

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**NAGPUR BENCH, NAGPUR**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER**

**SMC MATTER**

**ITA no.390/Nag./2024**  
(Assessment Year : 2013-14)

Income Tax Officer  
Ward-2, Khamgaon

..... Appellant

v/s

Renuka Oil Industries  
Plot no.D-27, MIDC  
Khamgaon 444 303  
PAN – AAIFR5255Q

..... Respondent

Assessee by : None  
Revenue by : Shri Sandipkumar Salunke

Date of Hearing – 06/01/2025

Date of Order – 27/01/2025

**ORDER**

The captioned appeal by the Revenue is directed against the impugned order dated 29/04/2024, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2013-14.

2. In its appeal, the Revenue has raised following grounds:-

*"1. The Ld. CIT(A) has erred on facts and on law by not appreciating the fact that assessee has not made claim of deduction u/s 35AD in return filed u/s 139 (4) of the Act and allowed the claim of the assessee.*

*2. Without prejudice to the above, the Ld. CIT(A) has erred on facts and on law by not appreciating that the assessee had not made claim of carry forward loss in return of income filed u/s 139(4) of the Act and in the factual matrix, of*

*the assessee having not filed return u/s. 139(1)/139(3) of the Act and allowed the claim of the assessee.*

*3. The Ld. CIT(A) has erred on facts and on law in interpreting the decision of Goetze (India) Ltd. Vs Commissioner of Income Tax [2006] 284 ITR 323 that CIT(A) is empowered the CIT(A) in allowing the claim u/s 35AD in Revised computation,*

*4. The Ld. CIT(A) has erred on facts and on law by allowing expenses on account of capital expenditure of Rs.4,64,98,357/- without any proper supporting documents on records.*

*5. The Ld. CIT(A) has erred on facts by restricting the disallowances from Rs.1,28,59,961/- to Rs.25,71,992/- (20%) on account of cash expenses claimed by the assessee in respect of labours payment, without any proper supporting documents*

*6. Any other ground that appellant craves to raise during the course of hearing."*

3. Facts in Brief:- The assessee is a Partnership firm engaged in the business of running oil mills filed its return of income for the year under consideration on 14/01/2014, declaring total income of ₹ 11,28,833. The case was selected under CASS scrutiny. Accordingly, statutory notices under section 143(2) and 142(1) of the Act issued and served on the assessee on 08/09/2014 in response to which the assessee furnished written submissions which were considered by the Assessing Officer. Thereafter, the Assessing Officer completed assessment determining total income of ₹ 47,99,885, as against returned income of ₹ 11,28,833, by making several additions viz. (i) additions under section 35AD of the Act; (ii) disallowance of expenses on account of capital expenditure of ₹ 4,64,98,357 and (iii) restriction of disallowance from ₹ 1,28,59,961 to ₹ 25,71,992 (20%) on account of cash expenses paid to labours. The assessee being not satisfied with the assessment order passed by the Assessing Officer, went in appeal before the first appellate authority challenging the aforesaid three issues.

4. The learned CIT(A), insofar as claim of deduction under section 35AD of the Act by the assessee is concerned, the learned CIT(A) allowed the claim by observing as under:-

*"6.7 On perusal & verification of the above submissions filed by the appellant vis a vis the concerned original return of income downloaded from CPC portal as accessible to the undersigned during the appeal proceedings, it is clear that there are certain discrepancies in the return filed by the appellant as accessed from the CPC portal and the one relied upon by the AO as downloaded by him from the erstwhile ITD system software while framing the impugned assessment order. From the material available on record, it is noted that the appellant had clearly mentioned profit of Rs. 52,40,000/- from specified business, which also matches with the Net Profit as per audited P&L A/c and had also claimed deduction of this profit from specified business in 'Schedule BP' while filing return of income on 14.01.2014. However, in the original ITR filed by the appellant on 14.01.2014, due to technical glitches as claimed by the appellant, the appellant could not correctly claim the carry forward of the unabsorbed loss of Rs. 19,03,01,511/- from specified business (Total claim of deduction u/s 35AD Rs. 19,55,41,557 - Current year profits Rs.52,40,046) and the concerned columns/schedules in the return statedly turned out to be blank. As such, the appellant subsequently filed rectification application u/s 154 on 31.03.2015 and claimed total deduction of Rs.19,55,41,557/- u/s 35AD including carry forward of loss of Rs. 19,03,01,511 in 'Schedule CFL'.*

*6.8 Regarding the AO's finding as per point (iii) of para 6.3 above, it is noted that as the appellant had neither claimed, for whatever reasons, carry forward of loss as returned u/s 73A of the Act in its original return of income nor had filed any valid revised return of income to claim it as the original ITR itself was filed belatedly, the AO rightfully rejected the claim of appellant to carry forward and set off the unabsorbed loss u/s 35AD as per ruling of the Hon'ble Apex Court in the case of Goetze (India) Ltd. Vs. Commissioner of Income Tax (Central-II) [2006] 284 ITR 323*

*It is, however, noted that in the same case law, it has been held that this restriction of entertaining fresh claims of assessee made during assessment proceedings without a valid ITR/revised ITR is limited to the powers of the assessing authority only and does not impinge on the power of the Income Tax Appellate Tribunal under section 254 of the Act or Commissioner of Income Tax (Appeals) under section 250 of the Act. It has also been held in various subsequent case laws that this restriction is not applicable to the appellate authorities and that the appellate authorities can entertain claims made otherwise than by way of return or revised return of income provided the appellate authorities must be satisfied that the claim was bonafide and could not have been made earlier for good reasons.*

*In the instant case, the appellant has submitted that the return of income could not be filed online in time (though the Tax audit report was duly filed within time-originally on 08.05.2013 and revised on 28.09.2013), due to frequent changes in versions of the ITR utility and technical problems in filing*

*which were statedly also brought to the knowledge of local Income Tax office for resolution but the problem could not be resolved leading to delay in filing the ITR as well non reflection of complete claim therein. The explanation so furnished by the appellant is found to be bonafide as the claim of deduction u/s 35D is duly found reflected in the revised audit report dated 28.09.2013 (filed long before filing the original ITR on 14.01.2014). The reasons for revising the audit report, as given by the auditor in the revised report itself, clearly mentions claim being made u/s 35AD. Col. 8(b) of the Audit report clearly mentions the setting up the warehouse for stockkeeping as per agreement with CWC and the but of commencement of operations of the warehouse w.e.f. 17.10.2022. Further. the Inspector's positive field enquiry report, dated 17.03.2016, conducted during as assessment proceedings, the declaration of rental income of Rs. 87.44,935 on letting off the warehouse in the ITR which indicates completion of construction and commencement of operations during the year under consideration, consistent value of investment in Warehouse Construction shown at Rs. 12,89,56,255 (plus value of land at Dhaba Rs.50,42,320 and investment in Plants & Equipment Rs.14.04.783) in both original as well as revised (though invalid) ITR/Audit report, not making claim of depreciation alternatively allowable u/s 32 on the capital expenditure incurred by the appellant on construction of the Warehouse in accordance with section 35AD(4), not disputing the factum or quantum (except disallowance of construction expenses of Rs 1.90.70,349 discussed in succeeding paragraphs) of investment in construction of the warehouse by the appellant and its in principle eligibility for deduction u/s 35AD by the AO, etc, are the various other factors which substantiate the genuineness et the claim of the appellant for deduction u/s 35AD. The AO has nowhere contended that the appellant does not fulfil the conditions prescribed u/s 35AD and is not eligible, in principle, for the deduction. The AO's only reason behind rejecting the claim, that the appellant has not declared any income from Specified business and has not claimed any deduction u/s 35AD in the return of income as downloaded from ITD system, is not found to be factually correct in view of numerous apparent discrepancies in the 'ITD' version of ITR relied upon by the AO as discussed in detail at pars 6.6 above. Therefore, in view of the above discussions and overwhelming factors in favour of the genuineness of the claim, I am inclined to accept the appellant's claim of deduction u/s 35AD as well as the carry forward of the consequential unabsorbed loss from specified business notwithstanding the fact that the claim of carry forward of unabsorbed loss due to deduction u/s 35AD was not correctly made/reflected in the ITR filed by the appellant on 14.01.2014.*

*In view of the above discussion, I am of the considered opinion, that the appellant is eligible for deduction u/s 35AD of the Act and its carry forward and setoff of loss from specified business subject to other specific expenses disallowed by the AO in the impugned assessment order which are discussed in the subsequent paragraphs.*

5. As regards the disallowance of expenses on account of capital expenditure of ₹ 4,64,98,357 is concerned, the learned CIT(A) deleted the addition by making following observations:-

"Material, it is noted that the AO in the impugned assessment order has disallowed the whole amount of Rs.1,27,61,840/- which is not justifiable as considerable cost on account of labour and transport of material is bound to occur in any construction work. The appellant in its submissions has submitted that this figure of Rs.1,27,61,840 is a balancing figure and that it includes transport expenses for purchasing GST paid material as well.

It is further seen that the AO has also made separate disallowance on account of payments of Rs.1,03,87,191/- made under the head 'Labour Construction' which seems to be covered under the head "labour, construction and Transportation of Material as mentioned above, thus it is apparently double disallowance of the same expenditure.

(iv) As noted from the concerned expenditure ledger account, out of total expense incurred on bricks (Rs. 25,93,263), Murum (Rs. 4759688), sand (Rs. 44,19,302) cash expenses made by the appellant are 'Nil' w.r.t bricks, Rs. 17,500/- w.r.t Murum and Nil' w.r.t Sand. As almost payment in respect of these expenses have been made by the appellant through banking channels, the AO was not justified in holding these expenses as bogus without expenses pointing out any specific defect. Thus, no disallowance was ought to be made by the AO w.r.t expenditure incurred by the appellant under these heads.

(v) Regarding disallowance made by the AO w.r.t payments made to contractor (₹ 1,88,99,394/-), I am of the opinion that the AO did not had sufficient reasons to blanketly disallow such payments as the expenses incurred thereon are stated to be paid as per prevailing rates which is also mutually decided by the parties. Further, on perusal of the ledger account, it is seen that the actual payments made by the appellant under this head is Rs. 1,39,11,344/- as against Rs.1,89.99,394/ mentioned in the impugned assessment order. Further, almost all of these payments have been paid by cheques and on which TDS has also been deducted by the appellant. The only cash payments of Rs.13,200/- on 18.04.2012 and 11,025/- on 05.06.2012 made by the appellant w.r.t payments made to contractors are also much below the threshold of Rs. 20,000/- for any violation u/s 40A(3) of the Act.

(vi) The appellant in its submissions has admitted that most of the expenses incurred on labour have been paid in cash. As admitted by the appellant, total expenses made in cash by the appellant amount to Rs. 1,28,59,961/- which has been verified from the ledger accounts of the appellant. However, it is seen that majority of these cash payments are near to threshold amount of Rs. 20,000/-. Further, no third-party verifiable evidence has been furnished by the appellant in support of these expenses neither during the assessment nor during appellate proceedings due to which authenticity of these payments remain unverified. Though the entire cash expenses cannot be stated to be bogus as it is a common practice that construction labour s mostly paid in cash on daily basis along with various other miscellaneous eleventh hour expenses in construction, however the possibility of overbooking of these cash expenses cannot be overruled completely in view of various discrepancies in the vouchers brought out by the AO in the impugned assessment order. Therefore, in my considered opinion, ends of justice would be met by disallowing 20% of the total cash expenses on estimate basis to plug any leakage of revenue in this regard Thus, out of total disallowance of Rs. 4,90,70,349/- made by the AO in the impugned assessment order on the

*above issue, disallowance of Rs. 25,71,992 is hereby upheld and the rest disallowance of Rs. 4,64,98,357 is deleted."*

6. Insofar as the next issue which relates to restriction of disallowance from ₹ 1,28,59,961 to ₹ 25,71,992 (20%) on account of cash expenses paid to labours is concerned, the learned CIT(A) partly allowed the claim while observing as under:-

*"7.6 In view of the findings at para 7.1 and 7.5 above, the total amount of investment in construction of warehouse for the purpose of computation of deduction u/s 35AD shall stand reduced by Rs.64,26,196 (38,54,204 + 25,71,992) with corresponding reduction in the allowable deduction u/s 35AD by Rs. 96,39,294 (i.e @150%) and consequential reduction in the amount of unabsorbed business loss from 'Specified Business carried forward to subsequent years. Accordingly, this ground of appeal raised by the appellant is partly allowed."*

7. Before us, the written submissions of the learned Departmental Representative are reproduced below:-

*"Facts of the case in the instant case, the assessee namely Renuka Oil Industries, Khamgaon Dist Buldhana having PAN No AAIFR5255Q which is a partnership firm engaged in business of running Oil mills filed return of income on 14.01.2014 for the A.Y. 2013-14 declaring total income of Rs. 11,28,833/-. The case was selected under CASS scrutiny. Accordingly notices u/s 143(2) issued and served on 08.09.2014 to the assessee. Thereafter notices u/s 142(1) were issued for compliance.*

*After considering the submissions filed by the assessee, the assessment was completed on total income of Rs. 47,99,885/- as against return income of Rs. 11,28,833/-*

*In the assessment order following additions/disallowances were made:*

*As regards to Deduction u/s 35AD: The regular business of the assessee is running the oil mills in the name and title of Renuka Oil Industries. During the assessment year under consideration, the assessee has completed construction work of Warehouse at Dhabha Village, Near Badnera Dist Amravati. The construction work of Warehouse was started in the F.Y. 2011-12 and completed in the F.Y. 2012-13. The assessee has claimed deduction u/s 35AD at Rs. 52,40,046 for this year as against total claim amount at Rs. 19,55,41,557/- and claimed carried forward of current year's of Rs. 19,03,01,511.*

*During the year under consideration, the assessee also started a warehouse at Dhabha, Tah. Badnera, Dist. Amravati. The assessee filed its return of income for the A.Y. 2013-14 belatedly on 14.01.2014 declaring total income of Rs.11,28,833/- after claiming deduction u/s 35AD amounting to Rs.52,40,046/- out of total profits of Rs.63,68,876/-(Warehouse unit: Rs.52,40,046: Oil mill unit: Rs. 11,28,830/-) during the year from both the oil*

*mill unit and warehouse unit. The return was processed by CPC u/s 143(1) on 31.07.2014 raising demand. Subsequently, the case of the appellant was selected for scrutiny by issue of notice u/s 143(2) of the Act on 01.09.2014. During the assessment proceedings, the assessee submitted that the total investment made by the assessee for its new warehouse business was Rs. 13,03,61,038/ which was a 'specified business; as defined u/s 35AD. Construction work was started during FY 10-11 and completed in FY 2012- 13. Accordingly, the total amount of deduction available to the appellant u/s 35AD comes out to Rs. 19,55,41,557/ (150% of Rs. 13,03,61,038/-). The assessee thus filed rectification claimed deduction of Rs. 19,55,41,557/-u/s 35AD of the Act with Rs.52,40,046/- adjusted against the current year profits of the 'Specified Business' and the balance amount claimed as carried forward for set off in subsequent years u/s 73A. The revised return was, however, technically invalid as the original return was filed belatedly. The assessee also made the rectified claim before the AO. The AO, however, completed the assessment u/s 143(3) of the Act on 30.03.2016 disallowing the entire claim of deduction made by the appellant u/s 35AD of the Act and its carry forward and set-off of unabsorbed loss stating the reason that no such claim of deduction u/s 35AD was made by the appellant in its ITR. The AO stated that the ITR downloaded from 'ITD system' by the AO did not match with the ITR produced by the appellant during the course of assessment proceedings.*

*Without prejudice to the disallowance of the entire claim of deduction u/s 35AD, the AO also held part of the construction expenses, totaling to Rs. 38,54,204, as disallowable u/s 40(a)(ia) and further expenses totaling to Rs. 4,90,70,349 as bogus expenditure being not supported with credible evidence and hence deduction u/s 35AD was held not allowable on such expenditure. However, as the entire claim u/s 35AD was already disallowed by AO, no separate disallowance of these expenses was done.*

*Aggrieved by the said assessment order, the assessee preferred appeal before Ld. CIT(A) on 30.04.2016. The said appeal by the National Faceless Appeal Centre Delhi vide order u/s 250 dated 29.04.2024 and partly allowed the appeal of the assessee giving following relief to the assessee*

*The Ld. CIT(A), National Faceless Appeal Centre adjudged the contention of the appellant and pointed out that although the appellant had filed its return of income for the A.Y. 2013-14 belatedly on 14.01.2014, the appellant is still eligible for carry forward and setoff of losses of 'specified business' covered u/s 35AD as per the provisions of section 73A as there was no condition to file the return of income within the due date u/s 139(1) to claim the carry forward of losses u/s 73A as section 73A was not covered within the scope of section 80 till 31.03.2016. This condition to file the return of income within the time prescribed u/s 139(1) of the Act subsequently came to be applicable to section 73A too only w.e.f A.Y. 2016- 17 onwards due to the amendment in section 80 of the Act by Finance Act, 2016 w.e.f. 01.04.2016.*

*Regarding the AO's finding that the return filed by the appellant does not reflect any claim made u/s 35AD, The Ld. CIT(A), pointed out from the material available on record that the appellant had clearly mentioned profit of Rs.52,40,000/- from specified business, which also matches with the Net Profit as per audited P&L A/c and had also claimed deduction of this profit from specified business in Schedule BP' while filing return of income on 14.01.2014. However, in the original ITR filed by the appellant on 14.01.2014, due to technical glitches as claimed by the appellant, the appellant could not correctly claim the carry forward of the absorbed loss of Rs. 19,03,01,511/- from specified business (Total claim of deduction u/s 35AD Rs. 19,55,41,557/- Current year profits Rs.52,40,046) and the concerned/schedules in the return statedly turned out to be blank. As Such, the appellant subsequently filed rectification application u/s 154 on 31.03.2014 and claimed deduction of Rs. 19,5,41,557/- u/s 35AD including carry forward of loss of Rs. 19,03,01,511 in 'Schedule CFL'.*

*Regarding AO rightfully rejection of the claim of appellant to carry forward of loss as required u/s 73A of the Act and set off the absorbed loss u/s 35AD, in the same case law, it has been held that this restriction of entertaining fresh claims of assessee made during assessment proceeding without filing valid ITR/revised ITR is not applicable to the appellate authorities and that the appellate authorities can entertain claims made otherwise than by way of revised return of income provided the appellate authorities must be satisfied that the claim was bonafide and could not have been made earlier for good reasons. In the instant case, the explanation so furnished by the appellant that the return of income could not filed online in time (though the Tax audit report was duly filed within time-original on 08.06.2013 and revised on 28.09.2013), is found to be bonafide as the claim of deduction u/s 35AD is duly found reflected in the revised audit report dated 28.09.2013.*

*During the appellate proceedings, the Ld. CIT(A), National Faceless Appeal Centre adjudged that the appellant is eligible for deduction u/s 35AD of the Act and its carry forward and setoff of loss from specified business subject to other specific expenses disallowed by the AO in the impugned assessment order.*

*The AO rejected the claim of appellant to carry forward and set off the unabsorbed loss u/s 35AD as per ruling of the Hon'ble Apex Court in the case of Goetze (India) Ltd. Vs. Commissioner of Income Tax (Central-II) [2006] 284 ITR 323. Ld.CIT(A), however, noted that in the same case law, it has been held that this restriction of entertaining fresh claims of assessee made during assessment proceedings without filing valid ITR/revised ITR is limited to the powers of the assessing authority only and does not impinge on the power of the Income Tax Appellate Tribunal under section 254 of the Act or Commissioner of Income Tax (Appeals) under section 250 of the Act. It has also been held in various subsequent case laws that this restriction is not applicable to the appellate authorities and that the appellate authorities can entertain claims made otherwise than by way of return or revised return of income provided the appellate authorities must be satisfied that the claim was bonafide and could not have been made earlier for good reasons.*

*Further Ld.CIT(A) has pointed out that it is noted that although the appellant had filed its return of income for the AY 2013-14 belatedly on 14.01.2014, the appellant is still eligible for carry forward and setoff of losses of 'specified business' covered u/s 35AD as per the provisions of section 73A as there was no condition to file the return of income within the due date u/s 139(1) to claim the carry forward of losses u/s 73A as section 73A was not covered within the scope of section 80 till 31.03.2016. This condition to file the return of income within the time prescribed u/s 139(1) of the Act subsequently came to be applicable to section 73A too only w.e.f AY 2016-17 onwards due to the amendment in Section 80 of the Act by Finance Act, 2016 w.e.f. 01.04.2016.*

*Therefore, Ld. CIT(A) has adjudged that the assessee is eligible for deduction u/s 35AD of the Act and its carry forward and setoff of loss from specified business subject to other specific expenses disallowed by the AO in the impugned assessment order amounting to Rs. 52,40,046/- and has held that the figure of assessed income of Rs.47,99,885/- adopted by the AO in the impugned assessment order, statedly to be the original returned income is found to be erroneous and is thus rejected.*

*Thus, the Ld. CIT(A) erred in allowing the above relief."*

8. None appeared on behalf of the assessee.
9. We have heard the learned Departmental Representative, perused the written submissions furnished by him and gone through the material available on record. We find that the learned CIT(A) has passed a well reasoned and speaking order covering all the issues raised by the Revenue which are self-explanatory as well and thus we do not find any reason to tinker with the order passed by the learned CIT(A) which is hereby upheld by dismissing all the grounds raised by the Revenue.
10. In the result, Revenue's appeal stands dismissed.

Order pronounced in the open Court on 27/01/2025

**Sd/-**  
**V. DURGA RAO**  
**JUDICIAL MEMBER**

**NAGPUR, DATED: 27/01/2025**

Copy of the order forwarded to:

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

*Pradeep J. Chowdhury  
Sr. Private Secretary*

True Copy  
By Order

Sr. Private Secretary  
ITAT, Nagpur