

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 5233/Del/2015
(Assessment Year: 2011-12)

C1 India Pvt. Ltd, D-5, 3 rd Floor, Defence Colony, New Delhi PAN: AABCC4078L	Vs.	DCIT, Central Circle-3, New Delhi
(Appellant)		(Respondent)

Assessee by :	Ms. Aayushi Gupta, Adv
Revenue by:	Ms. Rinku Singh, Sr. DR
Date of Hearing	16/01/2019
Date of pronouncement	18/02/2019

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id CIT(A)-23, New Delhi dated 12.06.2015 for the Assessment Year 2011-12.
2. The assessee has raised the following grounds of appeal:-
 - “1. *That the order of the Id CIT(A) dated 12.06.2015 is bad in law and on facts.*
 2. *That the Id CIT(A) has erred in upholding the disallowance of write off of advance paid as deposit for premises to be taken on rent amounting to Rs. 10,00,000/-.*
 - 2.1 *that the Id CIT(A) ignored the fact that the appellant company had paid the same amount to M/s. KG Drugs Pvt. Ltd as a security deposit for taking property on rent which was forfeited during the course of business. Such business loss is revenue in nature and rightly claimed u/s 37 of the Act.”*
3. Brief facts of the case shows that assessee is a company, filed return of income declaring income of INR 3 727359/- on 30/09/2011. The case of the assessee company was selected for scrutiny under CASS of the act. As addition was made in the income of the assessee for earlier years for non-payment of service tax same was also made for the current year. The assessee also claimed bad debts of 723607/-, the assessee was asked to

show that admissible of the same along with the details that in which year the same was recognized as income. It was further noted that assessee has claimed advance written off amounting to INR 2 136704/- and assessee was asked to submit a note about the justification for deductible at of the same. Reply was received and therefore the same was added. Consequently the total income of the assessee was assessed at INR 6 866021 against the total income returned of INR 3 727359/- by passing an assessment order u/s 143 (3) of the act vide order dated 7/3/2014.

4. The assessee preferred an appeal before the learned CIT – A, New Delhi who passed an order dated 12/6/2015 wherein most of the claim of the assessee were decided however he confirmed the disallowance of INR 1,000,000 out of the write off of security deposit for taking property on rent which was forfeited during the course of the business. Therefore assessee is in appeal before us.
5. The learned authorised representative submitted that appellant company deals in empowering the clients across the industry to automate the manual procurement process through technological expert eyes, deep process knowledge and innovation. With the diverse portfolio of the product the appellant is pioneer in providing a procurement services. It was stated that during the year under consideration the appellant company had decided to take the premises on lease at Hyderabad from M/s KG drugs private limited for the purpose of setting of its branch office there. As per the lease agreement executed between the parties the premises was leased out to the appellant from 01/10/2010 for a monthly rent of INR 18 3333 on refundable security deposit of INR 1,100,000. The assessee deposited the same as a security deposit however on account of Lack of business opportunity and selection of inappropriate location and unexpected growth in that market and certain other reasons the company could not set up its branch office in Hyderabad and did not occupy the premises taken on lease even for the single day. As per the clause 19 of the lease agreement there was also a lock in period of 6 months during which both the parties could not terminate the agreement in the lease was required to pay the rent of the lock in period even if the premises remained vacant. As the property was not occupied even for the lock in period as per clause 19 of the agreement,

the failure on account of the assessee resulted into the forfeiture of the security deposit is a rent of the lock in period. The learned CIT – A has confirmed the disallowance of claim made by the learned assessing officer stating that it is not deductible revenue expenditure. However she submitted that the learned CIT – A also referred that it is the money which has been lost by the appellant. She reiterated the submissions made before the lower authorities and further relied upon the decision of the coordinate bench in case of home care retail Marts private limited in ITA number 6484/MUM/2014 where on the similar facts the deduction was allowed. Therefore she submitted that the issue squarely covered in favour of the assessee. She further relied upon the decision of the Fab India overseas private limited in ITA number 199/del/2012 where on the identical facts and circumstances security deposit forfeited was held to be revenue expenditure allowable under section 28 of the income tax act. She further relied upon the decision of the coordinate bench in AT&T Communication services India private limited 91 taxmann.com 58. She further submitted that even otherwise it is not a capital expenditure is no capital asset has come into existence. She relied on 102 taxmann 206 for the above proposition. She further relied on the decision of the coordinate bench in case of outworks solutions private limited vs. joint Commissioner of income tax (ITA number 4234/del/2015) wherein the above expenditure of the forfeiture of security deposit is allowed as a deduction.

6. The learned senior departmental representative vehemently submitted that the forfeiture of security deposit cannot be said to be an expenditure incurred by the assessee. She further stated that such expenditure cannot be held to be revenue expenditure. She further stated that it is not a bad debt as claimed by the assessee. Therefore she submitted that the above disallowance made by the lower authorities may be upheld.
7. We have carefully considered the rival contention and perused the orders of the lower authorities. We have also produced the several decisions relied upon by the learned authorised representative. Admittedly the assessee was to take the premises on rent and for which the security deposit was paid by the assessee. Later on for some reasons the assessee could not occupy the above premises and therefore in terms of the agreement entered

into by the assessee with the landlord, the above deposit was forfeited. It is not the case of the revenue that the above deposit was not forfeited but is still receivable by the assessee. It is not also the claim of the revenue that it was not forfeited during the year. In view of that it is apparent that the forfeiture of the above security deposit for taking the premises on rent was revenue in nature as it did not confer any benefit of enduring nature on assessee. Further the loss also occurred during the year. It is also not disputed by the revenue that assessee was to acquire the premises on rent for its business. Admittedly assessee wanted to open a branch office in that particular city but could not, for certain reasons. Therefore it is apparent that the amount of expenditure of security deposit paid by the assessee was for the purposes of the business. Admittedly it is not a bad debt written off by the assessee. Now the only issue is whether it is and expenditure allowable as deduction under section 37 (1) or under section 28 itself. According to us the above loss has been incurred by the assessee during the course of the business which has been crystallized during the year same is allowable as a deduction u/s 28 of the income tax act itself to the assessee. In view of this the appeal of the assessee is allowed with a direction to the learned assessing officer to allow the forfeiture of deposit as is loss u/s 28 of the income tax act. Accordingly the orders of the lower authorities are reversed.

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

Order pronounced in the open court on 18/02/2019.

-Sd/-

(H.S.SIDHU)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 18/02/2019
Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi