

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B': NEW DELHI**

**BEFORE,
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.1458/Del/2022
(ASSESSMENT YEAR 2015-16)**

Haier Appliances India Private Limited Building No.1, Okhla Industrial Estate Phase-3, New Delhi-110 020 PAN-AABCH 3162L (Appellant)	Vs.	National Faceless Appeal Centre, Delhi (Respondent)
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Appellant by	Mr. Ramit Katyal, Authorized Representative
Respondent by	Mr. T. James Singson, Commissioner of Income Tax, Departmental Representative ("CIT- DR" for short)

ORDER

PER ANADEE NATH MISSHRA, AM:

(A) This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), New Delhi [Ld. CIT(A)", for short], dated 06.05.2022

for Assessment Year 2015-16. Grounds taken in this appeal are as under:

“1. That on the facts and circumstances of the case and in law, the ex-parte order dated 06.05.2022 passed by the Commission of Income Tax (Appeals) [‘CIT(A)’], under section 250 of the Income-tax Act, 1961 (‘the Act’), ex-parte and in limine without affording any opportunity of being heard to the appellant is devoid of natural justice, beyond jurisdiction, illegal and bad in law.

2. That on the facts and circumstances of the case and in law, the CIT(A) erred in passing the impugned ex-parte order dated 06.05.2022 in gross violation of principles of natural justice, arbitrarily holding that the appellant was not inclined to pursue its appeal and has not sought any adjournment not appreciating that the appellant has duly made a request for adjournment on the ITBA portal.

3. That the CIT(A) erred on facts and in law in upholding the action of the assessing officer in making an ad-hoc disallowance of Rs.4,38,754/- being 2% of the total telecom expenses of Rs.2,19,37,724/- incurred by the appellant during the year under consideration, allegedly holding that the certain vouchers for to the said expenditure could not be produced.

3.1 That the CIT(A) erred on facts and in law in upholding the action of the assessing officer by not appreciating that the entire expenditure incurred by the appellant on account of telecommunication were incurred wholly and exclusively for the purpose of business of the appellant, and deductible under section 37(1) of the Act.

3.2 That the CIT(A) erred on facts and in law in passing ex-parte order sustaining the ad-hoc disallowance of telecom expenses made by the assessing officer without appreciating that similar disallowance was deleted in the appellate order passed for assessment year 2012-13.

4 That the CIT(A) erred on facts and in law in upholding the action of the assessing officer in making disallowance of provision of inventory obsolescence amounting to Rs.2,99,02,475/- allegedly holding that the said expenditure is contingent in nature.

4.1 *That the CIT(A) erred on facts and in law in passing ex-parte order sustaining the disallowance of provision of inventory obsolescence made by the assessing officer without appreciating that similar disallowance was deleted in the appellate order passed for assessment year 2012-13.*

5 *That the CIT(A) erred on facts and in law in upholding the action of the assessing officer by not allowing set off of unabsorbed depreciation of Rs.9,90,89,986/- against the income earned during the year under consideration, allegedly holding that the appellant has already availed set off of unabsorbed depreciation in the preceding years.*

5.1 *That the CIT(A) erred on facts and in law in passing ex-parte order for the year under consideration without disposing the appeal for preceding assessment years 2013-14 and 2014-15, not appreciating that decision in appeal for earlier years have bearing on the computation of unabsorbed depreciation available for set off for the year under consideration.*

5.2 *That the CIT(A) erred on facts and in law in upholding the action of the assessing officer of not allowing set off of the lower of the brought forward business loss and unabsorbed depreciation as per books of account amounting to Rs.18,72,10,467/-, while computing book profits under section 115JB of the Act.*

The appellant craves leave to ad to, alter, amend or vary from the above grounds of appeal before or at the time of hearing”

(B) In this case, assessment order dated 27/10/2017 was passed by the Assessing Officer (“AO” for short) u/s 143(3) of the Income Tax Act wherein the assessee’s income was assessed at Rs.23,56,29,921/- under normal provisions of Income Tax Act and at Rs.11,60,29,243/- under section 115JB of Income Tax Act; as against returned income of Rs.10,61,98,706/- The assessee’s

appeal against the aforesaid assessment order was dismissed by the Ld. CIT(A). The Ld. CIT(A) took the view that the assessee was not interested in pursuing the appeal; and dismissed the assessee's appeal *in limine*. The present appeal before us has been filed by the assessee against the aforesaid impugned appellate order dated 06/05/2022 of the Ld. CIT(A).

(B.1) At the time of hearing before us, Mr. Ramit Katyal, Chartered Accountant, Ld. Authorized Representative for the assessee submitted that the Ld. CIT(A) should have decided the assessee's appeal on merits instead of dismissing the assessee's appeal *in limine*.

(B.2) The Ld. CIT-DR for Revenue, Sh. T. James Singson relied on the order of the Ld. CIT(A).

(B.2.1) On perusal of section 250(6) of IT Act, we find that the Ld. CIT(A) was required by law to pass the order stating the points for determination, the decision thereon and the reason for the decision. The aforesaid impugned appellate order dated 06/05/2022 of the Ld. CIT(A) does not fulfill this statutory

requirement. He has not decided the grounds of appeal on merits through speaking order, which is required u/s 250(6) of Income Tax Act. Therefore, we set aside the impugned appellate order dated 06/05/2022 of the Ld. CIT(A) with the direction to pass a *denovo* order in accordance with law with due regard to provisions under section 250(6) of the Income Tax Act; after providing reasonable opportunity to the assessee.

(C) For statistical purposes, the appeal is treated as partly allowed.

Order pronounced in the Open Court on 24/01/2023.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 24/01/2023

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI