

**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. 2129/DEL/2023
Assessment Year: 2012-13**

Minosha India Limited, Plot no. 25, Okhla Phase-III, Delhi-110020. PAN- AAACR4151J	<u>Vs</u>	DCIT-16 (1), New Delhi.
APPELLANT		RESPONDENT
Assessee represented by	Sh. Paresh Shaparia, CA	
Department represented by	Dr. Maninder Kaur Biswas, Sr. DR	
Date of hearing	06.02.2024	
Date of pronouncement	06.02.2024	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 26.05.2023, pertaining to the assessment year 2012-13. The assessee has raised following grounds of appeal:

“1. NON CONSIDERATION OF WRITTEN SUBMISSIONS AND THEREBY TREATING NON COMPLIANCE BY APPELLANT WHEREBY VIOLATION OF PRINCIPLES OF NATURAL JUSTICE

2. CLAIM OF ADDITIONAL DEPREICATION ON GOODWILL UNDER SECTION 32(1) OF THE ACT AMOUNTING TO RS 59,76,140 BE ALLOWED.”

2. Facts, in brief, are that for A.Y. 2012-13 originally the assessee e-filed return of income on 30.11.2012 declaring loss at Rs. 2,82,87,881/-. Subsequently on 29.03.2013 the assessee e-filed revised return, revising loss at Rs. 2,80,62,479/-. Thereafter on 31.03.2014 the assessee e-filed another return claiming additional TDS credit for Rs. 86,771/-. The case was selected for scrutiny. The AO vide order dated 3.3.2016 completed the assessment u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act") at a loss of Rs. 2,78,69,804/- as against the business loss of Rs. 3,60,98,970/- returned by the assessee. Aggrieved against it the assessee preferred appeal before the CIT(A), who dismissed the appeal by affirming the action of the AO. Now the assessee is in appeal before this Tribunal.

3. Learned counsel for the assessee at the outset submitted that in appeal proceedings the learned CIT(A), NFAC without considering the detailed submissions uploaded on the portal by the assessee in support of its claim on 22.02.2021 & 07.10.2022, dismissed the appeal. Learned counsel submitted that in the interest of natural justice the order of learned CIT(A) may be set aside and the matter be restored to the file of learned CIT(A) for decision afresh on merit after providing reasonable opportunity of being heard and considering the submissions made by the assessee .

4. Learned DR opposed the submissions made on behalf of the assessee and relied on the order of learned CIT(A).

5. We have heard rival submissions and perused the material available on record. We find that the learned CIT(A) in dismissing the appeal of the assessee, in paras 4 & 5 of his order has observed as under:

"4. As per records, this appeal was posted for hearings as many as six occasions from 17.07.2019 to 05.04.2023 including four faceless hearings.

There has been no compliance on each occasion. In view of the above, the appeal is decided on merits relying on the materials available on record.

5. The only issue involved in this appeal relates to non-consideration of depreciation on good-will amounting to Rs.59,76,140/- @25% on WDV of Rs.2,39,04,561/- u/s.32(1) claimed only through the revised computation filed by the appellant before the AO during the course of assessment proceedings. During the appellate proceedings, the appellant failed to respond to the notices issued from this end and has not brought any evidence or material in support of its contention raised through the grounds of appeal and statement of facts. On the other hand, the AO has denied to accept the revised computation containing additional depreciation claimed by the appellant based on sound reasoning and after referring to the relevant case law of Goetze (India) Ltd. vs. CIT (2006) (284 ITR 323), wherein, the Hon'ble Apex Court has held that no deduction or claim can be allowed to the appellant otherwise than by a revised return.

In view of the above, I find no reason to interfere with the order of the AO and dismiss the appeal of the appellant.”

5.1. Before us the learned counsel for the assessee has specifically submitted that during appeal proceedings before learned CIT(A) NFAC, the assessee had uploaded on the portal detailed submissions on 22.02.2021 & 07.10.2022 in support of its claim. However, there is no mention of such submissions in the order of the learned CIT(A). He has dismissed the assessee by observing that during the appellate proceedings, the appellant failed to respond to the notices issued from this end and has not brought any evidence or material in support of its contention raised through the grounds of appeal and statement of facts. In view of above, to sub-serve the interests of natural justice and to be fair to both the parties, we are constrained to set aside the impugned order of learned CIT(A) and restore the matter back to his file with the direction to decide the appeal afresh, on merits,

after considering the submissions made on behalf of the assessee in support of its claim, of course, affording adequate opportunity of being heard to the assessee. We order accordingly

6. Appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 06.02.2024.

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI