

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "H (SMC)", MUMBAI**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**ITA No.1791/M/2024
Assessment Year: 2010-11**

M/s. Akluj Power Company Limited, 402, Waves Apts, Gamadia Cross Road, Mumbai, Maharashtra- 400 026 PAN: AABCA9539Q	Vs.	Commissioner of Income Tax (Appeals), ITO-6(1)(1), Aayakar Bhavan, Mumbai, Maharashtra-400 020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Vineet Agrawal, A.R.
Revenue by : Ms. Dhivya Ruth J., Sr. D.R.

Date of Hearing : 16 . 07 . 2024
Date of Pronouncement : 24 . 07 . 2024

O R D E R

Per : Satbeer Singh Godara, Judicial Member:

This assessee's appeal for assessment year 2010-11 arises against the National Faceless Appeal Centre(NFAC) Delhi's DIN & order No.ITBA/NFAC/S/250/2023-24/1060589595(1) dated 07.02.2024, in proceedings under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short 'the Act').

2. We have heard the assessee's director Shri Vineet Agrawal in person as well as the department. Case file perused.

3. The assessee's sole substantive ground raised in the instant appeal challenges correctness of both the lower authorities' action adding high term capital gains of Rs.29,26,076/- and expenditure disallowance u/s 37(1) of the Act of Rs.1,22,266/-, in the course of assessment dated 28.12.2017 and upheld in the learned CIT(A)/NFAC's ex-parte lower appellate discussion.

4. Learned departmental representative invited our attention to page 3, para 4 of the lower appellate discussion. She submits that the learned CIT(A)/NFAC herein had afforded as many as eight opportunities to the assessee to explain its case which the latter failed to avail. Ms. Dhivya Ruth J. accordingly draws strong support from both the learned lower authorities' action invoking the impugned addition. Shri Vineet Agrawal; who claims himself to be the assessee's/company's director, submits that the foregoing lapse during the course of lower appellate proceedings was on

account of the fact that there was a change in address which could not be effectively intimated to the departmental authorities.

5. We have given our thoughtful consideration to the foregoing vehement rival submissions. The fact remains that although it could be noticed that the learned CIT(A)/NFAC had indeed afforded various opportunities to the assessee, its lower appellate findings in para 5 to 5.2 do not satisfy the rigor of section 250(6) of the Act requiring it to frame points of determination followed by a detailed adjudication thereupon. We thus restore the assessee's instant appeal back to the learned CIT(A)/NFAC for its appropriate adjudication as per law subject to a rider that it shall be the tax payer's risk and responsibility only to plead and prove all the relevant facts within three effective opportunities of hearing in consequential proceedings. Ordered accordingly.

6. Delay of 60 days in filing of the instant appeal is condoned in light of the fact that the assessee has filed medical records of its concerned persons during the limitation period. Hon'ble Apex Court in Collector, Land Acquisition vs.,

MST Katiji [1987] 167 ITR 471 (SC) has settled the law long back that all these technical aspects must make way for the cause of substantial justice. Ordered accordingly.

7. This assessee's appeal is allowed for statistical purposes in above terms.

Order pronounced in the open court on 24.07.2024.

**Sd/-
(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER**

**Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.