

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F": NEW DELHI  
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 6086/Del/2016  
(Assessment Year: 2013-14)

Panasonic Consumer India Pvt. Ltd, K-39, Connaught Place, New Delhi PAN: AAACN1498G (Appellant)	Vs.	ITO, Ward-19(3), New Delhi (Respondent)
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Assessee by :	Shri Pradeep Dinodia, CA
Revenue by:	Shri Surender Pal, Sr. DR
Date of Hearing	01/08/2019
Date of pronouncement	31/10/2019

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id CIT(A)-12, New Delhi dated 18.10.2016 for the Assessment Year 2013-14, wherein, the addition on account of disallowance of Rs. 5586993/- is confirmed. The assessee raised effectively 8 grounds of appeal, however all of them are against sustaining the disallowance of Rs. 5214980/-.
2. The assessee has raised the following grounds of appeal:-
  - “1. That the order of CIT(A) is bad in law.
  2. That the Ld. CIT(A) has grossly erred in law and on facts and circumstances of the case in sustaining the disallowance of Rs.52,14,980/- on wholly illegal, erroneous and untenable grounds.
  3. That the Ld. CIT(A) has grossly erred in law and on facts and circumstances of the case in holding that there is no business income during the year under consideration.
  3. That the Ld. CIT(A) has erred in law in not appreciating that “provision written back” is admittedly a business income as per the provisions of Sec 41 and disclosing it under “Other Income” in financials is the requirement of Companies Act.
  4. That the Ld. CIT(A) has failed to appreciate that the assessee has stopped the primary business operations but the business has not yet closed.

5. *The Ld. CIT(A) has failed to appreciate that in an corporate entity no expenses can be incurred for non-business or personal purpose.*
  6. *That the Ld. CIT(A) has erred on facts in alleging that the assessee has not submitted any detail in respect of expenses incurred.*
  7. *That the Ld. CIT(A) failed to appreciate and follow the order of CIT(A) order in earlier year on identical facts.*
  8. *That each ground is independent of and without prejudice to the other grounds raised herein.”*
3. Brief facts of the case shows that the assessee is a company filed its return of income on 14.09.2013 declaring Nil income. The assessment u/s 143(3) was made on 29.02.2016 by ITO, Ward-19(3), New Delhi, wherein, the addition of Rs. 5214676/- was made. The above addition was made which is described in para 2 of the order as under:-

*“2. Disallowance of Expense under section 37*

*Assessee Company was engaged in the business of trading and marketing consumer electronics goods. However, no such operation has been carried out as is evident from reply of the assessee.. In reply vide letter dt. 02.02.2016 it has been stated that the assessee has wound-up its business operations and has not undertaken any business activity since 2006. During the year under consideration the assessee has declared only other income as per schedule 14 which shows the following;*

<i>Interest income on term deposits</i>	<i>1,97,23,408/-</i>
<i>Bad debts Recovered</i>	<i>8,79,555/-</i>
<i>Provision no longer required written back</i>	<i>14,423/-</i>
	<i>2.06.17.386/-</i>

*3. Since the assessee company had not undertaken any business activities during the year -and only income from other sources has been shown, vide note sheet entry dated 21.01.2016 the assessee was show caused as to why the expenses debited to P&L account be not disallowed as the same had not been incurred wholly and exclusively for the purpose of business and also there being no revenue from operation. The assessee, in its letter dated 02.02.2016 has submitted its reply & placed reliance on various case laws with respect to defining the terms “Wholly & exclusively” & “for the purpose of business” to allow expenditure under provision of section 37.-*

*In order to allow the expenditure u/s 37, the following conditions have to be fulfilled:*

- *It must be expenditure in the nature of revenue expenditure and not in the nature of capital expenditure*

- *It must be laid out or expended wholly and exclusively for the purpose of business or profession.*
- *It must not be of the nature described in section 30 to 36*

4. *Assessee's submissions have been considered. In this case the condition for expenses being wholly and exclusively for the purpose of business or profession has not been satisfied by the assessee, as in its reply dt 02.02.2016 the assessee has itself accepted that there is no business activity since 2006. This condition having not been satisfied by the assessee, as it had not done any business during the year, the facts of the cases as quoted by the assessee are different from the facts of the case of the assessee itself with respect to the basic argument that in the case of the assessee there was no business activity carried on during the year, in fact in the case of the assessee business activities itself have ceased to exist from the year 2006. The matter of allowability of expenditure in case of cessation of the business activity has been elaborately considered in the following cases reliance on which has been made while analyzing the facts of the case of the assessee, and it is therefore concluded that expense incurred after cessation of business activity are not allowable as deduction under section 37:*

*[1967] 65ITR 638 (SC) L.M. Chhabda and Sons v. Commissioner of Income-tax*

*Section 37(1) of the Income-tax Act, 1961 [Corresponding to section 10(1) of the Indian Income-tax Act, 1922] - Business expenditure — Allowability of - Assessment year 1955-56 — Whether if an assessee carries on several distinct and independent businesses, and one of such businesses is closed before previous year, he cannot claim allowance under section 10 of Act of 1922 of an outgoing attributable to business which is closed against income of his other businesses in that year - Held, yes — Assessee was lessor of a cinema theatre - After expiry of lease landlord filed an action in civil court in ejectment against assessee and obtained a decree for possession of theatre and an order for payment of mesne profits - Assessee claimed parts of mesne profits as allowance for computation of income from business of exhibiting films - ITO disallowed claim of assessee on ground that business of cinema theatre in question was not carried out during relevant previous year - Appeal of assessee before AAC was also failed - Tribunal also disallowed claim of assessee observing that assessee was acquiring various theatres from time to time either on lease or otherwise and run each of them independently with separate identifiable books; opening of a new theatre or closure of another would not affect working of remaining ones — High Court affirmed Tribunal's order - Whether since there was no evidence about unity of control and management, or inter-relation of business, or employment of same staff to run business, or possibility of one theatre being closed without affecting rest of the business, on facts found by Tribunal, it was difficult to hold that assessee had made out their case that venture of cinema theatre in*

*question was a part of a general business of exhibiting films in cinema theatres carried on by assesseees - Held, yes - Whether, therefore, assessee's claim was rightly disallowed by authorities below - Held, yes*

*[1999] 107 TAXMAN 544 (DELHI) HIGH COURT OF DELHI Dalmia Dairy Industries Ltd.v. Commissioner of Income-tax*

*Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of Assessment years 1967-68 16 1972-73 - Assessee engaged in manufacture and sale of cement sold its factories for a consideration of supply of cement to it for sale in market - On buyer's default assessee incurred certain expenses to realize its claim - Whether merely because sale consideration of capital assets was to be received in form of goods and not in cash, expenditure incurred to realise said claim would become revenue expenditure Incurred wholly and exclusively for purpose of business - Held, no*

#### FACTS

*The assessee, a public limited company incorporated in India, was engaged in the manufacture and sale of cement with its factories in Pakistan. It transferred its factories to PPCIL under a sale agreement on 30-9-1964 and agreed to receive cement in lieu of the payments in order to sell it in India. On PPCIL's failure to supply cement, the assessee-company filed claim against the National Bank of Pakistan, a guarantor, and incurred certain expenses for recovery of the said claim.*

*The expenses were disallowed by the ITO holding them as capital expenses. He rejected the assessee's argument that these expenses were incurred in salvaging the assets in the running business and not for realising the capital. The assessee's appeal before the AAC and the Tribunal failed.*

*On reference :*

*HELD*

*5. A perusal of the P&L shows that the following expenses have been debited by the assessee company*

<i>Employee benefit</i>	<i>Rs. 6,27,683/-</i>
<i>Other expenses</i>	<i>Rs. 55,86,993/-</i>

*In order to be deductible as business expenditure, the amount in question must fulfill twin conditions, namely, (i) the expenditure must be laid out wholly and exclusively for the purpose of the assessee's business, and (ii) it should not be an expenditure of a capital nature. Fulfillment of both the conditions is sine qua non for qualifying for deduction under section 37. In this view of the matter, the contention of the assessee that whenever expenditure is incurred in the course of the business, it has to be revenue in nature had to be rejected. Section 37 itself postulates a contingency of expenditure incurred wholly and exclusively for the purpose of the business to be of capital nature.*

*The expenditure in question did not fulfill even the aforesaid first condition. Though the scope and ambit of the expression 'for the purpose of business' is very wide and may include expenditure of diverse nature but howsoever wide the meaning of the expression 'for the purpose of the business' may be. its limits are implicit in it 'The purpose shall be for the purpose of the business, that is to say, the expenditure incurred shall be for the carrying on of the business and the assessee shall incur it in his capacity as a person carrying on the business'. In other words, only that expenditure is allowable under section 37 which is intimately and directly connected with the actual running of the assessee's business activity. It has to be shown that not only the expenditure was wholly and exclusively laid out but it was so laid out for the purpose of the assessee's normal business activity. /*

*In the instant case, admittedly, the expenditure incurred for pursuing its claim against National Bank of Pakistan was in connection with the assessee's business ventures In Pakistan, which stood transferred to PPCIL with effect from 1-10-1962.*

*Since then the assessee did not have any business in Pakistan which it could be said to be 'carrying on' during the relevant previous year, its business operations in Pakistan having come to a close. The contention of the assessee that since the litigation expenses were incurred to recover the sale price of the cement which was to be supplied to satisfy the sale consideration of the two factories and, therefore, the same having been incurred wholly and exclusively for the purpose of the assessee's business were allowable under section 37, was without any merit and, accordingly, had to be rejected.*

*Employee benefit consists of salary, allowances and bonus, contribution to PF, Gratuity and staff welfare. In respect of these expenses the assessee has filed certain details were filed which do not contain even the name of the employees or the proof for receipt of salary from the assessee company. The assessee company has also not given any note as to what duties these employees were performing when no business has been carried out by the assessee company during the year. Therefore, it cannot be said that the salary and allowances were incurred for carrying on of business of the company.*

*With respect to other expenses, these consist of office maintenance, rates and taxes, travelling, communication, legal expenses, bank charges and misc expenses etc. The assessee company has not submitted proper details with evidences substantiating its claim that the expenses claimed by it are wholly and exclusively for its business purpose.! As discussed above, since no business has been carried out by the assessee company during this year, these expenses are not allowable u/s 37 of the Act. [However, the assessee company is earning income based on other sources and to earn such income it needs some expenses for functioning of the assessee company such as office maintenance, travelling, bank charges etc. Accordingly, in the absence of proper details as well as looking to the needs of expenses*

*for normal functioning of the assessee company which is earning income from other sources only, I am left with no option except to allow the expenditure x U: for normal functioning of the company for the lump sum basis. 'Accordingly I hereby allow lump sum amount of Rs. 10,00,000/- out of Rs.62,14,676/- which is claimed by the assessee company and rest of the expenditure i.e. Rs.52,14,676/- is hereby disallowed and added back to the total income of the assessee company on the ground as discussed above.*

*Having regard to the nature of disallowance made above I am satisfied that the assessee has concealed its particulars of income and furnished inaccurate particulars of income within the meaning of explanation to section ,27(l)(c). Penalty proceedings u/s 271(l)(c) read with section 274 of the Act is initiated.”*

4. The assessee aggrieved with the order of the ld AO preferred an appeal before the ld CIT(A), who passed an order on 18.10.2016 confirming the above disallowance vide para No. 9.3 to 9.5 of his order as under:-

*“9.3 Ground No. 1 & 3 relate to disallowance expenses of Rs.52,14,980/ u/s 37 as being not incurred wholly & exclusively for the purposes of Assessee business. During the course of assessment proceedings, Assessing Officer observed that it had not undertaken any business activities during the year and it had declared only other income as per Schedule 14 which showed Interest Income from Term Deposits of Rs. 1,97,23,408/-, Bad Debts recovered Rs.8,79,555/- and Provision no longer required written back of Rs. 14,423/-. Assessing Officer observed that in order to claim the expenses u/s 37, the conditions therein have to be fulfilled that the expenditure has to be in the nature of revenue expenditure and wholly & exclusively for the purposes of business and it must not be of nature described in Section 30 to 36 and since no business have been carried out during the year, Assessing Officer disallowed the amount of Rs.52,14,676/- out of Rs.62,14,676/-. Assessee is in appeal against the same.*

*9.4 Appellant has stated that he has earned business income by written back of bad debt and written back of provisions and though the primary business has been closed, it is maintaining the operations for the purpose of recovering debts, pursuing litigation and payment of legal and professional fee and the expenses of Rs.55,86,993/- are necessary for maintaining the business.*

*9.5 I have carefully considered the observations of the Assessing Officer and submissions of the Appellant. It is seen that Appellant has not carried any business activity during the year and from the perusal of Profit & Loss Account and computation of income, it is seen that there is no income during the year. Therefore, it has no income from business during the year. Income from write back of bad debt on provisions are taken under the head “Income from Other Sources” by the Appellant itself. Appellant’s contention is that it is maintaining the operations for*

*the purpose of recovering debts, and pursuing litigation. However, Assessing Officer has stated in the assessment order that Assessee company has not submitted proper details to substantiate its claim that expenses claimed by it were wholly & exclusively for the purposes of its business. Appellant has not submitted any details regarding the claim of expenses during appellate proceedings also. It has been stated that expenses were mainly on account of litigation expenses. However, no details have been submitted. Therefore, I am constrained to sustain the addition on account of disallowance of expenses.”*

5. Therefore, the assessee is in appeal before us.
6. The ld AR submitted that the assessee has prepared its accounts on going concern basis, audited by the statutory auditor without any qualification. The ld AO disallowed the expenditure of Rs. 5214980/- u/s 37 of the Act as no business is carried out by the assessee. He submitted that the assessee has earned interest income, has credited bad debts recovered and also certain provision. Therefore, the ld AO held that the assessee company has not undertaken any business activities and therefore, expenditure is not allowable to the assessee u/s 37 of the Act is incorrect. He further stated that bad debts recovered and provision written back are chargeable to tax u/s 41(1) of the Act, which are chargeable to tax as “profits and gain of business and profession” and therefore, the disallowance cannot be made. It was further stated that all the expenditure incurred by the assessee are for the purposes of business. Most of the expenditure are salaries and allowance, legal and professional charges, rates and taxes and miscellaneous expenditure. He extensively referred to the details of such expenditure and submitted that they are wholly and exclusively for the purpose of business. He further referred to the report of the independent auditor on the account of the company which also says that account of assessee is prepared on going concern basis. He further submitted that for Assessment Year 2011-12 the identical issue arose wherein, disallowance of Rs. 1313933/- was deleted by the ld CIT(A). He further submitted that for Assessment Year 2014-15 also the assessee incurred the expenditure to the tune of Rs. 13413305/- as per schedule No. 15. Assessment for that year has also been made u/s 143(3) of the Act 14.12.2016 and same is allowed.

He therefore, submitted that in view of this the claim of the assessee of deduction of expenditure deserves to be allowed.

7. The Id DR vehemently supported the order of the Id CIT(A) and stated that as no business has been carried out by the assessee the disallowance has been correctly made.
8. We have carefully considered the rival contentions and also perused the orders of the lower authorities. Admittedly, in this case the assessee is engaged in the business of electronic goods and office system products. As submitted that due to heavy losses for Assessment Year 2006-07, the company operations of trading of these items was suspended. The company is looking for fresh opportunities to do the business. The assessee prepared its annual account on the basis of on going concern basis. The profit and loss account of the assessee show that there is credit of Rs. 20617386/- to the profit and loss in the form of bad debts recovered of Rs. 879555/- and Rs. 14423/- which are chargeable to tax as business income. The assessee has also earned the interest income on term deposit amounting to Rs. 19723408/-. The assessee has incurred the expenditure of Rs. 627683/- being employee benefit expenses and further expenses of Rs. 7424773/- on account of rates and taxes, Rs. 3788257/- of legal and professional charges and Rs. 895063/- as miscellaneous expenditure. Over and above assessee also incurred the audit fee expenditure etc. Assessee submitted the details of these expenditure and narrated the necessity of incurring the same. In the computation of the total income the assessee has offered bad debts recovered of Rs. 879555/- and provision for contingencies written back of Rs. 14242652/- as a "business income" under the provision of section 41(1) of the Act. The above income is chargeable to tax under the head "profit and gain of business and profession". The expenditure incurred by the assessee is also expenditure which have been incurred to keep the corporate entity alive, to safeguard the assets of the assessee and look at the new opportunities of revival of the suspended business trading of electronic goods. Thus, it cannot be said that Assessee is not carrying on the business during the year. Further, in the Assessee's own case for AY 11-12 identical disallowance was made which was deleted by the Id CIT(A) and has not been

contested by the Id Assessing Officer further. Similarly, on the identical facts and circumstances in AY 2014-15 all the expenditure are allowed to the Assessee, despite having no income chargeable to tax under the head “business income” but only having interest income under the head “income from other sources”. For AY 2012-13, AO allowed part of the expenditure on lump-sum basis to the extent of Rs. 10 lacs. Thus, even on principles of consistency also AO cannot take shifting stand in different year. Therefore, we find no reason to uphold the order of the lower authorities and direct the Id Assessing Officer to delete the disallowances of Rs. 5214676/- on account of various expenditure as they are incurred for the purposes of the business and further, same was accepted in earlier and subsequent years. Accordingly Ground nos. 1 to 8 of the appeal are allowed.

9. Accordingly, appeal of the assessee is allowed.

Order pronounced in the open court on 31/10/2019.

-Sd/-  
(AMIT SHUKLA)  
JUDICIAL MEMBER

-Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 31/10/2019  
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR  
ITAT, New Delhi