

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad**

**Before Shri Rama Kanta Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member**

ITA.Nos.1699/Hyd/2017 and ITA 938/Hyd/2018		
Assessment Year: 2013-14		
Uniloids Bio Sciences Private Limited, Kukatpally, Hyderabad. PAN : AABCU1607K	Vs.	The Income Tax Officer, Ward 17(3), Hyderabad.
(Appellant)		(Respondent)
Assessee by:		Shri K.C. Devdas.
Revenue by:		Shri Kumar Adithya
Date of hearing:		24.03.2023
Date of pronouncement:		27.03.2023

ORDER

PER BENCH :

These appeals are filed by the assessee, feeling aggrieved by the separate orders passed by the Commissioner of Income Tax (Appeals) – 11, Hyderabad dt.31.08.2017 and 24.01.2018, respectively, for the assessment year 2013-14.

2. The grounds raised by the assessee in ITA No.1699/Hyd/2017 read as under :

"1. The order of the Hon'ble CIT(A) is erroneous in law as well as facts of the case.

2.TheHon'bleCIT(A) without allowing proper and sufficient opportunity dismissed the appeal and therefore the order cannot be held as valid.

3. *The Hon'ble CIT(A) ought to have observed that the assessing officer erred in treating the lease rental income of the building as income from house property rejecting the claim of the assessee that the same constitute income from business and therefore, the addition ought to have been deleted.*

4. *The Hon'ble CIT(A) ought to have observed that the assessing officer erred in treating the lease rental income of the plant and machinery as income from other sources rejecting the claim of the assessee that the same constitute income from business and therefore, the addition sustained is liable to be deleted.*

5. *The Hon'ble CIT(A) ought to have observed that the assessing officer erred in rejecting the claim of the assessee with regard to trail run expenditure observing that the same constitute capital expenditure and therefore the addition ought to have been deleted.*

6. *The Hon'ble CIT(A) ought to have observed that the assessing officer erred in bifurcation of common expenditure as the same was incidental to the business of the assessee and incurred exclusively for the business.*

7. *The Hon'ble CIT(A) ought to have observed that the assessing officer erred in restricting the claim of the salaries on estimation basis inspite of the fact that the expenditure was incurred by the assessee for the purpose of business.*

8. *The Hon'ble CIT(A) ought to have observed that the assessing officer erred in concluding that there was no income under the head business and therefore no expenditure was allowable as the expenditure incurred was incidental to the business of the assessee.*

9. *The Hon'ble CIT(A) ought to have observed that the assessing officer erred in disallowing part of the expenditure by invoking the provisions of section 14A of the IT Act and therefore the same ought to have been deleted.*

10. *The Hon'ble CIT(A) ought to have observed that the assessing officer erred in concluding that expenditure of Rs.52,37,695/- as capital expenditure because the same was incurred during the course of business and hence the erroneous conclusion is liable to be set aside.*

2.1. The grounds raised by the assessee in ITA No.938/Hyd/2018 read as under :

1. The order of the Hon'ble CIT(A) is erroneous in law as well as facts of the case.

2. The Hon'ble CIT(A) ought to have observed that the action of the assessing officer erroneous in law as there was no mistake apparent from record for invoking provisions of section 154 of the IT Act.

3. The Hon'ble CIT(A) ought to have observed that excess allowance of depreciation in respect of factory building cannot be mentioned as a mistake apparent from record rectifiable u/s.154 of the IT Act as the conclusion involved a debatable issue and therefore, cannot be considered as mistake apparent from record.

4. In the facts and circumstances of the case, the Hon'ble CIT(A) ought to have observed that the action of the assessing officer was against the provisions of the Act and therefore the disallowance of Rs.21,34,180/- was liable to be deleted.

3. Before us, at the outset, both the parties submitted that the facts in both the appeals are identical. In view of the aforesaid submissions, we, for the sake of convenience proceed to dispose of both the captioned appeals by a consolidated order but however refer to the facts in ITA No.1699/Hyd/2017 for the sake of brevity. Ld. AR further submitted that the appeal in ITA No.938/Hyd/2017 is filed by the assessee against the order passed by the Assessing Officer u/s 154 of the Act whereby he disallowed Rs.21,34,180/- towards depreciation.

4. The brief facts of the case are that assessee is a Private Limited Company and leased out its business premises during the year under consideration. The assessee company filed its return of income on 30.09.2013 declaring loss of Rs.4,15,397/-. The case was taken up for scrutiny and notice u/s 143(2) of the Act was issued to the assessee. In response to the said notice,

Assessing Officer finalized the scrutiny assessment u/s 143(3) of the Act on 15.03.2016 computing the total income at Rs.74,55,570/- as against the loss of Rs.4,15,397/- declared by the assessee. During the course of scrutiny assessment, Assessing Officer noticed that assessee had leased out the factory premises and therefore, the income cannot be assessed under the head business and hence, brought the same under rental income and consequently made certain disallowances. Subsequently, the Assessing Officer had passed an order u/s 154 of the Act on 28.09.2016 disallowing Rs.21,34,180/- and computed the total income at Rs.98,25,000/-.

5. Feeling aggrieved with the orders passed by the assessing officer, assessee filed captioned appeals before the Ld. CIT(A), who in his order noted that though the assessee was granted as many as ten opportunities to appear and represent the case, however, the assessee has failed to appear and file the written submissions in support of its case. The ld.CIT(A) after relying upon the decision of Hon'ble Supreme Court in the case of CIT Vs. B.N. Bhattacharjee and another had dismissed the appeals of assessee, however, thereafter, ld.CIT(A) had also decided the appeals of the assessee on merits.

6. Feeling aggrieved with the orders of ld.CIT(A), assessee is now in appeal before us.

7. Before us, ld. AR has reiterated the contentions raised before the Assessing Officer wherein he mainly submitted that the assessee received rent for leasing out not only for building but also for plant machinery, equipment, furniture etc and the rent received on the property shall be considered but not including plant and machinery, equipment, furniture, goodwill etc. and hence, the lease rental income cannot be assessed under the head

‘income from house property’. The ld. AR further submitted that the lease was given for the purpose of exploiting the assets of the company and to earn more money and hence, the income earned on lease was shown as income from business or profession. Ld. AR further submitted that Assessing Officer had passed order wrongly assessing the income of the assessee under the head ‘income from house property’ or ‘income from other sources’ instead of assessing the income under the head ‘income form business’ and ld.CIT(A) had also wrongly confirmed the same.

8. Ld.AR further submitted that assessee failed to appear before the ld.CIT(A) due to unavoidable circumstances. Ld.AR further submitted that as the assessee has sufficient cause from putting in appearance before the ld.CIT(A), matter may kindly be remitted back to the authorities below for afresh adjudication.

9. Per contra, ld. DR relied on the orders of lower authorities. Ld.DR further raised objection for remanding the matter back to the file of lower authorities.

10. We have heard the rival submissions and perused the material on record. On perusal of the records, we find that the main grievance of the assessee is Assessing Officer had wrongly assessed its income under the head ‘income from house property’ instead of assessing its income under the head ‘income from business’. The ld.CIT(A) had granted several opportunities to the assessee to file written submissions or any evidence in support of its case. The same is evident from Para 4.1 to 4.3 of the order of ld.CIT(A). However, the assessee failed to avail the opportunities provided by the ld.CIT(A). Further, ld.CIT(A) had also confirmed the order of Assessing Officer by giving detailed reasoning vide Paras 5 to 5.6 of his order.

11. The Id.CIT(A) had decided the issue after dismissing the appeals on account of non-appearance of the assessee as well as on merits. As the assessee had shown a plausible and cogent reason for non appearance before the Id.CIT(A) to prove its case and in the interests of justice, we feel that one more opportunity is to be granted to the assessee to appear and contest the case before the Id.CIT(A). Hence, we remand back the appeal to the file of Id.CIT(A) with a liberty to grant one more opportunity to the assessee to prove its case. On the date of hearing fix by the Id.CIT(A), the assessee shall file all the documents / evidence in support of its case and in that eventuality, the Id.CIT(A) shall call for the remand report from the Assessing Officer. In case, the assessee failed to file any document in support of its case, Id.CIT(A) shall decide the matter in accordance with the law. Needless to say that the Id.CIT(A) shall be bound by the decisions of the Hon'ble Supreme Court, jurisdictional High Court and the Tribunal rendered on identical facts of the case. Accordingly, the appeal of assessee is allowed for statistical purposes.

12. As far as the other appeal i.e. ITA 938/Hyd/2018 is concerned, in view of the submission of both the parties that the facts in both the appeal are identical, we for the reasons stated hereinabove while deciding the appeal in ITA 1699/Hyd/2017 and for similar reasons, allow the appeal of assessee for statical purposes with the same directions as mentioned in ITA No.1699/Hyd/2017.

13. To sum up, both the appeals of assessee are allowed for statistical purposes. A copy of the same may be placed in respective case files.

Order pronounced in the Open Court on 27th March, 2023.

Sd/-

Sd/-

(RAMA KANTA PANDA) ACCOUNTANT MEMBER	(LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 27th March, 2023.

TYNM/sps

Copy to:

S.No	Addresses
1	Uniloids Bio Sciences Private Limited, C/o. B. Narsing Rao and Co., Chartered Accountant, Plot No.554, Road No.92, Jubilee Hills, Hyderabad – 96.
2	The Income Tax Officer, Ward – 17(3), Hyderabad.
3	PCIT – 5, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order