

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
'D' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष  
BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND  
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2126/Chny/2025  
Assessment Years: 2017-18

M/s.Fuente Enterprise India Private Limited,  
No.93, Amishri Kavya, Kandasamy Nagar, Main Road, Palavakkam, Chennai-600 041.  
[PAN: AABCF2501K]

Assistant Commissioner of Income Tax,  
Corporate Circle-2(1), Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Assessee by

: None

प्रत्यर्थी की ओर से /Revenue by

: Mr.Saujanya Ranjan, IRS

सुनवाई की तारीख/Date of Hearing

: 24.09.2025

घोषणा की तारीख /Date of Pronouncement

: 06.11.2025

**आदेश / ORDER**

**PER AMITABH SHUKLA, A.M :**

This appeal is filed by the assessee against the order bearing DIN & Order No.ITBA / NFAC / S / 250 / 2025-26 / 1076161541(1) dated 13.05.2025 of the Learned Commissioner of Income Tax [herein after "CIT(A), National Faceless Appeal Center [NFAC], Delhi, for the assessment year 2017-18. The reference to the word "Act" in this order hereinafter shall mean the Income Tax Act, 1961 as amended from time to time.

2.0 At the outset, Ld.Counsel for the assessee submitted that the Ld.CIT(A) had not adjudicated adequately, its ground of appeal contesting the legality of the assessment order. The Ld.Counsel submitted that it had, through a specific ground of appeal, contested before the Ld.CIT(A) that the assessment order was invalid since the Ld.AO had proceeded against the assessee company which was struck off from the records of registrar of the company, without first attempting restoration of the company. Reference was invited to para 5 of the appellate order. It was also contended that even on merits of addition the Ld.CIT(A) has merely repeated the arguments of the Ld.AO before dismissing his appeal.

3.0 Per contra, the Ld.DR relied upon the order of authorities below.

4.0 We have heard rival submissions in the light of material available on records. Before us also the assessee invited our attention to its ground of appeal no.2 and 3 which are legal grounds contesting the action of Ld.AO in passing assessment order in respect of strike off company. It is the case of the assessee its case is covered by CBDT instruction in F No.225/423/2017/ITA-II dated 18.04.2018. We have noted that CBDT in the impugned instruction had mandated as under:-

**“....MISCELLANEOUS - FILING OF REFERENCES FOR RESTORATION OF  
STRUCK-OFF/DE-REGISTERED COMPANIES UNDER THE COMPANIES ACT,  
2013**

**LETTER [F.NO.225/423/2017/ITA.II], DATED 18-4-2018**

*Vide communication dated 29th December, 2017 in file of even no. (copy enclosed for reference), Board had issued necessary directions regarding filing of references for restoration of struck-off/de-registered companies under Companies Act, 2013. The field authorities were required to take immediate action in this matter, however, it has been found that till now action has been taken in a very few cases.*

*2. Upon consideration of the matter, the Board desires that exercise of filing references in situations stated in para 2 of Board's letter dated 29th December, 2017 including instances of pendency of outstanding tax-liability in cases of struck-off/de-registered companies should be completed by all charges by **31st May, 2018**. The concerned Pr. CCIT would thereafter furnish a report to Member (A&J), CBDT containing compilation of cases in his jurisdiction where reference applications have been filed by the Income-tax Department (ITD) before the National Company Law Tribunal (NCLT). This would be in addition to the preliminary report sought by Member (A&J) in this regard vide letter in F.No. 278/M-52/2003-ITJ(Pt.) dated 4th April, 2018.*

*3. Regarding the mechanism for filing references by the ITD for restoration of name of the struck-off/de-registered companies, Ministry of Corporate Affairs (MCA) has intimated that in view of Section 252(3) of the Companies Act, 2013, being an aggrieved creditor for its pending Income-tax proceedings, ITD may file such an application before the NCLT Bench having territorial jurisdiction over a particular case. In view of this intimation by the MCA, the concerned field authorities should file appeals before the NCLT as stated in para 5 of Board's letter dated 29th December, 2017.*

*4. The MCA has also informed that they have issued suitable directions to All Regional Directors/All Registrar of Companies to extend co-operation to ITD while filing applications for restoration off name of struck-off/de-registered companies before the jurisdictional NCLT Bench. They have further informed that directions have been issued to All Regional Directors/All Registrar of Companies not to oppose applications filed by ITD before the NCLT for restoration of struck-off/de-registered companies while filing the irresponse/reply/submission on behalf of the MCA.*

5. The Departmental Standing Counsels representing the case of ITD should be suitably briefed about the stand of MCA mentioned in paras 3 and 4 above.

6. While undertaking the exercise of striking-off/de-registering companies, Registrar of Companies (RoC) issues a 'Public Notice' about the proposed action of removal or striking-off/de-registration the names of such companies and seeks objections, if any, to be furnished within thirty days of the notice. In the past, instances were noticed that action on these 'Public Notices' which were issued by the Regional RoCs was not taken in a timely manner. Therefore, to ensure that a timely response is available from the side of the ITD in these cases, it has been decided to designate nodal authorities in the ITD (as per enclosure) for this purpose. The designated nodal authorities besides coordinating response for cases falling in their jurisdiction shall also ensure that where a particular case pertains to another Pr. CCIT jurisdiction, the information would be passed to it in a timely manner.

7. The MCA is also being requested to intimate the Regional RoCs to ensure service of 'Public Notice' regarding proposal of striking-off/de-registration of companies under section 248(1) of the Companies Act, 2013 upon designated nodal authorities in the ITD. The statement of objection under section 248(1) of the Companies Act, 2013 is required to be furnished by the jurisdictional Income-tax authorities on the basis of parameters indicated in para 2 of Board's letter dated 29th December, 2017 including pendency of out-standing tax-arrears, if any.

8. The list of cases requiring filing of applications may be identified by the concerned Pr. CIT/CIT on the basis of information, already available with the ITD & also in public domain. Further, to facilitate the process of identification of companies already struck-off/de-registered, the MCA is being also requested to furnish by 30th April, 2018 a list of all cases struck-off/deregistered by the RoC during the Financial-Year 2017-2018.

The list would be furnished by the concerned regional RoCs for cases in their jurisdiction to the designated nodal authorities in the ITD as mentioned in para 6 above. It is reiterated that based upon parameters indicated, all applications are required to be filed before the NCLT Benches by 31st May, 2018.....”.

5.0 The Ld.Counsel for the assessee submitted that the registrar of company of Tamil Nadu had struck off assessee company on 05.05.2017

w.e.f. 29.06.2017 and that an intimation to this effect was published in official gazette on 20.05.2017. It was argued that proceeding against a struck off company is akin to proceeding against a dead person and that the same is not permissible in law.

6.0 Upon consideration of para 5 of the order of Ld.CIT(A) we have noted that he has not addressed this concern of the assessee by way of a speaking order. It has been noted that the ground raised by the assessee has been dismissed summarily solely upon conjectures and surmises. Thus, it is a clear case of non-application of mind and of passing a consequent non-speaking order. We are therefore of the considered view that ends of justice would be met if the matter is restored back to the Ld.CIT(A) for readjudication of the assessee's ground of appeal no.1 raised before him by way of a speaking order. Accordingly, the order of the Ld.CIT(A) is set aside and he is directed to readjudicate assessee's ground of appeal no.1 raised before him by way of a speaking order and in accordance with law. Needless to say due opportunity of being heard would be accorded to the assessee before passing of any order. Ground of appeal Nos. 2 and 3 of the assessee is therefore allowed for statistical purposes.

7.0 Ground of appeal nos. 4 to 6 are regarding merits of the addition. Since the assessee has succeeded on the legal grounds, the ground of appeal nos. 4 to 6 have become academic in nature.

8.0 In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on 6<sup>th</sup> , November-2025 at Chennai.

**Sd/-**

(एबी टी. वर्की)

(ABY T VARKEY)

**न्यायिक सदस्य / Judicial Member**

**चेन्नई/Chennai, दिनांक/Dated: 6<sup>th</sup> , November-2025.**

**KB/-**

**Sd/-**

(अमिताभ शुक्ला)

(AMITABH SHUKLA)

**लेखा सदस्य /Accountant Member**

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT - Chennai/Coimbatore/Madurai/Salem.
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF