

**आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ 'बी', मुंबई ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH MUMBAI**

**BEFORE SHRI R.C.SHARMA, AM**  
**&**  
**SHRI SANJAY GARG, JM**

**आयकर अपील सं./ITA No.46/Mum/2016**

**(निर्धारण वर्ष / Assessment Year :2006-2007)**

M/s Badheka Paper Mfg.Co.Pvt. Ltd., 13, Rustom Sidhwa Marg, Fairy manor, Fort, Mumbai-400001	Vs.	ITO-2(1)(1), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AAACB 6321 Q</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Dr. K.Shivaram

राजस्व की ओर से /Revenue by : Shri Mallikarjun Uttura

सुनवाई की तारीख / Date of Hearing : **07/07/2016**

घोषणा की तारीख/Date of Pronouncement **24/08/2016**

**आदेश / O R D E R**

**PER R.C.SHARMA (A.M):**

This is an appeal filed by the assessee against the order of CIT(A), Mumbai, for the assessment years 2006-2007, in the matter of order passed u/s.143(3) r.w.s.147 of I.T.Act.

2. In ground No.1, the assessee is aggrieved for addition on account of expenditure which was not claimed as deduction.

3. Ld. AR contended that only in the P&L account prepared as per Companies Act, expenditure of Rs.19,78,593/- towards labour dues were debited, however, the same has not been claimed as deduction under the Income Tax Act. Similarly with respect to the expenditure on Excise Duty,

legal fee, miscellaneous expenses and depreciation, it was contended by Id. AR that same has not been claimed in the computation of income.

4. From the record we found that as per computation of income placed at page 68, even though assessee had added back its claim of depreciation, labour charges etc and thereafter arrived at a loss of Rs.5,59,202/-. However, while framing the assessment order at page 7, the AO has taken net loss as per P&L account amounting to Rs.13,90,841/- in place of net loss of Rs.5,59,202/- as worked out by the assessee in its computation of income. However, facts are not clear, the AO has not given proper reasoning for adding back the expenses actually incurred in the regular course of business. No proper justification has been given by assessee to support that these expenses were crystallised during the year even though pertaining the earlier years, therefore, in the interest of justice, we restore this matter back to the file of AO for deciding afresh the allowability of expenses of Rs.29,43,388/- claimed by assessee in ground No.1. Needless to say that assessee should be given due opportunity for the same.

5. Next grievance of the assessee relates to CIT(A)'s failure to delete the double addition of capital gains on transfer of assets. It was contended by Id. AR that AO after taking the net loss as per profit and loss account prepared by assessee as per Companies Act, which includes book profit of Rs.21,01,862/- on sale of assets had worked out taxable income. As per Id. AR assessee had already credited the same in

its P&L account, therefore, again adding the same in the income of the assessee resulted into double addition.

6. We have considered rival contentions and found that in the computation of income assessee has already offered sale of assets amounting to Rs.21,01,862/- and thereafter arrived at a net loss of Rs.30,90,841/-. However, while framing assessment at page 7, of his order has again added back Rs.21,01,862/- in the income of the assessee, which amounts to double addition of what assessee had already offered in its profit and loss account as well as computation of income. Accordingly, we direct the AO to delete the addition of Rs.21,01,862/-, which has already been offered as income by the assessee in its profit and loss account.

**7. In the result, appeal of the assessee is allowed in part.**

Order pronounced in the open court on this 24/08/ 2016.

**Sd/-  
(SANJAY GARG)**

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated 24/08/2016

प्र.कु.मि/pkm, नि.स/ PS

**आदेश की प्रतिलिपि अग्रोषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A), Mumbai.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

**Sd/-  
(R.C.SHARMA)**

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार

(Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai