

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI

**BEFORE SHRI PRASHANT MAHARISHI, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No. 2259/Mum/2017
(Assessment Year: 1988-89)

Numech Emballage Ltd. Off No. 15, 1 st Floor, Mansion Building, 98 Princess Street, Shamaldas, Gandhi Marg, Mumbai-40 002	Vs.	DCIT, Circle-7(1) Aayakar Bhavan, New Marine Lines, Mumbai-400 020
PAN/GIR No. AAACN 7414 N		
(Assessee)	:	(Respondent)
Assessee by	:	Shri Askash Kumar
Respondent by	:	Shri Ajay Singh
Date of Hearing	:	03.10.2024
Date of Pronouncement	:	18.10.2024

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals)-21, Mumbai ('ld.CIT(A) for short), passed u/s.143(3) of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 1988-89.

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

1. *The learned CIT(A) erred in confirming additions made by the Assessing Officer of Rs.42,62,803/- in the computation of total income.*
2. *He also erred in upholding the additions made by A.O.:*
 - a. *Without getting into any further investigation & finding on the merits for addition;*
 - b. *Without enquiring or requiring any support for any such alleged income;*
 - c. *Without appreciating the appellant's submissions that the addition which is apparently based on only the statement made by Mr. Nikhil Merchant at the time of I.T. raid on him, is not the only documentary evidence to be relied upon;*
 - i) *unless the statement is read into in full.*
 - ii) *unless the statement is supported with fact finding information/documents*
 - iii) *unless proper opportunity is given to the assessee company of necessary cross examination of statement maker /others as specifically called for in course of*

assessment proceedings, and irrespective of the fact that the person was then a Director of the assessee Company

3. Brief facts of the case are that the assessee is engaged in the manufacturing and trading in multiwall paper bags. The original assessment order in the case of the assessee was passed on 15.03.1991 where the learned Assessing Officer (ld. A.O. for short) determined the total income at Rs.22,26,156/- against the returned loss of Rs.62,07,240/-.

4. In an appeal filed before the first appellate authority against the said order, the ld. CIT(A) set aside the order for *de nova* adjudication vide order dated 17.03.1994. The ld. A.O. again confirmed the said addition vide an *ex parte* order against which the assessee was in appeal before the ld. CIT(A) and during the pendency of the said appeal, the assessee had opted for VDIS, 1998 scheme, thereby withdrawing the said appeal. The ld. A.O. made an addition of Rs.43,63,803/- as 'bogus purchases' for A.Y. 1989-90, pursuant to a search and seizure action dated 22.08.1989.

5. The assessee was in appeal before the first appellate authority and the ld. CIT(A) vide order dated 30.04.1997, upheld the addition, amounting to Rs.42,63,803/- by stating that the said transaction pertains to A.Y. 1988-89, i.e., the impugned year and not pertaining to A.Y. 1989-90. Subsequent to the said order, the ld. A.O. reopened the assessee's case vide notice u/s. 148 of the Act and upheld the addition as 'unexplained income', pertaining to the purchases made from M/s. Akshat Trading Agencies for the reason that the assessee has failed to substantiate its claim.

6. The assessee was in appeal before the ld. CIT(A), who vide order dated 17.01.2002, upheld the addition made by the ld. A.O.

7. In an appeal before the Tribunal, in ITA No. 1681/Mum/2002 dated 17.05.2005, the Tribunal set aside the issue to the file of the ld. A.O. for fresh adjudication, after giving sufficient opportunity to the assessee. The ld. A.O. held the said transaction to be 'bogus purchases', thereby making an addition of Rs.42,63,803/- in the hands of the assessee.

8. Further, in an appeal against the said order, the ld. CIT(A) upheld the addition made by the ld. A.O.

9. The assessee is in appeal before us, challenging the impugned order.

10. During the appellate proceeding, the learned Authorised Representative (ld. AR for short) for the assessee brought to our notice that the assessee company was undergoing liquidation process and had also filed details pertaining to the same. The learned Departmental Representative (ld. DR for short) had also not controverted the said fact.

11. In view of the same, we are of the considered opinion that since proceedings under I&B code have already been initiated/decided and presumably a moratorium has been declared by prohibiting all the proceedings against the corporate debtor including execution of any judgment, decree or order of any court of law, tribunal, arbitration panel or other authority, this appeal is not maintainable having not been filed by the Interim Resolution Professionals (IRP) who can file appeal with approval of committee of creditors.

12. Resultantly, aforesaid appeal filed by the assessee company is disposed of with liberty to file fresh appeal in the proper format, duly verified by the person authorized to

file the return of income or to get the present appeal restored by moving an application.

However, nothing expressed herein shall affect the aforesaid appeal on merits.

13. We hereby dismiss the appeal filed by the assessee with a liberty given to the assessee to restore as and when the Resolution Professional is appointed, as we do not have anything on record for the same.

14. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 18.10.2024

Sd/-

(Prashant Maharishi)
Accountant Member

Mumbai; Dated : 18.10.2024

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT- concerned
4. DR, ITAT, Mumbai
5. Guard File

Sd/-

(Kavitha Rajagopal)
Judicial Member

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai