

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI
BEFORE
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER
ITA No. 89/Del/2024 (A.Y 2017-18)**

Deputy Commissioner of Income Tax, Circle-1(1), Room No. 153A, C. R. Building, I. P. Estate, New Delhi	Vs.	Absolute Projects (India) Ltd. 4222/1, Laxmi Jung, 1 st Floor, Ansari road, Darya Ganj, Delhi PAN No:AABCA0783G
(Appellant)		(Respondent)

C.O No. 54/Del/2024 (A.Y 2017-18 in ITA No. 89/Del/2024)

Absolute Projects (India) Ltd. 4222/1, Laxmi Jung, 1 st Floor, Ansari Road, Darya Ganj, Delhi PAN No:AABCA0783G	Vs.	Deputy Commissioner of Income Tax, Circle-1(1), Room No. 153A, C. R. Building, I. P. Estate, New Delhi
(Appellant)		(Respondent)

Appellant by	Sh. Manu Gawri, CA & Sh. Rajiv Kr. Gawri, CA
Respondent by	Sh. Dayainder Singh Sidhu, CIT(DR)

Date of Hearing	10/12/2024
Date of Pronouncement	12/12/2024

ORDER

PER YOGESH KUMAR U.S.

The above captioned appeal and the Cross Objection are filed by the Department and the Assessee respectively aggrieved by the order of the Ld. CIT(A) dated 13/11/2023 for Assessment Year 2017-18.

2. The Department's grounds of Appeal are as under: -

"The Assessing Officer, DCIT, Circle- 1(1), New Delhi is hereby authorized to file an appeal on the following grounds of appeal in the above mentioned case before the Hon'ble ITAT, New Delhi

1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in directing the AO to quantify the profit of 801C and non-801C unit by allocating the Indirect expenses on the basis of turnover rather than inflating the profit of non- 801C Unit by the appellant without appreciating the facts that the assessee had failed to substantiate the abnormal profit allocated to 80/C unit.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in directing, the AO to quantify the profit of 801C and non-801C unit by allocating the indirect expenses on the basis of turnover rather than inflating the profit of non- 80/C Unit by the appellant without appreciating the facts that the assessee company has claimed fictitious/exaggerated expenses to shift its profit to the exempted unit from the Noida unit for availing maximum tax benefit

3. The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal."

2.1 The Assessee's grounds of Cross Objection are as under:-

"1. The action of the Learned AO in increasing the NP rate from 4.16% reported in the consolidated financial statements for all the units to 26.31% being the NP Rate reported in the Roorkee Unit, which was eligible for deduction u/s 80-IC, based on the assumption that the assessee company has claimed fictitious / exaggerated expenditure is illegal, arbitrary, unjust and against the facts of the case.

2. The action of the Learned AO in alleging that the assessee company has shifted profits to the exempt unit from its Noida unit, is illegal, arbitrary, unjust and against the facts of the case.

3. *The action of the Learned AO in adding the amount of Rs 28,30,94,009.00 by applying the NP Rate 26.31% on the gross turnover of all the units amounting to Rs 127,83,41,574.00, without considering the past history, pass assessment records, facts and material available on the record is illegal, arbitrary, unjust and against the facts of the case.*

4. *The action of Learned AO in issuing invalid show cause notice under section 142(1) for completing the assessment under section 144 of the Act and thereafter in completing the assessment under section 143(3) is illegal, arbitrary, unjust and against the facts of the case.*

5. *The Action of Learned CIT(A), NFAC in by passing the appeal order without adjudicating the Grounds of Appeal raised before the Learned CIT(A) and in proceeding to remand back the matter to Learned AO by directing the Learned AO to allocate the expenses on the basis of turnover when non-exempted unit is a trading unit and exempted unit is a manufacturing unit when all the units maintained separate books of accounts is illegal, arbitrary, unjust and against the facts of the case.”*

3. Brief facts of the case as mentioned in the order of the Ld. CIT(A) are as under: -

“2.1The appellant company is engaged in the business of electrical / mechanical / civil / instrumentation turnkey contracts, manufacturer, supplier and dealers in electrical goods for generation, for accumulation and distribution of supply of electricity for all purposes for which electrical energy can be utilized. The return of income for the A.Y. 2017-18 was filed on 13.10.2017 admitting total income at Rs.4,12,70,160/-. This case was selected for scrutiny under CASS and notices u/s 143(2) & 142(1) of the Act were sent. The details of the notices issued by the AO was discussed in the assessment order. As per the AO, the appellant only filed part reply.

2.2. The AO noticed that the appellant is having manufacturing units located at Roorkee and Greater Noida. The first manufacturing unit was located in Noida and the second unit was set up in Roorkee, Haridwar District, Uttarakhand. The appellant claimed deduction u/s 80IC of the IT Act for the Haridwar Unit. The AO observed that profit of Haridwar Unit was 26.31% on the turnover of Rs.15.63 crores. However, the Noida Unit did not have that much of profit. The overall profit on the total turnover of Rs. 127.83 crores was only 4.16%. the AO noticed that they have shifted the profit to the 80IC Unit. Hence, he issued notice dated 01.12.2019 and 08.12.2019, with a request to substantiate this abnormal profit of Haridwar Unit. As there was no compliance by the appellant, he reworked the profit by adopting 26.31% for Noida Unit also. Accordingly, he determined the profit of Noida Unit at Rs.33,63,31,668/- as against Rs.5,32,37,657/- disclosed by the appellant. This difference amount of Rs.28,30,94,009/- was added back to the total income.

2.3 After examining the case, the AO completed the assessment u/s 143(3) of the IT Act on 25.12.2019 by assessing the total income at Rs.32,43,64,169/-.”

4. Aggrieved by the assessment order dated 25/12/2019, the Assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) vide order dated 13/11/2023 partly allowed the Appeal of the Assessee, which is under challenged by both the Department as well as the Assessee.

5. The Ld. Departmental Representative vehemently submitted that the Assessee has failed to appear before the A.O. but filed certain documents before the Ld. CIT(A) during the first Appeal. However, the Ld. CIT(A) without calling for the remand from the A.O., without confronting those documents to the A.O. and without providing opportunity, allowed those document and deleted certain additions, therefore, submitted that the order of the Ld. CIT(A) is erroneous, thus, sought for setting aside the order of the Ld. CIT(A).

6. Per contra, the Ld. Assessee's Representative submitted that the Assessee has produced all the documents before the Ld. CIT(A), which has been analyzed by the Ld. CIT(A) and due to certain difficulties, the Assessee could not produce those documents during the assessment proceedings, thus, justified the order of the Ld. CIT(A) in deleting the additions. The Ld. Assessee's Representative further submitted the Ld. CIT(A) committed error in remanding the matter to the A.O. which is arbitrary and the same is erroneous.

7. We have heard both the parties and perused the material available on record. It is found that the Assessee has not produced all the documents before the A.O. to substantiate the claim of the Assessee during the assessment proceedings, however, the Assessee opted to produce certain

documents before the Ld. CIT(A). It emerges from the record that the Ld. CIT(A) has neither called for remand report from the A.O. nor provided any opportunity to the A.O. to verify and rebut those documents. Considering the above facts and circumstances, we are of the considered opinion that, if the matter is restored to the file of the A.O. with a direction to the Assessee to produce all the documents in support of its claim substantial justice would be rendered. Accordingly, we set aside the order of the Ld. CIT(A) and remand the matter to the file of the A.O. for framing de-novo assessment. We reserve liberty to the Assessee to produce all the documents in support of its claim. The A.O. is directed to pass the assessment order after providing the opportunity of being heard to the Assessee in accordance with law.

8. In the result, both the Appeal and the Cross Objection filed by the Department and the Assessee respectively are partly allowed for statistical purpose.

Order pronounced in open Court on 12th December, 2024

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Dated: 12/12/2024

R.N, Sr. PS

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT, NEW DELHI