

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'D', KOLKATA**

[Before Shri P.M. Jagtap, AM and Shri S.S. Viswanethra Ravi, JM]

I.T.A. No. 1315/Kol/2015
Assessment Year: 2010 -11

M/s. Mallcom (India) Limited.....Appellant
EN-12, Sector-V, Salt Lake
Kolkata - 700091
[Pan : AABCM7809F]

A.C.I.T., Cir -8(1), Kolkata.....Respondent
Aayakar Bhawan, 5th Floor,
P-7, Chowringhee Square
Kolkata - 700069

Appearances by:

Shri K.M. Roy, FCA appearing on behalf of the Assessee.

Shri Kalyan Nath, Addl. CIT appearing on behalf of the Revenue.

Date of concluding the hearing : September 13, 2017

Date of pronouncing the order : September 20, 2017

ORDER

Per P.M. Jagtap, AM

This appeal filed by the assessee is directed against the order of Ld. CIT (Appeals) – 12, Kolkata dated 13.08.2015 passed ex-parte and the grounds raised therein by the assessee read as under:

- i. That on the facts and in the circumstances of the case, the Ld. CIT (A) erred in adjudicating the appeal ex-parte or giving any final opportunity.
- ii. That it was wrong on the part of the Ld. CIT (A) to upheld the addition of Rs. 1,08,81,159/- on account of excess claim of depreciation without having any representation from the appellant.

2. The assessee in the present case is a company. In the assessment originally completed u/s 143(3) vide an order dated

11.03.2013, the total income of the assessee for the year under consideration was determined by the AO at Rs. 18,47,345/-. Thereafter, he noticed that there was a mistake in the said assessment in allowing set off of brought forward business of Rs. 1,08,81,159/- pertaining to the A.Y. 2009-10 as well as in allowing excess depreciation of Rs. 1,18,88,189/-. He, therefore, issued a notice u/s 154 to the assessee and since the explanation offered by the assessee in response to the said notice was not found satisfactory by him, the AO rectified the assessment order passed u/s 143(3) vide his order dated 13.06.2013 passed u/s 154 disallowing the claim of the assessee for set off of brought forward business loss amounting to Rs. 1,08,81,159/- and excess depreciation amounting to Rs. 1,18,88,189/.

3. Against the order passed by the AO u/s 154, an appeal was preferred by the assessee before the Ld. CIT (A) and since there was no compliance on the part of the assessee to the notices issued by him during the course of appellate proceedings fixing the said appeal for hearing from time to time, the Ld. CIT (A) presumed that the assessee had nothing to argue in support of its appeal and dismissed the said appeal upholding the order passed by the AO u/s 154. Aggrieved by the order of the Ld. CIT (A), the assessee has preferred this appeal before the Tribunal.

4. We have heard the arguments of both the sides and also perused the relevant material available on record. As submitted by the learned counsel for the assessee, even though adjournments were

sought by the assessee on the various dates on which its appeal was fixed by the Ld. CIT (A) for hearing including 07.07.2015, a detailed submission in writing was filed by it before the Ld. CIT (A) on 07.07.2015 in support of its appeal. He has invited our attention to the copy of the said submission filed before the Ld. CIT (A) and pointed out that although the issue relating to the disallowance of assessee's claim for brought forward business loss pertaining to A.Y. 2009-10 amounting to Rs. 1,08,81,159/- was not pressed by the assessee, a detailed submission was made in support of its case on the issue of disallowance of the alleged excess depreciation amounting to Rs. 1,18,88,189/-. He has submitted that the Ld. CIT (A) however dismissed the appeal of the assessee vide his impugned order passed ex-parte without considering the said submissions and urged that the matter may be sent back to the Ld. CIT (A) for deciding the issue relating to the disallowance of the alleged excess claim of depreciation after considering the said submissions. We find merit in this contention of the learned counsel for the assessee and since the learned DR has also not raised any material objection in this regard, we set aside the impugned order of the Ld. CIT (A) and remit the matter back to him for disposing of the appeal of the assessee afresh on merit after taking into consideration the written submission claimed to be filed by the assessee on 07.07.2015, if the same is available on his record.

5. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order Pronounced in the Open Court on 20th September, 2017.

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

Sd/-
(P.M. Jagtap)
ACCOUNTANT MEMBER

Dated: 20/09/2017
Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Mallcom (India) Ltd., EN-12, Sector-V, Salt Lake, Kolkata.
2. ACIT, Cir-8(1), Kolkata
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata