

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “B”, MUMBAI
BEFORE SHRI B R BASKARAN, ACCOUNTANT MEMBER
AND
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER
ITA NO. 2689/MUM/2024 (A.Y: 2017-18)**

Nipro Tube Glass Pvt. Ltd.

Plot No. B-17, B-18, MIDC Industrial
Area, Near Police Station, Badlapur,
Thane – 421 503

PAN: AABCT2017Q

(Appellant)

ACIT, Thane/

**New Delhi, Mayur
Bhawan, Connaught Lane,
Barakhamba, New Delhi-
110001**

(Respondent)

Assessee Represented by	:	Shri Rahul Hakani, Ld. AR
Department Represented by	:	Shri Leyaqaat Ali Afaqui, Ld. DR
Date of conclusion of Hearing	:	28.02.2025
Date of Pronouncement	:	03.04.2025

ORDER

PER RAJ KUMAR CHAUHAN (J.M.):

1. This appeal is filed by the appellant/assessee against the order dated 18.03.2024 of Learned Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre, Delhi [hereinafter referred to as the “CIT(A)”], wherein the Ld. CIT(A) has dismissed the appeal of the assessee.



2. The brief facts of the case are that, the assessee is an individual and filed return of income on 25.11.2017 for AY 2017-18 declaring total loss of Rs. 1,22,50,63,571/-. The case was selected for scrutiny as there was specific information of tax evasion and accordingly statutory notice u/s 143(2) was issued on 10.08.2018 and later on notice u/s 142(1) of the Act alongwith questionnaire was issued on 22.02.2021. The assessee did not make the necessary compliance of the statutory notices. Hence the Ld. AO had no option but to complete the assessment ex-parte on the material available on record. The AO was of the view that the assessee has nothing to offer which can substantiate its claim with respect to Long Term Capital Loss amounting to Rs. 121,21,40,974/- arising on account of slump sale. Accordingly, the said long term capital loss was disallowed. The AO further made addition of Rs. 35,27,87,243/- which was reduced by the assessee from the profit of the business being capital gain on account of profit on sale of business and was treated under the head income /receipts credited to profit and loss account. AO further observed that the assessee has failed to tender any explanation /documentary evidence, hence it was not possible to ascertain the true nature /accurate amount of “loss due to API receivable transfer”; hence the same remained unverified and accordingly Rs. 168,28,74,753/- was



disallowed and added back to the total income of the assessee under the head 'Income from business profession'.

3. Aggrieved by the assessment order, assessee preferred appeal before the Ld. CIT (A) who dismissed the appeal of the assessee and refused to admit the additional evidence filed by the appellant /assessee on the ground concluded in para 6.5 of the impugned order as under:-

6.5 It is well-settled that an appellant is not entitled to produce additional evidence as a matter of right and credible proof of a 'sufficient cause' is a sine qua non and a condition precedent for its successful consideration. The appellant is a well-established company with blue chip clients and not a marginal player with tax-illiterate persons at the helm of its affairs. There is no explanation for not filing the documentary evidence as sought by the AO during the course of the assessment proceedings neither the appellant has been able to show that there was any sufficient cause which prevented the appellant from doing so. In these circumstances, the bar of rule 46A of the Rules is not lifted in the case of the appellant. It is held that the appellant has no "sufficient cause" for not providing the documentary evidence during the assessment proceedings as called for. An argument often raised is that the new document ought to be admitted in the interest of substantial justice. This is untenable since it presumes that rule 46A of the Rules is not part of the statute and can be ignored. In this case, the filing of 'additional evidence' in the instant appellate proceedings is, therefore, undeniably hit by the legal bar placed by said Rules. Ex consequenti, the additional evidence sought to be furnished by the appellant is not accepted.



4. Therefore, aggrieved by the impugned order of Ld. CIT(A), assessee preferred the present appeal before us and has raised the following grounds of appeal:-

1 The Learned CIT(A)/NFAC erred in not interfering with the Assessment Order by rejecting Appellant's application under Rule 46A without appreciating that Appellants case fell in Rule 46A(1)(b), (c) and (d) and further learned CIT(A)/NFAC erred in not invoking Rule 46A(4) and hence the order of Ld CIT(A)/NFAC may be quashed/set-aside.

2. The Learned CIT(A)/NFAC erred in denying carry forward of long term capital loss of Rs 121,21,40,974/- arising on slump sale of business without appreciating that AO had decided said issue without hearing the Assessee and said loss has arisen as per law and the computation is duly supported by Auditors Certificate and hence the long term capital loss of Rs 121,21,40,974/- may be allowed to be carried forward.

3. The Learned CIT(A)/NFAC erred in making addition of Rs 35,27,87,243/- in respect of transfer of assets as business income without appreciating that same is considered while preparing the return of income and said assets are part of slump sale and duly considered in the Long term capital loss and hence the addition of Rs 35,27,87,243/-may be deleted.

4 The Learned CIT(A)/NFAC erred in disallowing loss due to API receivable of Rs 168,28,74,753/- without appreciating that same is fully allowable as per law and hence the addition of Rs 168,28,74,753/-may be deleted.



5 The Appellant craves leave to add/amend/alter/delete the grounds of appeal.

5. We have heard Ld. AR and Ld. DR and examined the record. At the very outset, the Ld. AR pointed out that assessee has filed an application for additional evidence under Rule 29 of the Appellate Tribunal Rules 1963 with a request to admit the additional evidence being application under Rule 46A before the Ld. CIT(A) and all the documentary evidences filed before the Ld. CIT(A). It is stated that the appellant was unable to appear before the AO as notices were issued during the Covid period and also on the e-portal and not on e-mail ID. It is further stated that the assessment order was ex-parte and the additional evidence was filed before the Ld. CIT(A) who did not admit the same despite there being sufficient cause for not producing the same before the Ld. AO and also despite the fact that the additional evidence was crucial for deciding the matter. The appellant has also put reliance on the case of Hon'ble Supreme Court in the case of Tek Ram vs. CIT (2014) 357 ITR 133 (SC) wherein it was held that where documents filed by assessee before the Court had some relevance, same should be considered while deciding appeal.



6. The Ld. AR submitted that in application under rule 46A, assessee has given the detail of additional evidence and the reasons for its admission and it was filed before the Ld. CIT(A) which is now submitted at page no. 1 of the paper book. We have examined the said application and it is noticed that assessee has given the detailed reasons for not producing the evidence before the AO stating that assessee was unable to appear before the AO in the absence of receiving of notices and because of covid pandemic situation was prevailing in Mumbai when the notices were issued by the AO between 22.02.21 to 27.03.21. It is further alleged in the application that only 3 days time was given to comply the said notices respectively and assessment was finally completed on 31.03.21 though the extension of time was given initially up to 30.04.21. It was therefore alleged that in these facts and circumstances, the appellant was prevented by reasonable cause to produce /submit the additional evidence before the AO. In page no. 3 of the application before the Ld. CIT(A), the assessee has given the details of additional evidence.
7. We have examined the impugned order wherein the Ld. CIT(A) has discussed the question of additional evidence from para 6 to 6.5 and reached to the conclusion that the appellant has not been able to show



sufficient cause which prevented the appellant from leading evidence before the AO and further held that the case of assessee was not covered within the Rule 46A of Income Tax Rule 1962.

8. The Ld. AR on behalf of the assessee vehemently argued that since the assessment proceedings were completed in a hurried manner and also during covid period, therefore, there was sufficient cause for inability of the assessee to produce evidence before the AO and the Ld. CIT(A) has dismissed the additional evidence application in a arbitrary manner which has caused prejudice and injustice to the assessee and has therefore prayed for allowing the additional evidence which is crucial for deciding the appeal of the assessee and adjudication of matter by the revenue authorities.
9. The Ld. DR on the other hand opposed the admission of additional evidence stating assessee has failed to show the sufficient justification for filing the requisite information before the Ld. AO despite opportunity given to the assessee.
10. We have considered the rival submissions of the parties regarding admission of additional evidence. Now the question before us is whether



the assessee/ appellant can be permitted additional evidence in order to establish the long term capital loss amounting to Rs. 121,21,40,974/- arising on account of slump sale alongwith addition of Rs. 35,27,87,243/- and 168,28,74,753/- respectively.

11. The assessee /appellant has sought permission of the additional evidence under Rule 29 of the Appellate Tribunal Rules 1963. Therefore, let us examine the Rule 29 of the Appellate Tribunal Rules, 1963/- which are as under:-

“Production of additional evidence before the Tribunal: -

29. *The parties to the appeal shall not be entitled to produce additional evidence either oral or documentary before the Tribunal, but if the Tribunal requires any documents to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, or, if the income-tax authorities have decided the case without giving sufficient opportunity to the assessee to adduce evidence either on points specified by them or not specified by them, the Tribunal, for reasons to be recorded, may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be adduced.”*

12. In support of their application, the assessee/appellant has relied the judgment of the Hon’ble Bombay High Court reported as Smt.



Prabhavati S. Shah Vs. Commissioner of Income Tax, (1998) 231 ITR 1.

Para 9 of the judgment of the Hon'ble Bombay High Court referred (supra) is relevant and reproduced as under:

“9. We are also of the opinion that in the facts and circumstances of this case, even under rule 46A of the Rules the assessee should have been allowed to produce the additional evidence. The Appellate Assistant Commissioner, in our view, was not correct in holding that the case of the assessee did not fall in any of the four exceptions set out in sub-rule (1) of rule 46A. In fact, the present case would fall under clause (c) of subrule (1) of rule 46A because the assessee had no occasion to collect this evidence earlier. He could have reasonably expected that the creditors will appear before the Income-tax Officer in compliance with the summons issued by him. He was never informed by the Income-tax Officer that the creditors were not available or unidentifiable. If he had been informed by the Income-tax Officer in the course of assessment proceedings that he was not inclined to accept the loans as genuine because of the nonavailability of the creditors, he could have tried to satisfy him about the genuineness of the loan by producing other evidence. At the time of hearing of the appeal, the appellant tried to satisfy the Appellate Assistant Commissioner about the genuineness of one of the loans by producing material which he could collect in the meantime. This case, therefore, will fall under clause (c) of sub-rule (1) of rule 46A of the Rules. In any view of the matter, we are of the opinion that in the instant case, the Appellate Assistant Commissioner should have considered the evidence produced by the assessee in regard to the loan of Rs. 40,000 from Champaklal Dalpatrai. In view of the above, we answer question No. 3 in the negative and in favour of the assessee. In view of the above answer to question No. 3, questions Nos. 1 and 2 need not be answered.”



13. We have considered the contents of the application of the assessee under Rule 29A of the Appellate Tribunal Rules 1963 alongwith application under Rule 46A Income Tax Rule 1962 wherein it is stated that they could not produce these documents before the revenue authorities due to reasonable and sufficient cause and the said documents are crucial for deciding the appeal and the adjudication of the matter by the revenue authorities. It was contended on behalf of the assessee that the assessment proceedings were carried out in a hurried manner and during the covid pandemic period. It was also contended that assessee could not receive the notices sent by the AO as office of the assessee was not operational due to covid pandemic period.

14. It is to be noticed that the revenue authorities has failed to produce any material contrary to the claim made by the assessee. It is an admitted fact that the assessment proceeding were completed during the covid pandemic period. Further no material was brought to our notice to show that the notices sent by the Ld. AO were duly served upon the assessee. For these reasons, we are of the considered opinion that the assessee /appellant has made sufficient cause for not producing the evidence before the AO when the assessment proceedings were completed during



the covid pandemic period. At this stage, we have no reason to disbelieve the contents of the application and genuineness of the claim of the assessee for producing additional evidence. For the above reasons, we find reason to allow the additional evidence by the assessee /appellant to justify the claim made before the AO for long term capital loss, for capital gain on account of profit on sale of business and for claiming loss due to API receivable transfer respectively. We are not convinced by the finding of Ld. CIT(A) with respect to denial of additional evidence during appellate proceeding despite assessee/appellant having made a strong case and showing sufficient cause for not producing the additional evidence before the Ld. AO. For these reasons, we find it expedient in the interest of justice that appellant /assessee be given opportunity to lead additional evidence as sought through the application under Rule 46A of Income Tax Rules 1962 before the Ld. CIT(A) and by invoking the jurisdiction of this Tribunal under rule 29A of the Appellate Tribunal Rules 1963

15. Further, Rule 30 of the Appellate Tribunal Rules, 1963 provides as under:

“Mode of taking additional evidence: -



30. *Such document may be produced or such witness examined or such evidence adduced either before the Tribunal or before such income-tax authority as the Tribunal may direct.”*

16. In view of the provisions of the Rule 30 of the Appellate Tribunal Rules, 1963 and in the given facts and circumstances, the case is restored to the file of the Ld. AO who shall consider the additional evidence to be filed by the assessee/appellant before the Ld. AO within the period of 60 days from this order. The Ld. AO shall decide the case of assessee afresh after considering the additional evidence to be led by the assessee before the revenue authorities. For the above reason, the impugned order is not legally sustainable and we accordingly set aside the same.

17. In the result, the appeal filed by the assessee is **allowed for statistical purposes** in above terms.

Order pronounced in the open court on 03.04.2025.

Sd/-

**(B R BASKARAN)
(ACCOUNTANT MEMBER)**

Mumbai / Dated 03.04.2025
Dhananjay, Sr.PS

Sd/-

**(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)**

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT



ITA No. 2689/Mum/2024
Nipro Tube Glass Pvt. Ltd.

4. DR, ITAT, Mumbai
5. Guard file.
//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mumbai