

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

Before Sh. K. Narashima Chary, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 3280/Del./2019 : Asstt. Year : 2013-14

ITA No. 3281/Del./2019 : Asstt. Year : 2014-15

Clyde Bergemann India Pvt. Ltd., S-1, 2 nd Floor, Sachdeva Arcade, B-15, DDA Local Shopping Centre, Mayur Vihar-II, Delhi-110091	Vs	Pr. CIT, Central-II, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AADCC0763C		

**Assessee by : Sh. Saubhagya Aggarwal, Adv.
Revenue by : Sh. Raja Ram Sah, CIT DR**

Date of Hearing: 11.09.2019

Date of Pronouncement: 13.09.2019

ORDER

Per Bench:

Since, the issues involved in all these appeals are common, they were heard together and are being disposed off by common order.

2. In ITA No.3280/Del/2019, following grounds have been raised by the assessee:

"1. That on the facts and in the circumstances of the case, the order passed by the Ld. CIT u/s 263 of the Act is bad in law and is liable to be quashed.

2. That on the facts and in the circumstances of the case the Ld. CIT was not justified in initiating proceedings u/s 263 as the impugned assessment order is neither erroneous nor prejudicial to the interest of revenue.

3. That the Ld. Pr. CIT has given direction u/s 263 of the Act without considering various reply filed by the appellant in response to show cause notice u/s 263 of the Act.

4. That on the facts and circumstances of the case, the learned Commissioner of Income Tax is erred in law giving directions u/s 263 of the Income Tax Act as the A.O. has framed the impugned order u/s 143(3) after making proper enquiry.

5. That the Id. CIT erred in exercising the power of revision for the purpose of directing the A.O. to hold another investigation.

6. That the Id. CIT was not justified in holding that the so called provision for bad debts should have been added back to the income of the appellant though the AO completed the assessment after making proper verification in this regard as the alleged Rs.10,26,150/- debited to profit & loss account under the head provision for bad and doubtful debt is per se is bad debt allowable u/s 37 of the Act.

7. That the Id. CIT exceeded his jurisdiction by directing the Ld. A.O. as to how the fresh assessment should be framed by him.

8. That the direction given by the CIT u/s 115JB of the Act is consequential in nature and deserve to be deleted in view of above grounds of appeal.

9. That direction given by CIT for addition u/s 36(i)(va) r.w.s. 2(24)(x) of the Act is wrong in view of various judicial pronouncements by various courts of the country including Hon'ble Delhi High Court.

10. That the so-called direction given by the Ld. CIT has no merit as the appellant never furnished any MOU during assessment proceedings to claim bad debts.

11. That the appellant craves leave to add, alter or delete all or any of the grounds of appeal."

Therefore it is prayed that the directions u/s 263 of the Act, may please be declared as void or any other suitable order as the Hon'ble Bench may deem fit be passed."

3. All the grounds revolve around two issues:

(a) Loss of revenue on account of non-examination of the bad debts and consequently re-computation of profits u/s. 115JB.

(b) Invoking provisions of Section 36(1)(va) - EPF and ESI.

Bad debts

4. The Id. PCIT in the order u/s 263 of the Act held that the Assessing Officer has not investigated and examined the issue of bad debts claimed by the assessee of Rs.10.26 lakhs and allowed it without proper examination and verification. The Id. PCIT held that the assessee claimed bad debts based on the MoU and the Assessing Officer has ignored the said MoU while allowing the deduction.

5. The Id. AR argued that the issue of provision for doubtful debts (bad debts) has been inquired by the Assessing Officer vide the questionnaire issued dated 11.12.2014 at point no. 35, 36 & 44 for which the assessee replied vide letter dated 04.03.2015 and furnished details as sought at point no. 6 of the reply. The details of the bad debts in case of two companies along with the address and the amount have already been furnished to the Assessing Officer. It was argued that the assessee company claimed bad debts of Rs.10,26,150/- under Section 36(1)(vii) of the Act. It was argued that the assessee written off this amount under the head "Provisions for bad debts", but in fact besides debiting the Profit and Loss Account, the assessee company has also simultaneously deducted the

said provision from its accounts by reducing the corresponding amount from debtors by Rs.10,26,150/- in the asset side of the Balance Sheet consequently, at the end of the year, the figure under the head "debtors/account receivable" on the asset side of the Balance Sheet was shown at Rs.12,36,03,189/- as net of alleged "provision for bad debt".

6. The Id. DR relied on the order of the Id. PCIT.

7. Heard the arguments of both the parties and perused the material available on record.

8. We find that from the details given before the Id. PCIT the bad debts have been claimed on the income booked in the financial year 2011-12 vide sale invoice no. 35 dated 11.11.2011 and also for the sale invoice dated 18.08.2012. This amounts have been written off owing to adjustment of late delivery charges by the debtors as per clause (vi) of the purchase order effectively meaning that these are the short receipts out of the total sales. The sales have already been accounted fully, hence the amounts pertaining to the short receipts have to be allowed as deduction. In other words, it amounts to a deduction or discount on the invoice price. Since, on the face of record it is proved that there is no loss of revenue as per the provisions of the Income Tax Act, without going much into the various aspects of Section 263, we hereby set aside the order of the Id. PCIT on this ground. Since, the bad debts written off in the books of account are found to be allowable, the consequential issue of re-computation of profit u/s 115JB does not arise.

Section 36(1)(va) - EPF and ESI

9. At the outset, it was brought to our notice, the contribution towards EPF and ESI have been deposited by the assessee before filing of the Income Tax Return u/s 139(1) of the Act. The assessee has produced the challans before the Assessing Officer vide letter dated 04.03.2015 and the Tax Audit Report filed along with the return has duly mentioned this fact. Since, the action of the assessee is in accordance with the provisions of Section 43B of the Act and the expenses are allowable, we cannot uphold the order of Id. PCIT on this ground.

10. In the result, both the appeals of the assessee are allowed.
(Order Pronounced in the Open Court on 13/09/2019).

Sd/-

(K. Narashima Chary)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 13/09/2019

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR