

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT),
'D' BENCH MUMBAI**

**BEFORE: SHRI M.BALAGANESH, AM
&
SHRI PAVAN KUMAR GADALE, JM**

**ITA No.1530/Mum/2019
(Assessment Year :2014-15)**

M/s. Malco Energy Limited 75, Nehru Road Vile Parle (E) Mumbai – 400 099	Vs.	Deputy Commissioner of Income Tax Circle 10(2)(2) Mumbai – 400 020
PAN/GIR No. AAHCS6896A		
(Appellant)	..	(Respondent)

Assessee by	Smt Fereshte D Sethna
Revenue by	Shri Shishir Dhamija
Date of Hearing	18/02/2021
Date of Pronouncement	08/03/2021

आदेश / O R D E R

PER M. BALAGANESH (A.M.):

This appeal in ITA No.1530/Mum/2019 for A.Y.2014-15 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-17, Mumbai in appeal No.CIT(A)-17/IT-343/11028/16-17 dated 27/12/2018 (Id. CIT(A) in short) against the order of assessment passed u/s.144 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 31/12/2016 by the Id. Dy. Commissioner of Income Tax-10(2)(2), Mumbai (hereinafter referred to as Id. AO).

2. The assessee has raised the following grounds of appeal:-

“1. Set off of Losses/Unabsorbed Depreciation

1.1 For that on the facts and circumstances of the case the Ld CIT(Appeals) erred in not concluding the ground re set off of losses/unabsorbed depreciation and erred in not dismissing the action of the Ld AO of not allowing set off of brought forward business losses of Rs. 16,80,23,720 pertaining to AY 2009-10 and Rs. 53,78,75,335 pertaining to AY 2011-12 even though the same was available and was claimed by the Appellant Company in its return of income.

1.2 For that on the facts and circumstance of the case, the Ld CIT(Appeals) erred in not appreciating the fact that the the learned Assessing Officer has erred in setting off the profits for the year against unabsorbed depreciation when the assessee has brought forward business losses for earlier years.

1.3 For that on the facts and circumstance of the case, the Ld CIT(Appeals) erred in merely stating that the set off of losses and unabsorbed depreciation has been disallowed as per the provisions of the Act and not explaining the same basis of any provisions of the Act and erred in not appreciating the fact that the learned Assessing Officer has failed to give effect to the provisions of section 72 subsection^ which clearly specifies the order of set off among unabsorbed depreciation and brought forward business loss.

2. Disallowance of Additional Depreciation

For that on the facts and circumstance of the case, the Ld CIT(Appeals) erred in confirming the action of the Ld. AO in disallowing Rs. 38,90,015 for claim of additional depreciation at the rate of 10% for assets acquired in second half of AY 2013-14 even though the same was claimed in the return of income for the AY 2014-15 as per section 32(l)(iia) of the Act while computing total income under Normal Provisions of the Act and as such the same needs to be deleted.

3. Disallowing Loss Pursuant to Slump Sale

For that on the facts and circumstance of the case, the Ld CIT(Appeals) erred in confirming the action of the Ld. AO in disallowing Rs. 32,92,00,000 being loss pursuant to Slump sale of power business debited to the P&L account in spite of the fact that the same was suo moto disallowed by the appellant company in its return of income and hence such disallowance amounts to double disallowance and hence needs to be deleted.

4. The above grounds are without prejudice and independent to each other.

5. For that the appellant Company craves indulgence to add, to amend, alter, modify, add to or forego any of the above grounds of appeal on or before the hearing of the appeal.”

3. At the outset, we find that the Id. CIT(A) had passed an exparte order without personal appearance from the side of the assessee. Though the assessee has been given sufficient opportunities before the Id. CIT(A), still as a last and final opportunity, we deem it fit in the natural of justice and fair play, considering the gravity of the issues involved, to remand this appeal to the file of the Id. CIT(A) for denovo adjudication in accordance with law. The assessee is directed not to seek any adjournment except due to unavoidable circumstances and co-operate with the Id. CIT(A) for expeditious disposal of the appeal. The assessee is at liberty to furnish fresh evidences, if any, in support of its contentions. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

4. In the result, appeal of assessee is allowed for statistical purposes.

Order pronounced on 08/03/2021 by way of proper mentioning in the notice board.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 08/03/2021
KARUNA, sr.ps

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai