

IN THE INCOME-TAX APPELLATE TRIBUNAL "C" BENCH MUMBAI  
BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER AND  
SHRI PAWAN SINGH JUDICIAL MEMBER

ITA No. 2824/Mum/2017 (Assessment Year 2012-13)

Photolink Creative India Pvt. Ltd. 1005, Embassy Centre, Nariman Point, Mumbai-400021. <b>PAN: AAEC6310K</b>	Vs.	DCIT Circle-2(2)(2), Mumbai.
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Appellant Respondent  
Appellant by : Ms. Ritika Agarwal (AR)  
Respondent by : Shri Chaudhary Arun Kumar Singh  
(DR)  
Date of Hearing : 28.08.2019  
Date of Pronouncement : 15.11.2019

**ORDER UNDER SECTION 254(1) OF INCOME TAX ACT**

**PER PAWAN SINGH, JUDICIAL MEMBER;**

1. This appeal by assessee is directed against the order of Id. CIT(A)-8, Mumbai dated 25.10.2016 for Assessment Year 2012-13. The assessee has raised the following grounds of appeal:

1. Because, the Id. CIT(A) has erred in holding that out of the total renovation expense of Rs.95,81,077/- only, an amount of Rs.59,72,177/- on account of furniture and fixtures qualified as revenue expenditure.
2. Because, the Id. CIT(A) has erred in holding that the expenditure incurred on account of refurbishment of premises and purchase of air conditioners amounting to Rs.36,58,900/- constituted as capital expenditure ignoring the fact that the Appellant is a lessee..
3. Because, the Id. CIT(A) has erred in ignoring the fact that the Appellant as a Lessee obtained premises on highly subsidised rental in order to compensate for refurbishment expense required to be incurred on the rented premises belonging to the land owner.
4. Because, the Id. CIT(A) has erred in holding that the amount of Rs.24,68,323/- written off on account of bad debt was not allowable

since the same had not been taken into account while computing the income of the previous year or earlier previous years.

5. Because, the Id. CIT(A) has erred in confirming the addition of Rs.24,68,323/ - without application of mind to the proper facts as available on record.
  6. Because, the Id. CIT(A) has erred in failing to understand that the aggregate expenses of Rs. 24,68,323/- were revenue in nature and allowable, if not as bad debt then other revenue heads.
2. Brief facts of the case are that the assessee is a company engaged in the business of providing creative services, design, strategy, branding, website, advertising, photography, cinema works, film-making and other consultancy services, filed its return of income for Assessment Year 2012-13 declaring total loss at Rs. 1,04,24,954/-. The case was selected for scrutiny. During the assessment, from the financial statement furnished by the assessee, the Assessing Officer noted that the assessee has claimed expenses of Rs. 95,81,077/-, incurred on account of interior in rented premises, furniture, fixture, renovation and installation of water connection etc. It was also noted that the tenanted premises could not utilized by assessee for its business due to legal problem. The expenses incurred by assessee consists on the following items:

Particulars	Amount (Rs.)
New Studio Refurbishment Assets Being payment for our office situated at Sitaram Mill Compound	13,89,900.00
New Studio Refurbishment Expenses Being payment towards renovation in at Sitaram Mill Compound	13,03,750.00
Furniture & Fixture being payment for furniture and fixtures for our office situated at Sitaram Mill Compound.	59,22,177.00
Air Conditions Being amount trf. To Capital WIP	9,65,260.00
<b>Total</b>	<b>95,81,077.00</b>

3. The assessee was issued show-cause notice as to why the expenses should not be disallowed as the expenses were on account of interior premises, furniture, fixture, which were not utilized. The assessee filed its reply dated 09.02.2015. In the reply the assessee explained that they have entered into agreement for leave and licence with Tantia Charitable Trust on 05.04.2008. The office premises was taken on lease, was a warehouse, and was not readily useable in absence of certain repair, which was authorised by landlord to the assessee in terms of lease agreement. However, due to non-availability of property document, Bombay Municipal Corporation (BMC) clearance for repairs was not sanctioned. The assessee had taken the premises by considering that it would be fit for its uses of office and the necessary major repair would be carried out by the owner, however, the expenses incurred by the assessee. The assessee also explained that the assessee was assured that there would be no difficulty in change of user and work to be carried out to transfer of old Warehouse into a modern office premises. However, the premises could not be occupied as the property/ tenanted/ an office premise was sealed by Mumbai Municipal Corporation after issuance of stop-work-notice. The said stop-work-notice was issued on 08.10.2008 which prevented the necessary repair work for converting the tenanted premises into office premises. As per the agreement, the assessee is

authorised to carry out the necessary beautification of compound and water and new electricity connection to keep watch and ward of the tenanted premises and other necessary expenses. The assessee incurred such expenses in the premises obtained by assessee.

4. The contention of assessee was not accepted by Assessing Officer. The Assessing Officer concluded that expenses are capital in nature as it was incurred for creating a new asset. The claim of the assessee that they undertake the renovation work and debited the expenses in Profit & Loss A/c is not acceptable as the owner of premises has not authorized the assessee to carry out repair and renovation work. The Assessing Officer disallowed the entire expenditure of Rs. 95,81,077/-.
5. The Assessing Officer further noted that the assessee has written off Rs. 24,68,323/-. The assessee was asked to substantiate its claim. The assessee filed its reply dated 09.02.2015 and furnished the working of bad-debts written off. The assessee furnish the following details/working:

“6.2 The assessee vide letter dated 09.02.2015 has made the submission in this regard and the relevant portion is reproduced as under:

“Bad-debts Rs. 24,68,323/- ”

	<b>Details of amount written off</b>	<b>Amount (Rs.)</b>
1	King Fisher Air Lines Ltd. (Since this company has gone into liquidation the said amount has been written off).	6,209.00
2	Komal Porecha Associates Please refer to Annexure 95 attached to our deter dated 14.11.2014. Excess payment made has been written off.	29,611.00
3	Tantia Charitable Trust	2,29,715.00

	Being amount paid w/off. Please refer to Annexure 96(14.11.2014).	
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In view of Leave and Licence agreement, dt. 01.05.2008, (Annexure 139 / 150 attached to our letter dt. ] 4.11. 20 14) and small cause court case filed by them for further recovery of the lease rent from this company the said amount has been written off

9. VISHAL ASSOCIATES

Please refer to Annexure 98/ 99 (14.11.2014) being amount paid to them, the difference of Rs. 1,17,277/- being excess amount pad to them on account of service lax since not clarify for set written off.

Girdharilal Tanntia Rs. 8,41,600/-

Being amount paid vide Leave and Licence agreement dt. 01.05.2008 (Annexure 150 - 14.11.2014) since this ill not recoverable written off

Tantia Charitable Trust Rs. 12,62,600/-

Being deposit paid to Tantia Charitable Trust Rs, 12,64,400/ - written off in view of the Leave and Licence agreement cit. 01.05.2010 [Annexure 132/ 11.11.2014) and based all circumstances that this amount is irrevocable (Annexure 112 / 14.11.2014) since the said company has filed suit of rent (Allnexure 112/ 14.11.2014) which is not provided for in tile accounts. However amount paid as deposit have been written off.”

6. The reply of assessee was not accepted by Assessing Officer holding that the payment made to Girdharilal Tantia Charitable Trust are nothing but a deposit paid to landlord on execution of lease agreement. The assessee has debited the amount as the landlord has filed Suit for Recovery of rent and that the outcome of Suit is not certain. Secondly, the assessee has not brought on record that the amount was credited in the Profit & Loss A/c in any of the previous year.
7. On appeal before the Id. CIT(A), the disallowance on account of repair/maintenance was partly restricted by passing the following order:

5.2.5 In the instant case, the items of repair/maintenance strongly indicate that the appellant obtained "new advantages" and they far exceed the entitlement envisaged in the agreement. The expenditure was not to preserve and maintain an existing warehouse but to bring a' new creative studio into existence and thereby attain new advantages that the original asset was not

designed to offer nor capable of offering. This conclusion is further strengthened by the fact that the premises are leased @ Rs. 45,000/- per month for a period of 36 months. Thus, over the period of leave & licence, the appellant was required to pay Rs. 26,20,000/-. As against this, the appellant incurred Rs. 95,81,077/- on "refurbishing". Any prudent person would incur expense of more than 600% of 3 years' rental value of a premise only if there was substantial new advantage or addition to the original asset. Applying the ratio laid down by jurisdictional IT AT, the treatment accorded by Assessing Officer is upheld. However, it is also noted that part of the expenses such as cabinets, furniture etc., were incurred on items that constitute office furnishing. These are not part of new assets or advantages in context of the decision of Hon'ble ITAT cited above. Therefore, the Assessing Officer is directed to verify and allow expenditure on purchase of office furniture. This ground is partly allowed.

#### 8. The disallowance of entire bad-debt was confirmed by Id CIT(A)

holding as under:

5.3.1 ----- addition of Rs. 24,68,323/- on account of bad debts written off. The Assessing Officer has discussed this at para 6 of his order. He has enumerated the items of bad debts written off as per the appellant at para 6.2 of his order. He has further made categorical observation that the appellant has not established that the amounts written off were taken into account while computing the income of the previous year under consideration or any earlier previous year. Therefore, the requirements of section 36(2) were not met.

5.3.2 During the course of appellate proceedings also, the appellant was notable to establish that the amounts written off were taken into account while computing the income of the previous year under consideration or any earlier previous year. Under the circumstances, I find no need to interfere with the findings of the Assessing Officer. This ground of appeal is dismissed.

9. Thus, further, aggrieved by the order of Id. CIT(A), the assessee has filed the present appeal before this Tribunal.

10. We have heard the submission of Id. Authorized Representative (AR) of the assessee and Id. Departmental Representative (DR) for the revenue and perused the material available on record. Ground No.1 to 3 relates to disallowance of expenditure incurred on account of furniture and fixtures. The Id. AR of the assessee further submits that assessee-company entered into agreement with leave and licence with Tantia Charitable Trust on 05.04.2008, as said Trust was in possession of the premises at Flat No. 4CS No. 72 at Lower Parel, Sitaram Mills Compound, Opposite Sitaram Mill, BMC School, Mumbai. As the agreement, the assessee was entitled to carry out the repair work in the tenanted premises to provide enough water and new connection to the tenanted premises, provide/obtained new best electricity connection for the said premises, security of the said premises, getting/providing plastering and painting of the exterior of the building, general beautification of compound. The copy of leave and license/ lease agreement dated 05.04.2008 is placed on record. The assessee incurred the expenses as the assessee has acquired the said premises on leave and licence would be fit for its use as office etc. and would be repaired by the landlord. However, the landlord not carried out any repair. The assessee company negotiated in July 2008 with the trustee of the Trust

for its office use as a Photography Studio. In the negotiation, the assessee was assured that there would be no difficulty in getting the change of user from Warehouse into a modern office. However, no permission was granted, for change of user, the assessee could not use the tenanted premises. The BMC sealed the tenanted property and it could not be made usable nor did the landlord fulfill its obligation and responsibilities under the lease for suitable user. The tenanted premise was sealed by BMC which prevented the assessee from further repair. The said premises despite making expenditure remained unusable as the BMC never allowed the renovation in the tenanted premises. The assessing officer disallowed the entire expenses, however, the Id CIT(A) granted substantial relief to the assessee. The Id. AR of the assessee submits that as of now, the dispute remains only of Rs. 1,86,831/-.

11. The landlord also filed a Suit for Recovery of rent despite the fact that the premises could not be used due to legal bar of its user. The Id. CIT(A) allowed only expenditure incurred on cabinets furniture or items that constitute of office furniture and disallowance of remaining expenditure was upheld.
12. On the other hand, the Id. DR for the revenue supported the order of lower authorities.
13. We have considered the rival submission of the parties and gone through the orders of lower authorities. The Assessing Officer disallowed the

entire expenses by taking view that the assessee incurred expenditure which is capital in nature and hit by the provision of section 37(1). The Assessing Officer further held that in the suit for recovery, the landlord claimed that assessee was not authorized to claim the expenses. The Id. CIT(A) upheld the action of Assessing Officer as recorded in para-5.2.5 of impugned order and granted part relief to the assessee on the expenses incurred on certain items. We have noted that the lower authorities has not disputed that assessee has obtained a tenanted premises for running its business for setting up a Studio. Further, there is no dispute that the premises could not be utilized as its user from Warehouse to office premises was not sanctioned by BMC. Moreover, the premise was sealed in the month of October 2008. The leave and licence agreement was executed on 01.05.2008. The assessee has claimed expenses which consist of furniture and fixture fixing of interior, installation of water and electricity connection, fencing of the tenanted premises. The Id AR for the assessee fairly submitted that Id CIT(A) has granted substantial relief to the assessee. We have noted that order giving effect to the order of Id CIT(A) is not placed on record The Id. AR of the assessee has furnished the break-up of all these expenses, details of which are available at page no. 213 of Paper Book. Considering the facts of the present case, we find merit in the submissions of Id. AR of the assessee, that the assessee despite incurring

huge expenditure could not use the tenanted premises for its business purpose and the expenses incurred by the assessee are allowable expenses. Therefore, the issue is restored back to the file of assessing officer to verify the remaining expenses which were incurred on repair / maintenance for use of tenanted premises and allow appropriate relief to the assessee in accordance with law. Needless to say that before passing the order, the Assessing Officer shall grant opportunity to the assessee to substantiate the claim / expenses. In the result, this ground of appeal is allowed for statistical purpose.

14. Ground No.4 & 5 relates to disallowance of bad-debt. The Id. AR of the assessee during the hearing submits that she is not pressing these grounds of appeal. Considering the submission of Id. AR of the assessee, these grounds of appeal are dismissed as not pressed.

15. Ground No.6 relates to claim of bad-debt in the nature of revenue expenses. This ground of appeal is claimed by assessee in alternative of ground no.4 & 5. The Id. AR of the assessee submits that the landlord of the tenanted premises filed a suit for recovery of possession and arrears of rent / leaves and licence fees before the Civil Court. The Civil Court passed an interim order against the assessee for payment of mesne profit by way of compensation to the landlord. The copy of order of Small Cause Court dated 23.10.2015 is filed on record. The Id. AR further submits that the assessee could use the tenanted premises despite

incurring huge expenses and the landlord recovered the rent or leaves and licence charges, therefore, the assessee is entitled for expenses as a revenue expenses, if not allowed as bad-debt.

16. On the other hand, the Id. DR for the revenue supported the order of lower authorities.

17. We have considered the submission of Id. representative of the parties and perused the record carefully. Before the Assessing Officer, the assessee claimed the amount of Rs. 24,68,323/- as a bad-debt, the details of which we have recorded in para-4 supra. The Assessing Officer disallowed the claim by taking view that suit filed by landlord has not attained the finality. The Id. CIT(A) upheld the action of Assessing Officer holding that the assessee has not fulfil the requirement of section 36(2). Before us, the assessee in alternative has claimed the amount as revenue expenditure. Considering the fact that the assessee has made the payment by the order of Civil Court and the fact that this plea is raised before the Tribunal for the first time, therefore, this ground of appeal is restored to the file of Assessing Officer to verify the payment made by the assessee in compliance of order of small cause court dated 23.10.2015 and grant appropriate relief to the assessee before giving effect to the direction of this order, the Assessing Officer is directed to grant opportunity to the assessee. In the result this ground of appeal is allowed for statistical purpose.

18. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 15/11/2019.

**Sd/-**  
**R.C. SHARMA**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**PAWAN SINGH**  
**JUDICIAL MEMBER**

Mumbai, Date: 15.11.2019

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**Copy of the Order forwarded to :**

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "C" Bench, ITAT, Mumbai
6. Guard File

**BY ORDER,**

**Dy./Asst. Registrar**  
**ITAT, Mumbai**