

**IN THE INCOME-TAX APPELLATE TRIBUNAL "C" BENCH,  
MUMBAI**

**BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER  
&  
SMT.RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.2925/MUM/2025  
(A.Y.2004-05)**

Income Tax Officer 5(2)(1) Room No. 567, 5 <sup>th</sup> floor, Aayakar Bhavan, M K Road, Mumbai-400020.	Vs.	Micro Plantae Limited 4, Unity House, 2 <sup>nd</sup> floor4, 8 Mama Parmanad Marg, Opera House, Mumbai-400004.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AAACM3686P</b>		
<b>Appellant</b>	<b>..</b>	<b>Respondent</b>

Appellant by :	Shri Dharmesh Shah, CA a/w Ms. Mitali M. Parekh, CA
Respondent by :	Shri R. A. Dhyani (CIT DR)

Date of Hearing	03.11.2025
Date of Pronouncement	20.11.2025

**आदेश / O R D E R**

**PER RENU JAUHRI [A.M.] :-**

This appeal is filed by the Revenue against the order of the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "CIT(A)"] dated 29.08.2024 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for Assessment Year [A.Y.] 2004-05.

2. The grounds of appeal are as follows:

1) "Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) is justified in not giving sufficient weight to the failure of the assessee to substantiate the claimed transactions during the initial assessment proceeding?"

2) "Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) is justified in accepting the additional evidence filed by the assessee

during the appellate proceedings, ignoring the findings of the AO in the Remand Report, and not giving sufficient weight to the failure of the assessee to substantiate the claimed transactions during the remand proceedings?"

3) "Whether on the facts and in the circumstances of the case and in law, the Ld.CIT (A) is justified in granting relief of miscellaneous expenses of Rs.41,700/- ignoring the failure of the assessee to substantiate the claimed transactions during the remand proceedings. specifically with regards to bills/ vouchers and bank reconciliation statements during the remand proceeding."

4) "Whether on the facts and in the circumstances of the case and in law, the Ld.CIT (A) is justified in granting relief of legal and professional expenses of Rs.266,149/- ignoring the failure of the assessee to substantiate the claimed transactions during the remand proceedings, specifically with regards to bills raised, payment receipts and bank reconciliation statements during the remand proceeding."

5) "Whether on the facts and in the circumstances of the case and in law, the Ld.CIT (A) is justified in granting relief of Custom Duty and PNQ Inspection charges of Rs.8,29,688/-ignoring the failure of the assessee to substantiate the claimed transactions during the remand proceedings, specifically with regards to bills raised, payment receipts and bank reconciliation statements during the remand proceeding."

6) "Whether on the facts and in the circumstances of the case and in law, the Ld.CIT (A) is justified in granting relief for depreciation of Rs.39,40,644/- ignoring the failure of the assessee to substantiate the claimed transactions during the remand proceedings. specifically with regards to copy of agreement of sale of assets, documentary evidence of purchase and sale of assets, Capital gain/loss computation and bank statement during the remand proceeding."

7) The appellant prays that the order of the CIT(A) on the grounds be set aside and confirm the order of the AO.

8) The appellant craves leave to add, amend or alter all or any of the grounds of appeal.

2. At the outset, it is noted that the appeal has been filed after a delay of 177 days by the revenue. An application for condonation of delay has been filed by the ld. AO wherein it has been explained as under:

"2. In this connection, the assessee filed its return of income for A Y 2004-05 on 01:11 2004 showing business loss of Rs 32,50,978/ The assessment u/s 143(3) was completed on 21 12.2006 assessing total income at Rs.26,92,470/ The assessee filed an appeal before the Ld. CIT(A) which was decided by the Ld CIT(A) vide order dated 16.06 2008 as partly allowed. Thereafter, aggrieved assessec filed an appeal before the ITAT against the order of CIT(A) The Hon'ble ITAT, Mumbai vide order dated 20.01 2010 sent the file back to the AO for re-adjudication.

3. In the meanwhile, a search u/s 132 of the IT Act was carried out at the premises of the group concern, M/s Temptation Foods Ltd on 24.09.2009 Assessment u/s 153C rws 143(3) of the IT Act was completed on 21 12.2011 assessing total income at Rs 19,43,210/- The penalty was levied vide order u/s

*271(1)(c) of the Act dated 25.03.2014 wherein penalty was levied amounting to Rs. 18,63,414/- on the additions/disallowance made in the assessment order. The Ld CIT(A) had partly allowed the appeal filed by the assessee and tax effect was less than the monetary limit as prescribed in CBDT circular no 17/2019 dated 08 08 2019 A Circular No 09/2024 dtd 17.09. 2024 hence second appeal was not recommended in this case.*

*4. After going through the records and cross verifying the facts with assessee it learnt that a Prosecution complaint was lodged/filed on 22 03.2018 u/s 276C(2) of the Act against the assessee and its directors for the A.Y. 2004-05 in the court of Learned Addl. Chief Metropolitan Magistrate's 38th Court at Billard Pier, Mumbai (Criminal Case No. 958/SW/18) for willful attempts to evade payment of tax arrears hence it was found that the case falls under exception provided in para 3 1(d) of the CBDT Circular No.5 of 2024 (F.No.279/Misc. 142/2007-ITJ(Pt.) dated 15 03 2024, and 2nd Appeal was filed before Hon'ble Tribunal vide Appeal No. ITA/2925/MUM/2025 dated 28.04.2025."*

After hearing the rival submissions and considering the facts mentioned in the application, we find that there was a reasonable explanation for the delay and therefore, we are inclined to condone the delay of 177 days in filing of appeal by the revenue.

