

**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI N.S SAINI , ACCOUNTANT MEMBER
AND KULDIP SINGH JUDICIAL MEMBER**

ITA No.446/CTK/2014
Assessment Year : 2007-08

Alfa Transformers Ltd., Plot No.3337, Mancheswar Industrial Estate, Bhubaneswar.	Vs.	ACIT, Circle 2(1), Bhubaneswar.
PAN/GIR No. AAACD 7880 L		
(Appellant)	..	(Respondent)

Assessee by : Shri Prajna Raj Mohanty, AR
Revenue by : Shri A. Tigga, DR

Date of Hearing : 24/04/ 2017
Date of Pronouncement : 26 /04/ 2017

ORDER

Per N.S.Saini, AM

This is an appeal filed by the assessee against the order of CIT(A)—1, Bhubaneswar, dated 26.9.2014, for the assessment year 2007-08 .

2. Ground No.1 of the appeal is general in nature and, hence, requires no separate adjudication by us.

3. In Ground No.2 of the appeal, the grievance of the assessee is that the CIT(A) erred in confirming the addition of Rs.2,55,000/- under the head " deposits written off".

4. We have heard the rival submissions and perused the orders of lower authorities and materials available on record. Brief facts of the case are that the Assessing Officer observed that the assessee has claimed an amount of Rs.2,55,000/- under the head " deposits written off". The Assessing Officer observed that for claiming deduction for bad debts u/s.36(1)(vii), the assessee has to show that the debt was incidental to the business or profession and was not an advance and that the debt was taken into account as income either in the previous year or earlier previous year. The Assessing Officer observed that the assessee contended that those were Earnest Money Deposits which are outstanding for more than 5 years and since the assessee did not get back those deposits inspite of lot of endeavour, the debt was written off in the books of account. The Assessing Officer observed that from the reply of the assessee, it was clear that the amount of Rs.2,55,000/- in question was written off and claimed the amount as expenditure and not bad debt u/s.36(1)(vii) of the Act. Therefore, he disallowed for the same.

5. On appeal, the CIT(A) confirmed the action of the Assessing Officer observing that the write off of deposits or expenditure claimed by the assessee relates to earlier years and has not been crystallised during the impugned assessment year. Since the write off of the deposits/expenditures relates to earlier assessment year, same cannot

be allowed in the impugned assessment year as the assessee follows mercantile system of accounting.

6. Ld Authorised Representative of the assessee relied on the decision of Kolkata Benches of the Tribunal in the case of DCIT vs. BOC India Ltd & Anr, (2016) 46 CCH 0493 (Kol Trib), wherein, the Tribunal has held that the business expenditure which was not specifically in sections 32 to 36 should be allowed u/s.37 and only test was that such expenditures before qualifying for deduction were required to be laid out nor expended wholly and exclusively for purpose of business and profession. He submitted that in that case, the assessee was engaged in manufacturing and selling of various industrial and medical gases. The assessee during the year has written off security deposits of Rs.22,59,471/- in the profit and loss account under section 28 of the Act as trading loss due to non-recovery. These security deposits were made by the assessee with the Electricity Board, Telephone Department, Hospital and earnest money deposits for obtaining commercial contracts. The Assessing Officer treated the same as capital loss, therefore, did not allow deduction as business expenditure while computing the income under the business head. On appeal, the CIT(A) deleted the addition and the Tribunal confirmed the same.

7. He submitted that the facts of the assessee's case are identical to the facts were before the Kolkata Benches of the Tribunal in the case of

BOC India Ltd and Anr (supra) and therefore, following the same the disallowance may be deleted.

8. Ld D.R. supported the orders of lower authorities.

9. We find that in the instant case, the assessee had made earnest money deposits which were outstanding for more than 5 years and since there were not recovered, the assessee wrote off them. We find that on identical issue, the Kolkata Benches of the Tribunal has deleted the addition observing as under:

"1. From the facts we find that the loss claimed by the assessee by way of writing off the security deposits was on the revenue accounts. These deposits were made by the assessee in the normal course of business. By making the security deposit no fixed assets has come into existence. Therefore such deposit was classified as current assets in the books of accounts of the assessee. The business expenditure which is not specifically provided in sections 30 to 36 of the Act can be allowed under section 37 of the Act. Such expenditures before qualifying for deduction, are required to be laid out or expended wholly and exclusively for the purpose of the business and profession. But expenditures in the nature of capital expenditures or personal expenses of the assessee are not admissible under the said section. However, we find that issue raised by the Revenue is already covered in favour of the assessee in its own case in **ITA No.1085/Kol/2007** and **1692/Kol/2007** for the assessment year 2002-03 where the Tribunal "C" Bench on similar facts has held that: -

"5. Ground No. 2 of the revenue pertains to earnest money written off and ground number 3 pertains to deletion of addition of 1,24,655/- being advanced to an employee treating the same as that this expense

6. On going through the order of the Id. CIT(A), we find no reason to interfere on the same. Accordingly both the grounds of the revenue are hereby rejected and dismissed."

In addition to the above we also find numerous judgments of various courts where such losses were allowed as deduction while determining the profit under the business head. Some of them are detailed as under for the purpose of the reference.

In the case of Ramchandar Shivnarayan vs. CIT (1978) 111 ITR 263 (SC) the Apex Court affirming the order of the Hon'ble High Court of Madras has held that if there is a direct and proximate nexus between the business operation and the loss or it is incidental to it, then the loss

is deductible, as, without the business operation and doing all that is incidental to it, no profit can be earned. It is in that sense that from a commercial standard such a loss is considered to be a trading one and becomes deductible from the total income. It is to be remembered that the direct and proximate connection and nexus must be between the business operation and the loss. Further, the Hon'ble Madras High Court in the case of CIT vs. Textool Co. Ltd. 135 ITR 200 (Mad) has held as follows: -

"where the assessee claims a business loss, the main question to be considered is, whether the loss is incidental to the business..... The tribunal found that the assessee had to import from abroad certain component parts necessary for its manufacturing business. The assessee had to abide by the scheme of import licences under which the assessee had to pay premiums to the Federation in advance covering the entire import entitlement. Owing to business exigencies, the assessee could not fully utilize the import entitlement, resulting in a forfeiture of part of the advance deposit with the Federation. The Tribunal therefore felt no difficulty in finding that the deduction claimed by the assessee in writing off the amounts so forfeited was in the course of and incidental to the assessee's business".

Similarly, the Bombay High Court in case of I.B.M. World Trade Corporation vs. CIT 186 ITR 412 (Bom) has held as follows: -

"As the acquisition of premises on lease would not ordinarily be in the capital field, there is no hesitation in holding that the moneys advanced by the assessee in pursuance of the 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."

The Revenue has also raised the issue that the assessee failed to justify as to why the sec. deposits have become irrecoverable. In our view, it is the assessee who conducts his business affairs in the most effective beneficial manner and in the interest of the organization. The AO cannot step into the shoes of the assessee for defining the best possible ways of the business. Accordingly we opined that the assessee has written off the security deposits in the interest of the business organization. Therefore the question of recovery or irrecovery does not arise under the present conditions and situations. The AO in the present case has not doubted the genuineness of the loss claimed by the assessee but the loss was merely disallowed by holding them as capital loss. As the loss was arising from the writing off the trading assets which was classified as current assets in the books of accounts and also relying in the aforesaid decisions we uphold the order of the Ld CIT(A). Hence this ground of appeal of Revenue is dismissed.'

10. Therefore, respectfully following the same, we set aside the orders of lower authorities and delete the addition of Rs.2,55,000/- and allow this ground of appeal of the assessee.

11. In Ground No.2 of the appeal, the grievance of the assessee is that the CIT(A) erred in confirming the addition of Rs.26,327/- towards loss on sale of assets.

12. The facts of the case are that the assessee claimed write off 5% of the written down value of number of assets since they have no further useful value. The Assessing Officer disallowed the claim since the same was adhoc in nature and does not fall u/s.30 to 36 of the Act and the claim is not allowable u/s.37 of the Act since the assets discarded is capital expenditure. The assets written off are part of the block of assets on which depreciation has been claimed.

13. On appeal, the CIT(A) held that the assets written off are part of the block of assets on which depreciation has been claimed. The assets are neither sold, discarded, demolished nor destroyed. There is no provision in Income tax Act to allow adhoc deduction for considering discarding of assets. In view of the same, the addition of Rs.26,327/- was confirmed.

14. Ld A.R. simply reiterated the submissions made before the lower authorities and could not point out any specific error in the order of the Assessing Officer or CIT(A). We, therefore, do not find any infirmity in

the order, which is hereby confirmed and dismiss this ground of appeal of the assessee.

15. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 26 /04/2017 in the presence of parties.

SD/-

sd/-

(Kuldip Singh)
JUDICIAL MEMBER

(N.S Saini)
ACCOUNTANT MEMBER

Cuttack; Dated 26 /04/2017
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : Alfa Transformers Ltd., Plot No.3337, Mancheswar Industrial Estate, Bhubaneswar.
2. The Respondent. ACIT, Circle 2(1), Bhubaneswar
3. The CIT(A)-1, Bhubaneswar.
4. Pr.CIT-1, Bhubaneswar.
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Cuttack