

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "B", MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER  
AND SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER**

**ITA Nos. 1805 & 1803/Mum/2024  
Assessment Years: 2011-12**

Maharashtra Small Scale Industries Development Corporation Limited  9, Krupanidhi, Walchand Marg, Ballard Estate, Mumbai-400001.  PAN: AAACM 3863 A  (Appellant)	Vs.	DCIT, Ward-10(2)(2), Mumbai       (Respondent)
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**ITA Nos. 1852 & 1853/Mum/2024  
Assessment Years: 2015-16 & 2018-19**

Maharashtra Small Scale Industries Development Corporation Limited  9, Krupanidhi, Walchand Marg, Ballard Estate, Mumbai-400001.  PAN: AAACM 3863 A  (Appellant)	Vs.	DCIT, Range-2(2)(2), Mumbai       (Respondent)
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**Present for:**

Assessee by : Ms. Dinkle Haria  
Revenue by : Shri Ashok Kumar Ambastha, Sr. DR

Date of Hearing : 26.06.2024  
Date of Pronouncement : 24.07.2024

**ORDER**

**PER AMARJIT SINGH, ACCOUNTANT MEMBER:**

All these four appeals filed by the assessee are directed against the different orders of ld. CIT(A), NFAC, Delhi pertaining to A.Y. 2011-12, 2015-16 & 2018-19. Since common issue and identical facts are involved in these appeals, therefore, for the sake

of convenience these appeals are adjudicated together by taking ITA 1805/Mum/2024 as lead case and its finding will be applied mutatis mutandis to the other appeals wherever these are applicable.

ITA No. 1805/Mum/2024

**“1. THE ORDER BAD, ILLEGAL AND WITHOUT JURISDICTION**

*1.1 In the facts and the circumstances of the case, and in law, the appellate order framed by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NEAC), Delhi, [‘Ld. CIT (A)’] be held as bad, illegal and without jurisdiction, as the same is framed in breach of the statutory provisions and the scheme and as otherwise also is not in accordance with the law.*

*1.2 Otherwise also, in the facts and the circumstances of the case, and in law, the appellate order so framed by the Ld. CIT(A) is bad and illegal void as the same is arbitrary and perverse.*

**2. NATURAL JUSTICE**

*2.1 It is submitted that, in the facts and the circumstances of the case, and in law, the appellate order so framed be held as bad and illegal, as:*

*(i) The same is framed in gross breach of the principles of natural justice; and*

*(ii) The same is passed without application of mind to the facts and the submissions brought on record by the Appellant.*

*2.2 Without prejudice to the generality of the above ground, in the facts and the Circumstances of the case, the appellate order so passed is bad and illegal as the Ld. CIT (A) erred in -*

*(i) Not granting proper, sufficient and adequate opportunity of being heard;*

*and*

*(ii) Not providing an opportunity of personal hearing to the Appellant.*

*2.3 It is submitted that in the facts and the circumstances of the case, and in law, no such action was called for.*

**3. EX-PARTE ORDER**

3.1 The Ld. CIT (A) erred in passing the order ex-parte.

3.2 While doing so, the Ld. CIT (A) failed to appreciate that the non-attendance / non-reply was for the reasons not attributable to the Appellant and, in any case for the reasons beyond the control of the Appellant and not deliberate or intentional.

3.3 It is submitted that in the facts and the circumstances of the case, and in law, no such action was called for.

WITHOUT PREJUDICE TO THE ABOVE

**4. NO LEVY OF INCOME TAX**

4.1 In the facts and the circumstances of the case, and in law, no addition of any income was required to be made in the hands of the assessee as the Appellant is a "state" within the meaning of Article 289 (1) of Constitution of India or an agent / an instrumentality of state within the meaning thereof.

WITHOUT PREJUDICE TO THE ABOVE

**5. DISALLOWANCE OF EXPENSES OF RS, 4,75,59,397/- ON AD - HOC ESTIMATION BASIS**

5.1 The Ld. CIT (A) erred in confirming the action of the DCIT- 2(2), Mumbai (the A.O.) in making disallowance of expenditure of Rs. 4,75,59,397/- (being 1% of the total expenditure of Rs. 475,59,39,691/-) on ad- hoc estimation basis.

5.2 While doing so, the Ld. CIT (A) erred in:

(i) Basing his action only on surmises, suspicion and conjecture;

(ii) Taking into account irrelevant and extraneous considerations; and

(iii) Ignoring relevant material and considerations as submitted by the Appellant.

5.3 Without prejudice to the generality of above, while doing so, the Ld. CIT (A) failed to appreciate that the sole reason for making disallowance of the expenses on an ad-hoc estimation basis - being non-filing of the audited books of accounts of the Appellant for the previous year corresponding to the relevant assessment year no longer survived, as the

*books of accounts of the Appellant for the previous year were duly audited subsequently on 24.06.2014.*

*5.4 It is submitted that in the facts and the circumstances of the case, and in law, no such disallowance was called for.*

*5.5 Without further prejudice to the above, assuming - but not admitting - that some disallowance was called for, the Ld. CIT (A) failed to appreciate that the computation of the disallowance made by the A.O. was arbitrary, excessive, and not in accordance with the law.*

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*6. The appellant craves leave to add, alter, delete or modify all or any of the above ground at the time of hearing.”*

2. Fact in brief is that return of income declaring total income of Rs. 4,70,54,400/- was filed on 30.09.2011. The case was subject to scrutiny assessee and notice u/s 143(2) of the Act was issued on 01.08.2012. During the course of assessment, the assessing officer noticed that gross receipt shown by the assessee exceeded the limit specified u/s 44AB of the Act and the assessee had failed to get its accounts audited by the specified date i.e. 30.09.2011 and submit the report of such audit by that date. The assessee has cited the reasons such as staff shortage etc. to justify the delay in finalizing its accounts. The AO observed that the assessee habitually failed to get its accounts audited on similar reasons for the last many years. Therefore, the assessing officer has made estimated disallowance out of the expenses debited to the P & L A/c of Rs. 475,59,39,691/- @ 1% of such expenses to the amount of Rs. 4,75,59,397/- and added to the total income of the assessee.

