

आयकर अपीलिय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**INDORE BENCH, INDORE**  
**BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER**  
**AND HON'BLE MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.351/Ind/2017**

**Assessment Year 2013-14**

M/s. Bhagirath Coach & Metal Fabricators Pvt. Ltd, C/o M. Mehta & Co, 11/5, South Tukoganj, Indore	Vs.	DCIT 1(1), Indore
(Appellant)		(Respondent )
PAN No.AAACB7112P		

Revenue by	Shri R.P. Mourya, Sr.DR
Assessee by	S/Shri S.N. Agrawal & Pankaj Mogra,CAs
Date of Hearing	17.12.2018
Date of Pronouncement	19.12.2018

**ORDER**

**PER MANISH BORAD, AM.**

The above captioned appeal is filed at the instance of assessee pertaining to Assessment Year 2013-14 and is directed against the orders of Ld. Commissioner of Income Tax (Appeals)-I (in short 'Ld.CIT(A)'), Indore dated 28.02.2017 which is arising out of the order u/s 143(3) of the Income Tax Act 1961(In short the 'Act') dated 23.03.2015 framed by DCIT-1(1), Indore.

2. Assessee has raised following grounds of appeal;

*“1. That on the facts and in the circumstances of the case and law the Ld. CIT(A) erred in maintaining disallowance of Rs.31,50,000/- as made by the Ld. A.O u/s 37(1) by treating the earnest money as forfeited by Maruti Suzuki India Ltd as Capital expenditure of the assessee company without properly appreciating the facts of the case, nature of business and submission made before him.*

*2. The assessee reserve its right to add, alter, modify or amend the grounds of appeal as and when required.”*

3. Briefly stated facts as culled out from the records are that the assessee is a Private Limited Company engaged in bus body building work. Income of Rs.8,36,61,650/- declared in the income tax return filed on 28.9.2013. Case picked up for scrutiny. Necessary notices u/s 143(2) and 142(1) of the Act was duly served upon the assessee and necessary details as called for were filed. Learned Assessing Officer (In Short Ld.A.O) during the course of assessment proceedings observed that the assessee has written off sum of Rs.31,50,000/- as earnest money forfeited by Maruti Suzuki India Ltd. Assessee has claimed this amount as revenue expenditure whereas Ld. A.O was of the view that the alleged expenditure of Rs.31,50,000/- is in the nature of capital expenditure and therefore cannot be allowed as an revenue

expenditure and accordingly disallowed this amount. Ld. A.O was also made ad-hoc disallowance of Rs.3,00,000/-. Income assessed at Rs.8,71,11,650/-.

4. Aggrieved assessee preferred appeal before Ld. CIT(A) and partly succeeded.

5. Now the assessee is in appeal before the Tribunal raising the sole ground against the findings of Ld. CIT(A) maintaining the disallowance of Rs.31,50,000/- made by the Ld. A.O u/s 37(1) of the Act for treating the earnest money forfeited by Maruti Suzuki India Pvt. Ltd as capital expenditure.

6. Ld. Counsel for the assessee referring to the paper book submitted that the assessee company applied for the dealership of Maruti Suzuki India Pvt. Ltd and gave deposits on various dates. At the time of the application the assessee company agreed to purchase a plot for setting up the show room for Maruti Suzuki India Pvt. Ltd. He further submitted that these transactions of paying the amount to Maruti Suzuki India Pvt. Ltd as well as to give the advance to Indore Development Authority for purchase of plot were for the purpose of business. Subsequently for unavoidable reasons the required plot was not allotted by Indore Development

Authority due to which the dealership was not allotted and the amount deposited in Maruti Suzuki India Pvt. Ltd was forfeited. He further submitted that for the contract for taking the agency of the vehicles manufactured by Maruti Suzuki India Pvt. Ltd was a business contract entered into with a view to earn profit and it was not a deposit made in order to secure any capital asset or a advantage endeavour in nature. As such the loss clearly cannot be attributed to the business carried on by the assessee. Reliance was placed on following judgments;

- (i) Hon'ble Bombay High Court in the case of Narandas Mathuradas & Co. V/s CIT (1959) 35 ITR 461 (Bom).
- (ii) Hon'ble Supreme Court in the case of Badridas Daga V/s CIT 34 ITR 10
- (iii) Hon'ble Supreme Court in the case of CIT V/s R.B. Rungta & Co. 50 ITR 233
- (iv) Madeva Upendra Sinai Vs. Union of India (1975) 98 ITR 209 (SC)
- (v) Ramchandar Shivnarayan Vs. CIT (1978) 111 ITR 263(SC)

(vi) Jwala Prasad Radha Kishan V/s CIT (1971) 79 ITR 530

(All.)

(vii) I.B.M. World Trade Corpn. V/s CIT (1990) 186 ITR 412

7. Per contra Departmental Representative supported the orders of Ld. CIT(A).

8. We have heard rival contentions and perused the records placed before us. The sole issue raised before us for adjudication is that whether both the lower authorities were justified in treating the forfeiture of earnest money as capital expenditure.

9. Perusal of the records shows that the assessee company applied for dealership of Maruti Suzuki India Ltd. Correspondences of the officials with Maruti Suzuki India Ltd are also placed on record. Amount of Rs.31,50,000/- which included Rs.30,00,000/- as deposit and the remaining amount for application were paid to Maruti Suzuki India Ltd. At the time of application for taking dealership, assessee agreed to purchase Plot No. RA-17, Scheme No.71, Gumasta Nagar, Indore from Indore Development Authority. This plot was approved by the officials of

Maruti Suzuki India Ltd for the purpose of show room. Assessee applied in the tender with the Indore Development Authority for acquiring the plot but the same was not allotted. For this reason Maruti Suzuki India Ltd failed to allot dealership to the company and as per the agreed terms, the amount deposited with Maruti Suzuki India Ltd was forfeited as the Maruti Suzuki India Ltd has to incur various expenses in relation to sending its officials to visit assessee company and other incidental expenses. Thereafter on 14.9.2012 the Board of Directors resolved to write off of the amount deposited with Maruti Suzuki India Ltd as business loss.

10. During the course of assessing proceedings Ld. A.O took a view that the alleged amount cannot be categorized as a bad debts because the alleged amount cannot be termed as bad debt and therefore treated the alleged amount as capital expenditure and disallowed the claim made by the assessee.

11. Now the issue before us is whether the alleged amount is a capital expenditure or revenue expenditure. It can be treated as revenue expenditure if it has been incurred for the business purpose in regular course. This fact is not disputed that the

assessee has entered into the transaction with Maruti Suzuki India Ltd in order to acquire dealership through which it can increase the scope of business as well as to maximize the profit. While going through the communication between the assessee and Maruti Suzuki India Ltd we came across a particular mail from Shri Hardeep S. Brar, Officer In-charge of Maruti Suzuki India Ltd placed at page 111 of the paper book, given to inform the assessee about the forfeiture of the amount. The relevant extract of this mail dated 8.12.2010 is mentioned below:-

“Dear Mr. Aditya Sharma,

We are disappointed to note that there is little progress in the matter so far. Pls find below the chronology of events during the past 3 months without any progress.

1. The proof of possession of the site was to be provided by 7<sup>th</sup> Sep 2010 as per the original letter dated 23<sup>rd</sup> July 2010.
2. This timeline as no fulfilled and meeting was held at our HOWEVER, in Delhi on 13<sup>th</sup> Sept 2010. It was discussed during this meeting that the suitable site options will be provided by 20<sup>th</sup> Sep.
3. However, there was no revert on the matter. Subsequently, CBH(East) during his meeting with you on 28<sup>th</sup> Sep extended timeline to 10<sup>th</sup> Oct.
4. This timeline was not met again and the timeline was extended to 30<sup>th</sup> Oct vide my mail dated 15<sup>th</sup> Oct.

5. During my visit to Indore on 30<sup>th</sup> Oct, there was again no site option shown. Hence, I went along with you and suggested a few sites. You requested for timeline of 10<sup>th</sup> Nov followed by request for extension till 15<sup>th</sup> Nov.
6. You had then sent mail on 17<sup>th</sup> Nov that site has been finalized and you will revert within a week after consulting your architect and Vastu consultant. However, there was no revert on the same.
7. After my insistence vide 29<sup>th</sup> Nov below, it was agreed to show site to Mr. Roy and Mr. Tamal Kar on 3<sup>rd</sup> Dec. However, the site visit was very unsatisfactory and there were shops in front of the site proposed. You will appreciate that we need a site which has a clear frontage, which has been communicated to you in past as well. Hence, the site shown was not acceptable.

Today we have exactly crossed 3 months from the originally agreed timelines and 4 ½ months from the date of issuance of letter. Considering the above points, it is felt that this project is not being taken seriously which is hampering our business in Indore. Our team has invested so much of time in this project but of no avail. We have been patiently waiting to come out with the solution, however, it is not possible to wait any longer considering the circumstances and hence, with heavy heart we have to withdraw this project. Pls be informed that under the circumstances, security amount deposited by you will be forfeited.

Regards,

Hardeep S. Brar

12. The above communication given by the Officer In-charge of Maruti Suzuki India Ltd gives complete series of facts which

nowhere leaves a doubt that the transaction relating to acquiring dealership were entered into in the due course of business and for unavoidable circumstances the deal could not be finalised which lead to loss to the assessee in the shape of forfeiture of amount deposited at Rs.31,50,000/-.

13. We find that Hon'ble jurisdictional High Court in the case of Thackers H.P. & Co. V/s CIT 10 Taxman 187 has held “ *It is well settled that the forfeiture of a security deposit under a contract is a business loss and not capital loss. The security amount deposited under a contract is not for obtaining the contract but for the due performance of its terms. More ever, in the instant case, it was obvious that the contract with the corporation was not a new business started by the assessee but was only a venture in the course of business which the assessee was already carrying on and, therefore it could in no sense be held that the deposit of security was made for acquiring a business. Accordingly, the loss resulting from the forfeiture of security money was a revenue loss*”

14. Hon'ble Bombay High Court in the case of Narandas Mathuradas & Co. V/s CIT (1959) 53 ITR 461 (Bom) has also held

that *“forfeiture of security of a businessman deposited for property carrying out a contract would be a trading loss and the assessee would be entitled to deduct such loss to arrive at the true profits of the business”*.

15. Hon'ble Apex Court in the case of CIT V/s R.B. Rungta & Co. 50 ITR 233 held that *“any loss which occurs in carrying on the business is related to the business operation is entitled to be deducted to arrive at the profits and gains of a business u/s 28 of the Income Tax Act.”*

16. We therefore respectfully following the ratio laid down in the above stated judgments and also in the given facts and circumstances of the case are of the opinion that the alleged earnest money was paid by the assessee to Maruti Suzuki India Ltd in its capacity as a person carrying on business and the contract for taking an agency of vehicle manufactured by Maruti Suzuki India Ltd was a business contract entered into with a view to earn profit and it was not made or secure any capital asset or a advantage endeavour in nature. As such the alleged amount though is not covered by the provisions of Section 36(1)(vii) of the

Bhagirath Coach & Metal Fabricators Pvt. Ltd  
ITA No.351/Ind/2017

Act but certainly it will be allowable u/s 37(1) of the Act. We accordingly allow Ground No.1 raised by the assessee and direct the Ld. A.O to delete the disallowance of Rs.31,50,000/-.

17. Ground No.2 is general in nature which needs no adjudication.

18. In the result appeal of the assessee is allowed.

The order pronounced in the open Court on 19.12.2018.

Sd/-

Sd/-

**( KUL BHARAT )**  
**JUDICIAL MEMBER**

**(MANISH BORAD)**  
**ACCOUNTANT MEMBER**

दिनांक /Dated : 19 December, 2018  
/Dev

Copy to: The Appellant/Respondent/CIT concerned/CIT(A)  
concerned/ DR, ITAT, Indore/Guard file.

By Order,  
Asstt.Registrar, I.T.A.T., Indore