

**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI**  
**BEFORE SHRI AMARJIT SINGH, AM AND MS. KAVITHA RAJAGOPAL, JM**

ITA No.3639/Mum/2023  
(Assessment Year: 2018-19)

|   |     |   |
|---|-----|---|
| Ashapura Perfoclay Limited<br>3 <sup>rd</sup> Floor, Jeevan Udyog Building,<br>278, D. N. Road, Fort,<br>Mumbai-400 001 | Vs. | Dy. CIT<br>Room No. 1923, 19 <sup>th</sup> Floor,<br>Air India Building, Nariman Point,<br>Mumbai-400 021 |
| PAN/GIR No. AAACA 9472 H  |     |   |
| <b>(Assessee)</b>   | :   | <b>(Respondent)</b>   |
| <b>Assessee by</b>  | :   | Shri Gaurang R. Sanghavi  |
| <b>Respondent by</b>  | :   | Shri Manoj Kumar Sinha  |
| <b>Date of Hearing</b>  | :   | 05.03.2024  |
| <b>Date of Pronouncement</b>  | :   | 20.03.2024  |

**ORDER**

**Per Kavitha Rajagopal, JM:**

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) (‘ld.CIT(A) for short), National Faceless Appeal Centre (‘NFAC’ for short) passed u/s.250 of the Income Tax Act, 1961 (‘the Act’), pertaining to the Assessment Year (‘A.Y.’ for short) 2018-19.

2. The assessee has challenged this appeal on the following grounds:

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|----|--|-------------|
| 1  | <i>That the Hon’ble CIT(A) has grievously erred in confirming the addition proposed by the ld. A.O. amounting to Rs.3,45,018/- on account of duty drawback</i>                       | 0           |
| 2. | <i>That the learned A.O. has grievously erred in making the said addition of Rs.3,45,018/- without providing the appellant any details relating to the same</i>                      | 103505      |
| 3. | <i>That the Hon’ble CIT(A) has grievously erred in confirming the learned A.O.’s contention seeking to recover DDT of Rs.73,01,547 along with interest u/s. 115P of Rs.30,66,650</i> | 12152305    |
| 4. | <i>The appellant craves for leave to add, amend or modify the grounds of appeal</i>  | 0           |
|    | <i>Total tax effect</i>  | 1,22,55,810 |

3. The brief facts are that the assessee is engaged in the business of manufacturing of bleaching clay used in refining edible oil. The assessee has filed its return of income declaring total income at Rs.51,72,33,240/- and the same was processed u/s. 143(1) of the Act. The assessee's case was selected for complete scrutiny under CASS and notice u/s. 143(2) and 142(1) of the Act were duly issued and served upon the assessee.

4. The Id. Assessing Officer ('A.O.' for short) observed that the assessee has debited Rs.30,00,000/- in profit and loss account under the head 'machinery and repairs' which was paid to Aakar Veneer & Ply for which the assessee has failed to deduct TDS. The assessee vide its submission stated that as the said amount was paid towards purchase of materials, no TDS was deducted on the same and further claimed it to be revenue expenditure expended towards fixed assets of block 'fixture and fittings'. The assessee has also agreed to treat the said amount as capital expenditure before the Id. A.O. and the Id. A.O. had capitalized Rs.30,00,000/- under block of assets fixture and fittings @ 10%. The Id. A.O. further observed that the purchase date of the same as per the invoice was 27.12.2017, thereby allowing depreciation @ 5% amounting to Rs.1,50,000/-. Both the lower authorities then made an addition of Rs.28,50,001/- towards the said amount. Further to this, it was observed that the assessee had received duty drawback of Rs.1,22,85,257/- for which the assessee contends that the same will be accounted as and when the assessee receives when due and after duly posted by the concerned authority. The assessee further contended that there was no much of delay in the claim posted and the amount received. The Id. A.O. had rejected the assessee's contention on the ground that as per the information received from the competent authority on export and import

the assessee was sanctioned duty drawback of Rs.1,22,85,257/- as against the amount of Rs.1,19,40,239/- which was accounted by the assessee in its books of accounts. The ld. A.O. added the differential amount of Rs.3,45,018/- towards the duty drawback received by the assessee. The ld. A.O. then passed the assessment order dated 06.04.2021 u/s. 143(3) of the Act determining the total income at Rs.52,05,48,209/- under the normal provisions and Rs.43,96,33,599/- u/s. 115JB of the Act.

5. The assessee was in appeal before the first appellate authority challenging the addition made by the ld. A.O.

6. The ld. CIT(A) upheld the order of the ld. A.O.

7. The assessee is in appeal before us challenging the impugned addition.

8. We have heard the rival submissions and perused the materials available on record. The learned Authorised Representative ('ld. AR' for short) for the assessee submitted that the assessee was not provided with the copy of the information relied upon by the ld. A.O. for making an addition on the differential amount towards duty draw back earned by the assessee during the year under consideration. The ld. AR contended that the assessee had declared the entire amount received as duty drawback for taxation which was not looked into by the lower authorities. The ld. AR prayed that the assessee may be given one more opportunity to present its case before the ld. A.O.

9. The learned Departmental Representative ('ld.DR' for short) had nothing to controvert the same. We are of the considered opinion that this issue has to be remitted back to the file of the ld. A.O. for verification of the fact that the assessee has offered to

tax the entire amount towards duty draw back. Ground no. 1 raised by the assessee is hereby allowed for statistical purpose.

10. On ground no. 2 pertaining to disallowance of claim of dividend distribution tax amounting to Rs.73,01,574/- along with the interest levied u/s. 115P of the Act amounting to Rs.30,66,650/-. The ld. AR contended that the said tax has already been paid by the assessee which was accounted and not considered by the lower authorities. The ld. AR prayed that this issue may also be remanded back to the file of the ld. A.O. for verification of the factual aspects contended by the assessee. We, therefore, remand this issue also back to the file of the ld. A.O. for verification of the facts pertaining to this ground.

11. In the result, the appeal filed by the assessee is allowed for statistical purpose.

*Order pronounced in the open court on 20.03.2024.*

Sd/-

Sd/-

(Amarjit Singh)  
Accountant Member

(Kavitha Rajagopal)  
Judicial Member

Mumbai; Dated : 20.03.2024

Roshani, Sr. PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai