

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 1649 /DEL/2023
[Assessment Year: 2009-10]

Universal Engineers, 317, Phase-VI, Udyog Vihar, Gurgaon, Haryana-122001. PAN-AABFU1139K	<u>Vs</u>	Income-tax Officer, Ward-49(1), New Delhi
APPELLANT		RESPONDENT
Assessee represented by	None	
Department represented by	Shri Om Parkash, Sr. DR	
Date of hearing	19.02.2024	
Date of pronouncement	20.02.2024	

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 29.03.2023, pertaining to the assessment year 2009-10. The assessee has raised following grounds of appeal:

“1. Ld. CIT (Appeals) has not considered the mail reference no. CPC/0910/T13/1004200330 dated 06.05.2019 issued by the DCIT, CPC. The appellant requests before your lordship, please consider the same in which the word rectification order was stated twice. The same is enclosed. The appellant has not committed a mistake by considering the purported letter as rectification order.

2. The Ld. CIT stated that the period of 4 years has elapsed for making application under sec 154 of the Act. The appellant bags to differ on this account as Intimation under sec 143(1) for the assessment year 2009-10 were not received. The appellant noticed the demand one day when he opened his portal and immediately applied for intimation on portal and filed rectification application to CPC Bangalore. The sequence is as under:

<i>Date of opening the portal</i>	<i>20/3 / 2019</i>
<i>Date of receiving intimation u/s 143 on mail</i>	<i>21/3 / 2019</i>
<i>Date of making Application under section 154:</i>	<i>25/4 / 2019</i>
<i>Date of rejection</i>	<i>09/05 / 2019</i>
<i>Date of filing an appeal (Late by 37 Days and condoned Appeals) by the CIT (Appeals)</i>	<i>15/07/2019</i>

Since the appellant feels therefore that period should be considered only after noticing the demand on portal as the should be considered as date of received of communication i.e. was issued by CPC on 21/3 / 2019

No chance of personal hearing was given.

3. Regarding disallowance of depreciation, Appellant before CIT (Appeals) stated as under:

3.1 That while filing the return of income the appellant did not fill in Schedule DPM (Depreciation of Plant and Machinery) and DOA (Depreciation of other assets) as the same was not mandatory in the year under review. Had these schedules were mandatory the assessee would have filled them. The figure of depreciation appears in computation of income and also form 3CD in clause no 14. The appellant has mentioned as per schedule enclosed. The same is appeared in the Balance sheet.

That the appellant at the time of filing the return did try to fill in the schedule but due to hiccups in the system was unable to do so.

4. The speaking order was provided by the A.O.”

2. At the time of hearing no one attended the proceedings on behalf of the assessee. It is seen from the record that the assessee has been seeking adjournment since 30.11.2023 and on earlier dates also there was no representation on behalf of the assessee. Looking to the conduct of the assessee the appeal is taken up for hearing in the absence of the assessee and is being decided on the basis of the material available on record.

3. Apropos to the grounds of appeal, learned DR contended that the assessee failed to support its claim before the lower authorities and did not claim depreciation properly. Therefore, the depreciation was disallowed.

4. In the statement of facts it is stated by the assessee that the schedule of depreciation of plant & machinery and depreciation on other assets was not filed along with the ITR since it was not mandatory. The depreciation was claimed in computation of income.

4.1 Considering the fact that since the claim of depreciation on fixed assets being legal, the same ought to have been admitted by the learned CIT(A). Therefore, considering the totality of facts I am of the considered view that the issue of claim of depreciation needs to be decided in accordance with law and the assessee is required to support its claim by furnishing the material evidence. Therefore, the impugned order is hereby set aside and the issue of claim of

depreciation is restored to the file of AO, who would verify the correctness of the claim and if it is found that the assessee was entitled for depreciation, the AO would allow the same. Grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in open court on 20th February, 2024.

**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**