

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ , मुंबई ।

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

AND SHRI AMARJIT SINGH, JUDICIAL MEMBER

आयकर अपील सं/ I.T.A. No.2614/Mum/2014

(निर्धारण वर्ष / Assessment Year:2009-10

Shri Rajeev Sharad Pradhan (Prop. M/s. Pantoscope), 229, Om Gita Niwas, L.J. Road, Mahim, Mumbai-400 016	बनाम/ Vs.	The ACIT-18(3), Piramal Chambers, Parel, Mumbai-400 016
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAJPP 9049H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
अपीलार्थी ओर से/ Appellant by:		Shri Raturaj H. Gurjar Shri S.K. Mutsaddi
प्रत्यर्थी की ओर से/ Respondent by:		Shri Vivek Anand

सुनवाई की तारीख / Date of Hearing : 12 .10.2015

घोषणा की तारीख /Date of Pronouncement : 21.10.2015

आदेश / O R D E R

PER N.K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the Ld. CIT(A)-29,Mumbai dated 18.02.2014 pertaining to Assessment year 2009-10.

2. The grievance of the assessee reads as under:

“ On facts and in circumstances of the case and in law the Ld. CIT(A) has erred in :

a) Upholding the disallowance of Rs. 3,64,442/- on account of forfeiture of rent security deposit paid to Mr. Mohmed Khan in respect of the premises utilized by the appellant for the purposes of his business; on the ground that the assessee failed to prove that the deposit was forfeited, notwithstanding the fact that adequate circumstantial evidence alongwith Bank Statements was furnished to the Ld. CIT(A).”

3. While scrutinizing the return of income, the Assessing Officer found that the assessee has claimed an expense of Rs. 6,91,000/- under the head 'Forfeiture of Rent Deposit.' The assessee was asked to justify his claim. The assessee explained that the said write off relates to the rent deposit of Rs. 6.91 lakhs. Pursuant to two agreements with Mayekar's & Arolkars who have forfeited the said deposit. There is also a write off for a deposit with Mohamad Khan. To substantiate its claim, reliance was placed on the decision of the Hon'ble Supreme Court in the case of CIT Vs Mysore Sugar Coi. Ltd. 46 ITR 649 and I.B.M. World Trade Corpn. Vs CIT 186 ITR 412. The claim of the assessee was denied by the AO who made an addition of Rs. 3,64,442/- in respect of the write off in the case of Shri Mohamad Khan.

4. Aggrieved by this, the assessee carried the matter before the Ld. CIT(A) but without any success. The Ld. CIT(A) confirmed the disallowance made by the AO for want of confirmation from the landlord.

5. Before us, the Ld. Counsel for the assessee reiterated what has been stated before the lower authorities. The ld. Counsel also relied upon the same decision which were relied during the course of the proceedings before the lower authorities.

6. Per contra, the Ld. Departmental Representative strongly supported the orders of the Revenue authorities.

7. We have carefully perused the orders of the authorities below. The undisputed fact is that the assessee has given deposit to Shri Mohmed Khan . The said deposits were made through account payee cheque. It is also an undisputed fact that the deposit has been given against new gala pursuant to a Leave & Licence agreement. The write off by the assessee is on account of forfeiture of the said deposit by Shri Mohmed Khan and the same is claimed as a business loss.

7.1. An identical issue was considered by us in ITA No. 6862/M/2012 in the case of Radhakrishna Consumer Services Pvt. Ltd. wherein we have considered the observations of the Hon'ble Supreme Court which read as under:

"To find out whether an expenditure is on the capital account or on revenue, one must consider the expenditure in relation to the business. Since all payments reduce capital in the ultimate analysis, one is apt to consider a loss as amounting to a loss of capital. But this is not true of all losses, because loosed in the running of the business cannot be said to be of capital. The questions to consider in this connection are: for what was the money laid out? Was it to " acquire an asset of an enduring nature for the benefit of the business, or was it an outgoing in the doing of the business? If money be lost in the first circumstance, it is a loss of capital, but if lost in the second circumstance, it is a revenue loss. In the first, it bears the character of an investment, but in the

second, to use a commonly understood phrase, it bears the character of current expenses."

which was also considered by the Hon'ble High Court of Bombay in the case of I.B.M World Trade Corpn. Vs CIT 186 ITR 412 which reads as under:

"As the acquisition of premises on lease would not ordinarily be in the capital field, we have no hesitation in holding that the moneys advanced by the assessee in pursuance of these agreements to the landlord for the purposes of and in connection with the acquisition of the premises on lease were for the purpose of business. Naturally, therefore, when such advances are lost to the assessee, the loss would be a business loss and not a capital loss."

Respectfully following our own decision in ITA No. 6862/M/2012 in the light of the decision of the Hon'ble Supreme Court (supra) and the Hon'ble High Court (supra), we set aside the order of the Ld. CIT(A) and direct the AO to delete the addition of Rs. 3,64,442/-.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 21st October, 2015

Sd/-
(AMARJIT SINGH)

Sd/-
(N.K. BILLAIYA)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 21st October, 2015

व.नि.स./ Rj , Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार

(Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai