

**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI
BEFORE SHRI RAJENDRA, AM AND SHRI RAVISH SOOD, JM**

ITA No.1268/Mum/2016

(निर्धारण वर्ष / Assessment Years:2012-13)

The Asstt. Commissioner of Income Tax-15(2)(2), Room No. 403, 4 th Floor, Aayakar Bhavan, Maharshi Karve Road, Mumbai 400020	बनाम/ Vs.	M/s Protego India Pvt. Ltd. R. No. 665, MIDC Complex, Rabale, TTC Industrial Area, Navi Mumbai 400 701
स्थायी लेखा सं./जीआइआर सं./PAN No. AAACP2657F		
(अपीलार्थी / Revenue)	:	(प्रत्यर्थी / Assessee)

अपीलार्थी की ओर से / Revenue by	:	Shri Rajat Mittal, D.R
प्रत्यर्थी की ओर से / Assessee by	:	Shri Ajay P. Shah, A.R

सुनवाई की तारीख / Date of Hearing	:	10.05.2018
घोषणा की तारीख / Date of Pronouncement	:	23.05.2018

आदेश / O R D E R

PER RAVISH SOOD, JUDICIAL MEMBER:

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-24, Mumbai, dated 29.12.2015 which in itself arises from the order passed by the A.O under Sec.143(3) of the Income tax Act, 1961 (for short 'Act'), dated nil for A.Y 2012-13. The revenue assailing the order of the CIT(A) had raised before us the following grounds of appeal:-

- “1. on the facts and circumstances of the case in Law, the Ld. CIT(A) erred in ignoring the fact that whether the stock disclosed by the assessee included the stock written off or not.

2. *On the facts and circumstances of the case in Law, the Ld. CIT(A) erred in overlooking the fact that the closing stock of this year is the same as opening stock of next year thereby indicating that the closing stock does not include the stock written off in the P&L a/c and also not including such stock in closing stock tantamount to the deduction being claimed twice.*
3. *The appellant prays that the order of CIT(A) on the above ground be set aside and that of the assessing officer be restored.*
4. *The appellant craves leave to add, amend or alter any grounds or add a new ground which may be necessary.”*

2. Briefly stated, the facts of the case are that the assessee company which is engaged in the business of manufacturing and service of flame arresters and industrial safety valves had e-filed its return of income for A.Y 2012-13 on 29.11.2012, declaring total income at Rs. Nil The return of income was revised by the assessee on 18.03.2014 at a loss of Rs.34,73,509/-. The return of income filed by the assessee was processed as such under Sec. 143(1) of the Act. The case of the assessee was thereafter taken up for scrutiny assessment under Sec. 143(2).

3. The issue involved in the present appeal lies in a narrow compass. The A.O during the course of the assessment proceedings observed that the assessee had written-off stock of Rs.52,43,318/-. The assessee on being called upon to furnish the details in respect of writing-off the stock filed a detailed reply. The A.O after deliberating on the reply of the assessee observed that the write-off of stock made by the assessee was in accordance with the accepted accounting principles and had also been certified by the auditors. On the basis of the aforesaid deliberations, the A.O concluded that there was neither any doubt on the actual stock write-off or its value of Rs.52,43,318/-. However, the A.O was not persuaded to accept the contention of the assessee that the actual stock write-off of material used in manufacturing and trading activity was to be taken as a revenue loss while computing the income of the assessee as per the normal provisions. The A.O holding a conviction that the write-off of the stock was an item of the balance sheet, therefore, added the same to the total income of the assessee.

4. Aggrieved, the assessee assailed the aforesaid addition made by the A.O in appeal before the CIT(A). The CIT(A) observed that the A.O was not in

agreement with allowability of actual stock write-off of material used in manufacturing and trading activity as a revenue loss while computing the total income of the assessee as per the normal provisions. It was however observed by the CIT(A) that the assessee on being queried as regards its claim of stock written-off of Rs.52,43,318/-, had submitted that being in the business of manufacturing of safety valves and flame filters etc, the stock was written off, as the same had become redundant due to change in the engineering designs of the devices. The assessee submitted before the CIT(A) that due to recession in the trade, the manufacturing and production had dropped and the stock lying in humid conditions for too long was subjected to rusting, for which reason the writing-off of the redundant stock of castings was carried out by the assessee. It was submitted by the assessee that the writing-off of the stock was in accordance with the accepted accounting principle AS-2. The assessee further in order to fortify the aforesaid factual position submitted that some of the material forming part of such stock in trade having been spoiled by rusting was sold as scrap and the income therefrom was offered to tax under the head 'Other income'. The CIT(A) after deliberating on the contentions advanced by the assessee observed that the A.O had not given any justifiable reason for disallowing the writing-off of stock, despite not having disputed the fact that the stock which was used in manufacturing and servicing activities was written-off by the assessee due to redundancy arising out of the change in engineering design of the products. Still further, the A.O had also not disputed that the assessee had sold some materials which were spoiled by rusting and had offered such scrap sales to tax under the head 'Other income'. The CIT(A) on the basis of his aforesaid observations concluded that the claim of the assessee of loss arising out of write-off of obsolete stock as a business loss was incidental to its regular business. The CIT(A) was not impressed by the observation of the A.O that as the stock was a balance sheet item, therefore, the writing-off of the same as a revenue loss was not justified. The CIT(A) in order to support his aforesaid view observed that the Hon'ble Supreme Court in the case of TRF Ltd. Vs. CIT 323 ITR 397 (S.C) had held that 'bad debt' which also was a balance sheet item was to be allowed as a revenue

expenditure. On the basis of his aforesaid deliberations, the CIT(A) concluded that as the stock under consideration was produced during the business operation, therefore, any loss arising therefrom due to diminution in value which had been accepted by the revenue in past could by no means justify denial of such deduction. The CIT(A) on the basis of his aforesaid observations deleted the addition of Rs.52,43,318/- and allowed the appeal of the assessee in context of the issue under consideration.

5. The revenue being aggrieved with the order of the CIT(A) had carried the matter in appeal before us. The ld. Departmental Representative (for short 'D.R') submitted that the CIT(A) had erred in allowing the write-off of the stock. Per contra, the ld. Authorized Representative (for short 'A.R') for the assessee relied on the order of the CIT(A). It was submitted by the ld. A.R that the CIT(A) after duly appreciating the facts of the case had correctly deleted the addition of Rs.52,43,318/- claimed by the assessee in respect of the value of stock written-off by it. It was submitted by the ld. A.R that the ground of appeal no. 2 wherein the revenue had assailed the order of the CIT(A) on the ground that the latter had erred in overlooking the fact as to whether the closing stock for the year under consideration was the same as the opening stock of the next year, did not emerge from the order of the CIT(A). The ld. A.R in order to drive home his aforesaid contention that the revenue cannot be permitted to improve upon the findings of the A.O in an appeal filed before the Tribunal, relied on the following orders of the coordinate benches of the Tribunal:

- (i) DCIT, Range-9(1), Mumbai Vs. Envision Investments and Findings Pvt. Ltd. (ITA No. 2138/Mum/2010, A.Y 2006-07), dated 07.08.2015.
- (ii) ACIT, Circle-2 Mumbai Vs. Ms. Aishwarya K. Rai (2018) 127 ITD 204 (Mum)
- (iii) ITO Vs. Anant Y. Chavan (2009) 126 TTJ (Pune) 984.

6. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. We are persuaded to be in agreement with the view taken by the CIT(A) that now when the A.O had duly accepted the fact that actual stock write-off was because of the redundancy of the stock of castings due to change in the engineering design of the devices and rusting of the materials therefore, there was no justifiable reason on his part for disallowing the claim of the assessee. We do not find ourselves to be in agreement with the observation of the A.O that as the stock was a balance sheet item, therefore, its writing-off as a revenue expenditure was not called for. We are of the considered view that as the stock in question was produced during the business operation, thus any loss arising due to diminution in its value, as had been accepted by the revenue in the past, had to be allowed as a deduction. The **Ground of appeal No. 1** raised by the revenue is dismissed.

7. We may further observe that the challenge thrown by the revenue to the order of the CIT(A), on the ground that the later had erred in overlooking the fact that the closing stock for the year under consideration was the same as the opening stock of the next year, does not emerge from the order of the CIT(A). We thus decline to admit the **Ground of appeal no. 2** so raised by the revenue before us.

8. The **Grounds of appeal Nos. 3 and 4** being general in nature are dismissed as not pressed.

9. We thus being persuaded to be in agreement with the observations of the CIT(A), thus, subscribe to the same and uphold his order. The appeal of the revenue is dismissed in terms of our aforesaid observations.

Order pronounced in the open court on 23.05.2018

Sd/-

Sd/-

(Rajendra)
ACCOUNTANT MEMBER
मुंबई Mumbai; दिनांक 23.05.2018
Ps. Rohit

(Ravish Sood)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

**आयकर अपीलीय अधिकरण, मुंबई / ITAT,
Mumbai**