

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER

I.T.A. No. 4094/Mum/2024
Assessment Year: 2017-18

Kiran Suryaprakash (India) Pvt. Ltd. Unit No. 1, Ground Floor Boston House, Suren Rd. Off. Andheri Kurla Road Andheri East Mumbai - 400093 [PAN: AAHCM6685M]	Vs	ACIT - 6(3)(1), MUMBAI
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Raturaj H. Gurjar, A/R	
Revenue by :	Shri Hemanshu Joshi, Sr. D/R	

सुनवाई की तारीख/Date of Hearing : 19/12/2024
घोषणा की तारीख /Date of Pronouncement: 19/12/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order dated 20/06/2024 passed by NFAC, Delhi pertaining to AY 2017-18.

2. The grievance of the assessee reads as under:-

"1. On facts and circumstances of the case and in law, the NFAC (Appeals) has erred in passing an ex parte order in the matter, thereby, rejecting the appeal by applying the principles of law "Vigilantibus Non Dormientibus Jura Subventunt". It is humbly prayed that since the appellant could not respond to notices for reasons beyond its control, the ex parte order passed may please be recalled.

2. On facts and circumstances of the case and in law, the NFAC (Appeals) has erred in confirming the disallowance of Rs.7,26,79,652/- being call option premium charges paid by the appellant as capital in nature.

3. Without prejudice to the above ground, the amount of Rs.7,26,79,652/- paid in respect of option premium charges disallowed as capital expenditure in nature by the AO, depreciation ought to have been allowed on the same.

4. On facts and circumstances of the case and in law, the NFAC (Appeals) failed in appreciating the fact that the appellant is in the business of solar power generation and audit report in Form 10CCB being filed with the AO, the appellant was entitled

to claim deduction u/s.80IA in respect of the income assessed of Rs.2,72,96,710/-, after considering a disallowance of Rs. 7,26,79,652/-.

5. On facts and circumstances of the case and in law, the NFAC (Appeals) has erred in confirming the initiation of penalty proceeding u/s.270A of the Income Tax.

6. On facts and circumstances of the case and in law, the NFAC (Appeals) has erred in confirming the chargeability of interest u/s.234D of the Income Tax Act.

The Appellant reserve its right to add to alter, amend, modify and delete any of the grounds taken in this appeal. The grounds taken in this appeal are without prejudice to each other. Since there is no designation of a Managing Director, the appeal is being signed by the Director."

3. Briefly stated the facts of the case are that the assessee electronically filed its return of income on 31/10/2017 declaring total loss of Rs. 4,61,10,257/- and MAT income u/s 115JB of the Act at Rs.76,12,718/-. The return was selected for scrutiny assessment and accordingly, statutory notices were issued and served upon the assessee. The returned loss was assessed at Rs.2,72,96,710/- by disallowing the option premium at Rs. 7,26,79,652/-.

4. The assessment was agitated before the Id. CIT(A) and the Id. CIT(A) issued notices to the assessee at the given e-mail address. On receiving no response, the final showcause notice was served on 12/01/2024 to which the assessee sought adjournment vide letter dated 30/01/2024. The Id. CIT(A) presumed that the assessee does not wish to rebut the contentions of the AO and the conclusion drawn and proceeded *ex-parte* and dismissed the appeal of the assessee.

5. We have given a thoughtful consideration to the orders of the authorities below. We find that all the notices have been issued on the e-portal. The adjournment requests of the assessee were denied and the order has been framed *ex-parte*.

6. We are of the considered view that the ld. CIT(A) ought to have given reasonable and adequate opportunity of being heard to the assessee. Therefore, in the interest of justice and fairplay, we deem it fit to restore the appeal to the file of the ld. CIT(A). The ld. CIT(A) is directed to decide the appeal afresh, after affording reasonable and adequate opportunity of being heard to the assessee, as per the provisions of law.

7. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Court on 19th December, 2024 at Mumbai.

Sd/-

(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-

(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 19/12/2024

Sd/-

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai