

आयकर अपीलीय अधिकरण, न्यायपीठ – “A” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
 (समक्ष)Before श्री ए. टी. वार्की, न्यायीक सदस्य एवं/and डॉ. ए. एल. सैनी, लेखा सदस्य)
 [Before Shri A. T. Varkey, JM & Dr. A. L. Saini, AM]

आयकर अपील संख्या / I.T.A No. 1570/Kol/2014
निर्धारण वर्ष/Assessment Year: 2006-07

M/s. Long View Tea Company Ltd. (PAN: AAACL5564F)	Vs.	Deputy Commissioner of Income-tax, Circle-6, Kolkata.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Date of Hearing	20.03.2017
Date of Pronouncement	07.06.2017
For the Appellant/ अपीलार्थी	Shri Sujoy Sen, FCA
For the Respondent/ प्रत्यर्थी	Md. Ghyas Uddin, JCIT

आदेश/ORDER

Per Shri A.T.Varkey, JM

This is an appeal filed by the assessee against the order of Ld. CIT(A)-VI, Kolkata dated 19.05.2014 for AY 2006-07.

2. The sole issue in this appeal of assessee is against the order of CIT(A) confirming the action of the Assessing Officer in disallowing the amortised miscellaneous expenses of Rs.76,81,390/- written off in the books of account in (@ 1/10th of Rs.7,68,13,902/- being the net realizable value of the advance made against capital goods) as per specific direction of Hon'ble jurisdictional High Court vide order dated 16-10-2001. For this, assessee has raised following concise ground:-

“1. That on the facts and on the circumstances of the case the CIT(A) had grossly erred in confirming the disallowance of Rs.76,81,390/-, made by the AO, in the assessment framed under section 143(3) out of the miscellaneous expenditure, representing 1/10th of Rs.7,68,13,902/- being the realizable value of advance against capital goods by wrongly and illegally, treating the same as capital expenditure, without placing cognizance to the order dated 16.10.2011, passed by the Hon'ble High Court at Calcutta, wherein the Hon'ble Court, while approving the scheme of amalgamation, issued specific and binding direction to the appellant company, being transferee/amalgamated company to write off the said realizable

value as advance against capital goods, transferred to it from the transferor/amalgamating company, M/s. Himadri Plantations Limited in ten equal installments as miscellaneous expense. The CIT(A) and the AO, had further failed to appreciate the fact, that similar expenditure had been allowed in the assessments framed, in respect of the appellant, for all the earlier and the subsequent assessment years.”

3. Brief facts of the case are that the assessee company for the relevant AY 2006-07 filed its return of income on 17.11.2006. The AO noticed during the course of assessment proceedings from P&L Account that the assessee has claimed miscellaneous expenses by claiming amortization of expenses i.e. 1/10th of advance on amalgamation. The assessee explained that the scheme of amalgamation was approved by Hon'ble Calcutta High Court vide order dated 16.10.2001 in the Co. Petition No. 368 of 2001 and CA No.221 of 2001. By virtue of this amalgamation scheme as approved by Hon'ble' High Court, Himadri Plantation Ltd. and Bihariji Fibres and Tea Industries Pvt. Ltd. got amalgamated with the assessee company w.e.f. 01.04.2000. The assessee claimed the said writing off in installments under the order of Hon'ble High Court and written off 1/10th of expenses credited under the head miscellaneous expenses out of the total expenses of Rs.7,68,13,902/-. The AO noted that as per court's order all assets and liabilities of transferor companies got transferred into the book value except advance made by these parties. According to him, the advance got transferred at net realizable value and differential of book value of the advance and accordingly, realizable value was credited to the transferee account as miscellaneous expenses. According to AO, these misc. expenses is a capital item and to be disallowed. For this he recorded the following findings:

“The item credited in the balance sheet as ‘miscellaneous expenditure’ is a capital item, thus, amortization to this capital expenditure does not cover sec. 36(2) of as loss u/s. 28. It is not covered u/s. 35D, neither can the assessee claim depreciation u/s. 32(1)(ii) treating it an intangible asset, as it does not have any interest value out of which income can be generated in future. Therefore, the sum of Rs.76,81,390/- is disallowed as revenue expenditure and to be reduced from total loss of the assessee.”

Aggrieved, assessee preferred an appeal before Ld. CIT(A), who also confirmed the action of the AO. Aggrieved, now assessee is before us.

4. We have heard rival contentions and gone through facts and circumstances of the case. At the outset, Ld. counsel for the assessee stated that this issue is squarely covered by the decision of Hon'ble Calcutta High Court in assessee's own case for AY 2002-03, where

similar additions as deleted by the Tribunal was confirmed by Hon'ble' High Court, although in the proceedings u/s. 263 of the Act on merits. Ld. counsel for the assessee referred to the decision of Hon'ble' Calcutta High court in ITA No.25 of 2008 G.A No. 79 of 2008 for the AY 2002-03 vide order dated 21st February, 2008, wherein it is held as under:

“Heard learned Counsel for the appellant. Perused the order passed by the Tribunal. It appears to us that the Tribunal dealt with the matter extensively and specifically stated as follows:

“We have carefully considered the arguments of both the sides and perused the material placed before us. We find that the CIT has invoked jurisdiction on the premises that the AO had not made proper enquiries as to the sum of Rs.76,81,390/- of advance written off and Rs.3,08,876/- of goodwill arising on amalgamation being written off as miscellaneous expenditure is not allowable and as such the action of the AO rendered the assessment order bad in law and prejudicial to the interest of revenue. The fact of such advance written off and goodwill written off was duly disclosed by the assessee in the audited accounts and the AO after considering such material on record has taken one of the possible views. The allegation of the CIT was that the AO has not made a proper enquiry. In our considered opinion, the matter has no relevance since such claim was made by the assessee as per the order of the Hon'ble High Court and this fact was duly disclosed in the audited accounts and the AO after considering such material and after making the necessary enquiries passed the assessment order. The course adopted by the AO is certainly permissible in the law. Moreover, issue of advance written off and goodwill written off are definitely issues of which two views are possible. It has been held by the Hon'ble Supreme Court that if two views are possible on an issue and the AO had considered one of the views although the same may not have been elaborated in such order, the Ld. CIT would not be justified in setting aside the AO's order u/s.263 of the Income-tax Act. In this connection, the following observation of the Hon'ble Apex Court in the case of Malabar Industrial Co Ltd vs. CIT [243 ITR (SC)] is very relevant:-

“The phrase ‘prejudicial to the interests of the Revenue has to be read in conjunction with an erroneous order passed by the AO. Every loss of revenue as a consequence of an order of the AO, cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue unless the view taken by the Income-Tax Officer is unsustainable in law.’

In view of the above, we respectfully following the decision of the Hon'ble Apex Court in the case of Malabar Industrial Co Ltd (Supra) hold that the CIT was not justified in setting aside the assessment order dated 08.03.2005 passed u/s. 143(3) of the Act. We, therefore, quash the order passed by the CIT u/s/ 263 and restore the assessment order dated 08.03.2005.”

In view of that we do not find that substantial question of law is involved in this matter. In our opinion the learned Tribunal has correctly come to the conclusion. Hence this application being ITA No. 25 of 2008 is dismissed.”

We find that the issue is squarely covered as the same has been allowed in AY 2002-03 by the Tribunal and confirmed by Hon'ble High Court of Calcutta and the SLP (Civil) No. 5905/2009 preferred by the department against the order of the Hon'ble High Court has been dismissed on 24.08.2009. Hence, this appeal of the assessee is allowed.

5. In the result, appeal of assessee is allowed.

Order is Pronounced in the open Court on 07.06.2017

Sd/-

(Dr. A. L. Saini)
(डॉ. ए. एल. सैनी)
Accountant Member

Sd/-

(Aby. T. Varkey)
(ऐ. टी. वार्की)
Judicial Member

Dated : 7th June, 2017

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – M/s. Long View Tea Company, Ltd., Salarpuria Jajodia & Co., 7, Chittaranjan Avenue, Kolkata-700 072.
2. Respondent – DCIT, Circle-6, Kolkata.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.