

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "ए", अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

सुश्री सुचित्रा काम्बले, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।
BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

Sl. No(s)	आयकर अपील सं/ ITA No(s)	निर्धारण वर्ष/ Assessment Year(s)	Appeal(s) by :	
			अपीलार्थी / Appellant	प्रत्यर्थी / Respondent
1.	769/Ahd/2023	2012-13	Presha Metallurgical Limited D-209, Sumel-11 Indian Textile Plaza Nr.Namaste Circle, Shahibaug Ahmedabad- 380 004 PAN:AACCJ 4764 D	The Income Tax Officer Ward-2(1)(2) Baroda, Now The Income Tax Officer Ward-3(1)(1), Ahmedabad
2.	770/Ahd/2023	2013-14	-do- Assessee	-do- Revenue
3.	843/Ahd/2023	2017-18	-do- Assessee	-do- Revenue

Assessee by :	Shri Ajay Kshatriya, AR
Revenue by :	Shri H. Phani Raju, CIT-DR & Shri V.K. Mangla, Sr.DR

सुनवाई की तारीख/Date of Hearing : 12/08/2024
घोषणा की तारीख /Date of Pronouncement: 14/08/2024

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, AM:

These three appeals filed by the Assessee are directed against the different orders of the Commissioner of Income-tax (Appeals), National

Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "CIT(A)" in short] dated 10/08/2023 for Assessment Years (AYs) 2012-13 & 2013-14 and dated 25/09/2023 for AY 2017-18 arising out of the assessment orders dated 26/03/2015, 08/03/2016 & 14/11/2019 passed by the Assessing Officer (AO) under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AY 2012-13 & 2013-14 and u/s.144 for AY 2017-18.

Facts of the case:

2. The assessee-company is a domestic public limited company engaged in the business of sale and purchase of securities. The assessee filed its return of income declaring NIL income for the assessment year under consideration. The summary of returns, its assessment u/s.143(3) of the Act and appeals filed are as follows:

Particulars	A.Y. 2012-2013	A.Y. 2013-14	A.Y. 2017-18
Date on which the return was submitted	25-09-2012	21-01-2014	12-03-2018
Declared total income of Rs.	NIL	NIL	NIL
Date on which AO passed the order u/s 143(3)	26-03-2015	08-03-2016	14-11-2019
- Nature of Addition by AO -	- Addition u/s 68 amounting to Rs. 43Cr and Rs.5 Cr - Disallowance of pre-commencement expenses of Rs.3,67,435/-	- Addition u/s 68 amounting to Rs. 1.40Cr and Rs.7Cr - Disallowance of pre-commencement expenses of Rs.1,73,626/-	- Addition u/s 68 amounting to Rs. 1,32,73,710/- - Under reported income of Rs.1,23,32,328/- on account of deemed interest @12% on loans and advances

			given
Date of Appeal filed before CIT(Appeals) - 2 Baroda	13-12-2019	19-04-2016	13-12-2019
Date on which CIT(A) -NFAC passed the order	10-08-2023	10-08-2023	25-09-2023
Decision of CIT(A) NFAC	Dismissed	Dismissed	Partly allowed confirming Addition u/s 68 and deleting addition on account of deemed interest

2.1. The cases were selected for scrutiny and the assessment was completed by making additions as detailed in the table above. The assessee filed appeals before the Ld.CIT(A), who issued notices on various dates as detailed in the table below:

Assessment Years	Dates of Notices issued by CIT(A)
A.Y. 2012-13	20-11-2017,28-12-2017,04-02-2020,09-07-2020,24-12-2020,22-01-2021,24-09-2021,03-11-2021,08-03-2022,02-05-2023,17-07-2023
A.Y. 2013-14	06-09-2017,20-11-2017,02-04-2018,24-12-2020,22-01-2021,24-09-2021,08-03-2022,02-05-2023,17-07-2023
A.Y. 2017-18	03-08-2023,14-08-2023,15-09-2023 Assessee submitted written submission on 18-09-2023 with a request to admit the same under Rule 46A of the Rules.

2.2. The assessee failed to reply to the notices of the Ld.CIT(A), hence the appeals for A.Y. 2012-13 and A.Y. 2013-14 were dismissed and the appeal for the A.Y. 2017-18 was decided on the basis of written submission.

3. Aggrieved by the orders of the Ld.CIT(A) in all these appeals, the assessee filed appeals before us with the following grounds and claimed the relief:

For AY 2012-13

"1. On facts and circumstances of the case and in law, the order passed by the Ld. CIT(A) is bad in law, illegal besides being in violation of principle of natural justice & equity as passed without considering the material already placed on record, as such it is liable to be quashed and set aside.

2. On facts and circumstances of the case and in law, the Ld. CIT(A) has grossly erred in not adjudicating the ground raised before him against impugned addition of Rs.43 crores being share premium/warrant money made by the A.O., and deciding the same on merits of the case.

3. On facts and circumstances of the case and in law, the Ld. CIT(A) has grossly erred in not adjudicating the grounds raised before him against impugned addition of Rs.5.73 crore on account of alleged unsecured loan made by the A.O., and deciding the same on merits of the case.

4. On facts and circumstances of the case and in law, the Ld. CIT(A) has grossly erred in not adjudicating the ground raised before him against impugned addition of Rs.3,67,435/- on account of pre-commencement of business expenses made by the A.O., and deciding the same on merits of the case.

LEAVE CRAVED

The appellant craves leave to add, alter, amend and/or withdraw any of the grounds or ground of appeal either before or at the time of appeal hearing.

RELIEF CLAIMED

The appellant respectfully urges that by allowing ground no.1 so being raised by the appellant, the impugned assessment order may kindly be quashed and the consequential additions made of Rs.43 crores, Rs.5.70 crores and Rs.3,67,435/- may kindly be deleted or set aside. If the ground no. 1 is not allowed in favour of the appellant then having regard to the merits of the case, the impugned additions of Rs.43 crores, Rs.5.70 crores and Rs.3,67,435/- may kindly be deleted by allowing ground no. 2, 3 & 4 so raised by the appellant."

For AY 2013-14

"1. On facts and circumstances of the case and in law, the order passed by the Ld. CIT(A) is bad in law & illegal besides being in violation of principle of natural justice & equity as passed without considering the material already placed on record, as such it is liable to be quashed and set aside.

2. On facts and circumstances of the case and in law, the Ld. CIT(A) has grossly erred in not adjudicating the ground raised before him against impugned addition of Rs.7 crores made by the A.O. being share premium/warrant money, and not deciding the same on merits of the case.

3. On facts and circumstances of the case and in law, the Ld. CIT(A) has grossly erred in not adjudicating the ground raised before him against impugned addition of Rs.1,73,626 on account of office expense made by the A.O., and not deciding the same on merits of the case.

LEAVE CRAVED

The appellant craves leave to add, alter, amend and/or withdraw any of the grounds or ground of appeal either before or at the time of appeal hearing.

RELIEF CLAIMED

The appellant respectfully urges that by allowing ground no.1 so being raised by the appellant, the impugned assessment order may kindly be quashed and the consequential additions made of Rs.7 crores and Rs.1,73,626/- may kindly be deleted or set aside. If the ground no. 1 is not allowed in favour of the appellant then having regard to the merits of the case, the impugned additions of Rs.7 crores, Rs.1,73,626/- may kindly be deleted by allowing ground no. 2 & 3 so raised by the appellant."

For AY 2017-18

"1. On facts and circumstances of the case and in law, the order passed by the Ld. CIT(A) is bad in law, illegal besides being in violation of principle of natural justice & equity as passed without considering the material already placed on record, as such it is liable to be quashed and set aside.

2. On facts and circumstances of the case and in law, the Ld. CIT(A) has grossly erred in sustaining an addition of Rs.1,32,73,710/- u/s. 68 of the Act

made by the A.O., when there is no justification in making impugned addition. The same may kindly be deleted.

LEAVE CRAVED

The appellant craves leave to add, alter, amend and/or withdraw any of the grounds or ground of appeal either before or at the time of appeal hearing.

RELIEF CLAIMED

The appellant respectfully urges that by allowing ground no.1 so being raised by the appellant, the impugned assessment order may kindly be quashed and the consequential addition of Rs.1,32,73,710/- may kindly be deleted or set aside. If the ground no. 1 is not allowed in favour of the appellant then having regard to the merits of the case, the impugned additions of 1,32,73,710/- may kindly be deleted by allowing ground no. 2, so raised by the appellant."

4. During the course of hearing before us, the Ld.Authorised Representative (AR) of the assessee submitted that the assessee had filed appeal before the Ld.CIT(Appeals)-2, Baroda on the dates mentioned in the summary table above.

4.1. Relating to appeal for A.Y. 2012-13 the Ld.AR stated that the assessee had submitted application under Rule 46A of the Income Tax Rules, 1962 to CIT(Appeals)-2, Baroda on 07-01-2016 adducing material additional evidence. The Ld.CIT(Appeals)-2, Baroda fixed the hearing on 03-02-2016 and the Ld.AR of the assessee attended and filed detailed submissions dated 27-01-2016 along with duly indexed paper-book and argued the case orally. The Ld.AR of the assessee attended the hearing fixed by the Ld.CIT(Appeals)-2, Baroda on 09-07-2017 and submitted comments on the

AO's remand report. On 19-01-2017, the Ld.AR attended and submitted further submission. Similarly, the Ld.AR also attended on 27-11-2017, 04-02-2020 and 09-07-2020. The Ld.AR further stated that the CBDT as per its executive instructions issued by virtue of order dated 25-09-2020, specifically directed to concerned commissioners to upload the submissions and paper-book on the department's ITBA portal in case of all pending appeals. The Ld.AR also stated that the impugned order passed by the Ld.CIT(A) suffers from perversity as the Ld.CIT(A) has not decided the matter on merit.

4.2. Relating to appeal for A.Y. 2013-14, the Ld.AR stated that Shri Mahendra Ganatra, Director who was authorised signatory for all tax related matters resigned on 28-08-2015 and, therefore, the assessee lost track of the notices issued by NFAC and remained uncompiled with. The appeal was also moved to NFAC from the Ld.CIT(Appeals)-2, Baroda.

4.2. Relating to appeal for A.Y. 2017-18, which was earlier filed with the Ld.CIT(Appeals)-2, Baroda and moved to NFAC, the Ld.AR stated that the Ld.CIT(A) has passed the order without considering the submission filed under Rule 46A. The Ld.AR further stated that the Ld.CIT(A) ought to have remanded the issue to the AO for further enquiry but has failed to so hence the case is not decided on merit.

5. The Ld.Departmental Representative (DR) fairly agreed that the cases are not decided on merits.

6. We have heard the submissions of both the parties and perused the materials available on record. Considering the facts and circumstances of

the case and the submissions made by the Ld.AR, we find that in case of A.Y. 2012-13 and A.Y. 2013-14, the Ld.CIT(A) dismissed the appeals without considering the additional evidence submitted under Rule 46A and the detailed submissions made by the assessee. This amounts to a failure to decide the matter on merit, which is contrary to the principles of natural justice. In A.Y. 2017-18, the Ld.CIT(A) partly allowed the appeal, but did not properly consider the submissions filed under Rule 46A. The Ld.CIT(A) should have remanded the matter to the AO for further inquiry but failed to do so.

6.1. We are of the view that the matter should be remanded back to the file of the Ld.CIT(A) for a fresh decision, after considering the additional evidence and submissions. It is also settled principle and law that when additional evidence is filed under Rule 46A, the Ld.CIT(A) must provide an opportunity to the AO to examine such evidence and to produce any evidence or documents in rebuttal of the additional evidence produced by the assessee and failure to do so would result in the denial of natural justice. In the present cases, the Ld.CIT(A) has not called for the remand report.

6.2. The Ld.Departmental Representative agreed to our view and did not object to restoring the matter back to the file of the Ld.CIT(A).

6.3. In view of the above, without going into the merits of the case, we set aside the orders of the Ld.CIT(A) for all the three assessment years and restore the matters back to the file of the Ld.CIT(A) with a direction to decide the issues on merits afresh, after considering the submissions and additional evidence filed by the assessee. We further direct the assessee to

adhere to the time limits prescribed by the Ld.CIT(A) for the submission of documents and evidence to ensure a timely resolution of the matters.

6.4. In the combined result, all the three appeals filed by the Assessee are treated as allowed for statistical purposes.

Order pronounced in the Open Court on 14th August, 2024 at Ahmedabad.

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

**Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER**

अहमदाबाद/Ahmedabad, दिनांक/Dated 14/08/2024

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

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)-(NFAC), Delhi
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad