

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**(DELHI BENCH 'SMC' : NEW DELHI)**  
**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER**

ITA Nos. 797 & 799/Del/2016  
Assessment Years: 2006-07 & 2009-10

M/S MALANI EXIM INTERNATIONAL  
DELHI  
5-A, GANPATI COTTAGE, 1-A,  
COURT ROAD, OLD POLICE LANE,  
DELHI – 110 054  
(PAN: AALFM3204D)

VS. ACIT, CIRCLE 36(1),  
NEW DELHI

**(APPELLANT)**

**(RESPONDENT)**

Assessee by : Sh. Pratap Gupta, CA

Revenue by : Sh. SL Anuragi, Sr. DR.

**ORDER**

The Assessee has filed these two Appeals against the respective orders of the Ld. CIT(A)-12, New Delhi pertaining to assessment years 2006-07 & 2009-10.

2. The grounds raised in ITA No. 797/Del/2016 (AY 2006-07) read as under:-

*1. Ld. CIT (Appeal) without appreciating the correct facts of the case is not justified in law and facts and circumstances of the case and erred in confirming the action of assessing officer in allowing the deduction u/s 10B amounting to Rs. 93,56,868/- against the correct claim of Rs. 1,07,13,615/- made*

*by appellant firm in revised computation of income filed during the course of assessment proceeding under section 147 of the I.T. Act ignoring the return of income filed in response to notice u/s 148 in which deduction of Rs. 1,10,60,530/- was claimed under section 10B by holding that no new claim can be made in the proceedings under section 147 of the I.T. Act.*

*2. Ld. CIT (Appeal) without appreciating the correct facts of the case is not justified in law and facts and circumstances of the case in confirming the action of the assessing officer in reducing the amount of interest paid of Rs. 1,27,800/- from eligible business profit under the circumstances when same was already been reduced by appellant firm to work out eligible business profit for claiming deduction u/s 10B of the I.T. Act and confirming the addition of Rs. 1,27,800/- made by Id assessing officer under the head income from other sources under the circumstances when same was already been added by assessing the business income.*

3. *Ld. CIT(A) is not justified in law and facts and circumstances of the case in confirming the action of AO in charging of interest under section 234B, 23C and 234D of the I.T. Act.*

4. *Assessee has every right to make, add, delete, modify or alter any grounds of appeal at the time of hearing.*

3. The grounds raised in ITA No. 799/Del/2016 (AY 2009-10) read as under:-

1. *Ld. CIT (Appeal) without appreciating the correct facts of the case is not justified in law and facts and circumstances of the case and erred in confirming the action of assessing officer in allowing the deduction u/s 10B amounting to Rs. 80,42,667/- against the correct claim of Rs. 91,85,742/- made by appellant firm in revised computation of income filed during the course of assessment proceeding as against the claim of Rs. 1,03,51,681/- made in the return of income filed ignoring the decision of Hon'ble Supreme Court in case of Goetze (India) Ltd vs. CIT [284 ITR 323 wherein it has been held that appellate authorities are competent*

*to entertain the claims made before them even if such claim was not made before assessing officer.*

*2. Ld. CIT (Appeal) is not justified in law and facts and circumstances of the case in confirming the action of assessing officer in charging of interest under section 234B, 234C and 234D of the I.T. Act.*

*3. Assessee has every right to make, add, delete, modify or alter any grounds of appeal at the time of hearing.*

4. The facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of convenience.

5. At the time of hearing, Ld. Counsel for the assessee stated that assessee has filed an Application dated 11.7.2018 for moving additional ground of appeal. He further stated that since the additional ground mentioned in the said application dated 11.7.2018 is purely legal based on facts already on record and therefore, the assessee may be allowed to raise the following additional ground in the interest of natural justice:-

*"That on the facts and in the circumstances of the case and in law the authorities below erred in invoking section 147/148 of the Act to reopen the case. The reopening being flawed ab initio and*

*without jurisdiction or authority of law must be quashed.”*

5.1 Ld. Counsel of the Assessee requested that keeping in view of the decision of the Hon'ble Supreme Court of India in the case of NTPC 229 ITR 383 (SC) (Supra), the aforesaid additional ground raised by the assessee in the appeal No. 797/Del/2016 (AY 2006-07) may be admitted and requested to set aside the issues involved in the appeal on merits alongwith this additional ground to the file of the Ld. CIT(A) with the directions to decide the same afresh, under the law, after giving adequate opportunity of being heard to the assessee.

6. Ld. Sr. DR has not raised any objection on the request of the Ld. Counsel for the assessee.

7. I have heard both the parties and perused the records especially the Application dated 11.7.2018 for admission of additional ground alongwith the orders passed by the Revenue Authorities. For the sake of convenience, the contents of the Application dated 11.7.2018 are reproduced as under:-

*“To permit the following ground to be raised as additional ground of appeal which may kindly be admitted and adjudicated:*

*“That on the facts and in the circumstances of the case and in law the authorities below erred in invoking*

*section 147/148 of the Act to reopen the case. The reopening being flawed ab initio and without jurisdiction or authority of law must be quashed.”*

*The above ground was not taken up originally in the memo of appeal because of inadvertent omission. The ground as raised is purely legal and arises from the records as it stands. No further enquiry of a factual nature is necessary, and it is, submitted that additional ground supra may kindly be admitted and adjudicated upon.*

*Pleaded for admission and consideration.”*

7.1 After perusing the aforesaid additional ground and the relevant documents/ evidences, as aforesaid, I am of the considered view that in view of the decision of the Hon'ble Supreme Court of India in the case of NTPC Limited 229 ITR 383 (Supra), the aforesaid additional ground raised by the assessee vide Application dated 11.7.2018 is purely legal ground and did not require fresh facts which is to be investigated and goes to the root of the matter. Therefore, in the interest of justice, I admit the aforesaid additional ground raised by the assessee, in view of the case law of NTPC Limited (Supra) and set aside the issues involved in the appeal

alongwith the aforesaid additional ground to the file of the Ld. CIT(A) with the directions to decide the same afresh on merits as well as on legal, after giving adequate opportunity of being heard to the assessee. In the result, the ITA No. 797/Del/2016 (AY 2006-07) is allowed for statistical purposes in the aforesaid manner.

8. As regards ITA No. 799/Del/2016 (AY 2009-10) is concerned. Ld. counsel for the assessee has stated that the facts and circumstances of the case and the issues involved in this appeal is identical to ITA No. 797/Del/2016 (AY 2006-07), as aforesaid, hence, the issues involved in this appeal i.e. in ITA No. 799/Del2016 AY 2009-10 may also be set aside to the file of the Ld. CIT(A) with the directions to decide the same on merits, after giving adequate opportunity of being heard to the assessee, because in this appeal the assessee by mistake not filed the Application for additional ground. Ld. DR did not have any objection to this proposition also.

9. After hearing both the parties and perusing the records. I am of the considered view that since I have already set aside the issues involved in the appeal on merits alongwith the additional ground raised in ITA No. 797/Del/2016 (AY 2006-07), to the file of the Ld. CIT(A) with the directions to decide the same on merits as well as on legal. Therefore, keeping in view of the facts and circumstances of the case in view of the issues involved in this appeal being identical to ITA No. 797/Del/2016 (AY 2006-07), as aforesaid, the issues involved in this appeal i.e. in ITA No. 799/Del2016 AY 2009-10 are

also set aside to the file of the Ld. CIT(A) with the directions to decide the same on merits only, after giving adequate opportunity of being heard to the assessee.

10. In the result, both the Assessee's appeals are allowed for statistical purposes in the aforesaid manner.

Order pronounced on 13-05-2019.

**Sd/-**

**(H.S. SIDHU)  
JUDICIAL MEMBER**

**Dated :13-05-2019**

SR BHATANGAR

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT  
NEW DELHI.

