

આયકર અપીલીય અધિકરણ, અહુમદાબાદ ન્યાયપીઠ "B", અહુમદાબાદ।

IN THE INCOME TAX APPELLATE TRIBUNAL  
" B " BENCH, AHMEDABAD

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER  
AND  
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTNAT MEMBER

1. ITA No.1066/Ahd/2023 &

2. ITA No.1067/Ahd/2023

Assessment Years : 2055-06 & 2006-07 respectively

LMP Motors Private Limited 1/2/3 Sun Enclave Opp. Jalaram Temple Karelibaug Vadodara – 390 018 (Gujarat)	Vs	The ACIT Circle-1(2) Vadodara
<b>PAN: AAACL 3413 H</b>		
અપીલાર્થી/ (Appellant)		પ્રત્યર્થી/ (Respondent)
Assessee by :		Shri Mehul K. Patel, Advocate
Revenue by :		Smt. Malarkodi R., Sr.DR

સુનવાઈ કી તારીખ/Date of Hearing : 19/06/2024  
ઘોષણા કી તારીખ /Date of Pronouncement: 26/06/2024

આદેશ/O R D E R

**PER SHRI MAKARAND V. MAHADEOKAR, AM:**

These appeals are preferred by the Assessee, LMP Motors Pvt. Ltd. a company, against the order of Ld.Commissioner of Income Tax (Appeals) - National Faceless Appeal Centre, Delhi (hereinafter referred to as "Ld.CIT(A)") dated 24.7.2023, dismissing the appeal filed by the assessee against the assessment order passed by the Assessing Officer (AO) under Section 143(3) read with Section 254 of the Income Tax Act, 1961 ("the Act") for the Assessment Years (AYs) 2005-2006 and 2006-2007.

**Facts of the case:**

2. The assessment of the assessee under Section 143(3) of the Act was completed on 15.12.2006 for the AY 2005-2006 and on 23-12-2008 for the AY 2006-2007, determining the total income at Rs.NIL against the returned loss of Rs.51,62,590/- for the AY 2005-2006. For the AY 2006-2007 the total income was determined at Rs.1,56,15,514/- after setting off of loss of Rs.42,55,953/-

3. In both the cases, Ld.CIT(A) upheld the AO's orders. Assessee preferred appeal before the tribunal in case of both the assessment years. The Hon'ble Tribunal, vide orders dated 31.08.2015 vide ITA No.1102/Ahd/2011 and ITA No.1354/Ahd/2011, directed the AO to verify from the records the fact of availability of interest-free funds for the purpose of making advances to its sister concerns.

3.1. Consequently, the AO passed an order under Section 143(3) read with Section 254 of the Act on 30.12.2016, disallowing the interest cost of Rs.54,76,690/- for AY 2005-2006 and Rs.46,31,906/- for the AY 2006-2007. Being aggrieved by the addition, the Assessee preferred an appeal before Ld.CIT(A), which was dismissed *ex parte*.

3.2. Therefore, the Assessee is in appeals before us with the following grounds of appeal:

**For ITA No. 1066/Ahd/2023**

- "1. The Learned CIT (Appeals) erred in passing the order without waiting for the response by the assessee company.
2. The Email ID to which the notices were sent by the Learned CIT (Appeals) were inoperative due to closure of the business operations by the company since past many years.
3. The Learned CIT (Appeals) erred in dismissing the appeal relying on various decisions cited in the Appellate Order.
4. The Learned CIT (Appeals) erred in confirming the disallowance of interest amounting to Rs.54,76,690/- despite the fact that the appeal filed for similar disallowance made in Assessment Year 2004-05 w which was the first year of similar disallowance was pending as on date.
5. The Learned CIT (Appeals) erred in confirming the findings of the Ld. Assessing Officer that the assessee company has not been able to prove that the borrowings were out of interest free fund.
6. The assessee company had submitted detailed information and submissions during the course of assessment proceedings which have not been considered by the CIT (A) while dismissing the order on account of non-attendance.
7. The assessee company craves, leave to add, alter or amend any of the grounds mentioned above."

#### **For ITA No. 1067/Ahd/2023**

- "1. The Learned CIT(Appeals) erred in passing the order without waiting for the response by the assessee company.
2. The Email ID to which the notices were sent by the Learned CIT(Appeals) were inoperative due to closure of the business operations by the company since past many years.
3. The Learned CIT(Appeals) erred in dismissing the appeal relying on various decisions cited in the Appellate Order.
4. The Learned CIT(Appeals) erred in confirming the disallowance of interest amounting to Rs.46,31,906/- despite the fact that the appeal filed for similar

*disallowance made in Assessment Year 2004-05 w which was the first year of similar disallowance was pending as on date.*

5. *The Learned CIT (Appeals) erred in confirming the findings of the Ld. Assessing Officer that the assessee company has not been able to prove that the borrowings were out of interest free fund.*
6. *The assessee company had submitted detailed information and submissions during the course of assessment proceedings which have not been considered by the CIT(A) while dismissing the order on account of non-attendance.*
7. *The assessee company craves, leave to add, alter or amend any of the grounds mentioned above."*

**On the grounds of appeal:**

4. The counsel for the Assessee contended that Ld.CIT(A) dismissed the appeal without giving them a fair opportunity to present their case. The notices were sent to an incorrect email address: [anuj@impmoters.com](mailto:anuj@impmoters.com), instead of the correct address provided in Form No. 35: [yiyerca@gmail.com](mailto:yiyerca@gmail.com). Consequently, the Assessee did not receive the notices and could not comply with the notices, resulting in the dismissal of the appeal.
5. We have gone through the Form 35 filed by the assessee in case of both the years. It is evident from the order of Ld.CIT(A) that the notices were sent to an incorrect email address, which led to the non-receipt of the notices by the Assessee. This procedural lapse denied the Assessee a fair opportunity to be heard. The principle of natural justice mandates that an assessee must be given an adequate opportunity to present their case.

5.1. The judicial pronouncements consistently emphasize the importance of proper service of notices as a fundamental requirement for the validity of proceedings under the Income Tax Act, 1961. Extrapolating these principles to the context of email communications, it is evident that incorrect email addresses would constitute improper service, thereby invalidating any subsequent actions based on such notices. Courts have repeatedly held that procedural requirements must be strictly followed to ensure fairness and legality in tax administration.

5.2. In view of above, we are of the considered opinion that Ld.CIT(A) has erred in dismissing the appeal ex-parte without providing the Assessee a fair opportunity to present their case. Therefore, in the interest of justice, we set aside the orders of Ld.CIT(A) for both the assessment years and restore the matter back to the file of Ld.CIT(A) for fresh adjudication, after providing an adequate opportunity of being heard to the Assessee.

**Decision:**

6. In the result, both the appeals of the assessee are treated as allowed for statistical purposes.

**Order pronounced in the Open Court on 26 June, 2024 at Ahmedabad.**

Sd/-  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Sd/-  
**(MAKARAND V. MAHADEOKAR)**  
**ACCOUNTANT MEMBER**

Ahmedabad, Dated 26/06/2024

टी.सी.नायर, क.नि.स./T.C. NAIR, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-(NFAC)-Delhi.
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजोकट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad