

आयकर अपीलीय अधिकरण "A" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.7002/Mum/2013

(निर्धारण वर्ष / Assessment Year : 2006-07)

Aakash Universal Limited (Formerly known as Aakash Stone Industries Ltd.) Santacruz Airport Side, Marble Market, W.E. Highway, Vile Parle (E), Mumbai-400099	बनाम/ v.	ACIT Range 8(1) Aaykar Bhavan, Mumbai 400020
स्थायी लेखा सं./ PAN : AAACA9755H		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:		Shri. Vimal Punmiya
Revenue by :		Shri Rajesh Kumar Yadav

सुनवाई की तारीख /**Date of Hearing** : 30.05.2018

घोषणा की तारीख /**Date of Pronouncement** : 01.06.2018

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member

This appeal, filed by the assessee, being ITA No. 7002/Mum/2013, is directed against appellate order dated 21.08.2013 passed by learned Commissioner of Income Tax (Appeals)-16, Mumbai (hereinafter called "the CIT(A)"), for assessment year 2006-07, the appellate proceedings had arisen before learned CIT(A) from assessment order dated 31-01-2013 passed by learned Assessing Officer (hereinafter called "the AO") u/s 143 (3) r.w.s. 254 of the Income-tax Act, 1961 (hereinafter called "the Act") for AY 2006-07. This is second round of litigation before the tribunal.

2. The grounds of appeal raised by the assessee in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

"Being aggrieved by the order of the learned Commissioner of Income Tax (Appeals) - 16, Mumbai, this appeal petition is submitted on the following grounds which it is prayed may be considered independently without prejudice to one another;

1) On the facts and circumstances of the case and in law the learned CIT(A) erred in confirming the disallowance of 2,53,379/- on account of the Sundry Balances Written Off, ignoring the facts of the case is bad in law and needs to be cancelled."

3. The brief facts of the case are that assessee is engaged in the business of manufacturing of marble slabs. This is second round of litigation before tribunal. The short controversy which has arisen in this appeal is with respect to writing off of sundry balances to the tune of Rs. 2,57,379/- which stood disallowed by Revenue . The tribunal in the first round of litigation has directed the assessee to produce evidences/ justification to prove that these sundry balances which were written off during the year under consideration were taken into account in computation of income of the earlier years etc vide common order dated 04-01-2012 passed by tribunal in ITA no. 5604/Mum/2010 and 4416/Mum/2010 , wherein tribunal held as under:-

"2.2 We have perused the records and considered the rival contentions carefully. The dispute is regarding disallowance of claim of deduction of Rs.2,57,379/- on account of sundry balance written off and disallowance of traveling expenses of Rs.2,23,038/-. The AO disallowed the claims on the ground that no details/justification in support of the above claims were given. CIT(A) agreed with the finding of the AO. However, it is found from the perusal of the paper book that the assessee had filed details of sundry balance written off and details of traveling expenses which are available at pages 78 and 79 respectively of the paper book. But the details only give the name of the party, amount, date and no further details as to whether these were taken into account in computation of income of earlier years etc. is not available. Similarly, in respect of traveling expenses, the details given are only the date wise payments made to Deep Tours & Travels. The relevance of these expenses to the business of the assessee has not been given or examined by the AO. In our view, for considering the allowability of claim, further details as mentioned above are required to be examined. We, therefore, set aside the order of AO for passing a fresh order after necessary examination in the light of observations made-above and after allowing opportunity of hearing to the assessee."

4. In second round of litigation, the AO again disallowed the same by holding that the assessee has only placed ledger account of two parties viz. Satellite Developers Private Ltd. and Pacific Marbles Private Ltd. which showed sundry balances written off to the tune of Rs. 36,725/- and Rs. 1,46,000/- respectively. From the ledger account produced by the assessee, the AO observed that some sales were made during the year but no supporting documents in the form of bills/invoices has been furnished to support its contentions. The AO also observed that in an earlier letter dated 12.10.2010 given by the assessee to the AO contained list of seven parties whose balances were written off, but the AO observed that there is no mention of the party 'Satellite Developer P. Ltd.' in the said list and hence it was observed that assessee is trying to mislead the Revenue and hence the claim of the assessee was rejected. The AO observed that there is no evidence on record that the assessee has offered such income to tax in earlier years and hence the additions to the tune of Rs. 2,57,379/- were made by the AO vide assessment orders dated 31-01-2013 passed u/s 143(3) r.w.s. 254 of the 1961 Act.

5. Before learned CIT(A) in second round of litigation, the assessee has only contended that these are petty amounts pertaining to earlier years which were written off during the year but in the absence of any evidence of the said amounts being included while computing income of the earlier years, the claim of the assessee was rejected by learned CIT(A) in second round of litigation vide appellate orders dated 21-08-2013.

6. The assessee is now before tribunal in second round of litigation. The assessee has filed a paper book containing 31 pages which is duly signed/certified by a Senior Chartered Accountant namely Shri. Vimal Punmiya wherein certification is issued by Sh Vimal Punmiya,CA that documents placed in paper book at page no. 1 to 31 were duly before both the authorities below namely AO and learned CIT(A). It is stated before the Bench that the said paper book do not carry any additional evidence filed for the first time before the tribunal. The said paper book carried tax audit report (PB/page 1-7), Balance Sheet and Profit and Loss account with schedules(Pb/page 8-20), Ledger account of Sundry Balances written off

(Page 21/pb), Ledger account of M/s Ganesh Stone Pune from 01.04.2001 to 31.03.2006 (Page 22-23/pb), copy of ledger account of Aakash Overseas Company from 01.04.2001 to 31.03.2006 (page 24-25/pb) and ledger account of 'Pacific Marbles Private Ltd.' from 01.04.2005 to 31.03.2006 (page 26/pb). It also carried three invoices dated 08-06-2003, 23-08-2003 and 24-09-2003 respectively issued by assessee in favour of 'Ganesh Stone Pune' for Rs. 62,543/- , Rs. 4,21,000/- and Rs. 2,20,407/- (page 27-29/pb) respectively , one invoice dated 09-09-2005 issued by assessee in favour of 'Pacific Overseas Private Limited' for Rs. 3,46,000/- (pb/30) , one invoice issued by assessee in favour of 'Tropicana Property' dated 01.04.2005 of Rs. 1,27,222/- which is placed in paper book at page no. 31 . The ledger account of the sundry Balances written off as is placed in paper book at page no. 21 is reproduced below:-

Aakash Stone Industries Limited

Santacruz Airport Side ,Marble Market,
W.E.Highway,Vile Parle(E),
Mumbai-400 099

Sundry Balance W/off

Ledger Account

1-Apr-2005 to 31-Mar-2006

Date	Particulars	Vch Type	Vch No.	Debit	Page 1	
					Credit	
30-12-2005	To B.G.Shirke Cons.Tech.P.Ltd.	Journal	365	8,833.49		
31-12-2005	By Mody Stone Enterprises	Journal	374			27,546.00
31-3-2006	To Tropicana Properties	Journal	530	29,967.00		
	To Vanila Deposit	Journal	552	0.59		
	To Aakash Overseas Co.	Journal	573	6,261.00		
	To Pasific Marbles Pvt Ltd	Journal	578	1,46,000.00		
	To Ganesh Stone Co.Pune	Journal	595	93,862.80		
				<u>2,84,924.88</u>		27,546.00
	By Closing Balance					2,57,378.88
				<u>2,84,924.88</u>		<u>2,84,924.88</u>

That the above ledger account represents sundry balances written off during the year . This list contains details of six parties whose balances are written off during the year under consideration while it contained name of one party whose credit balance stood written back during the year under consideration. The said list does not contain name of Satellite Developers Private Ltd. . The Senior Chartered Accountant Sh. Vimal Punmiya has certified that this ledger account contained the list of sundry balances written off during the year under consideration and the said list was duly filed before the authorities below. Statement has been made before us by Sh. Vimal Punmiya that these are true and correct documents filed before the authorities below and the

authorities erred in ignoring these details/documents. We are proceedings to decide the controversy based upon material on record .

Now, coming to merits of the case , it is contended before us that the amount of Rs. 8833.49 was paid to 'B.G Shirke Cons. Tech P Ltd.' towards professional charges . We have observed that no evidences are brought on record that these were the expenses which were paid towards expenses incurred wholly and exclusively for the purposes of business of the assessee . Since there is no material/evidence on record to come to conclusion that these are expenses incurred wholly and exclusively for the purposes of business of the assessee, we are rejecting the claim of the assessee. The assessee fails on this addition. We order accordingly.

With regard to the second party namely Tropicana Properties an amount to the tune of Rs. 29,967/- was written off . The assessee has produced an invoice dated 01-04-2005 bearing number 02 towards sale of marble slab and statement is made before us that out of the amount recoverable to the tune of Rs. 1,27,222/- for sale of marble slabs vide said invoice, an amount of Rs. 29,967/- could not be recovered and the said amount is written off in the books of accounts. We are accepting this claim of the assessee as sale invoice value of Rs. 1,27,222/- as raised by assessee in favour of 'Tropicana Properties' is included for computing income. Thus, in nut-shell we are allowing claim of the assessee towards write off of sundry balance of Rs. 29,967/- recoverable from Tropicana Properties keeping in view provisions of Section 36(1)(vii) of the 1961 Act. The assessee succeeds on this addition. We order accordingly.

There is a sundry balance write off of minor /fractional amount of insignificant value of Rs. 0.59 being written of on account of short/excess from 'Vanila Deposit'. Keeping in view that amount involved is insignificant and is merely short/excess being fractional amount of paise fifty nine only written off, the same is allowed.The assessee succeeds on this addition. We order accordingly.

With respect to write off of sundry balance to the tune of Rs. 6261/- recoverable from 'Akash Overseas Company' , wherein ledger account is placed in paper book from 01.04.2001 to 31.03.2006, perusal of the ledger account reveals large number of debit and credit entries of amounts paid

and received . There is no sales made to said party by assessee. Hence, it could not be shown by assessee that the said amount constituted income which was included while computing taxable income of the assessee. Thus, based on material on record, the claim of the assessee cannot be allowed within the parameters of Section 36(1)(vii) of the 1961 Act and hence claim of the assessee is rejected. We order accordingly.

With respect to M/s Ganesh Stone Company an amount of Rs. 93,862/- was written off . The ledger account of M/s Ganesh Stone Company was presented from 01.04.2001 to 31.03.2006. Perusal of ledger account reveals that some sales were made to said party in July to September 2003 and thereafter no sales were made. The sales invoices are also placed on record . There were recoveries made from time to time by the assessee from said party and the account with the said party is running account. It is not brought on record as to why the amounts continued to be received after making sales in July-September 2003 and reasons for non appropriating said large receipts against the sales made by the assessee to said party in the month of July-September 2003. Thus, there is a presumption that the amounts received by the assessee post sales made in July-September 2003 were towards sale made by assessee. It is for the assessee to have brought on record reasons as to why large receipts post sales cannot be appropriated towards sales. No such evidences are brought on record and this is second round of litigation. Under these circumstances there is no valid justification for allowing this amount of Rs. 93862.80 as write off of sundry balances as no justification/ business exigency is shown . In the absence of proper explanation/evidences on record, the assessee claim cannot be allowed. The assessee fails on this addition. We order accordingly.

Now coming to write off of Rs. 1,46,000/- with respect to 'Pacific Marbles Private Ltd.' , it is shown vide ledger account and sales invoices that sales have been made to the tune of Rs. 3,46,000/- on 09.09.2005 , out of which Rs. 2 lacs was recovered on 05.10.2005 and the balance amount of Rs. 1,46,000/- was written off . In view of evidences brought on record , keeping in view provision of Section 36(1) (vii) , this amount of write off to the tune of Rs.1,46,000/- being recoverable from Pacific Marbles Private Limited stood allowed as deduction while computing income of the assessee. The assessee claim is allowed. We order accordingly.

7. In the result, the appeal of the assessee is partly allowed as indicated above.

order pronounced in the open court on 01.06.2018

आदेश की घोषणा खुले न्यायालय में दिनांक: 01.06.2018 को की गई ।

Sd/-

(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-

(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Mumbai, dated: 01.06.2018

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

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BY ORDER

DY/ASSTT. REGISTRAR
ITAT, MUMBAI