

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER  
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA Nos.334 & 335/Kol/2023**  
**Assessment Years: 2009-10 & 2010-11**  
**&**  
**ITA No.336 /Kol/2023**  
**Assessment Years: 2013-14**  
**&**  
**ITA No.337 /Kol/2023**  
**Assessment Years: 2016-17**

Rajatgiri Oil Industries Unit No. 4 (5 <sup>th</sup> Floor), Block-M, New Alipore Market Complex, Somnath Lahiri Sarani, New Alipore-700053. (PAN: AADFR7140K)	Vs.	ACIT, Circle-28, Kolkata. 2, Gariahat Road (South), West Bengal-700068.
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Appellant by : Shri Somnath Banerjee, Advocate  
Respondent by : Shri B. K. Singh, JCIT, Sr. DR

Hearing concluded on : 14.12.2023  
Date of Pronouncement : 05.02.2024

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

All these captioned appeals filed by the assessee are against the separate orders of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order nos. ITBA/NFAC/S/250/2022-23/1049366817(1), ITBA/NFAC/S/250/2022-23/1049366568(1), ITBA/NFAC/S/250/2022-23/1049366396(1) & ITBA/NFAC/S/250/2022-23/1049366171(1), all dated 02.02.2023 passed against the assessment order by ACIT, Circle-28, Kolkata, dated 29,12,2016 u/s.147/143(3) of the

Income-tax Act, 1961 (hereinafter referred to as the “Act”) for AY 2009-10, 30.03.2016 u/s. 143(3)/148 of the Act for AYs 2010-11 & 2013-14 & 27.12.2018 u/s. 143(3) of the Act for AYs 2016-17.

2. Grounds of appeal in respect of AY 2009-10 read as under:

*“1. On the facts and in the circumstances of the case and in law the C.I.T.(A) erred in holding that there is no infirmity found in reopening the assessment u/s 147 thereby dismissing ground No.1 and 2 related to validity of reopening the assessment u/s 147 of the I. T. Act.*

*2 On the facts and in the circumstances of the case and in law the C.I.T.(A) erred in disallowing depreciation Rs.32,78,068 which may kindly be deleted.*

*3. On the facts and in the circumstances of the case and in law the C.I.T.(A) erred in confirming the addition of Rs.5,74,510 on account of commission/professional consultancy income.”*

2.1 Grounds of appeal in respect of AY 2010-11 read as under:

*1. On the facts and in the circumstances of the case and in law the C.I.T.(A) erred in holding that there is no infirmity found in reopening the assessment u/s 147 thereby dismissing ground No.1,2 and 3 related to validity of reopening the assessment u/s 147 of the I.T.Act .*

*2 On the facts and in the circumstances of the case and in law the C.I.T.(A) erred in disallowing depreciation of Rs.2,72,577 and enhancing the rent of Katedan Godown to Rs.5,80,153 which may kindly be deleted.*

*3. On the facts and in the circumstances of the case and in law the C.I.T.(A) erred in confirming the addition of Rs.8,09,039 on account of enhancement of rent of Katedan Godown which may kindly be deleted.*

*4. On the facts and in the circumstances of the case and in law the C.I.T.(A) erred in confirming the disallowance of Rs.67,495 on account of income from commission and treating the total commission Rs.30,36,602 received by the Appellant may kindly be treated as business income.*

*5. On the facts and in the circumstances of the case and in law the C.I.T.(A) erred in confirming the addition of Rs 14,65,339 by arbitrarily treating the price of bulk oil at the rate of Rs. 51.46 per kg which may kindly be deleted.*

*6. On the facts and in the circumstances of the case and in law the C.I.T.(A) erred in confirming the disallowance of Rs.23,127 on account of payment of service tax by the Appellant which may kindly be deleted.*

*7. On the facts and in the circumstances of the case and in law the C.I.T.(A) erred in confirming the disallowance of Rs.9,11,407 on account of payment of license fees by the Appellant which may kindly be deleted.*

*8.On the facts and in the circumstances of the case and in law the C.I.T.(A) erred in confirming the disallowance of Rs 2,31,675 on account of payment of commission and brokerage by the Appellant which may kindly be deleted.*

9. *On the facts and in the circumstances of the case and in law the C.I.T.(A) erred in confirming the disallowance of depreciation of Rs. 24,750/- on air conditioner which may kindly be deleted.*

10. *On the facts and in the circumstances of the case and in law the C.I.T.(A) erred in confirming the disallowance of depreciation of Rs.35,68,210/- which may kindly be deleted.”*

## 2.2 Grounds of appeal in respect of AY 2013-14 read as under:

*“1. On the facts and in the circumstances of the case and in law the C.I.T.(A) erred in holding that ground No. 1 and 2 are not to be adjudicated separately while dismissing ground No.1 and 2 for statistical purposes.*

*2 On the facts and in the circumstances of the case and in law the C.I.T.(A) erred in disallowing depreciation of Rs.1,98,708 and enhancing the rent of Katedan Godown from Rs.5,27,412 to Rs.7,72,18 which may kindly be deleted.*

*3. On the facts and in the circumstances of the case and in law the C.I.T.(A) erred in confirming the estimation of rental income of property owned by the assessee by Rs.58,45,66 which may kindly be deleted.*

*4. On the facts and in the circumstances of the case and in law the C.I.T.(A) erred in treating the total commission Rs.97,20,104 and interest on F.D.R., I.D.B.I., I.D.S. amounting to Rs.10,88,640 received by the Appellant as income from other sources may kindly be treated as business income.*

*5. On the facts and in the circumstances of the case and in law the C.I.T.(A) erred in confirming the disallowance of Rs.10,88,943 on account of payment of service tax by the Appellant which may kindly be deleted.*

*6. On the facts and in the circumstances of the case and in law the C.I.T.(A) erred in confirming the disallowance of Rs.2,43,237 on account of payment of license fees by the Appellant which may kindly be deleted.*

*7. On the facts and in the circumstances of the case and in law the C.I.T.(A) erred in confirming the disallowance of Rs.96,707 on account of payment of commission and brokerage by the Appellant which may kindly be deleted.*

*8. On the facts and in the circumstances of the case and in law the C.I.T.(A) erred in confirming the disallowance of Rs.4,98,630 on account of repair, renewal and maintenance, Rs.24,069 as electric charges and Rs.7,19,869 as rates and taxes.*

*9. On the facts and in the circumstances of the case and in law the C.I.T.(A) erred in confirming the disallowance of depreciation of Rs.39,66,138 which may kindly be deleted.”*

## 2.3 Grounds of appeal in respect of AY 2016-17 read as under:

*“1. On the facts and in the circumstances of the case and in law the C.I.T.(A) erred in holding that there is no infirmity found in estimation of rent Rs.17,38,800 and adding with the total income which may kindly be deleted.*

*2 On the facts and in the circumstances of the case and in law the C.I.T.(A) erred in disallowing depreciation Rs.7,17,217 which may kindly be deleted.*

*3. On the facts and in the circumstances of the case and in law the C.I.T.(A) erred in confirming the addition of Rs.39,940 on account of interest received on summary assessment and not on the final determination u/s 143(3) of the I. T. Act which 'may kindly be deleted.'*

3. In the course of hearing, Ld. Counsel for the assessee asserted that in all the four appeals, there is a common issue involved in respect of disallowance of claim of depreciation on building along with legal issue on reopening of the assessment for AYs 2009-10 and 2010-11. The matter was heard and reserved for order on the hearing held on 12.06.2023. However, while going through the file for the purpose of drafting the order, it was noted that there are several other grounds raised by the assessee which are different from the aforesaid common issues asserted by the assessee. The matter was re-fixed for seeking clarification on the stance of assessee on the several other grounds which are different from the common grounds. In this respect, ld. Counsel submitted that these other grounds are pressed for disposal. However, no submissions, neither oral nor written were made before us in respect of these other grounds.

4. We first take up the legal issue raised by the assessee on the reopening u/s. 147 for AYs 2009-10 and 2010-11. We will take up the facts from AY 2009-10 for the purpose of deciding this issue for both the years together.

5. Assessee is a partnership firm consisting of two partners viz., Shri Lokenath Bhattacharya and Shri Somnath Bhattacharya having equal shares in profit and loss of the firm. Assessee filed its return of income on 07.09.2009 reporting total income of Rs.1,84,45,230/-. The return was processed u/s. 143(1) dated 19.01.2011. Subsequently, case of the assessee was taken up by issuing notice u/s. 148 on 31.03.2016 after

recording reasons for the issue of such notice. In the proceeding u/s. 148 read with 147 Ld. AO observed that assessee has claimed depreciation of Rs.32,78,068/- under section 32 of the Act on assets forming part of the block of assets i.e. buildings.

5.1. Further, Ld. AO noticed that during the course of assessment under section 143(3)/147 for A.Y.2013-14 and for the A.Y. 2010-11, the assessee had claimed depreciation on those buildings for which the assessee had also declared rental income under section 22 to 27 of the Act. The Ld. AO noticed with regard to the Land and Building at Hyderabad that the assessee has declared rental income and the said property was in-fact obtained under development agreement without incurring any cost. The assessee was claiming depreciation on the collector value of the said property. Hence, the assessee's share was in fact acquired by it without incurring any cost. Accordingly, claim of the assessee was rejected by the AO in the AYs 2010-11 and 2013-14.

5.2. According to the Ld. AO, as the assessee had shown rental income from the properties, no deduction other than those mentioned in section 22 to 27 of the Act can be allowed. Hence, the depreciation is not available under these sections. The contention of the assessee with regard to change of opinion was not accepted as in the case of the assessee, summary assessment was completed u/s 143(1). The Ld. AO had reopened the case for assessment by issuing notice u/s 148 on the basis of assessee's ITR for AY 2009-10, the completed assessment orders of A.Y. 2010-11, AY 2013-14 and Form 26AS for AY 2009-10.

5.3. Also, in reasons recorded by the AO, one of the reason was on the escapement of commission income declared in ITR as against reported in Form 26AS. According to the Ld. CIT(A), assessee in its submission admitted that necessary directions to be issued to the Ld.

AO for passing order u/s 154. Hence, assessee's admission, with regards to the non offering of commission income, proved that the belief of the Ld. AO regarding escapement of Income on the commission income was correct. Ld. CIT(A) held that Ld. AO had enough material on record i.e. ITR of the appellant, completed assessment orders for AY 2010-11, AY 2013-14 and Form 26AS etc, to form the belief.

5.4. Before the Ld. CIT(A), assessee also contended that appeals for AYs 2010-11 and 2013-14 had been filed on the same issue and are pending and, therefore, no reassessment proceedings could be initiated for AY 2009-10 on the same issue until the final outcome of those appeals. Ld. Counsel made detailed submission on this legal issue emphasizing on the change of opinion aspect for the action of Ld. AO. Assessee also claimed that issue relating to depreciation on block of assets had been examined by the Ld. AO in the original assessment proceedings and hence, opinion formed on this issue is nothing but change of opinion.

5.5. After considering the submissions made by the assessee, Ld. CIT(A) arrived at his findings to hold that case of the assessee was of return processed u/s. 143(1) and not a complete scrutiny assessment wherein none of the issues noted in the reasons to believe were considered. Thus, he disregarded the theory of change of opinion contested by the assessee. He also noted that reasons recorded included escapement of commission income declared in the return as against shown in Form 26AS. On this issue, he noted that assessee itself has admitted for necessary direction be issued to the Ld. AO for passing order u/s. 154 so as to included the commission income which remained to be offered in the return. Ld. CIT(A) also noted that intimation u/s. 143(1) was issued against which no appeal was filed

by the assessee and thus there was no dispute which was pending at the appellate stage. Thus, considering all these contentions and submissions, ld. CIT(A) held that belief of the AO regarding escapement of income was correct and he had enough material on record viz., return of the assessee, assessment orders for AY 2010-11 and 2013-14, form 26AS to form his belief. He thus, dismissed the legal ground raised by the assessee on the validity of assessment made u/s. 147.

6. From the above, we note that in determining whether the commencement of reassessment proceeding is valid or otherwise, it is only to be seen that there was prima facie some material on record on the basis of which AO can reopen the case. The sufficiency or correctness of the material is not a thing to be considered or questioned at this stage. Accordingly, we do not find any infirmity in the proceedings initiated u/s. 148 of the Act and assessment made u/s. 147 thereafter by the Ld. AO. Ground no.1 for AY 2009-10 and 2010-11 are dismissed.

7. Now, we take up the common issue in respect of disallowance of claim of depreciation on building which is relevant to all the four appeals before us.

8. Assessee had claimed depreciation of Rs.32,78,068/- in AY 2009-10 as reported in its audited financial statement. These claims relate to the following properties:

- (a) Land and building at Hyderabad.
- (b) Office premises ( flat No. 3C, Rajhans, 6, Hastings Park Road, Kolkata
- (c) Office premises ( flat No. 3D, Rajhans, 6, Hastings Park Road, Kolkata
- (d) Office premises at Hyderabad.

