

**IN THE INCOME TAX APPELLATE TRIBUNAL "H"  
BENCH, MUMBAI**

**BEFORE SHRI R. C. SHARMA, AM &  
SHRI SANDEEP GOSAIN, JM**

आयकरअपीलसं./ I.T.A. No. 3113/Mum/2016  
(निर्धारणवर्ष / Assessment Year: 2009-10)

Mr. Ramesh Jain Plot No. 35, 6 <sup>th</sup> floor, UdghithVallabhnagar Society, N. S. Road No. 6, JVPD, Ville Parle (W), Mumbai- 400056.	<b>बनाम/ Vs.</b>	DCIT Central Circle-1, Thane, Pin-
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AABPJ0921C		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	None
प्रत्यर्थीकीओरसे/Respondentby	:	Shri M. C. Omi Ningshen, DR

सुनवाईकीतारीख/ Date of Hearing	:	10/04/2018
घोषणाकीतारीख / Date of Pronouncement	:	24/04/2018

आदेश / ORDER

**Per Sandeep Gosain, Judicial Member:**

The present Appeal filed by the assesseeis against the order of Commissioner of Income Tax (Appeals)-11, Pune, dated

09.02.16 for AY 2009-10 on the grounds mentioned herein below:-

*I. a. The Learned Comm. of Income Tax (Appeals) erred in confirming the disallowance of Rs. 1,52,32,422/- on the ground that it is a loss of capital and not a business loss.*

*b. The Learned Comm. of Income Tax (Appeals) failed to appreciate and ought to have held that, on the facts and in the circumstances of the case, the disallowance is unwarranted and unjustified.*

*c. The Appellant prays that disallowance of Rs. 1,52,32,422/-be deleted.*

*II. The Appellant craves leave, to add, amend or alter the above ground of appeal at the time of hearing.*

2. At the very outset, it is noticed that none has appeared on behalf of assessee in spite of several calls and even no application for adjournment was moved. On the other hand Ld. DR is present in the court and is ready with arguments. Therefore we have decided to proceed with the hearing of the case ex-parte

with the assistance of the Ld. DR and the material placed on record.

3. As per the facts of the present case, the assessee is engaged in the business of Building and development and operates this business through various firms, and Companies. The return for A. Y. 2009-10 U/s 139 was filed on 6th September, 2010, showing an income of Rs. 1,77,46,180/- and return filed on 6<sup>th</sup> August, 2013 U/s 153A on Showing income of Rs. 1,77,46,180/-. Subsequently, the case was selected for scrutiny and after serving statutory notice and seeking reply, order of assessment u/s 143(3) was passed by AO thereby making disallowance treating as capital loss and set off against capital gain.

Aggrieved by the order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) after considering the case of both the parties dismissed the appeal of the assessee.

Now before us, the assessee has preferred the appeal by raising the above grounds.

4. The sole ground raised by the assessee relates to challenging the order of Ld. CIT(A) in confirming the disallowance of Rs. 1,52,32,422/- on the ground that it is a loss of capital and not a business loss.

5. We have heard Ld. DR and we have also perused the material placed on record as well as the orders passed by revenue authorities.

Before we decide the merits of the case, it is necessary to evaluate the orders passed by Ld. CIT(A). The Ld. CIT(A) has dealt with the above grounds raised by the assessee in its detailed order. The operative portion of the order of Ld. CIT(A) is contained in para no. 4 to 7 of its order and the same is reproduced below:-

*4. I have considered the appellant's submissions and the facts of the case. It is stated that the appellant was a partner in a firm by name Allied Engineers. This firm was dissolved on 30/04/2008. The closing balance of the appellant (partners capital account) with this firm on the date of dissolution was Rs. 1,87,78,584/-. The appellant claims that this closing balance to the extent of Rs. 1,52,32,422/- was on account of the interest*

*accrued to the appellant on the capital account in the past years. The appellant further claims that due to the dissolution, the appellant could not recover this balance amount and hence the same should be allowed as a business loss. The appellant's arguments are already reproduced above.*

*5. I do not agree with the appellant that in the facts of the case it can be said that the appellant has lost the amount due to him from the partnership firm on dissolution of the firm. Further, I also do not agree that any amount remaining unrecovered out of the capital account of a partner, can be claimed as business loss on dissolution of the firm. I have gone through the dissolution deed produced by the appellant. The dissolution deed mentions that the accounts of the partners have been made up to the date of the dissolution. The deed further mentions that all the assets of the firm have been divided among the partners including fixed assets. The partners' outstanding capital balances are thus settled by mutual consent. The appellant has furnished no evidence that the dissolution of the firm were less than the capital account balance including the so called interest amount. No details have been furnished as to how much cash/bank balance was available with the firm as on the date of the dissolution and how the same was*

*divided. The value of the land etc received by the appellant appears to be much more than the balance in the capital account. Thus there are absolutely no facts to hold that the appellant has lost any money due to dissolution of the firm.*

*6. Legally the appellant has not been able to point out the provisions of the law under which such a claim of business loss can be allowed. The appellant was not doing any business with the firm and the amounts outstanding from the firm had not been advanced in the course of any business. Thus the amount even if unrecovered cannot be allowed as bad debts or business loss. The interest received from the firm was credited to the appellant's capital account in the firm. It was like reinvesting the income earned. Thus it became part of the capital of the appellant in the succeeding years. If the firm is unable to pay back this capital, it is simple loss of capital. There is no business involved between a firm and its partners. When a person becomes a partner by introducing capital he is not doing business with the firm. There is no business loss to the partner if the firm does not do well and the capital is lost or diminished.*

*7. To conclude it is held that the AO had rightly disallowed the appellant's claim. The appeal filed by the appellant is dismissed*

After having gone through the facts of the present case as well as considering the orders passed by revenue authorities and submissions made by Ld. DR, we find that Ld. CIT(A) has correctly dismissed this ground of appeal raised by the assessee after holding that as per the terms of dissolution deed, the accounts of the partners have been made up to the date of the dissolution and all the assets of the firm have been divided among the partners including fixed assets. On these admissions, Ld. CIT(A) had correctly inferred that the partner's outstanding capital balances have thus settled by mutual consent. Even no evidence was placed on record to show that assets received by the assessee on dissolution were less than the capital account balance including the so called interest amount, thus in this way, the assessee had not lost any money due to dissolution of the firm. We concur with the findings recorded by Ld. CIT(A) in para no. 6 of its order.

Moreover, no new facts or contrary judgments have been brought on record before us in order to controvert or rebut the findings so recorded by Ld CIT (A). Therefore, there are no reasons for us to interfere into or deviate from the findings recorded by the Ld. CIT (A). Hence, we are of the considered view that the findings so recorded by the Ld. CIT (A) are judicious and are well reasoned. Resultantly, this ground raised by the assessee stands **dismissed**.

6. In the net result, the appeal filed by the assessee stands **dismissed**.

*Order pronounced in the open court on 24<sup>th</sup> April, 2018.*

Sd/-

Sd/-

(R.C. Sharma)

(Sandeep Gosain)

लेखासदस्य / Accountant Member न्यायिकसदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated : 24.04.2018

Sr.PS. Dhananjay

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार

(Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai