

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

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
&  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No. 3187/Del/2014  
Assessment Year: 2009-10**

Bikanervala Foods Pvt. Ltd. A-28, Lawrence Road, Industrial Area, New Delhi. <b>PAN No. AAACB0611P</b>	vs	ACIT Circle-3(1) New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Assessee by</b>	<b>Shri Deepak Goel, FCA</b>
<b>Revenue by</b>	<b>Shri P.V. Gupta, Sr. DR</b>

<b>Date of Hearing</b>	<b>01.07.2019</b>
<b>Date of Pronouncement</b>	<b>03.07.2019</b>

**ORDER**

**PER SHRI BHAVNESH SAINI, J.M.**

This appeal by assessee has been directed against the order of Ld. CIT(Appeals)-VI, New Delhi dated 28.02.2014 for AY 2009-10.

2. This appeal was earlier dismissed for default, however, the ex - parte order was recalled by allowing miscellaneous application of the assessee. The appeal was, therefore, restored. Appeal is fixed for hearing today, however, both parties sought adjournment which is rejected being the old case.

3. We have heard Ld. Representatives of both the parties and perused the findings of the authorities below.

4. Ground no. 1 is general and need no adjudication.

5. On ground no. 2 assessee challenged the addition of Rs. 1 lakh paid to M/s Halwais Bakers & Restaurants Association. The assessee submitted bills of member and subscription fees paid to M/s Halwais Bakers & Restaurants Association. The AO, however, noted that the expenses have not been incurred wholly and exclusively for the purpose of business as the same are providing enduring benefit to the assessee. The AO accordingly made addition of Rs. 1 lakh. The assessee submitted before Ld. CIT(A) that this is a Trade Association of members that are engaged in the business of manufacturing and trading of sweets, namkeens, bakery products and running of restaurants, etc. in which the assessee company is primarily engaged in. The main objects of the Trade Association are as under:

- a) *“To encourage, promote and protect the interests of Proprietors and other persons interested or concerned in the business of Halwais, Bakers or Restaurants and other allied trades and to take all such steps as may be considered expedient for that purpose, including the provision of legal and other professional advice and assistance.*
- b) *To collect and disseminate statistical and other information relating to Halwais, Bakers, Restaurants and kindred interests and to diffuse among its members information on all matters affecting Halwais, Bakers and all allied trades and to print, publish, issue and circulate such papers, periodicals, books, circulars, pamphlets and other literature*

*as may seem conducive to any of these objects or calculated to advance those interest.*

*c) To consider all questions affecting the interests of Halwais, Bakers and Restaurants and any legislation bye-laws or regulations affecting the same, and to initiate, support or oppose such legislation or regulation either by petition, public meetings or otherwise.”*

5.1 The assessee being engaged in the same line of business, the membership has direct nexus with the business interests of the assessee. This expenditure is, therefore, wholly and exclusively incurred for the purpose of business of the assessee and is, therefore, deductible u/s 37 of the Act. It was clarified that though the assessee is nominated as life member of the association, however, to continue to avail the benefits of the membership of Trade Association, the assessee is also required to pay the annual membership. On similar facts, the Hon'ble Delhi High Court in the case of CIT vs. Engineers India Ltd. 239 ITR 237 has held that no enduring benefits results to the assessee by payment of initial membership, if annual membership also needs to be paid by the assessee. Ld. CIT(A) noted that the payment is made on account of nomination of Shri Shyam Sunder, MD as a Chief Patron by way of designated life member of the association. Therefore, the deduction is not allowable. Ld. CIT(A) accordingly confirmed the addition.

6. On ground no. 3 assessee challenged the addition of Rs. 2,16,963/- out of depreciation. During the year, under reference assessee company has claimed loss on disposal of fixed assets of

impugned amount. The assessee was required to furnish details of these losses and also to show cause as to why the claim of depreciation on units sold/vacated at Surajpur be not treated as slump sale u/s 2(42C) of I.T. Act. The assessee explained before AO that assessee company was running a manufacturing unit in rented premises at Surajpur Industrial Area for manufacturing weaning food for supply as per UP Government tenders. During the assessment year under appeal, the rented arrangement came to an end. According, many of the fixed assets that were installed at the rented premises had to be removed from the premises to give vacant possession to the landlord, whereas some of the machinery and equipment could be shifted to new premises. Some other which were not in a good condition or were broken during dismantling had to be discarded and sold as scrap. In this process, the assessee company suffered losses of the impugned amount. The loss incurred on disposal of the assets was added back in the computation of income. Scrap of these assets was sold to various scrap dealers. Copies of sale of bills of scrap were filed. It was clarified that there was no slump sale of any business or units or undertaking of the assessee company within the meaning of section 2(42C) of the IT Act. The assessee company had only shifted its industrial undertaking to new premises at Greater Noida and continued its operation. The AO, however, did not accept the contention of the assessee and noted that assessee claimed depreciation on the assets which is not in existence. It was also noticed that none of the units of the assessee company

had producing goods independently which means fixed assets of it are separable from the block of assets of assessee company whereon depreciation has been charged. The AO considering it to be a slump sale made the addition of Rs. 2,16,963/-.

