



आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणेमें।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCHES "A" :: PUNE

BEFORE MS.ASTHA CHANDRA, JUDICIAL MEMBER  
AND  
DR.DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.2168/PUN/2024

निर्धारण वर्ष / Assessment Year: 2021-22

Assistant Commissioner of Income Tax, Panvel.	V s	Flowline Systems Pvt. Ltd., 401, 402, Bhoomi Landmark, New Panvel, Dist-Raigad. Maharashtra – 410206.
PAN: AABCF1096R		
Appellant / Revenue		Respondent / Assessee

Assessee by	Shri A R Sakhalkar & Shri M.R.Dharmadhikari –AR's
Revenue by	Shri Ramnath P Murkude – DR
Date of hearing	20/03/2025
Date of pronouncement	17/04/2025

**आदेश/ ORDER**

**PER DR. DIPAK P. RIPOTE, AM:**

This is an appeal filed by the Revenue against the order of  
ld.Commissioner of Income Tax(Appeal)[NFAC] passed under  
section 250 of the Act, dated 14.08.2024 for A.Y.2021-22 emanating  
from order under section 154 of the Income Tax Act, 1961 issued by  
ADIT(CPC), Bangalore. The Revenue has raised the following  
grounds of appeal :



*“a. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing the appeal of the assessee by deleting the addition of Rs. 2.08.54.382/- by failing to exercise his powers u/s. 250(4) by making such further inquiry as he thinks fit or by directing the Assessing Officer to make such further inquiry*

*b. On the facts and circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that the submissions made by the assessee during appellate proceedings were in the nature of additional evidences and therefore erred in not allowing the A.O. to examine the additional evidence admitted by them as per the provisions u/s. 46A(3) of the I. T. Rules, 1962.*

*c. The appellant prays that the order of the CIT(A) may be set aside and that of the Assessing Officer be restored.*

*d. The appellant craves leave to add, alter, amend and modify any of the above grounds of appeal either before or at the time of hearing of the appeal, if considered necessary.”*

**Submission of ld.DR :**

2. The ld.DR for the Revenue submitted that ld.CIT(A) has not verified the facts. Ld.DR relied on the order u/s.154 of the Act.

**Submission of ld.AR :**

3. The ld.AR filed a paperbook along with written submission.

The relevant paragraphs of the written submission is reproduced as under :

*“On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing the appeal of the assessee by deleting the additions of Rs.2.08.54.382.00 by failing to exercise his powers u/s 250(4) by making such further inquiry as he thinks fit or by directing the Assessing Officer to make such further enquiry.*

*At the outset, we would like to bring to the attention of your honour/s the very nature of the abovesaid addition*



*This amount represents total value of Performance Guarantees issued by HDFC Bank Ltd. to Andhra Pradesh Industrial Infrastructure Corporation Ltd. and Nuclear Power Corporation of India Ltd. on behalf of 'The Company' and is reported as such by the auditor in Form 3CD as 'Provisions, Contingent Liabilities and Contingent Assets' in point no. 7 of disclosure as per ICDS under point 13 (f) as well as in point 21 (g) under the heading 'Particulars of any liability of contingent nature'*

*The details of the bank Guarantees issued on behalf of the company and remaining outstanding as on the last day of the previous year are as under:*

<i>Bank Guarantee No.</i>	<i>Issued to</i>	<i>Amount</i>
<i>240GT02180050019</i>	<i>Nuclear Power Corporation of India Ltd.</i>	<i>Rs.1,50,55,682.00</i>
<i>240GT02160910009</i>	<i>Andhra Pradesh Industrial Infrastructure corporation Ltd.</i>	<i>Rs.5,798,700.00</i>
	<i>Total (Rs.)</i>	<i>Rs.2,08,54,382.00</i>

*Your honour's kind attention is invited to the fact that a bank guarantee is always contingent in nature and in our case the total amount of Rs. 2,08,54,382.00 was required to be reported by our auditor only as a part of disclosure requirement of Form 3CD*

*The point no. 21(g) of Form 3CD, requires only reporting of contingent liabilities and there is no requirement under that point for the auditor to check whether the said amount is allowable, disallowable or otherwise.*

*In fact, it is a basic knowledge of accounting that an amount representing 'Contingent Liability' is never debited to Profit and Loss account but appears in Notes to the accounts following the principals of 'Prudence' and transparent presentation of the financial statements, as the liability which may arise in future depending upon happening of an event, which may or may not happen.*

*Further, according to the Accounting Standard (AS) 29 on "Provisions, Contingent Liabilities, and Contingent Assets", a contingent liability is defined as a possible obligation that arises from past events whose existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events.*



*Since these liabilities are contingent and do not meet the criteria for recognition, they are not debited to the profit and loss account.*

*Such Bank Guarantees being contingent in nature, there is no question of claiming the same as expense and the fact that we have not done so, can be verified in the Income Tax Return filed by 'The Company' for A.Y. 2021-22.*

*We had argued before The Ld. CIT(A), NFAC that we fail to understand how can the learned assessing officer add back the amount of Bank Guarantees as disallowed expense to the returned income of 'The Company' which has not been even claimed as expense in the first place in the return filed for A.Y. 2021-22.*

*Since the said Bank Guarantees are not in the nature of incurred expense and not claimed as expense in the return of income, the total amount of such bank guarantees is reported in the Form 3CD only as a statutory obligation for disclosure purpose only.*

*It will be obvious for any person of sound mind and having common sense that there cannot be any addition U/s 37 of Income Tax Act, 1961, for an amount which has not been claimed as expenditure in the return of income at the first instance.*

*Since the abovesaid amount representing Bank Guarantees issued in our favor is contingent in nature, The Ld. CIT(A), NFAC has correctly directed the Ld. Assessing Officer to delete the said addition, being an error apparent from record, in his order of rectification against the Intimation u/s 143(1) of Income Tax Act, 1961.*

*Further the Ld. Assistant Commissioner has objected that the Ld. CIT (A), NFAC has failed to exercise his powers u/s 250(4) by making such further inquiry as he thinks fit or by directing the Assessing Officer to make such further enquiry, in his ground of appeal.*

*Your honour/s will appreciate the fact that the law has given the power to The Commissioner of Income Tax (Appeals) to make such further inquiry as he thinks fit (Emphasis supplied). Thus, it cannot be construed as an obligation or a mandatory requirement on the part of CIT(A) to make an enquiry in all cases, if he has arrived at conclusions based on facts of the case before him and the explanations offered to him meet his satisfaction and judgment. Thus, it is evident from the plain reading of the section that the law has given him the power which are discretionary in nature.*



*It is very evident in our case that based on submissions made and explanations offered during the course of hearing and particularly since the disputed amount was never claimed as an expense in first place, The Ld. CIT(A), NFAC was fully convinced and satisfied in arriving at a conclusion that the said addition is a mistake apparent from records. Thus, he did not find any reasons or necessity to make any further inquiry and he did not deem it a fit case for further enquiry or necessity to direct the assessing officer to make such further enquiry.”*

### **Findings & Analysis :**

4. We have heard both the parties and perused the records. In this case, an order u/s.143(1) of the Act, was passed on 13.11.2022. As per the order u/s.143(1), Return of Income was filed on 15.01.2022 and due date of filing Return was 15.03.2022. Thus, the Return of Income was filed within the time. The Centralised Processing Center made following adjustment u/s.143(1) which is appearing at page no.27 of the order u/s.143(1) of the Act, which is reproduced as under :

#### *Adjustment u/s 143(1)(a)*

*Disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return – 143(1)(a)(iv)*

<i>Sl.No.</i>	<i>Particulars</i>	<i>Amount in Income Tax Return</i>	<i>Amount mentioned in Form Annexure 3CD</i>	<i>Proposed adjustment to total income</i>
<i>1</i>	<i>There is inconsistency in Any other amount not allowable under section 37 claimed in return in schedule OI and audit report</i>	<i>0</i>	<i>2,08,54,382</i>	<i>2,08,54,382</i>



5. The assessee filed rectification application which was rejected by ADIT(CPC), Bangalore. Aggrieved by the order u/s.154, assessee filed appeal before the ld.CIT(A).

5.1 The ld.CIT(A) in para 5.2 has held as under :

*“5.2 Ground of appeal No. 1*

*It is claimed by appellant that amount of 20854382/- wrongly added in total income.*

*It is seen that this amount represents the total values of performance guarantees issued by HDFC bank on behalf of the appellant company. This amount is in the nature of a 'contingent liability' and does not form a part of the profit & loss account. The CPC made an error in adding this amount to the assessee's income while carrying out the processing u/s 143(1)(a). Since this is a mistake clearly apparent from the record, it was rectifiable u/s 154. The AO is directed to clarify this error and reduce the income of the assessee by deleting the addition.*

*The assessee's appeal is allowed.”*

6. Thus, ld.CIT(A) gave a finding that the amount of Rs.2,08,54,382/- is a contingent liability and does not form part of the profit and loss account. Ld.CIT(A) gave a finding that it is a performance guarantee issued by HDFC Bank. Therefore, ld.CIT(A) held that CPC has erred and accordingly, directed the Assessing Officer to delete the addition.



6.1 We have perused the copy of the Return of Income filed by assessee which is at page no.37 to 121 of the paper book. Following details have been noted :

<i>Gross Profit</i>	-	5,35,89,036/-
<i>Profit before Interest, Depreciation, Tax</i>	-	3,74,32,896/-

6.2 Thus, the difference is Rs.1,61,56,140/-. It means, assessee has claimed Rs.1,61,56,140/- as expenditure in the profit and loss account, excluding Interest, Depreciation and Tax.

Interest claimed	-	Rs.1,05,31,772/-
Depreciation claimed	-	Rs.1,54,58,343/-
Net Profit before Tax	-	Rs.1,14,42,781/-

6.3 Thus, on perusal of the Return of Income, it is observed that assessee has not claimed Rs.2,08,54,382/- as Expenditure in the Profit and Loss Account. We have perused the Audit Report filed by assessee which is at page no.9 to 36 of the paper book. The contingent liability mentioned in the Audit Report is as under :

<i>Sl.No.</i>	<i>Nature of Liability</i>	<i>Amount</i>
1	BANK GUARANTEES ISSUED	Rs.2,08,54,382

7. Ld.CIT(A) has verified these facts from the Return of Income, Audit Report filed by the assessee. Therefore, there is no document filed by the assessee which was not available before the Assessing Officer. Thus, ld.CIT(A) has not admitted any new evidence, hence,



there is no violation of Rule 46A of the Income Tax Rules. Therefore, Ground No.“b” of the Revenue is dismissed.

8. Ld.CIT(A) has verified the facts from the record. We have already reproduced the relevant facts which we have noted from the Audit Report and Income Tax Return. We have also studied the Computation of Income which is Schedule BP of the Return of Income and observed that the impugned amount has not been claimed as expenditure separately. In these facts and circumstances, we agree with ld.CIT(A) that the impugned amount is a contingent liability and assessee has not debited the impugned amount to Profit & Loss Account. Therefore, we do not find any infirmity in the order of ld.CIT(A), accordingly, grounds of appeal raised by the Revenue are dismissed.

9. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open Court on 17<sup>th</sup> April, 2025.

**Sd/-**  
**(ASTHA CHANDRA)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(DIPAK P.RIPOTE)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 17<sup>th</sup> April, 2025/ SGR



**आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.