

IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC – A” BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER

ITA No.1703/Bang/2017
Assessment year : 2008-09

Health and Glow Retailing Pvt. Ltd., Site No.32/5, 2 <sup>nd</sup> Floor, Ganapa Towers, Hosur Main Road, NGR Layout, Roopena Agrahara, Bangalore – 560 068. <b>PAN: AAACR 4742B</b>	Vs.	The Assistant Commissioner of Income Tax, Circle 3(1)(2), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri B.R. Sudheendra, CA
Respondent by	:	Shri Vikas Suryawanshi, Addl. CIT(DR)

Date of hearing	:	15.11.2017
Date of Pronouncement	:	15 .12.2017

**ORDER**

This appeal is preferred by the assessee against the order of the  
CIT(Appeals) *inter alia* on the following grounds:-

“General Ground

1. The order passed by the learned CIT(A) is bad in law and liable to be quashed.

Ground on disallowance of write off of rental deposit

2. The learned CIT(A) has erred in confirming the disallowance of write off of rental deposit amounting to Rs. 11,70,000. On facts and circumstances of the case and law

applicable, write off of rental deposit amounting to Rs. 11,70,000 should be fully allowed as deduction.

Ground on disallowance of deduction claimed in respect of cash theft of Rs. 2,38,858

3. The learned CIT(A) has erred in confirming the disallowance of deduction claimed in respect of cash theft of Rs. 2,38,858. On facts and circumstances of the case and law applicable, deduction of Rs. 2,38,858 should be fully allowed as claimed by the appellant.

Prayer

4. In view of the above and other grounds to be adduced at the time of hearing, the appellant prays that the order passed by the learned CIT(A) be quashed or in the alternative, the aforesaid grounds and the relief prayed for thereunder be allowed.

The appellant submits that each of the above grounds/ sub-grounds are independent and without prejudice to one another.

The appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of hearing, of the appeal, so as to enable the Income-tax Appellate Tribunal to decide the appeal according to law.

The appellant prays accordingly.”

2. With regard to ground No.2, the Id. Counsel for the assessee has contended that he has given rent advance of Rs.11,70,000 against Udupi Hall. Since the assessee could not recover the said advance on account of certain dispute with the landlord, he wrote it off in the books of account as bad debt and claimed deduction which was disallowed by the AO having noted that legal dispute has not been settled by the court. The disallowance was also confirmed by the CIT(Appeals).

3. The assessee preferred an appeal before the Tribunal with the submission that he could not recover the amount from the landlord, therefore he has rightly written it off.

4. The Id. DR, on the other hand, has placed reliance upon the order of the CIT(Appeals).

5. Having carefully examined the orders of lower authorities in the light of rival submissions, I find that the assessee has taken premise on rent for which he has given interest-free refundable security deposit of Rs.11,70,000 to the landlord. When the assessee could not continue with the possession, he claimed the entire amount back which was not given by the landlord, therefore he has filed a Civil Suit in the Civil Court, Bangalore. On account of non-recovery of this amount, he has written it off in the books of account and claimed deduction. Undisputedly, the assessee has given refundable security deposit and on its non-return by the landlord, assessee has filed a Civil Suit and the same is *sub judice* in the court and therefore the hope of recovery of this refundable security deposit has not been lost. In such circumstances, the business loss claimed by the assessee cannot be allowed in the impugned assessment year. It can only be allowed in that assessment year when the assessee finally fails to recover the said amount. Moreover, it is not a bad debt as it does not fulfil the requisite conditions prescribed u/s. 36(2) of the Act. Therefore, I find no merit in the claim of assessee and accordingly I confirm the order of the

CIT(Appeals). However, I direct the AO to allow the claim of assessee only in that year for which the assessee finally loses the hope of its recovery of the said amount.

6. Apropos ground No.2, the assessee has claimed the deduction in respect of cash theft of Rs.2,38,858, but in this regard the assessee could not furnish any evidence either before the lower authorities or before me. He has only submitted that there was a cash theft for which information was given to the Police, but no evidence is filed on record. In the absence of any evidence, the claim of assessee in respect of cash theft cannot be entertained. Accordingly, this ground of the assessee is rejected and I confirm the order of the CIT(Appeals).

7. In the result, the appeal of the assessee is dismissed.

Pronounced in the open court on this 15<sup>th</sup> day of December, 2017.

Sd/-

( SUNIL KUMAR YADAV )  
Judicial Member

Bangalore,  
Dated, the 15<sup>th</sup> December, 2017.

/ Desai Smurthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Senior Private Secretary  
ITAT, Bangalore.