

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"F" BENCH, MUMBAI**

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No. 3674/MUM/2024**

**(Assessment Year : 2017-18)**

**ACIT, Circle – 8(3)(1)**

Room No.665A,  
6<sup>th</sup> Floor, Aayakar Bhavan,  
Mumbai – 400020

..... Appellant

v/s

**United Futuristic Trade Impex Pvt. Ltd.,**

Unit No.301, 3<sup>rd</sup> Floor,  
Turf Estate Off Dr. E Moses Road,  
Shakti Mill Lane Mahalaxmi,  
Mumbai – 400011,  
Maharashtra  
PAN : AABCU7296C

..... Respondent

**ITA No. 4219/MUM/2024**

**(Assessment Year : 2017-18)**

**United Futuristic Trade Impex Pvt. Ltd.,**

Bajaj Bhavan, 226-Nariman Point, Unit No.301, 3<sup>rd</sup> Floor,  
Turf Estate Off Dr. E Moses Road,  
Shakti Mill Lane Mahalaxmi,  
Mumbai – 400011,  
Maharashtra  
PAN : AABCU7296C

..... Appellant

v/s

**ACIT, Circle – 8(3)(1)**

Room No.665A,  
6<sup>th</sup> Floor, Aayakar Bhavan,  
Mumbai – 400020

..... Respondent

Assessee by : Shri Satish Mody

Revenue by : Shri Raj Singh Meel, Sr. DR

Date of Hearing – 21/11/2024

Date of Order - 29/11/2024

## **ORDER**

### **PER SANDEEP SINGH KARHAIL, J.M.**

The assessee and the Revenue have filed the present cross-appeal challenging the impugned order dated 22.05.2024, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the Assessment Year 2017-18.

2. The assessee's appeal is delayed by 31 days. Along with its appeal, the assessee has filed an application seeking condonation of delay in filing the appeal before the Tribunal which is duly supported by an affidavit. In the aforesaid application, the assessee submitted that on 22.05.2024 it received an email stating/intimating that the order has been passed by the learned CIT(A) in its appeal. However, the said order was not visible on the Income Tax Portal and accordingly the assessee filed an application before the Income Tax Department seeking a copy of the order passed by the learned CIT(A). Upon receipt of the order, it is submitted that the assessee filed the present appeal before the Tribunal. Therefore, it has been submitted that due to the aforesaid circumstances, the present appeal was delayed by 31 days.

3. We find that the reasons stated by the assessee for seeking condonation of delay falls within the parameters for grant of condonation laid down by the Hon'ble Supreme Court in the case of Collector Land Acquisition, Anantnag Vs. MST Katiji and others: 1987 SCR (2) 387. It is

well established that rules of procedure are handmaid of justice. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred. In the present case, the assessee did not stand to benefit from the late filing of the appeal. In view of the above and having perused the application, we are of the considered view that there exists sufficient cause for not filing the present appeal within the limitation period and therefore, we condone the delay in filing the appeal by the assessee and we proceed to decide the appeal on merits.

4. In its appeal, the assessee has raised the following grounds: -

*"1. On the facts and in the circumstances of the case and in the law, the learned CIT(A) has erred in confirming the order of the AO by rejecting the books of accounts without appreciating the facts of the case and on conjectures and surmises.*

*2. On the facts and in the circumstances of the case and in the law the learned CIT(A) has erred in partly confirming the order of the AO by making addition to the net profit of the case & the detailed submissions & evidences filed during the course of the Assessment."*

5. While the Revenue has raised the following grounds in its appeal: -

*"1. Whether on the facts and circumstances of the case, the Ld. CIT(A) was justified in estimating the business income of the assessee at 3.30% of the total turnover for the year concerned which is Rs.4,79,47,053/- against the AO's estimation at 5.59% without bringing on record any cogent reasoning or material to substantiate the basis?*

*2. Whether the Ld. CIT (A) erred in ignoring the fact that the AO has brought on record the comparable companies to estimate the net profit at 5.59% of the total turnover for the year concerned as business income of the assessee and the same has not been rebutted by the Ld. CIT (A)?*

*3. Whether the Ld. CIT(A) erred in giving benefit of doubt to the assessee on the issue of rejection of books on basis of non-genuine expenses, ignoring that these expenses were not satisfactory explained by the assessee with sufficient reason and the same would be contradictory to the facts of the case?*

*4. Whether on the facts and circumstances of the case, the Ld. CIT(A) was justified in estimating the business income of the assessee at 3.30% of the total turnover for the year concerned which is Rs.4,79,47,053/- against the AO's estimation at 5.59% without appreciating that the AO has given exhaustive basis in the assessment order for rejecting the books of accounts and estimation of business income?"*

6. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case are that the assessee is engaged in the business of selling Bitumen, various chemicals and furnace oil. For the year under consideration, the assessee filed its return of income on 07.11.2017 declaring a total income of Rs.49,43,077/-. The return filed by the assessee was selected for complete scrutiny under CASS and statutory notices under section 143(2) and section 142(1) were issued and served on the assessee. During the assessment proceedings, upon perusal of the profit and loss account of the assessee, for the year under consideration, it was noticed that the percentage decreases in revenue and purchases are 59% and 53% respectively, whereas the other expenditure has gone up disproportionately. It was further noted that the employees' expenses which stood at Rs.92 Lakh in the last year have increased to 1.28 crore this year. Further, the other expenses stood at Rs.2.29 Lakh last year have increased to Rs.3.84 crore this year. However, out of expenditure of Rs.3.84 crore, the expenditure to the tune of Rs.2.54 crore appears under the heads where Nil expenditure was incurred last year. It was observed that the purchases have halved during the year as compared to the last year. However, the assessee has increased expenditure on duties and taxes of Rs.13.29 crore, surcharges of Rs.3.46 crore, transport inward of Rs.39.05 Lakh and other trading expenses of Rs.49.48 Lakh. However, none of these expenditures were incurred last year. Accordingly, notices under section 142(1) were issued to the assessee to furnish the explanation for the above and other infirmities noticed in the

financial statements of the assessee. Vide notice issued under section 142(1) of the Act on 14.12.2019 the assessee was informed about the information that has not been furnished by it despite repeated opportunities. However, the assessee failed to make any compliance in response to the aforesaid notice. Accordingly, the show cause notice was issued on 23.12.2019.

7. As the assessee failed to provide the details as sought during the assessment proceedings despite repeated opportunities, the Assessing Officer ("AO") vide order dated 27.12.2019 passed under section 143(3) of the Act held that the assessee's books of account are not reliable. The AO further held that despite several opportunities, the assessee has not come forth to justify and substantiate the transactions reflected in its books of account and the book results as per the financial statements. Accordingly, the AO proceeded to reject the books of account filed by the assessee and the net profit of 0.33% declared by the assessee during the year under consideration. By considering the companies engaged in similar business, viz. Chika Overseas Pvt. Ltd. & Hitech Specialities Solutions Ltd., the AO computed the net profit of the assessee for the year under consideration at 5.59%. Since during the year under consideration, the assessee declared a total turnover of Rs.14529.41 lakh, by applying the aforesaid net profit rate of 5.59%, the AO computed the business income of Rs.8,12,19,000/- as taxable during the year under consideration.

8. In its appeal before the learned CIT(A), the assessee submitted that in the year under consideration the assessee decided to indulge in the physical

trading of goods and started physically importing the goods into India and clearance under its own name. Therefore, the same necessitated the need to incur various expenditures, which were not incurred in the preceding year. The submissions of the assessee, as noted by the learned CIT(A) in its order, are reproduced as follows: -

*"7.3 From A.Y. 2017-18, the appellant decided to indulge into physical trading of goods and started physically importing the goods into India and clearance under their own name. This necessitated the need of taking storage tank, hence expenses related to storage charges to the tune of Rs. 3,46,64,128/-. The appellant had taken storage tanks at Karwar Port, Mundra Port, Kakinada Port and Haldia Port.*

*7.4 Similarly, the appellant also had to transport the Cargo from the vessel to the terminal required using transportation expenses, thus appellant also had to incur expenses on transportation of goods to the tune of Rs. 39,04,703/- during AY 2017-18, which were not necessitated in the AY 2016-17.*

*7.5 Further, all the goods imported into India requires payment of Customs Duty, the goods imported needs to cleared from customs department also, thus the appellant had to pay the Customs duty & other relevant levies to the tune of Rs. 13,29,57,104/- to clear the goods from the customs department, whereas in AY 2016-17, the goods were sold on High Seas Basis otherwise, hence onus of payment of customs duty and other levies was with the ultimate customer, hence no expenses were incurred on payment of custom duties and other levies previously.*

*7.6 The appellant also had to appoint CHA Agents and Surveyors in order to facilitate clearance of goods from the Customs during AY 2017-18.*

*7.7 The appellant also had to incur expenses on cartage charges and other expenses related to custom Port. All these expenses totaled to Rs. 49,47,711/- while there was no such expenses was incurred during AY 2016-17.*

*7.8 Further, due to expansion of the commercial activities during AY 2017-18, the appellant had to recruit, more employees to ensure smooth operations and had to incur expenses to the tune of Rs. 1,28,51,820/-While during AY 2016-Cthere, was OP/,Rs192 438l expenses in this segment.*