7. The assessee reiterated the submissions before Ld. CIT(A). It was submitted that company had only shifted its industrial undertaking to a new premises at Greater Noida. Therefore, addition is unjustified. The Ld. CIT(A) on the same reasoning as given by the AO confirmed the addition.

8. We have considered the rival submissions. It is not in dispute that assessee company is engaged in the business of manufacturing/trading of sweets, namkeens, weaning foods and other allied products. The assessee became member of the Trade Association M/s Halwai bakers and restaurant association and paid Rs. 1 lakh. The assessee submitted bills of membership and subscription fees paid which have not been doubted by the authorities below. It is also not in dispute that the trade association where assessee has become member was having the similar objects of the trade which is carried out by the assessee. Thus, the assessee become member of the trade association which was meant to encourage, promote and protect the interest of all the persons interested or concerned in the business of Halwai, bakers or restaurants and other allied trades. Therefore, to safeguard the business interest of the assessee, if assessee become member of such a Trade Association, there was nothing

illegal. The assessee has incurred this expenditure wholly and exclusively for the benefit of business. The assessee also explained that apart from paying the life membership fees, it was also required to pay annual membership. Thus, the membership of the trade association has direct nexus with the business interest of the assessee. Thus, there is no enduring benefit arose to the assessee. The decision relied upon by the assessee in the case of Engineer India Ltd. (supra) squarely applied to the facts of the case. Further, the Ld. CIT(A) rejected the claim of assessee because MD of the assessee company Shri Shyam Sunder was nominated as Chief Patron by way of the designated life member of the association. Such an issue would not be adverse in nature against the assessee because company is a legal entity and somebody has to represent before the trade association on behalf of the assessee company. If the assessee company has nominated its MD to represent the assessee company before trade association, there is nothing illegal to disallow the expenses. The company being a legal entity itself cannot represent before the Trade Association. Therefore, the reasoning given by the CIT(A) is wholly incorrect to disallow the amount of the expenditure. It, therefore, appears that assessee incurred this expenditure wholly and exclusively for the purpose of business of the assessee to safeguard its interest. The amount is, therefore, deductible expenditure. We, accordingly, set aside the orders of the authorities below and delete the addition of Rs. 1 lakh. Ground no. 2 of appeal of assessee is allowed.

9. As regards the addition of Rs. 2,16,963/-, the assessee explained that during assessment year under appeal, it was running a manufacturing unit in rented premises at Surajpur Industrial Area for manufacturing, weaning food for supply as per UP Government tender. This arrangement came to an end in assessment year under appeal. Accordingly, many of the fixed assets that were installed at the rented premises had to be removed from the premises to give vacant possession to the landlord. Some of the machinery and equipment could be shifted to new premises, however, some of the machinery and equipment which were not in a good condition and broken during dismantling have been discarded and sold as scrap. The assessee in their process suffered the loss and as such, the scrap was sold. The assessee filed bills of the scrap sold before the authorities below. These facts clearly show that assessee suffered loss on account of shifting of the rented premises. Therefore, it could not be treated as slump sale of business unit as is held by the authorities below. Thus, loss claimed by the assessee was allowable in favour of the assessee. The AO further noted that assessee had claimed depreciation on the asset of Rs. 21,69,636/- which is not in existence.

9.1 Ld. Counsel for assessee in the written submission explained this issue that as per the provisions of sections 32 and 2(11) of the Act read with Rule 5 of the Rules, a block consists of same category of assets with same rate of depreciation. As in the instant case **neither the block of plant and machinery carrying**

**15% depreciation cease to exist nor the sale price of machines scrap exceeds WDV** of said block, therefore as per section 32 read with section 50 of the Act, the Appellant correctly reduced only the actual sale price from WDV of relevant block of assets and correctly claimed depreciation on the balance value. Therefore, the depreciation claimed by the Appellant as per provisions of section 32 of the Act is a valid claim and does not warrant any disallowance. Since, the entire findings of the authorities below are based on the fact that it was a slump sale which is not justified in the matter. Therefore, there was no justification to make the addition of Rs. 2,16,963/-. We, accordingly, set aside the orders of the authorities below and delete the addition. This ground of appeal is allowed.

10. No other point is raised in the appeal.

11. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court.

Sd/-

**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

Dated: 03/07/2019

\*Kavita Arora

Sd/-

**(BHAVNESH SAINI)**  
**JUDICIAL MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	01.07.2019/ 02.07.2019
Date on which the typed draft is placed before the dictating Member	01.07.2019/ 02.07.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	03.07.2019
Date on which the fair order is placed before the Dictating Member for pronouncement	03.07.2019
Date on which the fair order comes back to the Sr. PS/PS	03.07.2019
Date on which the final order is uploaded on the website of ITAT	04.07.2019
Date on which the file goes to the Bench Clerk	04.07.2019
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

