

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 1484/Mum/2023 (A.Y.2007-08)

Evermore Polymer Systems Ltd.,

53-A, Mittal tower,
210 NarimanPoint,
Mumbai-400021

PAN: AAACE1116C

..... Appellant

Vs.

CIT-A (NFAC)

Mumbai City

..... Respondent

Appellant by : Shri Baldev Idani Ld. AR

Respondent by : Shri H. M. Bhatt, Ld. DR

Date of hearing : 06/07/2023

Date of pronouncement : 25/08/2023

ORDER

PER GAGAN GOYAL, A.M.:

This appeal by assessee is directed against the order of National Faceless Appeal Centre (for short "NFAC") dated 21.03.2023 u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2007-08. The assessee has raised the following grounds of appeal:-

1. THAT learned Commissioner of Income-Tax (Appeals), in his Order Dt.21-03-2023 has erred in failing to appreciate, true facts and circumstances, recited in "Statement of Facts", and Appellant's submission, vide Letter Dt.16-03-2023 (copy annexed), and has MISCONSTRUED the "Grounds of Appeal".

2. THAT the learned Commissioner of Income-Tax (Appeals), in his Order Dt.21-03-2023 has erred in assuming that Order (dt.23-06-2010), appealed against, has been truly served on Appellant, on or before 22-07-2010, whereas it was never served, at any point of time, on the Appellant, by the Dept.

3. THAT the learned Commissioner of Income-Tax (Appeals), in his Order Dt.21-03-2023 has failed to consider that copy of said Order, was actually received by Appellant, on 02-04- 2019 (being the actual date of receipt of Order), when, at Appellant's request, for a copy to enable Appellant to file an Appeal, was made to the Ld.AO.

4. THAT Ld. CIT (A), in his Order Dt.21-03-2023, has failed to consider Appellant's prayer (at Para 6, Letter Dt. 16-03-2023), that "I say the Imposition of Penalty, during the pendency of the quantum Appeal, is an act of haste therefore I pray U/s. 276 C, the present Appeal proceedings may kindly be kept pending till the disposal of the Quantum Appeal"

5. THAT Ld. CIT (A), in his Order Dt.21-03-2023, has acted in undue haste, in dismissing the Penalty Appeal, during the pendency of the "Quantum Appeal"..

6. THAT Ld. CIT (A), has erred in failing to consider, other "Grounds of Appeal", and has misconstrued that the only Ground was "Condonation of Delay".

7. THAT Ld. CIT (A) has erred in

(i). not adopting a holistic view of, facts and circumstances, especially, the fact that Appellant had discontinued its business, had closed its business, and had discontinued its Company;

(ii). That its three original Directors had gone away and one of them (Mahesh H. Hinduja) had settled abroad; the failure of the Directors to attend was on account of circumstances beyond their control and also on account of their growing age and physical disabilities. It was at this time that Senior Director (H.K.Hinduja) had to undergo Heart Surgery; Also, the other Director was medically challenged and was under constant medical attention. It was at this time that the adult child of the Directors was discovered to be suffering from cancer and after a struggle of more than two years, succumbed to this deadly disease on 29/08/2010.

8. THAT the learned CIT(Appeals) has erred in failing to consider, that Directors were unable to attend because of circumstances beyond their control;

9. THAT the learned CIT (Appeals) has erred in failing to consider, that, the Appellant Company had substantial B/f losses, it was natural, just and fair to assume that they would have no tax liability.

10. THAT the learned CIT(Appeals) has erred in failing to consider, that the Appellant Company had been removed, from the Companies Act, Register, and ceased to be a Company, since a number years earlier, from the rolls of the Companies Act; that it had filed its return of income voluntarily, had explained its family tragic personal, Medical circumstances, its selling off its Office & residential flat, and the loss of its record due to the 2005 DELUGE (floods), and thereby causing inability to attend personally to the IT Notices.

11. THAT the learned Commissioner of Income-Tax (Appeals) has erred in not taking cognizance of various Appeals contemporaneously filed and pending with the Ld.

*CIT(A), vide Numbers 462098231080419 U/s 144 (Quantum Appeal) U/s. 271(1)(c)
Penalty for concealment.*

2. The brief facts of the case are that assessee company filed its return of income on 30.09.2007 declaring NIL income. The case of assessee was selected for scrutiny and an inquiry, with reference to the following amounts received from the directors were made:

| <u>From</u> | <u>Amount (Rs.)</u> |
|-------------------------|---------------------|
| Mr. H. K. Hinduja | 3,60,000/- |
| Mr. Mahesh Hinduja | 50,000/- |
| <u>Ms. Maya Hinduja</u> | <u>2,18,000/-</u> |
| Total loan | 6,28,000/- |

3. However, neither any of the principal officers of the company nor the AR furnished the relevant details. Ultimately, resulting into an addition of Rs. 6.28 lakhs. That Appellant comprises of 3 Directors namely (1) Shri H K Hinduja, who suffered a heart ailment requiring hospitalization (2). Smt Maya H Hinduja a super senior citizen, requiring constant attention and support (3) Shri Mahesh H Hinduja, now a Non-Resident, who shifted from India to USA.

4. **That Appellant had discontinued its business, and had informed the Registrar of Companies, of this fact; and that said Companies office had deleted Company's name from its Register of Companies. That vide letter dt 22-3-2019 (copy Enclosed) the Appellant's CA, filed with the Ld. AO 3(1)(3) then sitting in room No: 66 Aayakar Bhavan had informed that the**

Appellant Company had been "struck off" from registrar of company, vide Extract of Gazette dt 18-6- 2011. That the business has been discontinued. Also the office at 1201/1202 Maker Chamber-V, 221, Nariman Point 400021 had been surrendered, also the residential premises had been shifted.

5. However the Assessee's Chartered Accountant had attended before the Ld. Assessing Officer and informed him of all the Facts and explained to him, due to adverse circumstance the Assessee not able to give information. However replies were given from time to time. The Ld, AO, in haste arrived at adverse conclusion against the Applicant, though in fact the Applicant was suffering, the business had been discontinued, the premises has been surrendered, and the Appellant was compelled to place (Keep in safety) its books etc. at known friend's industrial factory, in a trunk for the purpose of safety.

6. However, in the great flood of 2005 the factory premises got flooded and the Applicant's books etc. lying in the truck were destroyed. The Ld. AO failed to appreciate these circumstances, and decided to punish the Appellant.

7. That The Ld. AO was aware and informed of the discontinue of business of the Nonexistence of Business premises, of the complete damage caused to the records, and therefore erred in invoking 144 and passing an Ex party Order.

8. It is also observed that quantum appeal is still pending before the Ld. CIT (A) and the business of the assessee is discontinued long before as

mentioned (supra) and was duly communicated to the AO during the penalty proceedings. As far as the levy of penalty u/s 271B is concerned, we found that with the factual matrix reproduced (supra), case of the assessee clearly deserves to be considered u/s. 274 wherein it is provided that if assessee is able to establish the reasonable cause behind its failure, no penalty can be imposed.

9. In the given circumstances, we are not in agreement with the action of AO and appeal order passed by Ld. CIT (A), in the result penalty imposed is directed to be deleted.

10. In the result, Appeal of the assessee is allowed.

Order pronounced in the open court on 25th day of August, 2023.

Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 25/08/2023

Sr. PS (Dhananjay)

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai