

**आयकर अपीलिय अधिकरण, कोलकाता पीठ 'B', कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA**

**Before Shri Sanjay Garg, Judicial Member and Shri Rakesh Mishra, Accountant Member**

**I.T.A. No.654/Kol/2024**  
**Assessment Year: 2016-17**

**Burnpur Polyfabs Private Limited**  
**4/1/1, Dasaat Ghosh Lane, Salkia,**  
**West Bengal-711106.**  
**(PAN: AADCB3127B)**

**..... Appellant**

**vs.**

**ACIT,Circle-1, Asansol**

**..... Respondent**

**Appearances by:**

Shri Devesh Poddar, Advocate appeared on behalf of the appellant.

Shri P. P. Barman, Addl. CIT, Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing :September 09, 2024

Date of pronouncing the order :November 18, 2024

**आदेश / ORDER**

**संजय गर्ग, न्यायिक सदस्य द्वारा/ Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the assessee against the order dated 15.02.2024 of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as the "Ld. CIT(A)" passed u/s. 250 of the Income-tax Act, 1961 (hereinafter referred to as the "Act") for Assessment Year (AY) 2016-17.

2. The assessee, in this appeal, has taken following grounds of appeal:

*"1. For that the order passed u/s 250 is bad in law to the extent that the Ld. CIT (A) was unjustified and incorrect in upholding addition of receipt from share application money amounting to Rs.2,10,00,000/- ignoring facts of the case and decided case laws.*

2) For that the Ld. CIT(A) erred in confirming the addition of Rs.2,10,00,000/- to the income of the assessee towards the receipt of share application money from a sister concern ignoring all the relevant documents on record.

3) For that the Ld. CIT(A) erred in confirming the disallowance of Rs. 53,153/- of car and telephone expenses on an estimated basis.

4) For that the Ld. CIT(A) erred in confirming the levy of penalty of Rs. 15,490/- u/S 37 of the Income Tax Act, 1961.

5) For that additions confirmed by the Ld. CIT (A) are arbitrary and are not according to the provisions of the Income Tax Act, 1961.

6) For that the appellant craves leave to add, alter or deduce any ground of appeal raised above at the time of hearing.”

**Ground Nos. 1 and 2 :**

3. The assessee, through ground no. 1, has agitated against the action of the Ld. CIT(A) in confirming the addition made by the AO of Rs.2,10,00,000/- treating the share application/share premium received by the assessee as bogus and thereby adding the same as income of the assessee from undisclosed sources.

4. At the outset, the Ld. Counsel for the assessee has invited our attention to the assessment order to submit that the assessee during the year had received the aforesaid share application/share premium from only one concern namely, M/s. Sahayogi Traders Pvt. Ltd. (in short “M/s. STPL”) which is a sister concern of the assessee, therefore, there is no doubt about the identity of the share subscriber. The Ld. Counsel has further submitted that the assessee company as well as the share subscriber company/sister concern have been managed and controlled by the same management and that the said sister concern has deep interest into the business affairs and progress of the assessee company. That as per the Master Data, the said M/s. STPL is an active compliance company and that there is no allegation that the said M/s. STPL is a shell company.

5. The Ld. Counsel has further submitted that during the year M/s. STPL had applied for 10,00,000 equity shares with face value of Rs. 10/- and premium of Rs.11/- per share. That the valuation of the same was also furnished before the AO, which was done as per the net asset value method based on the last audited financial report for the year ending 31.03.2014, the copy of which has been placed at paper book pages 8 and 9. The Ld. Counsel has further submitted that the assessee even had duly demonstrated the creditworthiness of the share subscriber company as well as the source of the subscription. Referring to the audited accounts of the said company, the Ld. Counsel has demonstrated that the said M/s. STPL had a total reserve and surplus of about Rs.11.79 Cr and that even the total sale received of the said company during the year was of Rs.4.27 Cr. against which the said company purchased the shares for Rs.2.10 Cr. of the assessee company. The Ld. Counsel has further demonstrated from the audited accounts of the assessee company placed at page 20 of the paper book that subsequent to the allotment of 10,00,000 equity shares, the said M/s. STPL holds 23,95,000 shares of the assessee company which is 70.92%. Therefore, it is apparent that the said sister concern of the assessee company had also previously made investment in the assessee company and the same have been accepted by the Department. All the payments were made through banking channel. The Ld. Counsel, therefore, has submitted that the assessee had duly demonstrated the identity and creditworthiness of the share subscriber and genuineness of the transaction.

6. The Ld. DR could not point out any material to the aforesaid factual aspects on the file.

7. Considering the aforesaid submissions of the Ld. AR, in our view, the assessee company has duly proved the identity and

creditworthiness of the subscriber and it has also been demonstrated that the said company is the sister concern of the assessee company and even the majority shareholder of the assessee company and has deep interest in the affairs and progress of the assessee company. The source of the investments has also been duly explained. There is no allegation that the share subscriber is a shell company. Therefore, we do not find any justification on the part of the lower authorities in making/confirming the impugned addition. The same is accordingly, treated as deleted.

**Ground No. 3:**

8. The assessee company vide ground no. 3 has agitated the confirmation of disallowance of Rs.53,153/- on account of 20% of the car and telephone expenses made by the AO on ad-hoc basis.

9. The Ld. Counsel in this respect has submitted that the assessee had claimed Rs.1,50,000/- as car expenses and Rs.1,15,767/- as telephone expenses. The AO, simply without assigning any reason, disallowed 20% of the said expenses on ad hoc basis without any plausible reason. The Ld. Counsel has further submitted that even such expenses have been claimed by the assessee in the past and the same have been accepted by the department. The Ld. Counsel has further submitted that in the current year, the net profit/income of the assessee has been declared at Rs.10,22,800/- as compared to the income of the previous year at Rs.6,92,108/- and, therefore, the marginal increase in the expenses was justified.

9.1. We note that no justification has been given for ad hoc disallowance of 20% of the car and telephone expenses. Moreover, the expenses claimed by the assessee does not seem to be exaggerated. In view of this, we do not find any justification on the part of the lower

authorities in making/confirming the aforesaid addition of 20% on account of car and telephone expenses on ad hoc basis. This ground of appeal is accordingly, allowed.

**Ground No. 4:**

10. Vide ground no. 4, the assessee has agitated against the disallowance of Rs.15,490/- claimed by the assessee as expenditure incurred on account of excise duty penalty. The Ld. CIT(A) confirmed the aforesaid disallowance observing that the excise duty penalty since was penal in nature, therefore, AO had justified in disallowing the same. We find no infirmity in this respect in the order of the lower authorities. Since the aforesaid amount paid by the assessee was on account of penalty and, therefore, the same was penal in nature and the same has rightly been disallowed by the lower authorities. This ground of appeal of the assessee is hereby dismissed.

**Ground Nos. 5 and 6:**

11. Ground Nos. 5 and 6 are general in nature and does not require any adjudication.

12. In the result, appeal of the assessee is treated as partly allowed.

Order is pronounced in the open court on 18.11.2024

Sd/-

**[Rakesh Mishra]**

लेखा सदस्य/Accountant Member

Sd/-

**[Sanjay Garg]**

न्यायिक सदस्य/Judicial Member

Dated: 18.11.2024.

JD

*Copy of the order forwarded to:*

1. **Appellant – Burnpur Polyfabs Pvt. Ltd., Howrah**
2. **Respondent – ACIT, Circle-1, Asansol**
3. CIT(A), NFAC, Delhi
4. Pr. CIT,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches