

**IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI**

**SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.1991/MUM/2024
(Assessment Year: 2014-2015)**

Assistant Commissioner of Income Tax Circle 2(2)(1)

Room No.577, 5th Floor, Aayakar Bhavan,
Churchgate, Mumbai - 400020 Maharashtra. **Appellant**

Vs

**Rihting Coating Technology (India) Pvt.
Ltd.**

No.164/A, Ground Floor, VGP Nagar,
Mogappaire West, Tamil Nadu - 600037.
[PAN:AACCN6314P] **Respondent**

Appearance

For the Appellant/Department : Shri Rajesh Meshram
For the Respondent/Assessee : Shri Sunil Bhandari

Date

Conclusion of hearing : 03.02.2025
Pronouncement of order : 23.04.2025

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The present appeal preferred by the Revenue is directed against the order, dated 20/02/2024, passed by the National Faceless Appeal Centre (NFAC), New Delhi [hereinafter referred to as '**CIT(A)**'] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as '**the Act**'] whereby the Ld. CIT(A) had allowed the appeal against the Assessment Order, dated 15/11/2016, passed under Section 143(3) read with Section 144 of the Act for the Assessment Year 2014-2015.
2. The Revenue has raised following grounds of appeal :

"1. *Ground No.1 whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the*

addition made on account of gross profit without appreciating the fact that AO passed assessment order ex parte u/s.144 of the Act in absence of any plausible reason for low G.P?.

2. *Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) was justified in deleting the addition made on account unexplained credits under the head securities premium of Rs.56,09,248/- u/s.68 of the Act.?*
3. *Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) was justified in admitting the additional evidence produced by the assessee without giving opportunity to the revenue in violation of Rule 46A of the IT Rule, 1962?"*

3. The relevant facts in brief are that the Assessee filed return of income for the Assessment Year 2014-2015 on 15/09/2014 declaring 'Nil' income which was processed under Section 143(1) of the Act. Subsequently, the case of the Assessee was selected for regular scrutiny. However, during the assessment proceedings, no response was received on behalf of the Assessee and therefore, the Assessee was proceeded ex-parte. The Assessing Officer noted that the Assessee had disclosed Gross Profit of INR.87,39,451/- during the relevant previous year as against total turnover of INR.7,89,58,118/-. Thus, the Assessee had declared Gross Profit at the rate of 11% of the turnover whereas in the preceding Assessment Years 2012-2013 and 2013-2014 the Assessee had disclosed Gross Profits at the rate of 38.63% and 12.83%, respectively. The Assessing Officer was of the view that the Assessee had not disclosed correct profits and therefore, taking the average of Gross Profits Rates for the Assessment Years 2012-2013 and 2013-2014, the Assessing Officer arrived at Gross Profit Rate of 25.73% for the Assessment Year 2014-2015 and computed profits of the Assessee at INR.2,03,15,923/- [$INR.7,89,58,118/- \times 25.73\%$]. Further, the Assessing Officer noted that Assessee had received share premium of INR.56,92,032/- during the relevant previous year and therefore, holding the same to be unexplained cash credit from the

undisclosed sources (for want of verification), the Assessing Officer made addition of INR.56,09,248/- under Section 68 of the Act. Thus, the Assessing Officer completed the assessment vide Assessment Order, dated 15/11/2016, passed under Section 143(3) read with Section 144 of the Act at assessed income of INR.2,59,25,271/- as against 'Nil' income declared by the Assessee in the return of income.

4. Being aggrieved, the Assessee preferred appeal against the Assessment Order, dated 15/11/2016, before the CIT(A). During the appellate proceedings, the Assessee furnished additional evidence, being the details/documents which were sought during the assessment proceedings. The CIT(A) called for the remand report from the Assessing Officer. In compliance with the direction received from the CIT(A), the Assessing Officer furnished Remand Report, dated 11/01/2018, supporting the additions made during the assessment proceedings and submitted that the additional evidence filed by the Assessee should not be considered by the CIT(A). The Assessee was confronted with the aforesaid Remand Report and in response to the same, the Assessee filed Letter, dated 09/02/2018, making out a case for deletion of additions made by the Assessing Officer and reiterated that the non-compliance during the assessment proceedings was on account of unavoidable circumstances [*mentioned in Letter, dated 31/08/2017 and 30/06/2017*]. After taking into consideration, the material on record, the CIT(A) allowed the appeal of the Assessee vide order, dated 20/02/2024, after taking into consideration additional evidenced furnished by the Assessee and deleted the entire addition made by the Assessing Officer.
5. Being aggrieved, the Revenue has preferred the present appeal before the Tribunal on the grounds reproduced at paragraph 2 above.

6. We have heard both the sides and perused the material on record (including the orders passed by the authorities below, Remand Report, dated 11/01/2018 and Letter, dated 31/08/2017, written by the Assessee to the Assessing Officer explaining the reasons for non-compliance with the notices issued during the assessment proceedings.

7. During the course of hearing it was contended on behalf of the Revenue that the additional evidence furnished by the Assessee was considered by the CIT(A) without considering the provisions contained in Rule 46A of the Income Tax Rules 1962 (for short '**IT Rules**'). We do not find any merit in the aforesaid contentions advanced on behalf of the Revenue. On perusal of Letter, dated 31/08/2017, *[placed at page No.7-8 of the Paper Book]* filed by the Assessee, we find that the Assessee had explained reasons for failure to comply with notice, dated 13/06/2016, issued under Section 142(1) of the Act. It was stated that on account of medical issues faced by the auditors of the Assessee between August, 2016 to January, 2017 there was lack of communications between the Auditor and Assessee and the Auditor, and therefore, arrangement for proper representation during the assessment proceedings could not be made by the Assessee. It was only in November, 2016 that the Assessee-Company was able to appoint tax consultant with the help of the tax auditors. The Assessment proceedings were getting time barred in December, 2016. However, on 11/11/2016, assessment order was passed by the Assessing Officer under Section 143(3) read with Section 144 of the Act. Thus, in our view, the Assessee was prevented by reasonable cause from filing evidence during the assessment proceedings and therefore, we do not find any infirmity in the approach adopted by the CIT(A) in admitting additional evidence filed by the Assessee. We note that the CIT(A) has also complied with the provisions contained in Rule 46A of the IT

Rules by calling for a remand report from the Assessing Officer. It is admitted position that the Assessing Officer had submitted Remand Report, dated 11/01/2018 and the same was taken into consideration by the CIT(A). Accordingly, we do not find merit in Ground No.3 raised by the Revenue challenging the order passed by the CIT(A) on the ground of violation of Rule 46A of the IT Rules and therefore, Ground No. 3 raised by the Revenue is dismissed.

8. We now proceed to adjudicate Ground No.1 raised by the Revenue. By way of Ground No.1, the Revenue has challenged, the order passed by the CIT(A) whereby the CIT(A) has accepted the profits declared by the Assessee and has rejected the computation of profits made by the Assessing Officer holding as under:

"3.2 The details regarding the gross profit filed by the appellant had been pre-paid used for used and it is seen that indeed the share of sale of services has increased substantially, whereas the sales of products has fallen during the relevant period. This has been brought out in the audited annual accounts and in view of the same. It is held that estimating the gross profit based on previous years as ratios is not feasible to arrive at the correct income. In view of the foregoing, it is held that the gross profit should be taken as declared by the appellant and has brought out in its audited accounts. The AO is directed to delete the addition on this account and the ground is allowed."

9. On perusal of material on record, we find that the findings of the CIT(A) are supported by the material on record. The Assessee had vide Letter, dated 09/02/2018, provided explaining for variation in gross profits for the Assessment Year 2014-2015 as compared to Assessment Year 2012-2013 and 2013-2014.

"Gross profit:

We have submitted all the details desired by the assessing officer vide notice under section 142(1) dated 13.06.2016 before him during the remand hearing and also the same has been accepted by the Assessing Officer without any adverse comments. We submit that the stand taken by the Assessing Officer to adopt the Gross Profit of the earlier years was incorrect due to the fact that there was change in

the line of business compared to the previous year. The Assessing Officer during the course of assessment failed to observe the fact that in previous year the sale of product is higher than the Sale of Service and during the above said assessment year the sale of product is declined and sale of service is substantially increased. Hence the GP adopted by the Assessing Officer is not comparable.

Without prejudice to the above, we wish to submit that the all the previous year, the scrutiny assessment has been completed without any addition and accepted the return of income filed as it is. Further, from the record it is so obvious that the company started incurring loss from financial year 2012-13 and till now the company into loss only. The company having operation only to comply with contractual obligations on service of the equipments already supplied with their customers

Based on the above, we request your good self to consider our submission and allow the appeal on this issue.”

10. On perusal of the financial statements of the Assessee-Company, the CIT(A) found merit in the above submissions advance on behalf of the Assessee and concluded that computation of gross profit for the relevant previous year on the basis of gross profit rate of the preceding assessment years was not correct. Since, the Assessee-Company had explained that the reason for variation in the gross profit margins for the relevant previous years and the preceding assessment years, the CIT(A) directed that the Gross Profits as declared by the Assessee in the audited financial statements should be taken as correct and the addition made by the Assessing Officer in this regard be deleted. The findings returned by the CIT(A) which are supported by the financial statements of the Assessee for the Assessment Year 2014-2015. On perusal of aforesaid financial statements, we find that the revenue from operations consists of sale of products amounting INR.157.35 Lakhs and sale of services amounting to INR.610.22 Lakhs. Whereas, for the immediately preceding Assessment Year 2013-2014, the revenue from sale of products stood at INR.157.35 Lakhs and the revenues from sale of services stood at INR.460.53 Lakhs. The aforesaid, supports the

contention advanced by the Assessee before the CIT(A) that for the relevant previous year there was change in the line of business, the sale of products fell and service income increased. Therefore, the gross profit of the earlier year was non-comparable with the gross-profit of the relevant previous year. There is nothing on record to controvert aforesaid findings returned by the CIT(A). Therefore, we declined to interfere with the order passed by the CIT(A) deleting the addition of INR.2,03,15,923/- on account of gross profits. Accordingly, Ground No.1 raised by the Revenue is dismissed.

11. As regard Ground No.2 raised by the Revenue is concerned, we find that CIT(A) has returned a finding that the share premium was received by the Assessee Company from its holding company Nittei Corporation, Japan.

"3.1.4. With regard to the addition under Section 68 of the Act, it has been stated that the money was received as share capital and premium and was from the holding company, which holds 99.9% of the shares in the assessee company. It is also stated that Rule 11U, mentioned by the additional commissioner in his forwarding letter does not apply since the addition has not been made under section 56(2)(viib). It is also stated that since the money has been remitted by a non-resident company to its subsidiary Rule 11U is not applicable in this case. Notwithstanding that the valuation of the shares based on the DCF method has been furnished to the RBI while taking permission.

3.2. xx xx

3.3 *The appellant has furnished an extract of the resolution passed by the Board of Directors of the company on 28.06.2013, with respect to the infusion of capital in the assessee company by the holding company, i.e., Nittei Corpn., Japan. It is seen that the company applied for the unique identification number from RBI for the purpose of this inward remittance and that the valuation was based on the Discounted free Cash Flow (DCF) method. This is a recognised method of valuation with respect to inward remittances and the AO has not found it wanting in the remand report.*

Further, the identity of the remitter is disclosed, its creditworthiness and therefore the genuineness of the transaction cannot be doubted. In view of the foregoing, the ground is allowed, and the AO is directed to delete the said addition."

12. On perusal of material on record, we find that there is no dispute as to the fact that share premium was received by the Assessee from its holding Company which is tax resident of Japan. The Assessee has placed on record copy of communications with the RBI whereby the transaction under consideration was carried out after necessary intimation/approval from Reserve Bank of India (RBI). The Assessee has also placed upon the record, the valuation report whereby the shares of the Assessee-Company were valued using Discounted Cash Flow (DCF) Method basis. It is admitted position that the aforesaid value was not objected to by RBI and the foreign inwards remittance was received by the Assessee. We note that even in the Remand Report, dated 11/01/2018, the Assessing Officer has listed the following documents furnished by the Assessee and has, thereafter, recorded that the Assessing Officer made the addition since the above documents were not furnished by the Assessee during the course of assessment proceedings.
- i. Copy of Form No. 20-B towards filing Annual Return/balance sheet by the company having a share capital with the Registrar of companies.
 - ii. Submission of FCGPR with RBI for investment made by the foreign investor Le. the holding company of the assessee viz. Nittie Corporation, Japan.
 - iii. Valuation Report issued by the Valuer / Chartered Accountant, determining the price of the equity share at Rs.245:58/- (Share premium Rs. 235.58 + Rs. 10 Face value).
 - iv. Certificate issued by the Practicing Company Secretary stating that the necessary requirements via Government Approvals for issue of the shares.
 - v. Foreign Inward Remittance Certificate (FIRC) issued by the

Authorized Dealer Bank certifying the direct foreign investment and KYC certificate in respect of the foreign investor issued by the Authorized Dealer Bank.

13. On perusal of the Remand Report, it is clear that the Assessing Officer did not find any infirmity in the above documents furnished by the Assessee during the remand proceedings. It is admitted position that share premium was received by the Assessee from its 99.99% holding company which is not resident in India. The inward remittance was made after making proper disclosure with the RBI. Thus, the nature and source of the transaction stands explained. The Assessee had discharged the onus cast upon the Assessee in terms of Section 68 of the Act. The CIT(A) has, after considering the above documents, was satisfied that addition under Section 68 could not be made in the hand of the Assessee. Therefore, the CIT(A) deleted the addition of INR.56,09,248/- made by the Assessing Officer under Section 68 of the Act. We do not find any infirmity in the approach adopted by the CIT(A). Concurring with the order of the CIT(A), we declined to interfere with the order passed by the CIT(A) on this issue. Accordingly, Ground No.2 raised by the Revenue is dismissed.
14. In result, the appeal preferred by the Revenue is dismissed

Order pronounced on 23.04.2025.

Sd/-
(Girish Agrawal)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated :23.04.2025
Milan,LDC

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण , मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai