

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH ' C '**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

I.T. A. No.1634/Bang/2018
(Assessment Year : 2005-06)

M/s. Unibic Foods India Pvt. Ltd.,
(Formerly known as Unibic Biscuits India
Pvt. Ltd.),
No.1134, 5th Floor, Shreeram Nivas,
100 Ft Road, HAL 2nd Stage,
Indira Nagar, Bengaluru – 560 038.

.... Appellant.

Vs.

Assistant Commissioner of Income Tax,
Circle 12(5), Bangalore.

.... Respondent.

Appellant By : Shri Ajay Rotti, CA
Respondent By : Dr. P. V. Pradee Kumar, Addl. CIT

Date of Hearing : 21.03.2019
Date of Pronouncement : 22.03.2019.

O R D E R

Per Shri Jason P Boaz, A.M. :

This appeal by the assessee is directed against the ex-parte order of the Commissioner of Income Tax (Appeals), Mysuru dt.24.03.2018 for Assessment Year 2005-06.

2. Briefly stated, the facts of the case, relevant for disposal of this appeal are as under :-

2.1 The assessee company engaged in manufacture and sale of cookies, filed its return of income for Assessment Year 2005-06 on 30.12.2005 declaring loss of Rs.88,48,299. The case was taken up for scrutiny and the assessment completed under Section 143(3) of the Income Tax Act, 1961 ('the Act') vide order dt.27.12.2007. On appeal, the CIT(Appeals) vide the impugned order dt.24.03.2018 dismissed the assessee's appeal ex-parte for non-appearance by the assessee.

3. Aggrieved by the order of the CIT(Appeals), Mysuru dt.24.03.2018 for Assessment Year 2005-06 the assessee has preferred this appeal wherein it has raised the following grounds :-

1. *On the facts and circumstances of the case the order passed by the learned Commissioner of Income Tax (Appeals) [(CIT(A)'] is bad in law.*
2. *The learned CIT(A) has erred in passing an order without granting the appellant an opportunity of being heard.*

Demurrage Charges

3. *The learned CIT(A) has erred in law and facts, in disallowing depreciation amounting to INR 91.886 on demurrage charges during the said assessment year.*
4. *The learned CIT(A) ought to have adjudicated whether the demurrage charges are in the nature of penalty or not.*
5. *Without prejudice to the ground no 3 and 4 above, the learned CIT(A) has erred in facts by holding that the demurrage charges do not create any asset.*

6. *Without prejudice to the above, if expenditure incurred towards demurrage charges does not create any asset. the CIT(A) ought to have directed the AO to grant relief under section 37 of the Income-tax Act, 1961 ('the Act').*

Telephone and Electricity Charges

7. *The learned CIT(A) has erred in facts by upholding the expenses as personal in nature without given the Appellant an opportunity of being heard.*
8. *The learned CIT(A) ought to have appreciated that the expenses were incurred by the director who was in-charge of the day to day affairs of the Company and therefore, wholly and exclusively incurred for the purpose of the business.*

Excess claim of depreciation

9. *The learned CIT(A) ought to have appreciated that the Appellant had provided significant number of invoices corresponding to the value of the assets capitalized.*
10. *On the facts and circumstances of the case. the learned AO has erred. both on facts and in law by categorizing projectors under plant machinery instead of computers and disallowing the differential depreciation claimed thereon.*

4.0 Ground Nos.1 and 2

4.1 We have heard the rival contentions and perused and carefully considered the material on record in respect of the assessee's contentions put forth in the above Grounds (supra) that the impugned order of the CIT(Appeals) is bad in law as it has been passed ex-parte, in violation of the principles of natural justice and is liable to be quashed as it is passed

without providing the assessee an opportunity of being heard. In this regard, the learned AR cited the decision of the ITAT – Bangalore Bench in the case of Vidal Health Insurance TPA Pvt. Ltd., in ITA No.2498/Bang/2018 dated 31.10.2018; wherein it is submitted that in exactly similar circumstances, the order of the CIT(A)-Mysore was set aside. The learned AR prayed that the impugned order of CIT(A) be set aside and the CIT(A) be directed to hear and dispose off the appeal on merits.

4.2 From a careful consideration of the learned Authorized Representative's submissions, we find merit therein, as it appears there has been a lot of confusion in the case on hand leading to the dismissal of the assessee's appeal ex-parte by the CIT(Appeals). According to the learned Authorized Representative, the assessee filed its appeal before the CIT(Appeals) – 7, Bangalore; which fact is evident from the endorsement in the impugned order; and was not aware of the transfer of the appeal from CIT(Appeals) -7, Bangalore to the CIT(Appeals), Mysuru. The assessee was surprised to receive the impugned ex-parte order dated 24.03.2018 dismissing its appeal by CIT(Appeals), Mysuru via e-mail without affording the assessee even a single opportunity of being heard. A perusal of the impugned order also shows that there is neither any proof of service of notice of hearing said to be issued to the assessee either at its old office address or even its new office address (supra). In these circumstances, both the Id. Counsel for Revenue and the assessee were of

the view that the impugned order be set aside and the matter restored to the file of CIT(Appeals) for adjudication on merits of the issues in the grounds raised before him. In the factual matrix of the case, as discussed above, we are of the view that the ex-parte impugned order of the CIT(Appeals) dt.24.03.2018 for Assessment Year 2005-06 is liable to be set aside and do so in the interest of substantial justice and restore the matter to the file of the CIT(Appeals) for adjudication of the issues in grounds raised before the CIT(Appeals) on merits. Needless to add, the assessee is to be afforded adequate opportunities of being heard and to file details / submissions required which shall be duly considered before deciding the issues raised on merits by way of a reasoned and speaking order. We hold and direct accordingly.

5. in the result, the assessee's appeal for Assessment Year 2005-06 is allowed for statistical purposes.

Order pronounced in the open court on the 22nd March, 2019.

Sd/-

(N. V. VASUDEVAN)
Vice President

Sd/-

(JASON P BOAZ)
Accountant Member

Bangalore,
Dt. 22.03.2019.
/NS/*

Copy to :

1	Appellant	4	CIT(A)
2	Respondent	5	DR. ITAT, Bangalore
3	CIT	6	Guard File

Certified True Copy

Asst. Registrar
Income Tax Appellate Tribunal
Bangalore.