



IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM

&

SHRI RAVISH SOOD, JM

ITA No.2720/Mum/2013

(Assessment Year :2006-07)

M/s. Amit Spinning Industries Ltd., Lotus House, 507, 5 th Floor 33-A, New Marine Lines Mumbai – 400 020	Vs.	DCIT – 1(1) Mumbai
PAN/GIR No.AACA3305M		
Appellant)	..	Respondent)

Assessee by	Shri Dharendra M. Shah
Revenue by	Shri R.P. Meena
Date of Hearing	04/04/2018
Date of Pronouncement	25/04/2018

आदेश / O R D E R

PER R.C.SHARMA (A.M):

This is an appeal filed by the assessee against the order of CIT(A)-4, Mumbai dated 31/01/2013 for A.Y.2006-07 in the matter of order passed u/s.143(3) of the IT Act.

2. Assessee is aggrieved for confirming addition in respect of principal amount of loan written back and also for addition made by disallowing bad debts written off.

3. Rival contentions have been heard and record perused.

4. Facts in brief are that the assessee is a company and is in the business of manufacturing and trading of yarn. During the course of scrutiny assessment, AO observed that the assessee has claimed the

sum of Rs.22,43,13,566/- being principal amount of loan written back as not taxable u/s. 41(1) and Sec.28(iv) of the Act. During the course of assessment proceedings, vide show cause notice u/s. 142(1) of the Act dt. 23.12.2008, the assessee was asked to show cause as to why its claim of Rs. 22,43,13,566/- towards principal amount of loan written back should not be disallowed and the sum of Rs.22,43,13,566/- be not taxed under provisions of Sec. 41(1) of the Act. In response, the assessee vide its letter dt. 26.12.2008 has submitted as under :-

“In this respect, we would like to submit that the company has credited a sum of Rs.22,43,13,566/- being the principal amount not payable to bank-view of OTS. This is neither loss, expenditure, trading liability, this is purely capital receipt and hence question of adding the said amount u/s.41(1) of the Act does not arise.”

5. However, AO did not agree with the assessee's contention and added the same u/s.41(1) of the IT Act.

6. By the impugned order, CIT(A) confirmed the action of the AO against which assessee is in further appeal before us.

7. We have considered rival contentions and carefully gone through the orders of the authorities below and found from record that assessee company had borrowed certain funds from banks and financial institutions on account of term loan for acquisition of capital assets, working capital and foreign trade loan etc. The company became sick within the meaning of Sick Industrial Company Act, 1985 and referred to BIFR, as claimed. In view of the financial condition of the assessee, it reached an agreement with the banks and financial institutions for "One-Time Settlement" (OTS)

of the outstanding liabilities due to these banks/financial institutions. The banks and financial institutions allowed write back of Rs.22,43,13,566/- of principal loan and Rs.8,21,87,951/- of interest amount. The assessee offered the interest written back as income because it had been claimed as expenditure in earlier years. Whereas, the principal loan amount written back was claimed as capital receipt and not taxable, claiming that it was never claimed as an expenditure or trading liability in any earlier year. The A.O. has not accepted the contention of the assessee and held it taxable u/s.41(1), 28(iv) or 56 of Income-tax Act and alternatively held it to be reduced from the cost/W.D.V. of fixed assets. The CIT(A) confirmed the action of the AO by observing that in the case of assessee, it has neither been proved by the assessee nor enquired or discussed by the A.O. in the assessment order as to for what use was made of such loan. Loan was taken long back and assessee has claimed that it was utilized for purpose of fixed assets. A.O. has not enquired the aspect of utilization of loan because he has held it taxable u/s.41(1) in the assessment order. Therefore, in the absence of detail of utilization of such loans, and the examination of the same by the A.O, the claim of the assessee cannot be allowed.

8. From the document placed on record, it appears that assessee has taken loan which had been waived by the bank. The interest element has already been offered by assessee as income, in view of the decision of the Bombay High Court in case of Mahindra and Mahindra Ltd., 261 ITR 501, the principal amount of loan waived should not be added to the income of

the assessee. It appears that both the lower authorities have not properly appreciated the facts of the case. In the interest of justice, we restore the matter back to the file of the AO for deciding afresh after considering the terms and conditions of loan sanction letter, utilization of loan for fixed assets or working capital as well as waiver letter filed by the assessee.

9. Next grievance of assessee relates to not allowing assessee's claim of bad debts. The facts of the case are that assessee has claimed bad debts written off Rs.87,76,269/- which has been rejected by the A.O. claiming that assessee has not filed any documentary evidence in this regard.

10. From the record we found that in the course of business assessee had given certain advances including discounts on sales made which could not have been recovered and therefore, claimed as bad debts. Such advances actually fall within the meaning of business loss and not bad debts. There are also certain debts, income of which had already been accounted in the year but assessee could not furnish details with regard to the year in which income has been accounted for. Accordingly, in the interest of justice, we restore the issue back to the file of the AO with the direction to the assessee to file complete details of the bad debts and the advances given in the course of business so as to justify that income relating to such bad debts have already been accounted for in the earlier years. AO is directed to decide the issue in terms of decision of Hon'ble Supreme Court in the case of TRF Ltd., 323 ITR 397 . We direct accordingly.

11. In the result, appeal of assessee is allowed in part for statistical purposes.

Order pronounced in the open court on this 25/04/2018

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 25/04/2018
Karuna Sr.PS

Copy of the Order forwarded to :

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

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai