

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

**BEFORE SHRI OM PRAKASH KANT, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No. 4290/Mum/2024
(Assessment Year: 2022-23)

Dow Chemical International Private Limited Unit No. 801, 8 th Floor, Building No.9, Gigaplex, TTC Industrial Area, MIDC, Airoli, Navi Mumbai-400 708	Vs.	Dy. CIT, Circle 14(1)(2) Mumbai
PAN/GIR No. AAACD 4467 B		
(Assessee)	:	(Respondent)
Assessee by	:	Shri Hemang Mehta
Respondent by	:	Shri R. R. Makwana
Date of Hearing	:	16.10.2024
Date of Pronouncement	:	29.10.2024

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)-4, Kolkata (‘ld.CIT(A) for short), National Faceless Appeal Centre (‘NFAC’ for short) passed u/s.250 of the Income Tax Act, 1961 (‘the Act’), pertaining to the Assessment Year (‘A.Y.’ for short) 2022-23.

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

Based on the facts and in the circumstances of the case and in law, the learned CIT(A) has:

Opportunity of being heard not granted

1. *Erred in disposing the appeal ex-parte without granting opportunity of being heard to the Appellant and thereby violating principles of natural justice.*
2. *Erred in not appreciating the fact that the Appellant did not receive the notice on the three email ids mentioned in the impugned order.*

3. Erred in disposing the appeal without affording any further opportunity to the Appellant even though there was no imminent statutory due date in the matter.

Disallowance of Rs 5,98,22,466 under section 36(1)(va) of the Act

4. Erred in confirming disallowance of Rs 5,98,22,466 under Section 36(1)(va) of the Act.

5. Without prejudice to the above, erred in confirming disallowance of Rs 3,10,13,832 (Rs 1,48,33,186 and Rs 1,61,80,646) without appreciating that deposits were paid within due dates by the Appellant.

Disallowance of Rs 84,95,77,884 on account of application of Income Computation Disclosure Standards ('ICDS')

6. Erred in confirming disallowance of Rs 84,95,77,884 on account of application of ICDS notified under Section 145(2) of the Act.

Charge of interest of Rs 54,05,349 under section 234C of the Act

7. Erred in confirming levy of interest of Rs 54,05,349 under section 234C of the Act.

3. Brief facts of the case are that the assessee is a private company incorporated in India and is engaged in the business of manufacturing and trading in diversified chemicals offering a broad range of products and services in various segments such as food and pharmaceuticals to paints, packaging and personal care products. The assessee had filed its return of income on 29.11.2022, declaring total income at Rs.499,11,27,660/- and had claimed a refund of Rs.11,49,60,750/-. The assessee had also filed a revised return dated 27.12.2022 and the amount of refund was the same as that of the original returns except for change in the presentation of certain items that are disallowable/allowable. The return of income was processed u/s. 143(1) of the Act and the CPC /ld. A.O. vide intimation dated 29.07.2023, determined the total income at Rs.592,91,40,270/-, thereby raising a tax demand of Rs.12,87,93,240/-, pertaining to certain adjustments made to the returned income and non grant of certain tax credits.

4. Aggrieved the assessee was in appeal before the first appellate authority, challenging the assessment order.

5. The Id. CIT(A) vide order dated 29.06.2024, upheld the order of the Id.A.O./CPC for the reason that inspite of several opportunity the assessee has failed to substantiate its claim and has been non compliant throughout the appellate proceedings.

6. The assessee is in appeal before us, challenging the impugned order of the Id. CIT(A).

7. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has challenged the additions made by the CPC/Id. A.O. before the first appellate authority but has not furnished any documentary evidence to substantiate its claim and has also been non compliant.

8. The learned Authorised Representative ('Id. AR' for short) for the assessee contended that the notice sent by the Id. CIT(A) during the appellate proceeding through email was not received by the assessee. The Id. AR further prayed that the assessee may be given one more opportunity to present its case before the Id. CIT(A).

9. The learned Departmental Representative ('Id.DR' for short) vehemently opposed to setting aside the issue to the file of the Id. CIT(A) for the reason that the assessee was given several opportunity by the Id. CIT(A) which was not availed by the assessee.

10. On the above factual matrix of the case, we are of the considered view that the assessee may be given one more opportunity to present its case before the first appellate authority by adhering to the principles of natural justice. We, therefore, remand all these

issues back to the file of the Id. CIT(A) for *de novo* adjudication. The assessee is directed to comply with the proceedings without any undue delay on its side.

11. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 29.10.2024.

Sd/-
(Om Prakash Kant)
Accountant Member
Mumbai; Dated : 29.10.2024
Roshani, Sr. PS

Sd/-
(Kavitha Rajagopal)
Judicial Member

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai