

आयकर अपीलीय अधीकरण, न्यायपीठ – “A” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
 (समक्ष) Before श्री ए. टी. वर्की, न्यायिक सदस्य एवं/and श्री एम. बालागणेश, लेखा सदस्य)
 [Before Shri A. T. Varkey, JM & Shri M. Balaganesh, AM]

I.T.A. No. 495/Kol/2014
Assessment Year: 2010-11

Deputy Commissioner of Income-tax, Circle-5, Kolkata	Vs.	M/s. HSIL Ltd., (PAN: AAACH7564H)
Appellant		Respondent

&

C.O. No.49/Kol/2014
In I.T.A. No. 495/Kol/2014
Assessment Year: 2010-11

M/s. HSIL Ltd.,	Vs.	Deputy Commissioner of Income-tax, Circle-5, Kolkata
Cross Objector		Respondent

Date of Hearing	13.06.2017
Date of Pronouncement	03.08.2017
For the Revenue	Shri R. S. Biswas, CIT
For the Assessee/Cross Objector	Shri P. K. Sanghai, CA

ORDER

Per Shri A.T.Varkey, JM

The appeal preferred by the revenue and the Cross Objection preferred by the assessee are against the order of Ld. CIT(A)-VI, Kolkata dated 04.12.2013 for AY 2010-11.

2. First we take up revenue's appeal. The sole issue raised by the revenue is against the action of Ld. CIT(A) in holding that the amount of Rs.3672.28 lacs which was credited to the P&L Account on account of transfer from Business Reconstruction Reserve (*in short BRR*), which, in turn, had arisen from revaluation of land and building of the company to this extent adjustment in account was allowable.

3. Brief facts of the case as noted by the Ld. CIT(A) at para 8 are that the assessee in its audited P&L Account credited an amount of Rs.3732.63 lacs on account of adjustment in

BRR and in the computation of income, an amount of Rs.3672.87 lacs was reduced. It was explained before the authorities below that a scheme has been sanctioned by the Hon'ble Calcutta High Court for financial restructuring of the company and as per the said scheme, the immovable properties of the assessee were revalued and adjustment on account of such revaluation was reflected in BRR of the company. This amount was utilized for writing off of old, non-recoverable debts and advances, non-moving stock, non-moving inventories etc. In other words, an amount of Rs.3732.63 lakhs was withdrawn from the revaluation reserve and spent towards write off of bad debts, inventory scheme expenses and assets write off. These expenses, other than write off of fixed assets, according to the assessee, were allowable for income tax purpose and hence, a claim was made by the assessee. However, the AO did not accept this plea and without assigning any reason in his order made an addition of Rs.3672.87 lacs. Aggrieved, the assessee preferred an appeal before the Id. CIT(A), who was pleased to delete the addition. Aggrieved by the said decision of the Ld. CIT(A), the revenue is before us.

4. We have heard rival submissions and gone through the facts and circumstances of the case. We find that the assessee company since last fifty years was in the manufacturing activities of sanitary wares and glass wares. During these years, the assessee company had various obsolete inventories due to the variation in the market demand and test etc. There were huge bad debts which were unrecoverable also. In the light of the said development, the Board of the company was advised to write off the obsolete inventories and bad debts and the company did so. Since the write off of such huge amount would disturb the annual results of the company, it was advised to set off the same with the BRR which needed to be created by revaluation of its land. Since the assessee is a listed company, a scheme of arrangement accordingly needed for such creation of BRR and setting the same as per approval of Hon'ble High Court. Therefore, the assessee company has made an application before the Hon'ble High Court at Calcutta for approval of its scheme for financial reconstruction of the company. The scheme was approved by the Hon'ble High Court vide order dated 26.03.2010 w.e.f. 01.04.2009. As per the scheme, the properties of the assessee in term of land and building were revalued and surplus arising out of such revaluation was transferred to a reserve called BRR with Rs.235 cr. which was withdrawn from the reserve and created to the P&L Account and to be utilized to set off of bad debts, obsolete stock,

fixed assets and to meet scheme expenses etc. as per para 15.1 of the scheme approved by the Hon'ble High Court. During this year, the assessee company had written off its obsolete stock, non-moving stock, bad debts, raw materials etc. to the extent of Rs.3732.63 lacs. These items were debited to the P&L Account. Since the items which have been written off were of revenue in nature, the assessee claimed it as allowable deduction. It was brought to our notice that as per the Income-tax Act, only write off of fixed assets is capital in nature and is not allowable as deduction in the computation of total income because of block concept and accordingly, the same was not claimed by the assessee. It was brought to our notice that the assessee had itself excluded an amount of Rs.59.76 lacs relating to writing off of fixed assets and since the remaining debited items are of revenue nature and related to business of the assessee it was claimed as allowable deduction. It was brought to the knowledge of the AO that this is only a book entry resulting into no actual monetary transaction or any real income as the same has been reduced from the income to the extent of Rs.3672.87 lacs. However, the AO without assigning any reason has disallowed the claim made by the assessee which is erroneous. The Ld. CIT(A), however, clearly held that the amount of Rs.3732.63 lacs credited to the P&L Account was on account of transfer from BRR which, in turn, has arisen from revaluation of land and building of the assessee company. Thus, the Ld. CIT(A) has rightly held that it did not represent any actual receipt of income but was merely an adjustment entry to show effect of revaluation of the assets. Hence, the Ld. CIT(A) held that no real income accrued which can be charged to tax and since it was merely a book entry, therefore, addition was not warranted and the Ld. CIT(A) has rightly deleted the addition, which we uphold and thereby dismiss the appeal of the revenue.

5. Now, we are coming to the Cross Objection. Ground No. 1 of assessee's CO was not pressed and hence, the same is dismissed as not pressed.

6. Ground no. 2 of assessee's CO is against the action of Ld. CIT(A) in confirming the action of AO in disallowing a sum of Rs.29,26,927/- as claimed by the assessee in the computation of income on account of provision for bad and doubtful debts written off.

7. Brief facts of the issue is that the AO made an addition of Rs.29,26,927/- in respect of provisions for bad and doubtful debts written back in the normal computation as well as

book profit. The AO observed that the assessee had in the audited accounts shown an amount of Rs.1.5 cr. as provisions for doubtful debts and advances written back under the head of other income. It was taken note by the AO that the assessee in its computation of income has deducted an amount of Rs.1,79,26,927/- in place of Rs.1.5 cr. in the audited accounts. Since the assessee could not properly explain the difference of Rs.29,26,927/- the AO made the addition of the said amount of Rs.29,26,927/-. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A). Before the Ld. CIT(A) the assessee made the following submissions:

“The assessee company had provision of bad and doubtful debts since earlier years out of which 1.50 crore was written off as either money was received or the debtors to that extent were determined not to be doubtful. Accordingly Rs.1,50 crore was shown in income side as excess provision for bad and doubtful debts written off. Since provision for bad and doubtful debts when debited in the profit and loss account is added back in the computation of total income. Similarly the same is reduced from the total income when such provision is written back and credited in P/L Account. Further out of old provision for bad and doubtful debts, a sum of Rs.29,26,927/- resulted in to bad debts and therefore directly reduced from debtors. Due to this position Rs.29,26,927/- was reduced from the computation. We had already submitted the details of such provision, amount written back, direct reduction from debtors and closing provision. A written explanation was also given in this regard at the time of hearing.

For the above reason the aforesaid amount of Rs.29,26,927/- was reduced from the computation. This was without any malafide intention. It was for the reason of non clarity on the matter while making computation of the total income by the person at HO.

Therefore, this resulted into a technical error only.”

8. The Ld. CIT(A) observed that it is not clear that whether the said debts have been reduced directly from the debtor's balance and accordingly confirmed the action of the disallowance made by the AO to the tune of Rs.29,26,927/- towards provisions for bad and doubtful debts. The Ld. AR prayed before us that let this issue be examined by the AO in the light of submissions made before the Ld. CIT(A) and on the materials available on record. In response to this, the Ld. DR did not place any objection for setting aside of the issue.

9. We have heard rival submissions and gone through the facts and circumstances of the case. In the facts and circumstances of the case, we deem it fit to remand this issue to the file of the AO for de novo adjudication of this issue based on the accounting treatment given by the assessee in the books of account and also the treatment of provision for bad and doubtful debts in the return of income. Accordingly, ground no. 2 of the Cross Objection

preferred by the assessee is remitted for de novo adjudication and this ground of assessee's Cross Objection is allowed for statistical purposes.

10. In the result, appeal of revenue is dismissed and the CO of the assessee is partly allowed for statistical purpose.

Order is pronounced in the open court on 03.08.2017.

Sd/-
(M. Balaganesh)
Accountant Member

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated : 3rd August, 2017

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – DCIT, Circle-5, Kolkata.
2. Respondent – M/s. HSIL Ltd., 2, Red Cross Place, Kolkata-700 001.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Sr. Pvt. Secretary