

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

BEFORE: DR. BRR KUMAR, VICE PRESIDENT
And SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

ITA No.1708/Ahd/2024
Assessment Year : 2018-19

Ashima Dyecot Private Limited (Now Merged into Ashima Ltd.), Ashima Limited, Texcellence Complex, Nr. Anupam Cinema, Khokhra, Mahemdabad Ahmedabad-380021. PAN: AACCA2753K (Appellant)	Vs	The Deputy Commissioner of Income Tax, Circle-1(1)(1), Ahmedabad. (Respondent)
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Assessee Represented: Shri Tushar Hemani, Sr.Advocate
Revenue Represented: Shri Ravindra, Sr.D.R.

Date of hearing : 19.02.2025
Date of pronouncement : 26.02.2025

आदेश/ORDER

PER : DR. BRR KUMAR, VICE PRESIDENT:

Delay Condoned

This appeal is filed by the Assessee as against the appellate order dated 28.06.2024 passed by the Commissioner of Income

Tax (Appeals)/National Faceless Appeal Centre, Delhi, relating to the Assessment Year 2018-19.

2. The assessee has raised the following grounds of appeal:

1. *The Ld. AO has erred in law and on facts in levying penalty of Rs.8,70,482/-at 200% of the tax payable on the alleged ground of under reporting of income by stating that it is in consequence of misreporting of income by the Appellant company and accordingly provision of Section 270A have been invoked. It is the settled law that the penalty proceedings and assessment proceedings are distinct and separate and the findings in the assessment proceedings though relevant and may be good for making the quantum addition cannot automatically justify the imposition of penalty as the appeal of the Appellant company was still not decided by the Hon'ble CIT (A) and till that time no penalty proceedings should be initiated.*

2. *The Appellant is very much confident of getting a favourable decision in the Quantum Appeal, which is pending before the NFAC. It is pertinent to mention that when the hearing of the Appeal filed by the Appellant against the penalty order before the NFAC came up for hearing unfortunately because of the fact that the erstwhile Ashima Dyecot Private Limited was merged into the Appellant during the intervening period and therefore the concerned persons who were taking care of the tax matter of the erstwhile Ashima Dyecot Private Limited were no longer there on the payroll of the present Appellant Company and the notices were therefore inadvertently not attended to by the present Appellant- In the above typical circumstances necessary evidences/clarifications could not be submitted to the Appellate Authority, NFAC, which has culminated into Appellant's Appeal being dismissed without going into merits of the matter by the NFAC.*

3. *The Appellant Is very much in a position to establish that even assuming without admitting that the original assessment order passed by the Ld. AO is bad in law, there is no question of any underreporting or misreporting of income in case of the Appellant and thus the Ld. AO has erred in law and on facts in levying penalty of Rs.8,70,482/- u/s 270A of the Act, which is required to be deleted.*

4. The Appellant craves to add, amend and/or alter the ground or grounds of appeal either before or at the time of hearing of the appeal.

3. For the year under consideration, the Appellant Company - erstwhile Transferor Company, Ashima Dyecot Private Limited had filed its return of income u/s 139(1) on 30.10.2018. Thereafter, the Appellant Company was merged with Ashima Limited by the order of the Hon'ble National Company Law Tribunal (NCLT) dated 22.07.2020 with effect from the appointed date i.e. 01.04.2019. Thus, the Appellant Company now is Ashima Limited - the Amalgamated Company. However, the assessment order was passed by the Assessing Officer on 13.04.2021 in the name of the erstwhile Transferor Company, Ashima Dyecot Private Limited wherein the Assessing Officer has made two additions - disallowance of depreciation on motor car amounting to Rs.4,53,623/- and addition of difference in duty drawback amounting to Rs.18,30,50s/- making total addition of Rs.22,84,128/- for A.Y.2018-19.

4. The Appellant Transferee Company Ashima Limited has filed an appeal before the National Faceless Appeal Centre (NFAC) on 19.01.2022 both on technical grounds as well as on merits contending that at **the outset the Assessment Order made u/s 143(3) of the Act in the name of the erstwhile Transferor Company, Ashima Dyecot Private Limited is bad in law since it was made in the name of the Company, which was non-existence as on the date of the order.** The assessee has also strongly contested the additions made in the assessment order on

merits both based on facts and also in law and the said quantum appeal is still pending for disposal before the first Appellate Authority.

5. In the meantime, the Assessing Officer passed an order u/s 270A of the Income Tax Act dated 12.01.2022 levying a penalty of Rs.8,70,482/- on the ground of alleged underreporting of the income as a consequence of misreporting and levying penalty at the rate of 200% of the tax to be evaded. It is undisputed fact that the penalty order has been passed in the name of Ashima Dyecot Pvt. Ltd. on 12.01.2022, by which time the Assessing Officer has been duly intimated about the merger of the assessee with Ashima Limited. Respectably placing reliance on the judgement of Hon'ble High Court of Gujarat in the case of Inox Wind Energy Ltd Vs. ACIT (454 ITR 152) and on the judgement of Hon'ble Apex Court in the case of PCIT Vs Maruti Suzuki Ltd, (416 ITR 613), it is hereby held that that the order passed in the name of non-existing entity is a nihility in the eyes of law.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 26.02.2025

Sd/-

**(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER**

Sd/-

**(DR.BRR KUMAR)
VICE PRESIDENT**

Ahmedabad : Dated 26.02.2025

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

TRUE COPY

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद