

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'B', NEW DELHI**

**BEFORE SH. O.P. KANT, ACCOUNTANT MEMBER  
AND  
SH. K.N. CHARY, JUDICIAL MEMBER**

ITA No.5188/Del/2012  
Assessment Year: 2007-08

M/s. Field Fresh Foods Pvt. Ltd., Aravali Crescent-1, Nelson Mandela Road, New Delhi	<b>Vs.</b>	DCIT, Circle -11(1), New Delhi
<b>PAN :AAACF8488N</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Sh. Anil Bhalla, CA
Respondent by	Ms. Ashima Neb, Sr.DR

Date of hearing	19.11.2018
Date of pronouncement	10.12.2018

**ORDER**

**PER O.P. KANT, AM:**

This appeal by the assessee is directed against order dated 25/07/2012 passed by the Ld. Commissioner of Income-tax (Appeals)-XIII, New Delhi for assessment year 2007-08, raising following grounds:

- The learned Commissioner of Income Tax(Appeals) has erred both on facts and in law in upholding the learned Assessing Officer's action of disallowing "amounts written off" as business loss during the relevant previous year amounting to Rs.3,20,34,757/- allegedly on the ground that the same is not allowable under Section 37 of the*

*Income Tax Act, 1961 and/or Section 28 of the Income Tax Act, 1961.*

2. *The appellant craves leave to add, alter or amend the ground of appeal at a later stage.*

**2.** Briefly stated facts of the case as emerging from the records are that the assessee company is a joint-venture Company of Bharti Enterprises Holding (Private) Limited and Rothschild ELRO Holdings, Mauritius and it was engaged in business of dealing and exporting all kinds of agriculture produce such as fruits, vegetable, floriculture produce. For the year under consideration, the assessee filed return of income on 31/10/2007, declaring business loss of Rs.25,70,26,541/-. The case was selected for scrutiny and notice under section 143(2) of the Income-tax Act, 1961 (in short 'the Act') was issued and complied with. During assessment proceeding, the Assessing Officer observed that the assessee had claimed expenses towards advances written off of Rs.3,20,34,757/-, which were related to non-recoverable portion of the amounts that were given to few parties in terms of sourcing agreements entered with them. It was contended on behalf of the assessee that those advances were given for purchase of agriculture produce and later on realized by the assessee that there was no adequate production of agricultural crops and this amount given to those parties could not be recovered and hence it was written off and approved by the Board of Directors of the company. This contention was not accepted by the Ld. Assessing Officer. According to him writing off of advances by the assessee was a unilateral decision without exploring any legal recourse or documentary proof regarding correspondence etc. placed on record by the assessee. The Ld.

Assessing Officer noted that unless the right of the assessee company as was present in the sourcing agreement for seeking compensation against the erring action of the producers stands fully discharged, no unilateral write off can be said to have been made in compliance of the provision of section 37(1) of the Act. Accordingly, he made addition of Rs.3,20,34,757/- and assessment under section 143(3) of the Act was completed on 31/12/2009. Aggrieved, the assessee filed appeal before the Ld. CIT(A) who partly allowed the appeal. Aggrieved with the finding of Ld. CIT(A) , the assessee is in appeal before the Tribunal raising the ground involving the issue of disallowance of business loss of Rs.3,20,34,757/-.

**4.** Before us, the Ld. counsel of the assessee referred to an application filed on 14/08/2017 under Rule 29 of the Income-tax (Appellate Tribunal) Rules, 1963 (in short 'ITAT Rules') for admitting additional evidences, which included a copy of arbitration award in respect of the advances recoverable from M/s Sutlej power Private Limited. The Ld. Counsel submitted that the arbitration proceedings happened subsequent to the write off of the advances and thus same could not be produced before the lower authorities. The Ld. counsel also submitted that the additional evidence has been filed in view of the direction of the bench during hearing on 01/03/2017 to produce any other document in connection with the business loss and therefore the additional evidence is in compliance to the Rule 29 of the ITAT Rules. Though the Ld. DR opposed admission of the additional evidence, however he submitted that the arbitration proceedings were not in respect of the amount of advances written off and, therefore, the same cannot justify allowance of the expenses.

**5.** We have heard the submission of the parties on the issue of admission of the additional evidences. We agree with the contention of the Ld. counsel of the assessee that the document was not available during proceedings before the lower authorities and submitted by the assessee on being asked by the Tribunal. According to the assessee, the document is connected with the issue-in-dispute. In the interest of justice and in view of the facts, the copy of the arbitration award filed by the assessee is admitted as additional evidence under rule 29 of the ITAT Rules.

**6.** We have heard the arguments of both the parties and perused the relevant material on record including the paper book filed by the assessee. The assessee company was engaged in the business of exporting of agriculture produce like fruits vegetables etc. The assessee company did not own any agriculture land and thus it planned to buy the agriculture produce from farmers through certain aggregator companies. For this purpose, the assessee entered into agreements with following two companies for procurement of the agriculture produce:

**1.** *M/s Rajtech Agro Plantation Private Limited vide agreement dated 16/01/2006.*

**2.** *M/s Sutej Power P. Ltd. vide agreement dated 21/07/2006.*

**7.** Those aggregate accompanies were given responsibility of aggregating individual farmer's land, supervising agriculture produce, procuring grading and supplying the agriculture produce to the assessee company, under the terms and condition contained in agreement made with them.

**8.** The assessee advanced money to these companies from time to time. In the profit and loss account for the year under

consideration, the assessee written off following advances made to those companies and claimed the same as business loss:

	Amount (in Rs.)
1. <i>Sutlej Power Pvt. Ltd.</i>	Rs.2,04,78,448/-
2. <i>Sutlej Agriculture Pvt. ltd.</i>	Rs. 17,08,389/-
3. <i>Rajtech Agro Plantation Pvt. Ltd.</i>	<u>Rs. 98,47,920/-</u>
	Rs.3,20,34,757/-

**9.** The Ld. counsel of the assessee contended that this write off was as a loss due to damaged quality of the agriculture produced and was approved by the audit committee and board of directors of the assessee company.

**10.** The Ld. Assessing Officer rejected the claim of the assessee mainly on following grounds:

1. As per the sourcing agreement between the assessee and the producer(s) (i.e. companies), it was the liability of the producer to ensure growing and supply of agricultural produce of acceptable quality and if the producer fails to deliver the goods as per the agreements then the assessee has the right for compensation.
2. Writing off of the advances by the assessee was a unilateral action without exploring any legal recourse.
3. No documentary evidence placed on record regarding the correspondence etc, which the assessee had with the producer(s) in respect of the write off.

**11.** Before the Ld. CIT(A), the assessee contended that the Assessing Officer has not appreciated various clauses of the agreement. He submitted that the clause (6) of the agreement

relied upon by the Assessing Officer also specifies that in the event of agriculture produce being destroyed or not of the acceptable quality or on account of failure of the crops due to factors beyond the control of the grower, the loss had to be borne only by the assessee company.

**12.** The Ld. CIT(A) rejected the contention of the assessee and upheld the finding of the Ld. Assessing Officer, observing as under:

*“6.3 Decision*

*I have considered the submission of the appellant and observation of the Assessing Officer. It is seen that during the year appellant has written off of Rs. 3,20,34,757/-out of the advances given to two parties namely Sulej Agro Group and Rajtech Agro Plantation. These advances were given for sourcing Fruits, Vegetables, Flowers etc. from these parties. However, later on the company realized that there were no adequate production facility with these parties, therefore, the amounts given to these parties could not be recovered and written off with the approval of Board of Directors. In the sourcing the agreement it is mentioned that producer will supply agricultural produce of acceptable quality and if the producer fails to deliver the goods as per the agreement than the appellant company has right for compensation. However, it is seen that no attempt has been made by appellant company for recovering the advances given for purchase of Agricultural Produce, no legal recourse has been explored for recovery of advances. The appellant has not Filed any document during the course of assessment proceedings nor before me regarding the correspondence made with M/s. Sulej Agro Group and M/s Rajtech Agro Plantation for recovery of the advances or for seeking Compensation from such produce. The write off of advances is unilateral decision of the appellant without taking any recourse to legal options available with the appellant, therefore, such write off cannot be considered as allowable expenditure u/s 37 of the IT Act.*

*.....”*

**12.** Before us, the Ld. counsel drawn our attention to clause 7 of the agreement at page 34 of the paper book, which reads as under:

*"Force majeure*

*Neither Party ("Affected Party") shall be liable to the other Party ("Non- affected Party ") for breach of this Agreement to the extent caused by or arising from prohibition or restriction by law or regulation of any government, fire, flood, storms, weather, strike, lockout or other labour problems, accident, riots, acts of god, breakdown of communication facilities, or events beyond the control of the party in breach.*

*Notwithstanding anything contained hereinabove, the Affected Party shall use its best efforts to resume full performance thereof without avoidable delay, provided that if any delay in the Affected Party 's performance caused by act of God or governmental action exceeds ninety (90) days, the Non - Affected Party may at its option terminate this agreement effective immediately."*

**13.** The Ld. counsel submitted that the nature of the business of the trading in agriculture produce is highly fragile and risky in view of the fact that the agriculture produces are highly perishable nature, subject to vagaries of nature and is prone to a very high degree of losses and heavily prone to act of God.

**14.** However, we note that the assessee has neither provided the details of quality damage of the agriculture produce nor any correspondence with the producers companies for claiming write off of the advances of Rs.3,20,34,757/-. The assessee is merely contended that after the write-off of unrecoverable amount of advances, there was a still balance of Rs.7,44,18,762/- and for which the assessee has gone into arbitration proceedings and an amount of Rs. 2 crore has been awarded in the arbitration proceedings. Thus according to the Ld. counsel of the assessee, efforts have been made to recover the outstanding amount from the producers and it cannot be said that no efforts have been made on the part of the assessee.

**15.** Though, we have admitted the copy of the arbitration award order as additional evidence, but in our opinion it is not of much help to the assessee, because it is related to amount outstanding from those parties other than the amount of Rs.3,20,34,757/- which is claimed as written off and in dispute before us. Moreover, we observe that the arbitration proceeding have been initiated only against one-party namely Sutlej agriculture Private Limited, whereas substantial amount of advance written off as in

respect of the Sutlej Power Private Limited (Agri Dv) (Rs.2,04,78,448/-) and Rajtech Agro plantation private limited (Rs.98,47,920/-). We note that no other document or correspondence evidencing the reasons of write-offs and any efforts for making recovery has been shown by the assessee. Even no agreement of settlement of dispute in respect of the amount involved between the assessee and the producers has been filed by the assessee. The Ld. counsel has reiterated that business of agriculture trade is highly fragile and risky and the assessee company was helping in the growth of the agriculture economy, but mentioning those general trend of the business and economy may not be sufficient to discharge onus of the assessee that it was a business loss. The assessee was required to show the correspondence between the assessee and the producers regarding damage of the particular crops along with quantity, evidence in support of the claim of inability of the farmers in providing the agriculture produces, but no such evidences have been furnished by the assessee either before the lower authorities or before us. For claiming any expenses as deduction under section 37(1) of the Act, it is incumbent upon the assessee to substantiate that those expenses are being incurred wholly and exclusively for the purpose of the business. In our opinion, the assessee has failed to discharge his onus in substantiating that the advances written off of Rs.3,20,34,757/- were made wholly and exclusively for the purpose of the business.

**16.** In the synopsis filed, Ld. counsel has relied on the number of decisions to support his claim, however, in absence of any documentary evidence with respect to claim that the advances

written off were for the purpose of business, those decisions cannot be applied over the facts of the instant case.

**17.** In our opinion, the finding of the Ld. CIT(A) on the issue in dispute that write off cannot be considered as allowable expenditure under section 37 of the Act, are well reasoned and we do not find any error in the same. We accordingly uphold the same and dismiss the appeal of the assessee.

**18.** In the result, appeal of the assessee is dismissed

***The decision is pronounced in the open court on 10<sup>th</sup> December, 2018.***

Sd/-  
**(K.N. CHARY)**  
**JUDICIAL MEMBER**

Sd/-  
**(O.P. KANT)**  
**ACCOUNTANT MEMBER**

Dated: 10<sup>th</sup> December, 2018.

RK/-(D.T.D.)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi