

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH, AHMEDABAD**

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER  
& SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER**

I.T.A. No.785/Ahd/2024  
(Assessment Year: 2010-11)

Takshashila Realities Pvt. Ltd., (Successor of erstwhile Takshashila Properties Pvt. Ltd.), Survey 218, 219 220, FP 3111, TF 112, Construction B S Takshila Ecogree, Nr. Aadinath Nagar, S.P. Ring Road, Vastral, Ahmedabad-382418	Vs.	The Assistant Commissioner of Income Tax, Circle-4(1)(2), Ahmedabad Current Jurisdiction The Deputy Commissioner of Income Tax, Circle-4(1)(1), Ahmedabad
[PAN No.AAACY1535D]		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

<b>Appellant by :</b>	Shri Sanjay R. Shah, A.R.
<b>Respondent by:</b>	Shri Ashok Kumar Suthar, Sr. DR

<b>Date of Hearing</b>	01.08.2024
<b>Date of Pronouncement</b>	07.08.2024

**ORDER**

**PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:**

The present appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), Delhi under Section 250 of the Act, vide order dated 22.02.2024, for Assessment Year 2010-11, wherein the CIT(A) had confirmed the additions made by the Assessing Officer regarding disallowance of claim of deduction under Section 80-IB of the Act (amounting to Rs. 2.93 crores), upheld adjustment to book profits computed under Section 115JB of the Act (amounting to Rs. 2.86 crores) and upheld addition of labour expenses (amounting to Rs. 63 lakhs approximately).

2. The assessee has taken the following grounds of appeal:

*“1. The learned Commissioner of Income-tax (Appeals) [CIT(A)] erred in passing the order u/s. 250 of the Income-tax Act, 1961 (“the Act”) upholding the additions made by the learned Assessing Officer as the appellant was prevented by reasonable cause to comply with the notice issued by him for hearing of the case and thus erred in deciding the appeal ex-parte and in violation of the principles of natural justice. It is submitted that in the facts and circumstances of the case, the order passed by the learned CIT(A) be set aside to provide opportunity to the appellant to file submissions and represent its case before the learned CIT(A).*

*2. The learned CIT(A) erred in law and facts of the case by upholding the disallowance of claim of deduction under Section 80-IB of the Act amounting to Rs.2,93,76,226/-.*

*3. The learned CIT(A) erred in law and facts of the case by upholding the adjustment of an amount of Rs.2,86,77,763/- to the book profit computed u/s. 115JB of the Act.*

*4. The learned CIT(A) erred in law and facts of the case by upholding the addition of Rs.63,33,965/- on account of Labour expenses.*

*5. The Appellant reserves the right to add, alter, amend and/or withdraw any of the above Grounds of Appeal.”*

3. Before us, at the outset, the Counsel for the assessee submitted that the assessee could not cause appearance before the Ld. CIT(A) and accordingly, the CIT(A) had confirmed the additions on ex-parte basis in the hands of the assessee by making a specific observation that Ld. CIT(A) is constrained to concur with the Assessing Officer’s findings of facts more particularly in the absence of any meaningful and worthwhile submissions / documents during the appellate proceedings to effectively counter the position adopted by the Assessing Officer. The Counsel for the assessee submitted before us that there was a valid reason for non-appearance before the Ld. CIT(A), which was for the reason that in the Form 35 filed before Ld. CIT(A), the assessee had given the e-mail address of one of it’s employees. However, at the time when the notices were issued by the Ld. CIT(A), such employee had left the employment of the assessee company and therefore, the notices of hearing issued by the Ld. CIT(A) were not received by the assessee. The Counsel for

the assessee also filed an Affidavit in support of the above contention. Therefore, it was submitted before us that since the assessee company was not in receipt of notices of hearing from the office of Ld. CIT(A), it could not cause appearance in response to these notices and did not get effective opportunity to present it's case on merits.

4. The Counsel for the assessee also submitted that in the instant case, substantial additions have been made by the Assessing Officer to the return of income of the assessee and looking into the quantum of additions, in the interest of justice, the matter may be restored to the file of Ld. CIT(A) for de-novo consideration. Further, the Counsel for the assessee submitted that even on merits, the assessee has a good on merits and our attention was drawn to the order passed by the ITAT in assessee's own case for A.Y. 2009-10, where substantial relief was granted to the assessee with respect to the issue of claim of addition under Section 80-IB(10) of the Act. The Counsel for the assessee also produced before us the relevant order passed by ITAT in assessee's own case for our perusal. Further, with respect to addition under Section 115JB of the Act, the Counsel for the assessee drew our attention to ITAT order in the assessee's own case for A.Y. 2010-11 dated 29.05.2024 wherein this issue had been decided by the ITAT in favour of the assessee. Our attention was drawn to Pages 157-158 of the Paper Book, wherein the ITAT had decided the same issue in favour of the assessee in it's order for A.Y. 2010-11. Regarding the third addition relating to disallowance of labour expenses amounting to Rs. 63,33,965/-, the Counsel for the assessee submitted that the assessee could not provide the relevant details regarding labour expenses to the Assessing Officer since during the relevant time the records of the assessee had been seized by the Sales Tax Department. However, the Counsel for the assessee submitted

that such records which had been seized by the Sales Tax Authorities have now been released and if given an opportunity, the assessee would be able to furnish the relevant supporting documents / evidences in support of claim of labour expenses. Accordingly, the Counsel for the assessee submitted that in view of the above background, it is a fit case where the matter may be restored to the file of Ld. CIT(A) for de-novo consideration, since firstly, the assessee for bona fide reasons, on account of non-receipt of notices of hearing from office of Ld. CIT(A), could not cause appearance during the first appellate proceedings and secondly, the assessee has a good case on merits and the issues under consideration have largely been allowed in favour of the assessee by Hon'ble Tribunal in assessee's own case for preceding assessment years.

5. In response, Ld. D.R. placed reliance on the observations made by Ld. CIT(A) in the appellate order.

6. We have heard the rival contentions and perused the material on record. In view of the circumstances highlighted above, the Affidavit filed by the Counsel for the assessee to that effect that since the employee upon whom the notices of hearing were served by the Ld. CIT(A) had left the organization, the assessee did not get an opportunity to cause appearance before Ld. CIT(A) and further, taking into consideration the fact that on the issues / grounds which are the subject matter of appeal before us, the ITAT in assessee's own case for previous assessments years has granted substantial relief to the assessee, we are of the considered view that this is a fit case where, in the interest of justice, the matter may be restored to the file of Ld. CIT(A) for de-novo consideration, after giving due opportunity of hearing to the assessee to present it's case on merits. The assessee is also directed to follow up with the office of Ld. CIT(A)

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and to promptly and diligently comply with all notices of hearing issued by the office of Ld. CIT(A) and in case of any further non-compliance on the part of the assessee, the Ld. CIT(A) would be at liberty to pass appropriate orders on the basis of material available on record, in accordance with law.

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

<b>This Order pronounced in Open Court on</b>	<b>07/08/2024</b>
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**Sd/-**  
**(MAKARAND V. MAHADEOKAR)**  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 07/08/2024

TANMAY, Sr. PS

**TRUE COPY**

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

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

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)**  
**आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad**