

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'E' : NEW DELHI)**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
and
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No.172/Del./2014
(ASSESSMENT YEAR : 2011-12)**

ACIT,
Central Circle 19,
New Delhi.

vs. M/s. New Hind Enterprises Pvt. Ltd.,
Parsvnath Metro Power,
Near Shahdara Metro Station,
Shahdara,
Delhi – 110 032.

(PAN : AABCN2536L)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Ms. Rano Jain, Advocate
Ms. Mansi Jain, CA

REVENUE BY : Ms. Pramita M. Biswas, CIT DR

Date of Hearing : 21.08.2019

Date of Order : 11.09.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, ACIT, Central Circle – 19, New Delhi (hereinafter referred to as the 'Revenue') by filing the present appeal sought to set aside the impugned order dated 07.10.2013 passed by the Commissioner of Income - tax (Appeals)-XXXIII, New Delhi qua the assessment year 2011-12 on the grounds inter alia that :-

“1. On the facts and in the circumstances of the case, the CIT(A) has erred in deleting the disallowance of

Rs.8,33,42,123/- made by the AO on account of bad debts claimed.

2. On the facts and in the circumstances of the case, the CIT(A) has erred in admitting additional evidence without following Rule 46A as laid down by the Hon'ble Delhi High Court in the case of Manish Build Well Pvt. Ltd. 204 Taxman 106.

3. On the facts and in the circumstances of the case, the CIT(A) has erred not considering the facts of the case that the assessee has filed writ petitions and the matter is subjudiced before the Hon'ble Courts and, hence, the advances cannot be treated as bad debts or crystallized loss.

4. On the facts and in the circumstances of the case, the CIT(A) has erred in deleting the disallowance of Rs. 33,400/- made by the AO under section 14A of the Income Tax Act, 1961 read with Rule 8D of the Income Tax Rules, 1961

5. The order of the CIT(A) is erroneous and is not tenable on facts and in law.”

2. Briefly stated the facts necessary for adjudication of the issue at hand are : Assessee company is engaged in dealing in procurement and construction of property. During the year under assessment, assessee claimed bad debt expenses to the tune of Rs.8,33,42,123/- and Assessing Officer (AO) has called upon the assessee to provide the ledger copy of business transaction leading to bad debts along with support evidence. Declining the contentions raised by the assessee that bad debts are advance given to the farmers/agriculturists, AO proceeded to make addition of Rs.8,33,42,123/- on the ground that the farmers have not furnished the details of advance received by them from the assessee.

AO also made addition of Rs.33,400/- by invoking the provisions contained under section 14A of the Income-tax Act, 1961 (for short 'the Act') read with Rule 8D on account of disallowance of expenses.

3. Assessee carried the matter by way of an appeal before the Id. CIT (A) who has dismissed the appeal by allowing the appeal. Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Undisputedly, assessee is into the business of real estate and land development. It is also not in dispute that the assessee company had advanced an amount of Rs.39.50 crores for purchase of land at Sonapat for township out of which the land has been registered in its name to the tune of Rs.27.33 crores. Assessee company has claimed bad debts to the tune of Rs.8,33,42,123/- which has been disallowed by the AO.

6. It is the case of the assessee that since the land in question has been acquired by the Government, the farmers did not return the advance taken from the assessee company for which he has filed a case in the Hon'ble High Court. We are of the considered view that when payment made to the farmers which has become subsequently bad debt has not been disputed by the AO who has accepted the account books

and qua the land in question, the land owners are in litigation with the Government for requisition of the land and other civil and criminal litigation is also pending, the loss suffered by the assessee on account of forfeiture of advances by the farmers is a business loss which is an allowable expenses.

7. Moreover, in case, due to termination of litigation in the case of assessee company, the advances made to the farmers are returned then at that point of time, the amount shall be considered for tax. Ld. CIT(A) has thrashed the issue at length in the light of the decision rendered by Hon'ble Delhi High Court as well as the Tribunal and reached the legal and valid conclusion.

8. During the course of argument, the ld. DR for the Revenue has failed to point out as to which piece of additional evidence has been entertained by the ld. CIT (A) without affording opportunity of being heard to the AO rather all the documents as to the litigation between farmers & Government and civil & criminal litigation between assessee & farmers are already on record and were also in the public domain. So, we find no illegality or perversity in the impugned order passed by the ld. CIT (A) deleting the disallowance of Rs.8,33,42,123/- made by the AO on account of bad debts claimed by treating the same as business loss.

9. So far as question of deletion of addition of Rs.33,400/- made by the AO u/s 14A of the Act is concerned, when undisputedly the assessee

has come up with specific plea that no expenditure has been incurred for earning exempt income nor the assessee has earned any exempt income during the year under assessment, there is no question of making disallowance by mechanically invoking the provisions contained u/s 14A read with Rule 8D. So, when there is no exempt income, no disallowance can be made and as such, ld. CIT (A) has rightly deleted the addition made u/s 14A read with Rule 8D and findings returned need no interference.

7. Resultantly, the appeal filed by the Revenue is hereby dismissed.

Order pronounced in open court on this 11th day of September, 2019.

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Dated the 11th day of September, 2019/TS

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-XXXIII, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**