9. While disallowing the claim of depreciation on the above stated properties, ld. AO observed that these properties were not used for the purpose of business of the assessee. Ld. AO also noted in respect of land and building at Hyderabad (propelrty at Sl. No. (a) that the assessee had declared rental income in its return of Rs.68,74,281/- from this property under the head "Income from House Property" falling u/s. 22 to 27 of the Act. According to the Ld. AO, Part C of Chapter IV of the Act contains charging and computation part of income from house property. The said part "C" of Chapter IV of the Act is a complete code in itself and no deduction other than those mentioned in section 22 to 27 can be granted while computing income from house property. Accordingly, deduction for depreciation is not available under these sections against the rental income from the aforesaid property. Ld. AO thus rejected the claim of assessee in respect of the depreciation in respect of this property.

9.1. Ld. AO also noted that assessee has obtained the said property under development agreement. According to him, no cost of acquisition has been incurred by the assessee for acquisition of asset since deprciation is to be allowed on the actual cost incurred as mandated u/s. 32 read with section 43(6) and 43(1) and explanation (4) to section 43 of the Act. Assessee was the owner of the land over which the building was developed by the developer as per the development agreement. Assessee was allotted 50% of the built up area and the remaining 50% of the built up area was retained by the developer. Accourding to Ld. AO, the collector value and its stamp cost has been taken as cost of acquisition for which no evidence has been placed on record. The total collector value including the stamp value was at Rs.4,69,06,460/- and share of the assessee at 50% came to Rs.2,34,53,230/- which has been taken in the books of accounts,

that is, the cost of acquisition on which depreciation has been charged.

9.2. According to the Ld. AO, the said property was obtained under development agreement by the assessee and collector value does not represent the actual cost incurred by the assessee. Ld. CIT(A) while dealing with this issue observed that if the contention of the assessee is accepted that the land was owned by it and the said asset was obtained in lieu of price of land, in that situation, only the price or value of the land can be considered to be the cost of 50% developed property obtained by it. According to him, assessee has valued the entire developed property and taken 50% of such value for claiming depreciation. Mere entry in the books of account and the collector value, more importantly, for the entire developed property to claim depreciation on the same was rejected.

10. Before us, Ld. CIT, DR on this issue asserted that finding of the Ld. AO in respect of rental income declared by the assessee itself on this property under the head income from house property has not been controverted by giving any proof or otherwise. According to him, the claim of depreciation on this property is not allowable since rental income from the said property has been computed by applying the provisions to section 22 to 27 wherein standard deduction is allowed.

11. We have heard the rival contentions and note that it is an uncontroverted fact that assessee has declared rental income from the said property in its return at Rs.68,74,281/- under the head "Income from House Property". We note that Part C of Chapter IV of the Act contains charging and computation part of income from house property which is the complete code in itself and no deduction other than those mentioned in section 22 to 27 of the Act can be granted for computing the income of the property. Accordingly, claim of deduction towards

depreciation on the said property u/s. 32 is not available. We thus, do not find any reason to interfere in the finding given by the Ld. CIT(A) in this respect, upholding the disallowance on claim of depreciation made by the Ld. AO on this property.

11.1. While holding this, we note that Ld. Counsel had referred to the decision of Coordinate Bench of ITAT, Kolkata in the case of Nilgiri Oil & Allied Industries in ITA No. 939/Kol/2016 dated 14.02.2018. From the perusal of the said decision, it is observed that the issue involved was in respect of invoking the revisionary proceedings u/s. 263 of the Act. This order was subjected to Miscellaneous Application vide MA No. 78/Kol/2018. While disposing the Misc. Application, Coordinate Bench noted that assessee has not shown any rental income from this property, fact of which was not controverted by the Ld. DR and, therefore, this property qualified for depreciation as it fell in the block of assets. The Coordinate Bench thus, partly allowed the Misc. Application upholding the jurisdiction to invoke revisionary proceedings. In the present case before us, assessee has reported income from the said property under the head "Income from House Property". Thus, only standard deduction can be given while computing income from house property u/s. 22 to 27 and depreciation u/s. 32 cannot be allowed on the same.

12. Now, we take up the disallowance of depreciation on the remaining three properties at Sl. No. (b), (c) and (d) listed above. In respect of these three properties, the main contention of the Ld. AO was that these properties were not being used for business purposes but were meant for residential use and were accordingly used for residential purpose only. According to Ld. AO, assessee had not proved the actual use of all these building for the purpose of business even though these assets have been reported as business assets in the books of account. In order to ascertain the veracity of claim made by

the assessee in respect of these three properties, ld. AO deputed an Inspector to verify their actual use. Ld. AO had also called for opinion from Kolkata Municipal Corporation in respect of the relevant properties against which Kolkata Municipal Corporation informed that the said properties were being used for residential purposes. Ld. AO also further noted that there was no trade license obtained by the assessee in respect of conducting business from these premises. Even in the first appellate proceeding, Ld. CIT(A) observed that assessee could not submit any corroborative evidence to establish fact that assessee was earning its business or maintaining office from these properties. Ld. CIT(A) upheld the finding of the Ld. AO which was based on the report presented by Inspector on his enquiry and the letter of the Kolkata Municipal Corporation and that the properties were not applied for commercial use.

12.1. Before us, Ld. Counsel reiterated the submissions made before the authorities below. He submitted that accounts of the assessee proves that the business had been conducted and income derived therefrom is recorded in the books and that the auditor has also certified these books of account. He pointed out that from the accounts, it is clear that the assessee had conducted business from all the premises and, therefore, depreciation is to be allowed on the same. Ld. Sr. DR placed reliance on the orders of authorities below.

13. We have heard the rival contentions and perused the material available on record. We take note of the fact that the properties stated herein form part of the block of assets on which depreciation has been claimed u/s. 32 of the Act. In order to justify the claim of depreciation, the asset is ought to be used for the purpose of business. Ld. AO enquired about the fact of usage of these properties in the business and conducted the required enquiries with the help of deputing an Inspector and calling of information from Kolkata Municipal

Corporation. Ld. CIT(A) also gave adequate opportunities to the assessee to establish with cogent material about the use of these properties for the purpose of conducting the business. Assessee has repeatedly harped on its submission that accounts of the assessee proves that the business has been conducted from all these premises. Assessee has also placed on record certain bills relating to electricity and maintenance charge forming part of the paper book, which in our understanding do not, in any way, establish the fact of usage of these properties for the purpose of business. Such expenses are incurred even when these properties are used for residential purpose. We also note that assessment year 2009-10 was not subjected to scrutiny assessment but only the return was processed u/s. 143(1) of the Act even though assessee had contended that predecessor AO had concluded the original assessment, holding these properties as business properties after considering the audited accounts and the other particulars. Such a contention made by the assessee is devoid of merit.

14. Considering the facts on record and in absence of any cogent material brought on record to demonstrate conduct of business from these properties except for submitting certain documents relating to electricity and maintenance expenses as well as the discussion made above, we do not find any reason to interfere with the finding given by the Ld. CIT(A) to uphold the disallowance of claim of depreciation on these three properties. Accordingly, grounds taken by the assessee in this respect are dismissed.

15. We now take up ground no.2 raised by the assessee in AY 2010-11 and 2013-14 in respect of disallowance of depreciation and enhancement of rent from Katedan Godown. Along with this, we also take up ground no.3 in AY 2010-11 and 2013-14 and ground no.1 in AY 2016-17 pertaining to enhancement of rent and estimation of rental

income. Admittedly, it is undisputed that assessee has reported rental income from Katedan Godown against which it has claimed depreciation also. Ld. AO has treated the godown rent as income from house property by allowing 30% standard deduction. Further, Ld. AO has noted that the rental receipts had remained same when compared with the preceding years and, therefore, considering the general trend of annual increment in the rentals has enhanced it by 10%. Ld. CIT(A) has upheld the findings given by the Ld. AO and has confirmed the addition and disallowance made in this respect.

16. Before us, Ld. Counsel for the assessee did not make any submission to rebut the findings and observations of the authorities below. In respect of estimation of rental income, the issue of usage of the properties by the assessee and subsequent claim of depreciation on them has already been held against the assessee as discussed in the preceding paragraphs. It has been noted that assessee did not use the properties for its business and failed to substantiate the claim by producing any documentary evidence to establish that these were used for the purpose of business. Our observations and findings in this respect are already noted above. In view of these observations and findings, the estimation of rent on the said properties and disallowance of depreciation and maintenance charges which have been upheld by Ld. CIT(A), we do not find any reason to interfere on the said finding and accordingly, upheld the addition and disallowance made in this respect. Accordingly, grounds taken in this respect are dismissed.

17. Grounds in respect of addition made towards commission/professional consultancy income are vide ground no. 3 for AY 2009-10 and treatment of commission received by the assessee as income from other sources instead of business income are vide ground no. 4 in AYs 2010-11 and 2013-14. In AY 2013-14, assessee

has also contested in the same ground no. 4 for treatment of interest income on FDR etc. On this issue as well as all other grounds, we have already noted that Ld. Counsel of the assessee has made no submissions either oral or written in the course of hearing. We have perused the orders of authorities below and material available on record.

17.1. Assessee has submitted in the proceedings before the authorities below that clause 4 of its partnership deed provides for conduct of business for earning trade commission and thus claimed commission income as business income. Ld. AO had enquired from the assessee to prove with documentary evidence at same services had been rendered to the parties from whom commission income has been received. However, assessee could not furnish any documentary evidence in this respect and thus, Ld. AO treated it as income from other sources, which has been upheld by Ld. CIT(A). In respect of addition of professional consultancy receipt for AY 2009-10, nothing was brought on record to reconcile the income as reported in Form 26AS and as reported by the assessee in its return because of which the addition was sustained. Before us also, nothing is placed to verify the veracity of claim made by the assessee except for reference made before the authorities below, clause contained in partnership deed which provides for earning of trade commission by the assessee.

17.2. Considering the facts on record and the observations made by authorities below, we do not find any reason to interfere with the same and upheld the treatment so made and addition made in this respect.

17.3. In AY 2013-14 vide ground no. 4, assessee has contested on issue of interest income on FDR of Rs.10,88,640/-. However, from the order of Ld. CIT(A) in para 7.6, we note that the issue raised by the assessee has been allowed for its treatment as business income.

Against this relief, department is not in appeal before the Tribunal. Thus, the ground raised by the assessee in this respect is infructuous and is, therefore, dismissed. Accordingly, issue raised by the assessee in the three assessment years, 2009-10 vide ground no. 3, assessment year 2010-11 vide ground no. 4 and assessment year 2013-14 vide ground no. 4 are dismissed.

18. We now take up other grounds of appeal vide ground nos. 5, 6,7,8 and 9 for AY 2010-11, vide ground nos 5, 6,7 and 8 for AY 2013-14 and ground no. 3 for AY 2016-17. All these grounds of appeal are extracted above in the order. In this respect, the matter was refixed seeking clarification on the stance of assessee for which no submission either in oral or in written form were made as already noted by us in the above paragraph. For this, we have perused the orders of authorities below and gone through the observations and findings given by them which have been arrived at after discussing the submissions made by the assessee before them and has been captured in their respective orders. The observations and finding arrived at by Id. CIT(A) on these issues are meritorious and which are arrived at by taking into account the contentions raised by the assessee. The observations and findings arrived at by the Id. CIT(A) on each of the above stated issues are extracted below for ease of reference:

18.1. In AY 2010-11:

(a) In respect of ground no. 5, Ld. CIT(A) has held as under:

*“9.4 The impugned order u/s 147 of the Act and the submissions of the appellant have been duly considered. The facts are that the appellant in tax audit report in column no. 28(a) which pertained to the quantitative details of principle items of goods traded. The appellant in the Tax Audit Report column no. 28(b) which pertains to the manufacturing concern has given the quantitative details as NIL. The AO on perusal of quantitative details asked the appellant whether the appellant has itself processed the oil or has got the job work get done by third party as manufacturing charges are debited to P&L account amounting to Rs.6.75 lakh. The appellant was claiming 5% shortage*

during the course of drriage and 10% during the course of production. The appellant before the AO stated that it had got the processing done by M/s. Nilgiri Oil and Allied Industries and paid the processing charges of Rs. 6.75 lakh. The production loss claimed by the appellant is normal in this line of business and the same has been allowed in the earlier years by the AO. However, the AO stated that appellant has not replied to the query whether the processing of the raw-material was done by the appellant. Further, as the appellant has not undertaken the processing itself, the question of drriage or production loss born by the appellant doesn't arise. In absence of daily production, daily input-output, stock register the AO has computed the addition after multiplying the quantity of loss i.e. 23694 by average sale price i.e. Rs.51.46 came to the addition of Rs.14,56,339/-. It is also the fact that the appellant has not declared the quantity details for manufacturing concern. Hence, it is clear the appellant was trading in oil. However, the appellant has not produced the details of daily production, daily input-output, stock register etc. to the AO on contention that it is not processing itself but got the processing done by its sister concern. However, at the same time, it is noted that it has not even produced before the AO the details of raw material supplied to its sister concern and finished product received to arrive at correct loss in quantity. Further, the details of byeproduct, who retains the by-product and its final disposal by the appellant or it's sister concern etc. are required to be determined for computing the actual loss to the appellant. In absence of any such documentary evidences, action of the appellant of merely calculating the loss on any percentage and subsequently claiming the loss in quantity is not acceptable. Hence, the addition made by the AO of rs.14,56,339/- is hereby confirmed.”

(b) In respect of ground no. 6 Ld. CIT(A) has held as under:

“10.3. The impugned order u/s. 147 of the Act and the submissions of the appellant have been duly considered. The appellant admitted that the service tax of Rs.23,127/- pertained to the rent received by it. The appellant during the assessment stage or during the appellate stage failed to submit evidence of payment of the service tax or for which property it was paid. Further, the observation of the AO with regard to recovery of the same from tenant has also not been controverted by the appellant. In absence of the documentary evidences, the disallowance of Rs.23,127/- made by the AO is hereby confirmed. The ground of appeal 11 is hereby dismissed.”

(c) In respect of ground no. 7 Ld. CIT(A) has held as under:

“11.3 The impugned order u/s 147 of the Act and the submissions of the appellant have been thoroughly considered. The appellant has claimed the amount of Rs. 9,11,407/- as license & fees. Before the AO, the appellant submitted that the said expenditure is municipal taxes against the properties used for business. The AO held that as the properties have not been used for the business and also some properties for which appellant declared rental income claiming standard deduction u/s 23(1), the municipal taxes cannot be allowed from the business income. The appellant during the assessment stage or during the appellate stage has failed to controvert the finding of the AO that the appellant has already claimed the standard deduction u/s 23(1) hence no separate expenses of municipal tax can be allowed as business expenditure.

*The disallowance made by the AO is hereby confirmed. The ground of appeal 12 is hereby dismissed.”*

(d) In respect of ground no. 8 Ld. CIT(A) has held as under:

*“13.2 The appellant has debited an amount of Rs. 2,31,675/- on account of brokerage and commission. The observation of the AO with regard to this expenditure is that all the transactions of the appellant were with the related parties and brokerage was paid for letting out the properties which pertained to income from house properties. Hence question of brokerage/commission as business expenses does not arise. The appellant has not submitted any details of agents or services rendered by them relevant to the business of the appellant. Hence the AO has disallowed the expense. The appellant during the assessment stage as well as appellate stage has not been able to substantiate its claim or controvert the finding of the AO. The disallowance of Rs.2,31,675/- is hereby confirmed. The ground of appeal 14 is dismissed.”*

(e) In respect of ground no. 9 Ld. CIT(A) has held as under:

*“The appellant has shown addition of Rs.1,65,000/- in the form of AC Machine to Plant and Machinery and claimed depreciation @ 15% which comes to Rs. 24,750/-. The appellant before the AO did not produce any evidence regarding purchase of these AC Machine, where they were installed and whether they were used for business purposes. During the appellate stage the appellant also remained silent on the issue. Therefore, the disallowance of depreciation of Rs. 24,750/- on ACs is hereby confirmed. The ground of appeal 16 is hereby dismissed.”*

18.2. Assessment Year 2013-14:

(a) In respect of ground no. 5 Ld. CIT(A) has held as under:

*“10.3 The impugned order u/s 143(3) of the Act and the submissions of the appellant have been duly considered. The observation of the AO was that the perusal of the profit & loss account reveals that there is no such income on which the assessee is liable to pay the service tax. More-over, the service tax is a personal account where input and output are debited and credited. The appellant at assessment stage did not submit satisfactory reply the AO on this issue. The appellant admitted during the appellate stage that the service tax of Rs.10,88,943/- pertained to the rent received by it. The appellant during the assessment stage or during the appellate stage has failed to submit evidence of payment of the service tax or for which property it was paid or whether any recovery of the same has been made from the tenant. In absence of the documentary evidences, the disallowance of Rs.10,88,943/- made by the AO is hereby confirmed. The ground of appeal 9 is hereby dismissed.”*

(b) In respect of ground no. 6 Ld. CIT(A) has held as under:

*“11.3. The impugned order u/s. 143(3) of the Act and the submissions of the appellant have been thoroughly considered. The appellant has claimed the amount of Rs. 2,43,237/- as license & fees expenditure. Before the AO, the appellant submitted that the said expenditure is some payment to GHMC. Before the AO, the appellant failed to furnish any ences/explanation with regard' to payment for trade licence, membership fees paid for Vedic Village Home Cultural Association and mutation fees in respect of Dhulagarh Land. The appellant at assessment stage did not submit satisfactory reply to the AO on the issue. The appellant during the assessment stage or during the*

*appellate stage has failed to submit any evidence or explanation with regard to allowability of these expenses being revenue in nature. The disallowance made by the AO is hereby confirmed. The ground of appeal 10 is hereby dismissed.*

(c) In respect of ground no. 7 Ld. CIT(A) has held as under:

*“13.2 The appellant has debited an amount of Rs. 1,96,709/- on account of brokerage and commission. The observation of the AO with regard to this expenditure is that the appellant's all the transactions were with the related parties and brokerage was paid for letting out the properties which pertained to income from house properties. Hence question of brokerage/commission as business expanses does not arise. The appellant has not submitted any details of, agents or services rendered by them relevant to the business of the appellant. Hence the AO has disallowed these expenses. The appellant neither during the assessment stage nor during the appellate stage has been able to substantiate its claim or controvert the findings of the AO in absence of any documentary evidences. The disallowance of Rs. 1,96,709/- is hereby confirmed. The ground of appeal 12 is dismissed.”*

(d) In respect of ground no. 8 Ld. CIT(A) has held as under:

*“12.5 The impugned order u/s 143(3) of the Act and the submissions of the appellant have been thoroughly considered. The appellant submitted the copy of the invoices of M. Srikant for Rs.4,98,630/- paid by the Appellant on account of repair, renewal and maintenance, on perusal of which it is found that the said expenditure is related to raising of compound wall and fencing. The said bill is for bricks wall, plastering work etc. This expense clearly appears to be capital in nature and cannot be allowed as revenue expenditure. Hence, the disallowance of a sum of Rs.4.98,360/- on account of repair, renewal and maintenance is hereby confirmed.*

*12.6. With regard to disallowance the expenses of Rs.7,19,869/- on account of Rates and Taxes, the appellant has not been able to controvert the finding of the AO that the said expenditure can only be allowed on the basis of evidence of payment. Further the said expenditure pertains to the properties from where the appellant received the rental income or deemed to be let out as not used for business purpose. Hence, only standard deduction @ 30% is allowable. In view of the same, the appellant failed to establish the allowability of the said expenditure as business expenditure either before the AO or at the stage of appellate proceedings hence, the disallowance made by the AO of Rs.7,19,869/- is hereby confirmed.*

*12.7 With regard to the disallowance of electric charges Rs.24,069/- ( Rs. 20,000/- on account of electric meter and Rs.4,069/- on account of electricity charges) pertaining to the Dhulagarh godown. This expense clearly appears to be capital in nature and hence cannot be allowed as revenue expenditure. The appellant has failed to establish at the time of assessment proceedings or at the time of appellate proceedings that the said expenditure is in revenue in nature. Hence, the disallowance of Rs.24,069/- is hereby confirmed.*

*12.8. In nutshell the disallowances of a sum of Rs.4,98,360/- on account of repair, renewal and maintenance; Rs.24,069/- as electric charges and Rs.7,19,869/- as rates and taxes are hereby confirmed. The ground of appeal 11 is dismissed.”*

18.3. Assessment Year 2016-17:

(a) In respect of ground no. 3 Ld. CIT(A) has held as under:

*“5.3 The impugned order u/s 143(3) of the Act and the submissions of the appellant have been considered. The AO has made the addition on account of interest on refund for AY 2014-15 which was received by the appellant in the year under consideration; however, the appellant has not declared the said income in its ITR under the head Income from other sources. The appellant’s argument is that the assessment order for AY 2014-15 for which refund was received was disputed by the Appellant and the final income needs to be ascertained, therefore, the claim of appellant that no income on that account needs to be booked is not acceptable as per law. The interest on refund falls under the income head i.e. Income from other sources and for this head the income is required to be offered on receipt basis. The interest income on Income- tax refund cannot be postponed till the final income has been determined after the appellate proceedings. Therefore, there is no infirmity found in the action of the AO treating the interest on refund as income from other sources for the year under consideration. The ground of appeal 4 is hereby dismissed.”*

19. Since nothing has come up before us from the assessee to rebut the observations and findings given by the ld. CIT(A) on these issues, and after having gone through his observations and findings, we do not find any reason to interfere with them. Accordingly, all these above stated grounds taken by the assessee are dismissed.

9. In the result, all the appeals of the assessee are dismissed.

Order is pronounced in the open court on 05th February, 2024

Sd/-  
(Sanjay Garg)  
Judicial Member

Sd/-  
(Girish Agrawal)  
Accountant Member

**Dated: 05<sup>th</sup> February, 2024**

JD, Sr. P.S.

Copy to:

1. The Appellant:
  2. The Respondent.
  3. CIT(A), NFAC, Delhi
  4. CIT
  5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata