

IN THE INCOME TAX APPELLATE TRIBUNAL

“B” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 856/Bang/2018
Assessment Year : 2012-13

M/s. Levigo Engineering India Pvt. Ltd., No. 38/1, Shed No. 1, Nadkerappa Industrial Area Estate Andrahalli Main Road, Bangalore – 560 091. PAN: AABCL6177F	vs.	The Deputy Commissioner of Income Tax, Circle – 4 (1) (1), Bangalore.
APPELLANT		RESPONDENT
Assessee by	:	Smt. Sheetal Borkar, Advocate
Revenue by	:	Shri K.R. Subash, JCIT (DR)
Date of hearing	:	06.06.2019
Date of Pronouncement	:	07.06.2019

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the assessee and the same is directed against the order of Id. CIT(A)-4, Bangalore dated 29.12.2017 for Assessment Year 2012-13.

2. The grounds raised by the assessee are as under.

- “1. The CIT (A) erred in passing the order in the manner he did.*
- 2. The learned CIT (A) erred in passing the order without giving the proper opportunity to the Appellant.*
- 3. The learned CIT (A) erred in disallowing the forex loss amounting to Rs. 41,85,991/- without appreciating that the same was incurred in the course of business and is a business loss on regular business.*
- 4. The learned CIT (A) erred in treating the Forex Loss amounting to Rs. 41,85,991/- as speculation loss u/s 43(5) of the Act without appreciating the submission of the Appellant..*
- 5. The learned CIT (A) erred in disallowing depreciation a technical know how holding that payment made is not an expenditure without appreciating that the same was used for the purpose of business, hence it is an business expenditure.*
- 6. Without prejudice, the disallowance are excessive, arbitrary and unreasonable and liable to be reduced substantially.*
- 7. for these and other grounds that may be urged at the time of hearing of appeal the appellant prays that the appeal may be allowed.”*

3. At the very outset, it was submitted by Id. AR of assessee that the impugned order of CIT(A) is ex-parte qua the assessee. She pointed out that on the date of hearing fixed by CIT(A) on 11.12.2017, the assessee has sought

adjournment and the same was granted by Id. CIT(A) as noted by him in para 1 of his order. Thereafter she submitted that the next date of hearing was fixed on 19.12.2017. She pointed out that on that date, the assessee and his AR went to the office of CIT(A) to appear but he was busy with some other case and therefore, assessee and Id. AR of assessee could not meet CIT(A). But it is noted by CIT(A) in para 1 of his order that there was no response on this date. She submitted that under these facts and in the interest of justice, the matter may be restored back to the file of CIT(A) for fresh decision after providing adequate opportunity of being heard to assessee. In reply, the Id. DR of revenue supported the order of CIT(A). He also submitted that the submissions made by Id. AR of assessee are not supported by any evidence.

4. We have considered the rival submissions. We find that admittedly on the earlier date of hearing i.e. on 11.12.2017, adjournment was sought by assessee and hearing was adjourned to 19.12.2017 by CIT(A). Regarding this date i.e. on 19.12.2017, there are contradiction in the finding of CIT(A) and the submission of Id. AR of assessee but we feel that in the interest of justice, the matter should go back to the file of CIT(A) for fresh decision because Id. CIT(A) has dismissed the appeal of the assessee in limine without a decision on merit. Hence we set aside the order of CIT(A) and restore the matter back to his file for fresh decision after providing reasonable opportunity of being heard to both sides. In view of this decision, we do not make any comment on the merit of the assessee's case.
5. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 07th June, 2019.
/MS/

Copy to:

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

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.