*7.9 During AY 2017-18, the appellant had to incur more finance expenses in form of Bank charges, Interest and document handling charges relating to import of goods which is total of Rs. 35,59,753/- while during the AY 2016-17, the expenses was of Rs. 2728/- in the same segment.*

*7.10 Further, the appellant had to appoint many commission agents in order to facilitate sale of goods during AY 2017-18 in which Rs. 1,82,61,592/- was incurred towards payment of commission of goods while there was no any expense claimed by the appellant during AY 2016-17. 7.11 As the commercial activities grew during AY 2017-18, the appellant had to incur more overheads like travelling, legal and professional expenses, transportation outward, stationery printing, insurance charges and other related overheads in which the total expense was Rs.3,84,14,393/- as compared to Rs. 2,29,143/- during AY 2016-17.*

*7.11 As the commercial activities grew during AY 2017-18, the appellant had to incur more overheads like travelling, legal and professional expenses, transportation outward, stationery printing, insurance charges and other related overheads in which the total expense was Rs.3,84,14,393/- as compared to Rs. 2,29,143/- during AY 2016-17."*

9. After considering the submission of the assessee, the learned CIT(A) vide impugned order, though agreed to the fact that the nature of business of the assessee has drastically changed to a "*physical trader*" and thus is responsible for the huge expenses incurred by it, however, came to the conclusion that several bills submitted by the assessee may be in-genuine and unauthentic considering the nature of business and the circumstances narrated by the AO. The learned CIT(A) further concluded that the estimation of profit as done by the AO, after the rejection of the books of account of the assessee appears to be unreasonable as the AO has not given satisfactory reasoning and detailed rationale for the same. Thus, upholding the conclusion of the AO in rejecting the books of account of the assessee for huge and unsubstantiated variation in the statistics, the learned CIT(A) concluded that the net profit of the assessee should be calculated at 3.30% instead of 5.59% as computed by the AO. Being aggrieved, both the assessee and the Revenue are in appeal before us.

10. During the hearing, the learned Authorized Representative ("*learned AR*") submitted that during the assessment proceedings, the AO issued notices under section 142(1) of the Act on 19.07.2019, 19.09.2019, 28.11.2019 and 07.12.2019, which were duly responded by the assessee and detailed as sought were furnished by the assessee vide its replies dated 29.07.2019, 15.11.2019, 22.11.2019, 04.12.2019 and 10.12.2019. The

learned AR submitted that after the transition of the assessment proceedings to e-proceedings, the AO issued notice on 14.12.2019 and show cause notice on 23.12.2019 asking for further details and clarifications, however, the assessee could not respond to such notices as the said notices were not received by the assessee. The learned AR further submitted that the learned CIT(A) though agreed that there has been a drastic change in the line of business conducted by the assessee, however, proceeded to uphold the conclusion of the AO in rejecting the books of account of the assessee without bringing any evidence against the genuineness and authenticity of the bills submitted by the assessee. The learned AR submitted that the comparables relied upon by the AO for computing the net profit at 5.59% are in the business of manufacturing speciality chemicals while the assessee is in the business of trading Bitumen and other bulk chemicals and therefore, the net profit margin of these companies cannot be considered. The learned AR submitted that the details as sought by the AO in the other notices dated 14.12.2019 and 23.12.2019 are available with the assessee and if given an opportunity the assessee can duly explain the increase in expenditure compared to the earlier years.

11. From the perusal of the record, it is evident that the assessee did not respond to the last two notices issued by the AO seeking various details in respect of the expenditure claimed by the assessee. We further find that before the learned CIT(A) the assessee tried to explain the nature of the expenditure incurred by it during the year under consideration, however, the learned CIT(A) without pointing out any specific deficiency in such evidence

upheld the conclusion of the AO in rejecting the books of account of the assessee. In light of the submissions of the assessee that all the bills and vouchers of the expenses are available with the assessee and the assessee can justify such expenses, we deem it appropriate to restore this issue to the file of the Jurisdictional AO for *de novo* adjudication after considering the submissions and details as may be filed by the assessee after granting opportunity of being heard to the assessee. Further, the assessee is directed to furnish all the details/evidence as may be sought by the AO for complete adjudication of this issue and also duly cooperate in the assessment proceedings. With the above directions, the impugned order is set aside and the grounds raised by the assessee and the Revenue are allowed for statistical purposes.

12. In the result, the present cross-appeal is allowed for statistical purposes.

Order pronounced in the open Court on 29/11/2024

**Sd/-**

**OM PRAKASHKANT  
ACCOUNTANT MEMBER**

**Sd/-**

**SANDEEP SINGH KARHAIL  
JUDICIAL MEMBER**

**MUMBAI, DATED: 29/11/2024**

*Prabhat*

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

By Order

Assistant Registrar  
ITAT, Mumbai