



आयकरअपीलीयअधिकरण,राजकोटन्यायपीठ,राजकोट।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER And
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकरअपीलसं./ITA No. 413 & 416/RJT/2024
(निर्धारणवर्ष/Assessment Year: (2015-16 & 2016-17))

Patel Brass Works 2, Bhaktinagar Station Plot, Rajkot (Gujarat) – 360002	Vs.	DCIT, Cir-1(1), IT-Office, New Aayakar Bhavan, Vatiak, Rajkot (Gujarat) - 360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AACFP7695L		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Appellant by : Shri G. R. Sanghavi, Ld. AR
Respondent by : Shri Vijay Kumar Singh, Ld. CIT(DR)
Date of Hearing : 03/11/2025
Date of Pronouncement : 06/11/2025

ORDER

Per, Dr. Arjun Lal Saini, AM:

These two appeals have been filed by the same Assessee, against the separate orders passed by the National Faceless Appeal, Centre (NFAC), Delhi [hereinafter referred to as “NFAC”] both dated 03.05.2024 arising in the matter of separate assessment orders passed u/s. 147 r.w.s. 144 of the Income Tax Act, 1961 (here-in-after referred to as “the Act”) relevant to the different Assessment Year 2015-16 & 2016-17.

2. When these appeals were called out for hearing, the Learned Counsel for the assessee invited our attention to the order dated 30.12.2024 passed by the Hon’ble



ITAT, Rajkot Tribunal in the assessee's own case in ITA No.414,415,417,418/Rjt/2024 for Assessment Year 2015-16 and 2016-17, vide order dated 30.12.2024, wherein the issue and the ground raised by the assessee that the assessee firm was converted from Partnership firm to a Privet Limited Company on 1st October 2010, however, notice was issued by the assessing officer on 29.03.2022 in the name of the Partnership firm which was not in existence w.e.f. 1st October 2010, therefore, the assessee appeals were restored back to the file of the assessing officer for deciding the issue afresh after verifying the facts that the assessee was existed or non-existed at that point of time. If the assessee does not exist at the relevant time, then appropriate relief may be granted to the assessee, therefore, issue was adjudicated in favour of the assessee and appeal was restored back to the file of assessing officer. The Learned Counsel for the assessee therefore submitted that the present these two appeals are squarely covered by the aforesaid order of the Tribunal, a copy of which was also placed before the Bench.

3. On the other hand, the Learned Department Representative relied on the finding of the Authorities Below.

4 We see no reasons to take any other view of the matter then the view so taken by the Division Bench of this Tribunal in assessee's own case(supra), vide ordered date 30.12.2024. In this order the Tribunal has inter-alia observed as follows;

"5. I have heard the submissions of both the parties and have also gone through the orders of the lower authorities carefully. I find that since the assessee does not exist, therefore, there is no question to attend the proceedings, before the Assessing Officer, therefore, the penalty imposed by the Assessing Officer, on account of non-compliance of notice, and on account of no response provided by the assessee, in response of several notices issued by the Assessing Officer, under Section 142(1) of the Act, does not survive. Since the entity does not exist in the eyes of law, hence penalty under Section 271(1)(b) of the Act, does not survive and should be deleted. I Find that once the foundation fails, the superstructure also fails i.e the addition on account of penalty is to be deleted. In this regard, I place reliance on the legal maxim "Sublato fundamento cadit opus" (meaning thereby that foundation



being removed, structure /work falls). Hence the initial action of the revenue itself is not in consonance with law, then all the subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order.

I find that since the entity does not exist in the eyes of law, hence penalty under Sections 271(1)(b) and 271F of the Act do not survive. Considering the overall facts and circumstances of the case, all the grounds of appeal raised by the assessee, in all these four appeals are restored back to the file of Assessing Officer for deciding the issue afresh, after verifying the fact that the assessee is existed or non-existed at that point of time. If the assessee does not exist at the relevant time, then appropriate relief may be granted to the assessee. In the results, grounds of appeals in all these four appeals raised by the assessee are allowed for statistical purposes.”

5. As the issue is squarely covered in favour of the assessee by the decision of the Co-ordinate Bench in assessee's own case, and there is no change in facts and laws and the revenue is unable to produce any material to controvert the above findings of the Co-ordinate Bench(supra). Therefore, these two appeals of the assessee are restored back to the file of the assessing officer for deciding issue afresh after verifying the facts that the assessee was existed or non-existed at that point of time. If the assessee does not exist at the relevant time, then appropriate relief may be granted to the assessee. Therefore, grounds of appeal raised by the assessee in these two appeals are allowed for statistical purposes.

6. In the combined result, these two appeals of the assessee are allowed, for statistical purposes, in above terms.

Order is pronounced in the open court on 06/11/2025.

**Sd/-
(Dinesh Mohan Sinha)
Judicial Member**

**Sd/-
(Dr. Arjun Lal Saini)
Accountant Member**

राजकोट/Rajkot

//True Copy//

दिनांक/ Date: 06/11/2025

Copy of the order forwarded to :

The assessee

The Respondent

CIT



The CIT(A)
DR, ITAT, RAJKOT
Guard File

By order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot