

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'B' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Vice-President (KZ) &
Shri Satbeer Singh Godara, Judicial Member**

**I.T.A. No. 2263/KOL/2016
Assessment Year: 2004-2005**

Income Tax Officer,.....Appellant
Ward-12(3), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700 069

-Vs.-

M/s. Hanuman Tea Company Limited,.....Respondent
FMC Fortuna,
234/3A, A.J.C. Bose Road,
Kolkata-700 020
[PAN: AAACH 6868 G]

Appearances by:

Shri Robin Choudhury, Addl. CIT, Sr. D.R., for the Department
Shri Vikash Surana, FCA, for the Assessee

Date of concluding the hearing : October 29, 2018

Date of pronouncing the order : October 31, 2018

O R D E R

Per Shri P.M. Jagtap, Vice-President (KZ):-

This appeal is preferred by the Revenue against the order of Id. Commissioner of Income Tax (Appeals)-8, Kolkata dated 01.09.2016 and the grounds raised by the Revenue therein read as under:-

“(1) That on the facts and in the circumstances of the case, the Id. CIT(A) erred in law as well as in the facts in deleting the disallowance made by the AO of Rs.1,78,86,327/- out of garden expenses.

(2) That on the facts and in the circumstances of the case, the Id. CIT(A) erred in law as well as in the facts in deleting the disallowance made by the AO of Rs.1,22,406/- on account of bad debt written off without considering the provisions as laid down u/s 36(2) of the I.T. Act, 1961”.

2. The assessee in the present case is a Company, which is engaged in the business of manufacturing tea. It was having three Tea Gardens, out of which one was sold during the year under consideration. The return of income for the year under consideration was filed by the assessee-company on 29.10.2004 declaring a loss of Rs.1,23,90,790/-. In the Profit & Loss Account filed along with the said return, tea garden expenses of Rs.908.86 lakhs were debited by the assessee. During the course of assessment proceedings, the assessee-company was required by the Assessing Officer to produce the relevant books of account as well as other documentary evidence to support and substantiate its claim for the tea garden expenses. The assessee-company, however, failed to comply with the said requirement. The Assessing Officer also noted that there was a similar non-compliance on the part of the assessee-company even during the immediately preceding year resulting into a disallowance of tea garden expenses to the extent of 19.68%. Accordingly, the Assessing Officer applied the same ratio and made a disallowance of Rs.1,78,86,327/- out of tea garden expenses. He also made a further disallowance of Rs.1,22,408/- on account of bad debts and advances written off as debited by the assessee-company in the Profit & Loss Account for the failure of the assessee-company to establish that the conditions stipulated in section 36(2) were duly satisfied. Accordingly in the assessment completed under section 143(3) vide an order dated 22.12.2006, the total income of the assessee was determined by the Assessing Officer at Rs.71,03,555/- after making, *inter alia*, two additions on account of disallowance of tea garden expenses and bad debts and advances written off.

3. Against the order passed by the Assessing Officer under section 143(3), an appeal was preferred by the assessee before the Id. CIT(Appeals) and after considering the submissions made on behalf of the assessee, the Id. CIT(Appeals) deleted the disallowance made by the Assessing Officer out of tea garden expenses on the ground that the mere inability of the assessee-company to produce the relevant books of

account and other documentary evidence was not sufficient to justify the said disallowance when the accounts maintained by the assessee regularly were duly audited. He also deleted the disallowance made by the Assessing Officer on account of bad debts and advances written off by accepting the contention of the assessee that the relevant debts would arise only consequent to the income having been recognized. Aggrieved by the order of the Id. CIT(Appeals), the Revenue has preferred this appeal before the Tribunal.

4. We have heard the arguments of both the sides and also perused the relevant material available on record. As rightly contended by the Id. D.R., the onus to support and substantiate its claim for the substantial tea garden expenses by producing the relevant books of account and other documentary evidence was on the assessee and when there was a total failure on the part of the assessee to discharge the said onus during the course of assessment proceedings despite specific opportunity afforded by the Assessing Officer, the Id. CIT(Appeals) should have either verified himself the claim of the assessee for the tea garden expenses from the relevant documentary evidence or remand the matter to the Assessing Officer for such verification. Since the Id. CIT(Appeals) has failed to do so, we find it fair and proper and in the interest of justice to set aside his impugned order on this issue and restore the matter to the file of the Assessing Officer in order to give one more opportunity to the assessee to support and substantiate its claim for the tea garden expenses by producing the relevant books of account and other documentary evidence for verification. Ground No. 1 of the Revenue's appeal is accordingly treated as allowed for statistical purposes.

5. As regards the issue involved in Ground No. 2 relating to the deletion by the Id. CIT(Appeals) of the disallowance of Rs.1,22,406/- made by the Assessing Officer on account of bad debts and other advances written off, the Id. Counsel for the assessee has pointed out from the relevant Profit & Loss Account of the assessee-company that a sum of

Rs.1,22,406/- actually represented discount allowed by the assessee and not bad debts and advances written off as wrongly taken by the Assessing Officer. Since this aspect also requires verification by the Assessing Officer as contended by the Id. D.R., we set aside the impugned order of the Id. CIT(Appeals) on this issue and restore the matter to the file of the Assessing Officer for verifying the claim of the Id. Counsel for the assessee that the amount in question represented discount allowed and decided the same in accordance with law. Ground No. 2 of the Revenue's appeal is accordingly treated as allowed for statistical purposes.

6. In the result, the appeal of the Revenue is treated as allowed for statistical purposes.

Order pronounced in the open Court on October 31, 2018.

Sd/-
(Satbeer Singh Godara)
Judicial Member

Sd/-
(P.M. Jagtap)
Vice-President (KZ)

Kolkata, the 31st day of October, 2018

Copies to : (1) **Income Tax Officer,
Ward-12(3), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700 069**

(2) **M/s. Hanuman Tea Company Limited,
FMC Fortuna, 234/3A, A.J.C. Bose Road,
Kolkata-700 020**

(3) **Commissioner of Income Tax (Appeals-8, Kolkata,**

(4) **Commissioner of Income Tax-** ,

(5) **The Departmental Representative**

(6) **Guard File**

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.