3. The assessee filed appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee on the ground that in spite of issuing various notices, assessee has not made any compliance during the course of appellate proceedings.

4. Heard both the sides and perused the material on record. Without reiterating the fact as discussed above in this order, the assessing officer has disallowed 1% of the total expenses debited in the P & L A/c since assessee had failed to get its accounts audited on time. During the course of appellate proceedings, the ld. CIT(A) has issued various notices however assessee has not made any compliance to the notices issued during the course of appellate proceedings. Therefore, the ld. CIT(A) has dismissed the appeal of the assessee without adjudicating the same on merit. Before us, the ld. Counsel submitted that e-mail ID on which the notices were issued was not active, therefore, no compliance could be made at the time of appellate proceedings before the ld. CIT(A). The ld. Counsel requested for providing more opportunity for deciding the appeal of the assessee on merit of disallowances made by the Assessing Officer on estimated basis.

5. We consider that section 250(6) of the Act contemplate that the ld. CIT(A) would determine point in dispute and therefore record reason on such point in support of his conclusion and decide the appeal on merit after considering the material available on record. After considering the plea of the assessee that no compliance could be made before the ld. CIT(A) because of non-operating of e-mail, we consider it appropriate to restore the same to the file of the ld. CIT(A) for deciding afresh on merit after providing adequate opportunity to the assessee. The assessee is also directed to make compliance before the ld. CIT(A) without any failure in the set aside proceedings. Therefore, the appeal of the assessee is allowed for statistical purposes.

ITA No. 1853/Mum/2024

6. During the course of assessment in this case also, the assessing officer noticed that assessee has failed to get its accounts audited by the specified date. The assessing officer disallowed the various expenses to the amount of Rs. 13,34,85,141/- consisting of debit balance written off of Rs. 11,19,873/-, disallowance of provisions of Rs. 2,94,80,259/-, disallowance of expenses incurred for impairment loss on fixed assets of Rs. 38,73,684/-, disallowance of expenses incurred in cash of Rs. 1,19,600/-, disallowance of liability for expenses of Rs. 2,67,347/-, disallowance of expenses incurred for interest on late payment of CST & TDS of Rs. 1,29,630/-, disallowance of expenses for corporate social responsibility of Rs. 5,50,000/-, disallowance of expenses under the head of other expenses of Rs. 1,91,58,187/- and disallowance of expenses u/s 40(a)(ia) of Rs. 21,39,250/-.

7. In this case also, the assessee has filed the appeal before the ld. CIT(A). However, the ld. CIT(A) has dismissed the appeal of the assessee on the ground that assessee has failed to make compliance to the various notices issued during the course of appellate proceedings for the similar reasons as discussed at para 4 of this order while adjudicating the appeal of the assessee for A.Y. 2011-12 vide ITA No. 1805/Mum/2024. Therefore, applying the finding in the case of the assessee for the ITA No. 1853/Mum/2024 as adjudicated above in this order, this appeal of the assessee is also restored to the file of the ld. CIT(A) for deciding afresh on merit after providing mere opportunity to the assessee. This appeal of the assessee is allowed for statistical purposes.

ITA No. 1852/Mum/2024

8. In this case also, the assessee failed to get its accounts audited within the specified period u/s 44AB of the Act. The assessing officer has passed order u/s 143(3) of the Act on 18.03.2021 and made various disallowances i.e. Rs. 1,44,62,364/- being disallowance of loss claimed by the assessee of Rs. 6,94,574/- u/s 40(a)(ia), Rs. 2,17,21,096/- u/s 43B of the Act.

9. The assessee has filed appeal before the ld. CIT(A). However, the ld. CIT(A) has dismissed the appeal of the assessee as the assessee has not made any compliance to the various notices issued by the ld. CIT(A) during the course of appellate proceedings for the similar reasons as discussed above at para 4 of the order vide ITA No. 1805/Mum/2024. Therefore, applying the finding of ITA 1805/Mum/2024, this case of the assessee is also restored to the file of the ld. CIT(A) for deciding afresh on merit after providing opportunity to the assessee. The assessee is also directed to make compliance before the ld. CIT(A) without any failure. This appeal of the assessee is also allowed for statistical purposes.

ITA No. 1803/Mum/2024

10. The assessing officer has finalized the assessment u/s 143(3) r.w.s. 147 of the Act after making disallowance of Rs. 2,76,77,667/- on account of cessation of liabilities. The ld. CIT(A) has dismissed the appeal of the assessee on the ground that assessee has not made any compliance to the notices issued during the course of appellate proceedings. Similar to the finding given as supra while adjudicating the case of the assessee vide ITA No. 1805/Mum/2024, this case is also restored to the file of the ld.

CIT(A) for deciding afresh on merit after providing more opportunity to the assessee. The assessee is also directed to make compliance before the Id. CIT(A) without any failure. Therefore, this appeal of the assessee is also allowed for statistical purposes.

11. In the result, all the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 24.07.2024.

**Sd/-**  
**(RAJ KUMAR CHAUHAN)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated: 24.07.2024  
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The CIT (A)
5. The DR

//True Copy//

By Order

Assistant Registrar  
ITAT, Mumbai Benches, Mumbai