



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"A" BENCH, MUMBAI**  
**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

ITA no.551/Mum/2014  
(Assessment Year :2008-09)

ASB International Pvt. Ltd.  
E-9, Addl. Ambernath Industrial Area  
MIDC, Anandnagar, Ambernath (E)  
Thane - 421 506 PAN - AAACA8424F

..... Appellant

v/s

Asstt. Commissioner of Income Tax  
Circle-1, Thane

..... Respondent

Assessee by : Shri Girish Dave  
Revenue by : Shri R.P. Meena

Date of Hearing - 22.05.2018

Date of Order - 25.05.2018

**ORDER**

**PERSAKTIJIT DEY, J.M.**

Aforesaid appeal by the assessee is against order dated 13<sup>th</sup> November 2013, passed by the learned Commissioner (Appeals)-II, Thane, for the assessment year 2008-09.

2. Before we proceed to decide the issues raised in the appeal, it is necessary to observe that this appeal was earlier disposed off by the Tribunal vide order dated 12<sup>th</sup> April 2017. Subsequently, the assessee filed an application under section 254(2) of the Income Tax Act, 1961

(for short "*the Act*") seeking rectification of the appeal order on the ground that the issues raised in grounds no.2 and 5 of the memorandum of appeal have not been disposed off while deciding the appeal.

3. After considering the submissions of the assessee, the Tribunal, vide order dated 26<sup>th</sup> April 2018, in M.A. no.339/Mum./2017, recalled the appeal order for the limited purpose of disposing off grounds no.2 and 5, raised by the assessee. Thus, we are now called upon to decide the aforesaid two grounds.

4. As regards ground no.2, the learned Authorised Representative submitted that while deciding the issue the learned Commissioner (Appeals) has recorded a factually incorrect finding to the effect that during the year under consideration, the assessee neither had brought forward business loss or unabsorbed depreciation. Drawing our attention to Para-6.1 of the assessment order, the learned Authorised Representative submitted, the facts stated therein clearly demonstrate that the assessee had brought forward business loss and unabsorbed depreciation, therefore, learned Commissioner (Appeals) was not justified in dismissing the ground raised as in fructuous.

5. As regards ground no.5, the learned Authorised Representative submitted that none of the issues raised therein have either been dealt

with or decided by the learned Commissioner (Appeals). Therefore, he submitted, the issues raised in the aforesaid grounds have to be restored to the learned Commissioner (Appeals) for fresh adjudication.

6. The learned Departmental Representative submitted, if the grounds raised by the assessee were not decided by the Learned Commissioner (Appeals) they may be restored back to him for adjudication.

7. We have considered rival submissions and perused materials on record. The limited grievance of the assessee as articulated before us by the learned Authorised Representative is, the issues raised in grounds no.2 and 5, though, were raised before the learned Commissioner (Appeals), he has decided them either on misconception of facts or has not decided them at all. After considering the submissions made before us, we are of the view that the issues raised in grounds no.2 and 5 have to be restored to the learned Commissioner (Appeals) for de novo adjudication after reasonable opportunity of being heard to the assessee. Accordingly, we restore these issues to the learned Commissioner (Appeals). The grounds raised are allowed for statistical purposes.

8. In the result, assessee's appeal is partly allowed for statistical purposes.

Order pronounced in the open Court on 25.05.2018

**Sd/-**  
**MANOJ KUMAR AGGARWAL**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 25.05.2018**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

(Sr. Private Secretary)  
ITAT, Mumbai