

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

BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &  
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER

ITA No.686 & 687/MUM/2024  
(A.Y.2011-12)

M/s.BrickbhanPolysters Pvt Ltd, 147,Room.No. 57, 3 <sup>rd</sup> Floor, Gaiwadi Sadan, Dr. Vegas Street, Kalbadevi Road, Mumbai-400002.	Vs.	ITO Ward 4(1)(3), Aayakar Bhavan, M.K.road, Mumbai-400021.
PAN/GIR No. AAACB4777C		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Appellant by	Ms. Ranjana Soni.AR
Revenue by	Shri.Ashok Kumar Ambastha.Sr.DR

सुनवाई की तारीख/Date of Hearing	28.08.2024
घोषणा की तारीख/Date of Pronouncement	03.09.2024

**ORDER**

**PER PAVAN KUMAR GADALE, JM:**

These are the two appeals filed by the assessee against separate orders of commissioner of Income Tax Appeal NFAC Delhi/CIT(A) (i) passed u/sec147r.w.s144 and u/sec 250 of the Act and (ii) u/sec 271B and u/sec 250 of the Income Tax Act.

2. At the time of hearing, it was submitted that there is a delay in filing the appeals before the Hon'ble Tribunal

and the assessee has filed an application/affidavit for condonation of delay. Whereas, the facts mentioned are reasonable and the Ld.DR has no specific objections. Accordingly, we condone the delay and admit the appeals.

3. Since the issues involved in these two appeals are common and identical, hence are clubbed, heard and a consolidated order is passed. For the sake of convenience, shall take up the ITA No. 687/Mum/2024 as lead case and the facts narrated. The assessee has raised the following grounds of appeal.

*The Assessee prefers an appeal against an order dated 08/09/2023 passed by the National Faceless Appellate Centre (NFAC), Delhi on following amongst other grounds, each of which is without prejudice to any others:*

- 1. The appellant submits that there is delay in filing the appeal by 100 days. The delay in filing of the appeal of 100 days was due to circumstances beyond the control of the appellant. The appellant makes a respectful prayer to your honour to condone the delay of 165 days in filing the appeal and decide the grounds on merits.*
- 2. On the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming in levying the penalty u/s 271B of the Income Tax Act, 1961 of Rs. 100,000/- without considering and appreciating the facts of the case that the appellant had got its accounts audited u/s 44AB of the Income Tax Act, 1961 before the specified date.*

3. *The appellant craves leave to add, alter, amend or modify any or all grounds till the disposal of the Appeal.*

4. The brief facts of the case are that, the assessee company is engaged in the business of manufacturing of polyesters texturing. The assessee has filed the return of income on 30/03/2013 for the A.Y.2011-12 disclosing a total income of Rs. Nil after adjusting business income of 39,53,909/-against brought forward business loss. Whereas the Assessing Officer(A.O) has received information that the assessee is beneficiary of accommodation entries aggregating to Rs. 23,67,900/- from the parties. Therefore, the Assessing Officer has reasons to believe that the income has escaped the assessment and issued notice u/sec 148 of the Act and there was no compliance. Further the AO has issued notice u/sec 143(2) and u/sec 142(1) of the Act along with questionnaire and there was no compliance. Whereas the A.O has issued show cause notice and was also not complied. Therefore, the AO considering the information on record has invoked the provisions u/sec 144 of the Act and made best judgment assessment with the addition of (i)unexplained credits u/sec68 of the Act of Rs.23,67,900/- (ii) estimated commission expenditure of Rs.47,358/- (iii) deposits in the bank account of Rs.37,47,150/- and estimated profit on undisclosed business receipts which works out to Rs.14,81,236/- and finally assessed the total income of Rs.54,35,145/-and

passed the order u/sec144 r.w.s147 of the Act dated 14.12.2018.

5. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, statement of facts and findings of the Assessment Order and has issued notice of hearing on various dates and since there was no compliance by the assessee to notice. Therefore, the CIT(A) considering the information on record has confirmed the action of the A.O and dismissed the appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

6. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in not considering the facts of the assessment proceedings. Further the Ld.AR emphasized that the assessee has good case on merits with supporting evidences which goes to roots of the case and play a vital role in the decision making and prayed for an opportunity to substantiate before the lower authorities. Per Contra, the Ld. DR relied on the order of the CIT(A).

7. We heard the rival submissions and perused the material on record. Prima-facie the CIT(A) has passed the order considering the fact that there is no proper compliance nor appearance in spite of providing adequate opportunity of hearing and the notices were issued. Therefore, the CIT(A) was of the opinion that the assessee

is not interested in prosecuting the appeal and dismissed the appeal ex-parte confirming the action of the assessing officer. The Ld. CIT(A) has issued the notices of hearing but there was no response and thus the Ld.CIT(A) came to a conclusion that the assessee is not interested and decided the appeal based on the information available on record. Whereas the assessee has raised grounds of appeal challenging the additions made by the A.O and there could be various reasons for non appearance which cannot be overruled. Therefore, considering the facts and principles of natural justice, we shall provide with one more opportunity of hearing to the assessee to substantiate the case with evidences and information subject to payment of cost of Rs. 5000/- to the Income Tax Department within one month from the date of receipt of the order and produce the proof of payment. Accordingly, we set aside the order of the CIT(A) and remit the entire disputed issues to the file of the CIT(A) to adjudicate afresh and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information for early disposal of the Appeal. And we allow the grounds of appeal of the assessee for statistical purposes.

**ITA No. 686/Mum/2024.**

8. As the facts and circumstances in this appeal that, the CIT(A) has passed an ex parte order and is identical to ITA No 687/Mum/2024, Hence the decision rendered in

above paragraphs would apply mutatis mutandis for this appeal also subject to payment of cost of Rs. 5000/- to the Income Tax Department within one month from the date of receipt of the order and produce the proof of payment. Accordingly, we allow the grounds of appeal of the assessee for statistical purposes.

9. In the result, both the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 03.09.2024.

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

Sd/-  
**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Mumbai, Dated: 03/09/2024

Poonam,  
Steno

**Copy of the Order forwarded to:**

1. The Appellant,
2. The Respondent
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,  
(Dy./Asstt. Registrar)ITAT,  
Mumbai