

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No. 226/Mds/2017
निर्धारण वर्ष /Assessment year : 2011-2012

M/s. Control Techniques India
P. Ltd,
117B, Developed Plots Estate,
Perungudi,
Chennai 600 096.

Vs. The Deputy Commissioner of
Income Tax,
Corporate Circle 1(2)
Chennai.

[PAN AAACC 1343B]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri. K.B.Muralidharan, C.A.
: Shri. Ashish Tripathi, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing
घोषणा की तारीख /Date of Pronouncement

: 21-06-2017
: 29-06-2017

आदेश / O R D E R

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

In this appeal filed by the assessee, it is aggrieved on a disallowance of Rs.18,36,318/- claimed by it u/s. 37(1) of the Income Tax Act, 1961 (in short "the Act").

2. Facts apropos are that assessee, a company is engaged in manufacturing of control drives, had filed its return of income for the impugned assessment year declaring a sum of Rs.7,60,56,670/-. In the computation of income filed in the impugned assessment year, assessee had reduced a sum of Rs.18,36,318/- from its profits as provision for advances, written back. Clarification of the assessee was sought. Explanation of the assessee was that these were advances given to a subsidiary company called M/s. Control Technical Elpro Automation Ltd. As per assessee, the said company was under liquidation, and advances had to be written off as business loss. Assessee also pointed out that the said amount was debited as a provision in the accounts for previous year ending 31st March, 2010 relevant year to assessment year 2010-2011, and this was written back and suo-motu added in the income computation for that year. However, Id. Assessing Officer was not impressed by the above explanation. According to him, the amount was not an allowable expenditure, since it was contingent in nature. As per Id. Assessing Officer, assessee had not written off such advance from its books of accounts. He made a disallowance of Rs.18,36,318/- relying on Section 36(1) (vii) of the Act.

3. Aggrieved, assessee moved in appeal before the Id. Commissioner of Income Tax (Appeals). Argument of the assessee

was that during the relevant previous year provision made in the preceding year was set off against the dues from the subsidiary, and thus there was actual an write off. However, Id. Commissioner of Income Tax (Appeals) was also not impressed. According to him, assessee and its subsidiary was in similar line of business and there were regular business transactions. Opinion of the Id. Commissioner of Income Tax (Appeals) was that dues from the said company could not be considered as irrecoverable merely on account of the losses suffered by it. As per the Id. Commissioner of Income Tax (Appeals) expenditure that could be allowed u/s. 37(1) of the Act was only for money paid wholly and exclusively for the purpose of business. Further, as per Id. Commissioner of Income Tax (Appeals) assessee could not claim the amount as bad debts u/s. 36(1) (vii) of the Act also since the transactions giving rise to the debt were not considered while computing the profits of any preceding years. As per the Id. Commissioner of Income Tax (Appeals) by virtue of judgment of Hon'ble Apex Court in the case of CIT vs. Nainital Bank Ltd 55 ITR 707 and that of Hon'ble Jurisdictional High Court in the case of *CIT vs. Textool Co. Ltd* 135 ITR 200, every loss was not deductible but only those which were incurred while carrying out the business operations was deductible. He thus upheld the order of the Id. Assessing Officer.

4. Now before us, the Id. Authorised Representative strongly assailing the orders of the lower authorities submitted that assessee had written-off the advance in its books of accounts, by passing journal entry against the provision for doubtful debts made in the preceding year. As per Id. Authorised Representative such provision which was made in the preceding assessment year was added back to the income in the computation for that year. Thus, according to him, for the impugned assessment year there was an actual write-off of the advances due from the subsidiary, which was an allowable as business loss. Reliance was placed on the decision of Co-ordinate Bench of the Tribunal in the case of *ACIT vs. Best & Crompton Engineering Ltd (2013) 60 SOT 0053*.

5. Per contra, Id. Departmental Representative submitted that there was no write-off in the books of accounts and assessee could not have made a suo motu reduction of income in its computation statement, without an actual write off.

6. We have considered the rival contentions and perused the orders of the authorities below. Entries passed by the assessee in its profit and loss account, for writing off the dues from its subsidiary appear at schedule 'P' of its Audited profit and loss account for year

ending 31st March, 2011 placed at paper book page 62. The said schedule is reproduced hereunder:-

Schedule P
Manufacturing and Other Expenses:-

Power and Fuel	767,010	745,603
Subcontractor charges	3,935,251	2,279,910
Rent	2,651,732	2,901,643
Rates and taxes	620,914	350,122
Repairs and maintenance		
-Plant and machinery	1,938	25,164
-Others	1,911,175	1,704,666
Insurance	835,435	708,732
Travelling and conveyance	7,629,396	5,937,567
Car rental charges	553,959	869,512
Communication expenses	1,759,683	1,809,626
Provision for inventory	2,538,169	525,201
Legal and professional charges	1,752,400	1,547,124
Management fees	12,989,084	10,345,208
Sales commission	745,531	338,360
Packing and forwarding expenses	2,306,879	2,278,780
Conference and seminar expenses	707,522	525,546
Provisions for doubtful debts (net of provision written back on bad debts provided in the previous years of ₹ Nil (Mach 31, 2010, ₹9,96,373/-)	464,286	2,051,439
Advances written off	1,836,318	252,872
Less: provision written back	(1,836,318)	---
Provisions for doubtful advances	---	1,836,318
Bad debts written off	---	1,398,818
Loss on scrap of fixed assets	1,851	---
Miscellaneous expenses	3,819,378	3,633,529
	45,991,593	42,065,740

It is clear from the above, that the advance of Rs.18,36,318/- has been written off in the books, by adjustment against the provision made in the preceding year. The provision was made by the assessee in its account for financial year ended 31.03.2010 and this is clear

from schedule 'P' its profit and loss account for year ending that date placed at page book page 53. In the computation statement for assessment year 2010-2011, the sum of Rs.18,36,318/- has been added back by the assessee as an inadmissible claim. Thus effectively assessee had written off the advance due from its subsidiary in its books of accounts, during the relevant previous year. Ld. Commissioner of Income Tax (Appeals) has given a clear finding that the dues from the subsidiary arose due to regular transaction of business as well as holding subsidiary relationship. The question whether amount extended to subsidiary for supporting the business of the assessee, written off in books, could be considered as legitimate business loss had come up before this Tribunal in the case of *Best & Crompton Engineering Ltd (supra)*. What was held by the Tribunal in para 17 is reproduced hereunder:-

“17. The Assessing Officer while completing the assessment disallowed the claim of the assessee for write off of advances to its subsidiary companies on the ground that the assessee failed to substantiate that the advances have been made in the course of normal business. The Commissioner of Income Tax (Appeals) deleted the disallowance following the order of his predecessor in assessee’s own case for the assessment year 2004-05 where similar claim for write off of bad advances made to subsidiary companies written off has been allowed. We find that the co-ordinate Bench of this Tribunal sustained the order of the Commissioner of Income Tax (Appeals) for the assessment year 2004-05 on the issue of write off of advances to subsidiary companies holding as under:-

6. We have heard the parties and have perused the orders passed by the CIT(A) as well as the Assessing Officer. We have also gone through the judgements cited by the respective parties. It is an admitted fact that loan was advanced by the assessee company to the subsidiaries. The Assessing Officer in his assessment order dated 23.3.2006 has stated that one of the subsidiary companies has paid interest to the tune of ` 9,19,270/- to the assessee. The other subsidiary companies to whom loan has been advanced, they have filed application before BIFR as they have gone sick. As per the conditions laid down by the BIFR no interest can be charged by holding company on its subsidiary. The facts and circumstances of the case show that the assessee has extended loans and advances to its subsidiaries to support the business and on account of commercial expediency. The subsidiaries could not repay the loans or advances for the reason that they have incurred huge financial losses and have gone sick. The Assessing Officer has not disputed the fact that subsidiary companies are under liquidation proceedings and therefore loans are not recoverable. It is understandable that assessee was constrained to write off the advances as the same were not recoverable on account of losses suffered by the subsidiaries and in some of the cases on account of liquidation proceedings. The assessee is entitled to claim the same as deduction. The Hon'ble Supreme Court of India in the case of S.A.Builders (supra) has held that "where it is obvious that a holding company has a deep interest in its subsidiary, and hence if the holding company advances borrowed money to a subsidiary and the same is used by the subsidiary for some business purposes, the assessee would, in our opinion, ordinarily be entitled to deduction of interest on its borrowed loans". In the instant case, it is an admitted fact that the loans advanced to the subsidiary companies were utilized by them for their business requirements and have not been utilized for the personal benefits of the individuals/directors. Therefore, the CIT(A) has rightly deleted the disallowance of interest on borrowed funds advanced as loan to subsidiary companies by the assessee. 7. In view of the above, we do not find any infirmity in the order passed by the CIT(A) and uphold the same. Thus, both the appeals of the Revenue are dismissed as devoid of any merit."

It is admitted position that assessee and the assessee's subsidiary were in same line of business. There is also no case for the Revenue that the advance given by the assessee to its subsidiary was used for any personal purpose of its directors. Hence, assessee could not have denied the claim of write off of such irrecoverable advances under Sec.37(1) of the Act. That said section covers a claim of business loss also has been held by the Hon'ble Apex Court in the case of CIT vs. Woodward Governor India P. Ltd 312 ITR 254. In the circumstances, we set aside the orders of the lower authorities and allow the appeal of the assessee.

7. In the result, appeal of the assessee stands allowed.

Order pronounced on Thursday, the 29th day of June, 2017, at Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 29th June, 2017.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |