

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

BEFORE SHRI RAJESH KUMAR, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.3095/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2012-13)

ACIT-24(3) R. No.413, 4 th Floor, Piramal Chambers, Lalbaug, Parel, Mumbai-400012.	बनाम/ Vs.	Shri Ramesh Ramswarupdas Jindal B/2/601, Greenland CHS Ltd., J.B. Nagar, Andheri (E), Mumbai-400059.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADPJ1124F		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri Drop Singh Meena (Sr. AR)	
Assessee by:	Shri Haridas Bhatt	

सुनवाई की तारीख / Date of Hearing: 14/11/2019
घोषणा की तारीख /Date of Pronouncement: 27/11/2019

आदेश / ORDER

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 23.02.2017 passed by the Commissioner of Income Tax (Appeals) -51, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2012-13.

2. The revenue has raised the following grounds: -

- "1. "Whether on the facts and circumstances of the case and in law the Ld. CIT(A) erred in deleting the addition made on account of unexplained unsecured loans of Rs.1,30,00,000/- and interest on unexplained unsecured loans of Rs.21,72,459/- for A.Y. 2012-13, without appreciating the fact that Shri Praveen Kumar Jain, in



his statement recorded on oath u/s. 132(4) of the I.T. Act on 01-10-2013 admitted that he is indulged in providing accommodation entries and also explained the complete modus operandi of providing such entries."

2. *" Whether on the facts and circumstances of the case and in law the Ld. CIT(A) erred in deleting the addition made on account of unexplained unsecured bans and interest on unexplained unsecured loans for AY. 2012-13 without appreciating the fact that in the statements recorded u/s. 132(4)/131 of the I.T. Act the directors/ proprietors of the related concerns who provided accommodation entries admitted that they were merely dummy directors and used to sign different papers for nominal consideration given by Shri Praveen Kumar Jain".*
3. *" Whether on the facts and circumstances of the case and in law the Ld. CIT(A) erred in deleting the addition made on account of unexplained unsecured loans and interest on unexplained unsecured loans for A.Y. 2012-13 without appreciating the fact that it was established beyond doubt that Praveen Jain Group is indulged in providing accommodation entries in the nature of loans/advances/LTCG/sale/purchases."*
4. *"Whether on the facts and circumstances of the case and in law the Ld. CIT(A) erred in deleting the addition made in A.Y.2012-13 on account of disallowance of loss on advances claimed by the assessee of Rs.53,57,232/- without appreciating the fact that in the instant case the debt has not become bad and the assessee had hopes of recovering the advances back through Court of law."*
5. *"The appellant prays that the order of the CIT(Appeals) on the above grounds be set aside and that of the AO be restored."*
6. *"The appellant craves leave to amend or alter any ground or to submit additional new ground which may be necessary."*

3. Before discussing further, it is necessary to brought into notice of certain facts on record. In fact, the present appeal has been decided by the Hon'ble ITAT by virtue of order dated 15.11.2017. At the time of deciding the said appeal, the ground no.4 was not discussed and decided, therefore, the revenue moved an application to recall the matter and after the notice to



the appellant, the appeal was recalled to the extent of adjudication of the issue no.4 in the appeal by virtue of order dated 09.05.2019. Now the case has come before us for hearing. The brief facts nowhere required to be repeated because the same has been narrated in the order passed by Hon'ble ITAT dated 15.11.2017. The AO declined the claim of Rs.53,57,232/- towards loss on advances given by the assessee. The CIT(A) allowed the claim of the assessee, therefore, the revenue has filed present appeal before us.

ISSUE NO. 4

4. Under this issue the revenue has challenged the allowance of the claim of the assessee in sum of Rs.53,57,232/- towards loss on advance given. The contention of the assessee is that the assessee gave the advances in sum of Rs.75 lacs to the party against which supplies were made. The supplier could not deliver goods against the balance moneys due to the financial crunch. The supplier submits cheques for the balance money which were bounced. The assessee filed the suit u/s 138 of the Negotiable Instrument Act which were pending before the court for the disposal. The AO declined the claim of the assessee on the basis of this fact that the assessee was not in the business of money lending because the assessee was in the business of trading in steel and other products. Subsequently, the assessee preferred an appeal before the CIT(A) who allowed the claim of the assessee. Before going further, we deem it necessary to advert the finding of the CIT(A) on record: -

“ 24.2. HELD: I have carefully considered the facts of the case, impugned / Assessment Order--and-written submission of the appellant. I find force in the argument put-forth-by the appellant t the first place,



the appellant has given -advances to its suppliers which is his normal trade practices. The appellant has also given an advance of Rs.75 lacs to M/s DynamixUrja Ltd against which part supplies were made. The supplier could not deliver goods against the balance moneys, due to the financial crunch and cheques given by the supplier for the balance moneys bounced. Appellant written off Rs.53,57,232/- in his books of accounts in the nature of general business loss. He has also filed suit u/s 138 of the IPC in the 201.0 to recover the advance. Thereafter, the appellant had an out of court settlement with the said party in October 214 and has received back/recovered Rs.28,00,000/- and treated the same as receipts in his P&L account under the head "Recovery of advances Written Off". This proves genuineness-516-usiness loss which appears to be a bonafide business transaction. I am of considered opinion that appellant at the first place is entitled to write off the amount in dispute as business loss. This fact is further strengthened when he has offered the recovered amount for tax in the A.Y.2015-16 in his return. Hence, addition made by the AO cannot be sustained. The grounds of appeal are allowed."

5. On appraisal of the above mentioned finding, we noticed that the assessee has given the advance to its supplier which was normal trade or practices. The assessee had given advance of Rs.75 lacs to M/s. Dynamix Urja Ltd. against which part supplies were made. The cheques issued by Dynamix Urja Ltd. were bounced which were in connection with the return of advance. The appellant written off an amount of Rs.53,57,232/- in his books of accounts. He has also filed complaint u/s 138 of the Negotiable Instruments Act which were pending for the recovery of the advance/disposal. Thereafter, the matter was settled by assessee in October, 2014 and recovered an amount of Rs.28 lacs and treated the same as receipt in his P & L Account under the head advance written off. It is clearly business loss and seems bona fide transactions. The said amount was offered to tax in the A.Y.2015-16 in the return of income. On appraisal of the finding given by CIT(A) we nowhere find any illegality and infirmity . Taking into account all the facts and circumstances mentioned above, we



ITA No. 3095/M/2017
A.Y.2012-13

affirm the finding of the CIT(A) on this issue and decide this issue in favour of the assessee against the revenue.

6. In the result, the appeal filed by the revenue is hereby ordered to be dismissed.

Order pronounced in the open court on 27/11/2019.

Sd/-

(RAJESH KUMAR)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated :27/11/2019

Vijay Pal Singh/Sr. PS

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



ITA No. 3095/M/2017
A.Y.2012-13

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**