

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA
(Before Sri J. Sudhakar Reddy, Accountant Member)**

I.T.A. No. 1007/Kol/2017
Assessment Year: 2010-11

Ashika Capital Limited.....Appellant
7th Floor
Trinity
226/1, AJC Bose Road
Minto Park
Kolkata - 700 020
[PAN: AADCA 4563 C]

DCIT, Circle-1, Kolkata.....Respondent

Appearances by:

Shri Sallong Yaden, Addl. CIT, appeared on behalf of the Revenue.

Shri D. Bhaumik, Advocate, appeared on behalf of the Assessee.

Date of concluding the hearing : March 28th, 2018

Date of pronouncing the order : April 13th, 2018

ORDER

Per J. Sudhakar Reddy, AM :-

This is an appeal filed by the assessee directed against the order of the Commissioner of Income Tax (Appeals)-18, (hereinafter the 'Ld. CIT(A)'), dt. 27/03/2017, passed u/s 250 of the Income Tax Act, 1961 (hereinafter the 'Act'), relating to Assessment Year 2010-11.

2. The sole issue that arises for my adjudication is whether the ld. CIT(A) is right in law in confirming the disallowance of Rs.20,10,000/-, being irrecoverable bad debts written off by the assessee.

3. After hearing rival contentions, I hold as follows:-

3.1. The assessee has admittedly claimed disallowance of Rs.20,62,900/-, and not Rs.23,10,900/-, as alleged by the Assessing Officer. The amount of Rs.20,62,900/-, consists of Rs.9,90,000/- due from Shri Subhash Javeri. This is in addition to an amount of Rs.30,900/- due from M/s. Secunderabad Health Care Ltd. As far as the amount due from Shri Subhash Javeri is concerned, admittedly, it was a security deposit given by the assessee for renting premises. The ld. CIT(A) held that the provision of Section 36(1)(vii) r.w.s. 36 (2) of the Act, are not satisfied in this case as such debt or part

thereof has not been taken into account in computing the income of the assessee nor is it money lent by the assessee in the ordinary course of business of banking or money lending. I agree with this finding of the Id. First Appellate Authority. The assessee submits various case-law and argues that this amount should be allowed as a revenue loss u/s 37 of the Act. Such arguments have not been taken before the lower authorities. A loss u/s 37 of the Act, can be allowed only in the year of crystallization. The assessee is bound to place evidence on this issue as to the year in which this deposit became irrecoverable. No such evidence has been produced. Hence, this order of the Id. First Appellate Authority on this issue is upheld.

4. Coming to the amount due from M/s. Arun & Chirag, the Id. Counsel for the assessee submitted that the advance of Rs.10,20,000/- was paid to Arun & Chirag who were clients of the assessee. Mr. Arung Dagaria and Mr. Chirag Shah had come together to acquire substantial shares/voting rights accompanied with change of control and management of Splash Mediaworks Ltd. The assessee was appointed as “Manager to the Offer” within the meaning of Securities and Exchange Board of India. The assessee entered into a MoU dt. 16/10/2007 with Arun & Chirag for the same. These have not been examined and analyzed by the revenue authorities. The claim was rejected without considering these documents and arguments.

4.1. This aspect requires verification. Hence, I set aside the matter to the file of the Assessing Officer for fresh adjudication in accordance with law.

5. In the result, the appeal of the assessee is allowed in part.

Kolkata, the 13th day of April, 2018.

Sd/-
[J. Sudhakar Reddy]
Accountant Member

Dated :13.04.2018
{SC SPS}

Copy of the order forwarded to:

1. Ashika Capital Limited

7th Floor

Trinity

226/1, AJC Bose Road

Minto Park

Kolkata - 700 020

2. DCIT, Circle-1, Kolkata

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy
By order

Senior Private Secretary
Head of Office/ D.D.O. ITAT, Kolkata Benches