

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 7046/DEL/2019
[Assessment Year: 2016-17]**

Mass Metals Pvt. Ltd., C/o Matta 7 Associates, 877, Aggarwal Cyber Plaza-II, Netaji Subhash Place, Pitampura, Delhi-110034 PAN- AAACM0764A	<u>Vs</u>	ACIT, Circle-16(2), New Delhi.
APPELLANT		RESPONDENT
Appellant by	Shri A.D. Sharma, CA & Shri Manu Sharma, CA	
Respondent by	Shri Jeetender Chand, Sr.DR	
Date of hearing	06.09.2022	
Date of pronouncement	06.09.2022	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-6, Delhi, dated 25.06.2019, pertaining to the assessment year 2016-17. The assessee has raised following grounds of appeal:

“1. That the Learned CIT (Appeals)-6 has grossly erred by approving the action of the Assessing Officer of disallowing a sum of Rs 68,45,188/- on account of prior period expenditure and setting off the same against unabsorbed depreciation instead of returned total loss.

2. *That the Learned CIT (Appeals)-6 has further erred by approving the action of the Assessing Officer of not netting off the prior period expenses and prior period income as claimed in the financial statements and return of income.*
3. *That the above grounds are without prejudice to each other.*
4. *The appellant craves leave to add, alter, amend or forego any of the grounds of appeal before or at the time of hearing”*

2. Facts of the case are that the assessee filed its return declaring loss of Rs. 1,33,75,248/- through electronic mode on 17.1.2018 pertaining to the assessment year 2016-17. The case was selected for scrutiny under CASS and the Assessing Officer framed assessment u/s 143(3) of the income-tax Act, 1961 (in short ‘the Act’) vide order dated 25.12.2018. The Assessing Officer issued show cause notice during the assessment proceedings to explain as to why expenses set off against other income being prior period in nature amounting to Rs. 18,92,402/- should not be disallowed. In response thereto the assessee filed its reply stating that it is true that the expenses amounting to Rs. 18,92,402/- related to prior period but as per the company the same had been crystallised during the relevant year i.e. settlement of discount with parties, so the expenses had been booked during the relevant year. This reply of the assessee was not found acceptable and the Assessing Officer observed that the prior period expenses of Rs. 68,45,188/- was set off against prior period income of Rs. 49,52,786/- and net prior period amount was shown in note 15 of balance sheet as Rs. 18,92,402/-. This fact is duly

supported by the tax auditor in his report. Therefore, the Assessing Officer made disallowance of prior period expenses of Rs. 68,45,188/- and assessed the loss at Rs.65,30,060/- against the returned loss of Rs. 1,33,75,248/-. Aggrieved against this the assessee preferred appeal before the learned CIT(Appeals), who after considering the submissions sustained the finding of the Assessing Officer and dismissed the appeal. Now the assessee is in appeal before this Tribunal.

3. At the time of hearing learned counsel for the assessee submitted that the Assessing officer did not afford sufficient opportunity and the impugned addition was made without giving opportunity to the assessee to rebut and further he submitted that the Assessing Officer had given show cause notice regarding expenses amounting to Rs. 18,92,402/-. However, while framing the assessment he made disallowance of Rs. 68,45,188/- without giving opportunity to the assessee. Learned counsel further reiterated the submissions made in the written submissions. For the sake of clarity written submissions of the assessee are reproduced as under:

“Ground of Appeal No. 1

The assessee filed its return of income on 17.01.2018 vide e-acknowledgement no 366564891170118 for Assessment Year 2016-17 declaring net loss of Rs 5,25,01,525/- including unabsorbed depreciation of Rs 1,33,75,248/-.

So the Loss of the Assessee consist of two Parts Business loss other than Depreciation amounting to Rs. 3,91,26,277 and Unabsorbed Depreciation of Rs. 1,33,75,248 total amounting to Rs. 5,25,01,525.00

Now the assessee has filled his Income tax Return after the due date and in terms of Section 139(3) of the Income Tax Act to carry forward business loss u/s 72(1), assessee should have filed its return of income in time allowed u/s 139(1) of the Act. However, the above condition does not apply in case of unabsorbed depreciation in view of the provision of section 32(2) of the Act.

So the Assessee has filled his return showing Total Loss of Rs. 5,25,01,525 and Carry forward Loss in the form of Unabsorbed Depreciation amounting to Rs. 1,33,75,248.

Now the Learned assessing officer disallowed Prior period expenses of Rs. 68,45,188. The assessee submits that this disallowance can be adjusted against Unabsorbed depreciation only if the loss other than depreciation is reduced to Nil The calculation of the above should be as Under:

	<i>Business loss Other than Depreciation</i>	<i>unabsorbed Depreciation</i>
<i>Loss Declared in Income Tax Return</i>	<i>39126277</i>	<i>13375248</i>
<i>Disallowance of prior period Expenditure</i>	<u><i>6845188</i></u>	<u> </u>
<i>Net Loss to be assessee</i>	<u><i>32281089</i></u>	<u><i>13375248</i></u>

So the assessee submits that the loss in the form of Unabsorbed depreciation can be reduced only if the disallowance is more than business loss and not otherwise.

Ground of Appeal No. 2

The learned Asst. Commissioner has issued show cause notice for disallowing the Income and expenditure of earlier years only for an amount of Rs. 18,92,402 being net expenditure after adjusting income of earlier

years. This fact is clearly mentioned in the Para 3 of Assessment Order. The assessee has replied to the same show cause notice by mentioning the amount of Rs. 18,92,402. Nowhere the Learned assessing officer has shown her intention to disallow the expenses of Rs. 68,45,188 without taking into account the income earned against the same expenses. So by disallowing the amount which was not mentioned in show cause notice the learned Asst. Commissioner has not followed the principle of Natural Justice. The assessee was shocked to received the Assessment order showing addition of Rs. 68,45,188 whereas the disputed amount as per show cause notice was only Rs. 18,92,402

It is settled law that once prior period income is taxed there is no reason to disallow prior period expenses being a part of prior period adjustment, i.e. setoff of prior period expenses must be allowed against prior period income. This is also decided in the case of DCIT vs. Dishman Pharmaceuticals and Chemicals in ITA No.692/Ahd/2011 and others.”

4. On the contrary, learned DR opposed the submissions and supported the orders of the authorities below.

5. We have heard rival submissions and perused the material available on record. The Revenue could not dispute the fact that the Assessing Officer had given show cause notice about disallowance of prior period expenses amounting to Rs. 18,92,402/- but while framing the assessment the Assessing Officer made disallowance of prior period expenses of Rs. 68,45,188/-. It is also not disputed that while doing so the Assessing Officer has not provided opportunity to the assessee. Therefore, considering the totality of the facts we are of the considered view that the assessee ought to have been given opportunity by the Assessing

Officer before proceeding to disallow a sum of Rs. 68,45,188/-. Hence, we set aside the assessment and restore the issue to the file of the Assessing officer to decide it afresh after giving adequate opportunity to the assessee. Needless to say, the assessee would cooperate in the proceedings. The grounds raised are allowed for statistical purposes.

6. Assessee's appeal stands allowed for statistical purposes.

Order pronounced in open court on 06.09.2022.

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER
MP

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI