

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH  
MUMBAI**

**BEFORE: SHRI PRASHANT MAHARISHI, ACCOUNTANT  
MEMBER**

**&**

**SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No. 4484/MUM/2023  
(Assessment Year : 2017-18)**

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| M/s. MIRC<br>Electronics Ltd.<br>G-1 Onida House,<br>Mahakali Caves<br>road,<br>M.I.D.C,<br>Andheri (East).<br>Mumbai-400093 | Vs. | Assistant<br>Commissioner of<br>Income tax,<br>Central Circle-10(2)(2),<br>Room no. 209,<br>2 <sup>nd</sup> floor,<br>Aaykar Bhavan,<br>M.K.Road,<br>Mumbai-400020 |
| <b>PAN/GIR No. AAACM8055A</b>  |     |  |
| <b>(Appellant)</b>   | ..  | <b>(Respondent)</b>  |

|                              |                                   |
|------------------------------|-----------------------------------|
| Assessee by                  | Shri. Vijay Mehta                 |
| Revenue by                   | Smt. Sanyogita Nagpal (CIT<br>DR) |
| <b>Date of Hearing</b>       | <b>15/05/2024</b>                 |
| <b>Date of Pronouncement</b> | <b>10/06/2024</b>                 |
|                              |                                   |

**आदेश / O R D E R**

**PER SUNIL KUMAR SINGH (J.M):**

1. This appeal has been preferred against the impugned order dated 10.10.2023 passed in Appeal No. CIT(A)17, Mumbai/10279/2019-20 by the Ld. Commissioner of Income-tax(Appeals), National Faceless Appeal

Centre(NFAC) [hereinafter referred to as the “CIT(A)”] u/s. 250 of the Income–tax Act, 1961 [hereinafter referred to as “Act”] for the relevant Assessment year [A.Y.] 2017–18, wherein, learned CIT(A) has confirmed the additions made by the assessing officer vide assessment order dated 18.12.2019.

2. The brief fact related to the appeal state that assessee company is engaged in the business of manufacturing electronics items like LCD/LED, Television, Washing Machine, Air Conditioners in the brand name ‘ONIDA’ and also trading of Air Conditioners, DVD, Microwave Ovens, and Mobiles in the brand name of ‘ONIDA’. Assessee e–filed its return of income for A.Y.2017–18 on 27.10.2018 declaring total income of Rs. Nil. The case was selected for scrutiny and the notice dated 21.08.2018 u/s. 143(2) of the Act was issued and served upon the assessee. Subsequently, notices dated 21.11.2018 and 30.10.2019 u/s. 142(1) of the Act were also issued and served upon the assessee. In response there of, assessee company e–filed written submissions. After considering the detailed response of the assessee, Assessing Officer, vide assessment order dated 18.02.2019, disallowed excess

depreciation of Rs. 36,20,359/-, disallowance of Rs. 1,65,85,542/- u/s. 35(2AB) of the Act, disallowed Rs. 3,19,000/- of expenses incurred on loss of sale of assets and disallowed Rs. 842.87 lakhs u/s. 33DDA of the Act. The aforesaid additions were made in the total income of the assessee for the relevant assessment year. Assessing Officer, simultaneously initiated penalty proceedings u/s. 270A of the Act for under reporting of income. Being aggrieved by the assessment order, assessee preferred an appeal before learned CIT(A). Learned CIT(A) confirmed the aforesaid additions and dismissed assessee's appeal for non prosecution.

3. The appellant assessee has approached this tribunal on the following grounds:

**“Ground No.1:**

*On the facts and in the circumstances of the case and in law, the learned AO erred in restricting the claim of depreciation on moulds (plastics) @ 15% as against 30% claimed by the appellant and disallowing a sum of Rs. 36,20,359/- treating the same as excess depreciation claimed. The appellant prays that the depreciation on plastic (moulds) may kindly be allowed @ 30% as allowed by the Hon'ble ITAT in the appellant own case for A.Y.2005-06, A.Y.2006-07, A.Y. 2007-08, A.Y. 2008-09, A.Y. 2010-11, A.Y.2011-12, A.Y. 2012-13, A.Y. 2013-14 and A.Y. 2014-15.*

**Ground No. 2:**

*On the facts and in the circumstances of the case and in law, the learned AO erred in invoking provisions of u/s 35DDA of the Act to the compensation paid by the appellant to employees who had taken voluntary retirement thereby disallowing Rs. 8,42,87,000/-. The appellant prays that the entire compensation of Rs. 9,63,28,000/- paid to employees who refused to take transfer and decided to take voluntary retirement should be allowed as revenue expenses and hence no disallowance is called for u/s 35DDA of the Act. The appellant prays that disallowance of Rs 8,42,87,000/- u/s 35DDA may kindly be deleted.*

**Ground No. 3:**

*On the facts and in the circumstances of the case and in law, the learned AO erred in not accepting plea of the appellant that expenses on scientific research activity which are not allowed u/s 35(2AB) of the Act, should be allowed u/s 37(1) of the Act. The appellant prays that the disallowance of Rs. 82,92,771/- may be allowed u/s 37(1) of the Act.*

**Ground No. 4:**

*On the facts and in the circumstances of the case and in law, the learned AO erred in not granting set off of brought forward losses and unabsorbed depreciation against the assessed income of Rs.9,16,53,759/-, despite of having a cumulative balance of brought forward losses and unabsorbed depreciation eligible to be set off.....”*

4. In response to the notice issued by the tribunal, learned DR appeared and participated in the proceedings.
5. We have perused the records and heard learned representative for both the parties.
6. At the very outset, learned representative for the assessee has submitted that learned CIT(A) has passed ex-parte order in violation of the principles of natural justice without any application of judicious mind, prayed to set aside the impugned order.
7. Learned DR has submitted that assessee did not respond to the notices issued on 4 different occasions through email by learned CIT(A) and supported impugned order.
8. It appears from the perusal of the impugned order, that learned CIT(A) has not passed impugned order on merit, rather has dismissed assessee's appeal in default simplicitor. Learned CIT(A) was expected to state the points for

determination, the decision there on and the reasons for the decision as provided u/s. 250(6) of the Act. We are conscious of the fact that the assessee has not turned up before the first appellate authority in response to the notices issued by it. However, in the interest of justice and fair play, we find it appropriate to remit the matter back to the file of learned CIT(A) for denovo adjudication on merit. We further direct the assessee to be diligent and cooperative in attending the hearings and making submissions before the first appellate authority for the expeditious and effective disposal of the appeal. Assessee should refrain from seeking any adjournment but for compelling and unavoidable reasons. Needless to say that learned CIT(A) shall ensure the observance of the principles of natural justice. It is made clear that we have not made any observation on the merits of the case. The appeal is liable to be allowed.

9. In the result, the appeal is allowed. The impugned order dated 10.10.2023 is set aside. The appeal is restored back to the file of the learned CIT(A) for statistical purposes.

Order pronounced on 10.06.2024.

**Sd/-**  
**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 10/06/2024  
Anandi Nambi, *Steno*

**Sd/-**  
**(SUNIL KUMAR SINGH)**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**