3. Brief facts of the case are that the original return was filed by the assessing for A.Y. 2004-05 declaring income of Rs. (-)32,50,978/- Assessment u/s. 143(3) was completed vide order dated 20.12.2006 assessing the total income at Rs. 26,92,470/-. Against this order, assessee filed an appeal before Id. CIT(A) who gave relief to the extent of Rs. 7,18,916/- vide his order u/s. 250 dated 25.06.2008. Aggrieved, the assessee filed further appeal and the Hon'ble Co-ordinate bench allowed the assessee's appeal for statistical purposes vide order dated 20.01.2010.

Meanwhile, a search action u/s. 132 of the Act was carried out in the case of Temptation Food Group on 24.09.2009 by the Investigation Wing, Mumbai. As some of the documents, found and seized during the course of search, pertained to the assessee, a notice u/s. 153C was issued

to it on 23.03.2010. In response, a return was filed on 16.04.2010 declaring same income as in the original return. Assessment was completed u/s. 143(3) r.w.s. 153C vide order dated 21.12.2011 at an total income of Rs. 19,43,210/- after making disallowances out of depreciation, balances written off and expenses.

Aggrieved, the assessee preferred an appeal before the ld. CIT(A). Vide order dated 29.08.2024, the assessee's appeal was allowed by the ld. CIT(A) after considering additional evidences filed by the assessee. Aggrieved, the revenue is now in appeal before the Tribunal.

4. At the outset, ld. AR submitted that an application under rule 27 of the Appellate Tribunal Rules has been filed by the assessee to raise the issue of validity of assessment. It is the contention of the assessee that no incriminating evidences were found as a result of search and hence the order of ld. AO is passed without assuming valid jurisdiction over the case of the assessee. Ld. DR on the other hand has strongly objected to the grounds of appeal raised under rule 27 and has filed written submissions of the ld. AO, relevant portion of which is reproduced below:

*“Rule 27 of the ITAT Rules enshrines a right to the respondent before the ITAT to support the order of the CIT(A) on any ground decided against him. In the instant case, the assessee is raising additional grounds under rule 27 before Hon'ble ITAT These very specific grounds-” (i) The Ld. CIT (A) ought to have held that the Ld.AO passed the order without assuming valid jurisdiction over the case of the assessee and (ii) The Ld.CIT/(A) ought to have appreciated that the disallowance made by the Ld.AO were incorrect and illegal as no incriminating evidences were found as result of the search.” were not raised before CIT(A). Hence the assessee is not eligible to raise those grounds under rule 27 of ITAT rules which were not decided by CIT (A) against the assessee.”*

5. We have heard the rival submissions and perused the material placed before us. We note that the ground relating to the validity of assessment

was raised by way of an additional ground vide letter dated 08.05.2023 before the Id. CIT(A). This ground was not adjudicated by the Id. CIT(A), on the ground that the same had become academic as appeal was allowed on merits. We hereby admit the grounds under rule 27 of ITAT Rules. We first take up the issue regarding validity of assessment raised by the assessee.

5.2 Before us, Id. AR has submitted that no incriminating material was found during the search and, therefore, the order u/s. 143(3) r.w.s 153C was bad in law. He has placed reliance on a catena of judgments in this regard some of which are as under:

- i. *Saksham commodities Ltd. V. ITO (2024) 464 ITR (Delhi)*
- ii. *ITO V. Saksham Commodities Ltd. 170 taxmann.com 87 (SC)*
- iii. *PCIT V. Abhisar Buildwell (P) Ltd. 454 ITR 212 (SC)*

Specifically, in the case of *Saksham Commodities (supra)* it has been held by the Hon'ble Delhi High Court that the seized material must pertain to the relevant assessment year and notices issued to third person in the absence of incriminating material is unsustainable. The SLP filed by the revenue against this decision was also dismissed by the Hon'ble Apex Court.

5.3 Ld. AR has filed a copy of the notice dated 23.03.2010 issued to the assessee u/s. 153A which was rectified to section 153C vide letter dated 30.08.2011. A copy of the satisfaction note has also been placed on record and it has been pointed out by Id. AR that there is no reference to the seized material/incriminating material therein. Further the same is dated

23.03.2010 but not signed by the officer who issued the notice on that date. Instead it is signed by the ACIT (central circle)-13 who subsequently issued the letter dated 30.08.2011. All these facts indicate that there was no valid satisfaction note recorded at the time of issuing notice u/s. 153A/153C of the Act on 23.03.2010.

5.4 Ld. DR on the other hand relied on the order of ld. AO.

6. We have considered the rival submissions and carefully perused the material placed on record. In view of the fact that no incriminating material has been mentioned in the satisfaction note, we are of the considered opinion that the notice u/s. 153C is invalid in the light of various judicial pronouncements cited by ld. AR and is, therefore, liable to be quashed. Under these circumstances, it is not necessary to adjudicate the grounds of appeal on merits.

7. Resultantly, the appeal of the revenue is dismissed.

Order Pronounced in Open Court on 20.11.2025

**Sd/-**

**(PAWAN SINGH)**

**(JUDICIAL MEMBER)**

**Sd/-**

**(RENU JAUHRI)**

**(ACCOUNTANT MEMBER)**

Place: Mumbai

Date 20.11.2025

*Anandi.Nambi/STENO*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai

5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

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