



IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI
BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA No.6746/Mum/2012
(Assessment Year : 2009-10)

M/s. Klenzaid's Contamination Control
Pvt. Ltd.
C/o. M/s. Natvarlal Vepari & Co.
OriconHouse, 4th Floor
12, K. Dubash Marg, Mumbai 400023
PAN AAACK8427G

..... Appellant

v/s

ACIT, Circle – 8(1) (OSD)
2nd Floor, Aayakar Bhavan
M.K. Road, Mumbai 400020

..... Respondent

Appellant by : Shri Rahul Hakani
Respondent by : Shri Rajesh Kumar Yadav

Date of Hearing – 11.10.2017

Date of Order – 03.11.2017

ORDER

PER SAKTIJIT DEY, J.M.

This is an appeal by the assessee against the order dated 28.08.2012 of Commissioner (Appeals)-17, Mumbai for Assessment Year 2009-10.

2. The solitary issue arising for consideration in the present appeal is with regard to disallowance of assessee's claim of write off of sundry balances of ₹38,40,095/-

3. Briefly the facts relating to this issue are, the assessee, a company, is in the business of manufacture and trading in Pharma machinery and cleaned equipments. Assessee also undertakes setting up of laboratories on turnkey basis. For the assessment year under dispute assessee filed its return of income on 30.09.2009 declaring total income of ₹2,12,40,627/-. During the assessment proceedings the Assessing Officer noticing that assessee has written off sundry balance of ₹74,84,067/- in the relevant financial year called upon the assessee to furnish party wise details of balances written off. After examining the reply of the assessee and details furnished, he found that amounts written off were on two counts, i.e. on account of bad debts and sundry balances on account of advances. As far as write off of bad debts is concerned, Assessing Officer allowed the same. However, as far as write off of sundry advances is concerned, the Assessing Officer found that as per the claim of the assessee such advances are for supply of materials and services which could not be recovered. Further, the Assessing Officer observed, the assessee was unable to furnish any evidence in support of the transactions on account of which the said dues arose. Thus, ultimately the Assessing

Officer held that the advances written off can be allowed, firstly, only if it is taken into account by the assessee as income in the current year or in any earlier year and secondly, if such debt arises in course of business of banking or money lending. He held that since the aforesaid conditions are not fulfilled by the assessee, the claim made is not allowable under section 36(1)(vii) r.w.s. 36(2) of the Act. Accordingly, he added back the amount to the income of the assessee. Though, the assessee challenged the addition before the Commissioner (Appeals), however, learned Commissioner (Appeals) upheld the addition by relying upon a Third Member decision of the Tribunal in case of Pasupathi New Tech Ltd. 7 SOT 107 (Del). The learned Commissioner (Appeals) observed, though, advances made for business purposes can be claimed as business loss under section 29/37(1) if it becomes irrecoverable, however, unlike section 36(2), the assessee cannot claim the loss on write off under section 29/37(1), unless, it establishes that the amounts are irrecoverable. Further, learned Commissioner (Appeals) observed, the assessee has not brought on record any evidence to show that those amounts have actually become irrecoverable. Therefore, learned Commissioner (Appeals) ultimately concluded that claim of loss under section 29/37(1) cannot be allowed.

4. The learned Authorised Representative submitted, the assessee has produced all necessary and relevant evidences before the

Assessing Officer in support of its claim of write off of advances. He submitted, neither the Assessing Officer nor the Commissioner (Appeals) have verified the facts properly and have arbitrarily concluded that assessee was unable to establish its claim with proper evidence. The learned Authorised Representative submitted, the advances written off were continuing from earlier years and party-wise details with ledger extracts were produced before the Departmental authorities. In this context he drew our attention to the written submissions filed before the Commissioner (Appeals), a copy of which is at page 35 of the paper book. The learned Authorised Representative referring to the party-wise details of advances which were written off submitted that each of such advances were for the purpose of assessee's business. Hence, has to be allowed as bad debts in terms of section 36(1)(vii). He submitted, once the assessee writes off the advances in its books, it is no more necessary for the assessee to establish that the amounts have actually become irrecoverable. In this context the learned A.R. relied upon the following decisions: -

- i. TRF Ltd. v/s CIT (2010) 323 ITR 397 (SC)
- ii. CIT v/s Essar Teleholding Ltd. (2014) 51 taxmann.com 499 (Bom)

Without prejudice to the aforesaid contention, the learned Authorised Representative submitted, since, money was advanced in course of assessee's business, the write off of such advances should be allowed

as business loss/expenditure under section 29/37(1) of the Act. In support of such contention the learned Authorised Representative relied upon the decision of the Hon'ble Bombay High Court in the case of CIT v/s Wackhardt International Ltd. (2009) 314 ITR 11.

5. The learned Departmental Representative supporting the finding of the Commissioner (Appeals) submitted that the assessee has not furnished evidence to establish the real nature of the transactions entered with the concerned parties. Further, learned Departmental Representative submitted, the assessee has also failed to establish the fact that the amounts have actually become irrecoverable.

6. We have considered rival submissions and perused the materials on record in the light of the decisions relied upon. As could be seen from facts on record, the assessee has written off an amount of ₹74,84,056/- towards bad debts and sundry advances. The Assessing Officer while allowing part of the write off claimed by the assessee has disallowed an amount ₹38,40,095/- basically for two reasons. Firstly, the assessee has not produced supporting evidence with regard to the transactions entered into by it for which advances were made and secondly, the write off is not allowable under section 36(1)(vii) as the assessee has failed to establish that the amount has actually become irrecoverable. The Commissioner (Appeals) has also endorsed the view expressed by the Assessing Officer. However, on perusal of facts and

material available on record we find that assessee has furnished the party-wise details relating to advances written off along with ledger extracts. Further, in a written submission assessee has explained the nature of transactions for which money was advanced. From the details furnished in the paper book it is noticed that an amount of ₹23,00,000/- was advanced to Suhas Engineers Pvt. Ltd. for development of a software to be used in the manufacturing process. The party neither developed the software nor refunded the money. Therefore, such advance was continued to be shown in the Balance Sheet from earlier years. An amount of ₹ 10,00,000/- was advanced to Petals Engineers Pvt. Ltd. for purchase of pharmaceutical machinery to be supplied to third parties. However, neither the machinery was supplied nor the advance was refunded. An amount of ₹ 2,41,888/- was given to Steel Sales Corporation for purchase of raw material. Neither the material was supplied nor was advance refunded. An amount of ₹1,59,047/- was advanced to Govind Pierre Jean for purchase of diagnostic kit for detection of anti bodies to HIV. However, the party neither supplied the kit nor refunded the amount. An amount ₹1,39,160/- was advanced to A.U. Chandan & Co. for purchase of raw material. Since, the raw material supplied were not as per specification, the same was returned. However, the party neither supplied the required raw material nor refunded the money. From the

aforesaid facts it becomes clear that the advances were in regular course of business and are continuing from earlier years. Therefore, if the assessee decides to write off the advances in the impugned assessment year by considering it as irrecoverable and it is actually written off in its books, there is no further need for the assessee to establish that the advances have actually become irrecoverable. In this context we may refer to the decision of the Hon'ble Supreme Court in the case of TRF Ltd. V/s. CIT (supra). Even, otherwise also, since, the advances given by the assessee in the regular course of business have become irrecoverable, they are allowable as expenditure/business loss in terms of section 37(1)/29 of the Act. Thus, looked at from any angle assessee's claim of write off deserves to be allowed. As far the observations of the Departmental authorities that the assessee has failed to furnish supporting evidence with regard to the advances made, we find it to be factually incorrect in view of the materials placed before us. In view of the aforesaid, we delete the addition made by the Assessing Officer. Ground raised is allowed.

8. In the result, assessee's appeal is allowed.

Order pronounced in the open Court on 03.11.2017

Sd/-
G.S. PANNU
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 03.11.2017

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

N. Panicker
Sr. Private Secretary

True Copy
By Order

(Dy./Asstt. Registrar)
ITAT, Mumbai