

IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI

BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No.3181/Mum/2023 (A.Y 2019-20)
ITA No.3182/Mum/2023 (A.Y 2018-19)
ITA No.3183/Mum/2023 (A.Y 2015-16)
ITA No.3184/Mum/2023 (A.Y 2017-18)
ITA No.3185/Mum/2023 (A.Y 2019-20)

Transworld Furtichem Pvt Ltd,R-701 & 701 Part,TTC Industrial Area, MIDC, Rabale, Navi Mumbai – 400701.	Vs.	DCIT, Circle- 3(4), 19 th Floor, Air India Building, Nariman Point, Mumbai-400021.
PAN/GIR No. : AACCT0972D		
Appellant	..	Respondent

Appellant by	Shri.K.Shivaram&ShriRahulHakani.AR
Respondentby	Shri P.D Chougule.Sr.DR

Date of Hearing	27.12.2023
Date of Pronouncement	28.12.2023

आदेश / O R D E R

PER BENCH:

These are the appeals filed by the assessee against the separate ex-parte orders of the Commissioner of Income Tax (Appeals)(CIT(A)-51 Mumbai passed u/sec 250 of the Income Tax Act, 1951.

2. Since the issues involved in these file appeals are common and interlinked, hence they are clubbed,

heard and a consolidated order is passed. For the sake of convenience, we shall take up ITA No. 3181/Mum/2023, A.Y 2019-20 as lead case and the facts narrated. The assessee has raised the following grounds of appeal:

1. *The Ld. CIT (Appeals) erred in law and on facts in dismissing the appeal.*
2. *The Ld. CIT (Appeals) erred in law and is not justified in not giving proper opportunity.*
3. *The Ld. CIT (Appeals) erred in law and is not justified in confirming the disallowing the depreciation of Rs1,68,42,855/- on Trademark made by the assessing officer without appreciating the fact that Trademark has been valued as per Valuation report of Registered Valuer.*
4. *The Ld. CIT (Appeals) erred in law and is not justified in confirming the disallowing the depreciation of Rs1,68,42,855/- on Trademark made by the assessing officer without considering the fact that Ld. AO has failed to appreciate the fact that Valuation has been made as per Income Approach given in Technical Guide on Valuation.*
5. *The Ld. CIT (Appeals) erred in law and is not justified in confirming the disallowing the depreciation of Rs1,68,42,855/- on Trademark made by the assessing officer without considering the fact that same has been allowed by Ld. AO in Preceding assessment year i.e.*

2016-17 and therefore disallowance has been made merely on account of change in opinion and same may be deleted considering doctrine of res judicata.

6. The Ld. CIT(Appeals) erred in law in law and is not justified in confirming the addition of disallowance of 14A of Rs. 26,80,542/- while calculating the Book Profit u/s. 115JB of Income Tax Act, 1961.

7. The Ld. CIT(Appeals) erred in confirming addition of Rs. 26,80,542/- in Book Profit calculated as per provision of section 115JB without considering the fact that no adjustment can be made in the book profit u/s. 115JB for the item not specifically mentioned in the explanation to section 115JB of the Act.

8. The appellant prays that:
a. Delete the Disallowance of Rs. 1,68,42,855/- on account of Depreciation on Trademark..
b. Delete the addition of Rs. 26,80,542/- in Book profit.
c. The Appellant plead before Honorable ITAT to add, alter or amend any or all grounds of appeal before or at the time of hearing

9. Each of above grounds of appeal is in alternative and without prejudice to other. The appellant craves leave to add, alter, amend or delete all or any of the grounds of appeal before or during the course of hearing.

3. The brief facts of the case are that, the assessee company is engaged in the business of manufacturing, packing, distributing, transporting etc. of inorganic fertilizers. The assessee has filed the return of income for the A.Y 2019-20 on 28.05.2020 disclosing a total income of Rs. Nil under the normal provisions of Income Tax Act and whereas the total income (MAT) was determined U/sec115JB of the Act of Rs.4,71,43,420/-. Subsequently the case was selected for scrutiny and notice u/sec143(2) and U/sec142(1) of the Act along with questionnaire are issued. In compliance to the notice, the assessee has filed the submissions through e-proceedings on ITBA. The Assessing Officer (AO) on perusal of the financial statements found that the assessee has claimed depreciation on trademark arising out of amalgamation and the details were called from the assessee. Whereas the AO was not satisfied with the explanations filed by the assessee and has disallowed the claim of depreciation of Rs.1,68,42,855/- Similarly, the A.O has made disallowance U/sec14A r.w.r 8D of Rs.26,80,542/-and assessed the total income of

Rs.1,95,23,397/-and passed the order u/sec 143(3) of the Act dated 17.02.2021.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, statement of facts and findings of the AO and has issued notices of hearing and since there was no compliance by the assessee to notices. Therefore the CIT(A) considering the information on record has confirmed the action of the A.O and dismissed the appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in confirming the action of the Assessing officer overlooking the submissions made in the assessment proceedings. Further the assessee has a good case on merits and shall substantiate with the material evidences and prayed for an opportunity to explain before the lower authorities. Per Contra, the Ld. DR supported the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. Prima-facie the CIT(A) has passed

the order considering the fact that there is no appearance in spite of providing adequate opportunity of hearing and the notices were issued. Therefore, the CIT(A) was of the opinion that the assessee is not interested in prosecuting the appeal and dismissed the appeal ex-parte confirming the action of the assessing officer. The Ld. CIT(A) has issued the notices of hearing referred at Page 3 of the order, but there was no response and thus the Ld.CIT(A) came to a conclusion that the assessee is not interested and decided the appeal based on the information available on record. Whereas the assessee has raised grounds of appeal challenging the additions of the A.O and there could be various reasons for non appearance which cannot be overruled. Therefore, considering the principles of natural justice shall provide with one more opportunity of hearing to the assessee to substantiate the case with evidences and information. Accordingly, we set aside the order of the CIT(A) and remit the entire disputed issues to the file of the CIT(A) to adjudicate afresh and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information for early

disposal of the appeal. And, we allow the grounds of appeal of the assessee for statistical purposes.

7. In the result, the appeal filed by assessee is allowed for statistical purposes.

ITA Nos. 3182 to 3185/Mum/2023. A.Ys 2018-19, 2015-16, 2017-18 & 2019-20.

8. As the facts and circumstances in these appeals are identical to ITA No 3181/Mum/2023 for the A.Y 2019-20 (except variance in figures) and the decision rendered in above paragraphs would apply mutatis mutandis for these appeals also. Accordingly, we allow the grounds of appeal of the assessee for statistical purposes.

9. In the result, the five appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 28.12.2023.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 28.12.2023

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai