

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "E": NEW DELHI  
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 147/Del/2017  
(Assessment Year: 2011-12)

National Research Development Corporation, 20-22, Zamroodpur Community Centre, Anusandhan Vikas, Kailash Colony Extension, New Delhi PAN: AAACN2025K (Appellant)	Vs.	DCIT, Circle-13(1), New Delhi  (Respondent)
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Assessee by :	Shri Niren Gupta, CA
Revenue by:	Ms Rakhi Vimal, Sr. DR
Date of Hearing	20/02/2020
Date of pronouncement	13/05/2020

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the National Research Development Corporation (assessee) against the order of the Id CIT (A)-6, Delhi [The Id CIT A] dated 09.11.2016 for the Assessment Year 2011-12, where the only grievance is that the claim of write off of business investment resulting into loss of Rs. 60 lacs was not allowed to the assessee as business loss holding that it is in the nature of capital loss.
2. The assessee has raised the following grounds of appeal:-
  - “1. That on the facts and circumstances of the case and in law, the Id CIT(A)-6 has erred by upholding the decision of the Id AO, that the claim for write off of business investment as loss of Rs. 60,00,000/- was not allowable, as the same was in the nature of a Capital Loss and not Business Loss.”
3. The brief facts of the case shows that the assessee is a public limited company formed by the Ministry of Science and Technology, Govt. of India and is involved in development, promotion and commercialization of technologies. It filed its e-return of income @ Rs. Nil on 29.09.2011 and claimed loss of Rs. 12100151/-. The assessment u/s 143(3) of the Act was

passed by the Id DCIT, Central Circle, 13(1), New Delhi [ The Id AO] at a total taxable income of Rs. 11699849/- on 07.03.2014. The Id AO disallowed a sum of Rs. 60 lacs, which is only dispute in this appeal.

4. The assessee has written off Rs. 6179031/- and debited the same to the profit and loss account. Out of the above sum, assessee has written off an amount of Rs. 60 lacs in respect of its equity investments in Twenty First Century Battery Ltd. The above sum was related to the investment made in the earlier years as equity capital in the said company. Said company was to engage in the manufacturing of Ion Lithium Automobile batteries. It was also shown as an investment in its balance sheet. The assessee claimed that the investment was made by the assessee and was written off as there is no scope of any recoverability as entire investment and asset of Twenty First Century Battery Ltd has been sold by the lending institution under SARFESI Act. The Id AO held that the investment made by the assessee was an investment and therefore it is a capital loss, which is not allowable therefore, it was disallowed.
5. The assessee contested the above addition before the Id CIT (A) who vide para No. 3.3.3 of his order confirmed the disallowance. He also held that the loss on investment is a capital loss and not business loss. Therefore, the assessee is in appeal before us on this solitary ground.
6. The Id AR referred to detailed paper book and drawn our attention to the memorandum of association. According to him, the object of the company covers the investment in certain company. He specifically referred clause No 5 of the memorandum, which authorizes the assessee to acquire and hold shares in any other company, if the acquisition of such shares are likely to promote further or benefit the business or interest of the company. He further referred to page No. 56 which is an investment agreement dated 31.03.2000 between the assessee and Twenty First Century Battery Ltd, where assessee has participated into the equity of the company as co-promoter. The assessee provided the advance financial assistance to that company in the form of subscription of 5 lacs equity shares at the face value of Rs. 10 each for Rs. 50 lacs. He further referred to page No. 99 of the paper book, which is part of the annual accounts of the assessee for FY 2010-11 wherein, in the note to the account it is mentioned that the

assessee invested Rs. 60 lacs as equity participation in the above company. It is also mentioned that above company's assets have been sold under the SARFASI Act. Thus in the financial statements, there is a permanent diminution value of investment and hence it has been written off during the year. The claim of the assessee is that write off the business investment is allowable as business loss and not a capital loss. He further relied upon the decision of the coordinate bench in DCIT Vs. Gujarat Small Industries Corporation [. 4 SOT 239], decision of the Hon'ble Bombay High Court in CIT Vs. Colgate Palmolive Ltd [378 ITR 728]. Thus, he claimed that the above loss is allowable as business loss. He further relied on the decision of the Hon'ble Supreme Court in 161 ITR 365.

7. The ld DR vehemently supported the orders of the lower authorities. He submitted that the investment made by the assessee is a capital investment. There is no transfer of such shares during the year. The assets of the company in the form of equity investment have been merely written off. He further stated that permanent diminution in the value of investment is merely an accounting entry. Even otherwise, he submitted that it is not a business of the assessee to invest in such companies. He also referred to clause 5 of MOA and submitted that it is for investment in like object entity and not to support manufacturing. Hence, the order of the lower authorities was supported.
8. We have carefully considered the rival contentions and perused the orders of the lower authorities. Clearly, the assessee is set up with the object of development and exploitation of various inventions, patents and other processes in the public interest. It is also authorised to enter into the various other forms for development of inventions etc. As per investment agreement, dated 31.03.2000 with Twenty First Century Battery Ltd the assessee co-promoted the above company and provided financial assistance for setting up facilities for manufacturing of Lithium-ion flexible electrolyte polymer rechargeable battery at Chandigarh. The assessee agreed to advance financial assistance in the form of subscription of 5 lakhs equity shares of that company at the face value of Rs. 10 each. By that agreement, the assessee acquired the voting rights in the above company as equity shareholders in accordance with the Companies Act, 1956. In the event of

disinvestment by the assessee, the first option was available with the promoters of that company. The assessee had also right of off appointment of nominee director. The assessee said that the above investment is in terms of Clause 5 of its memorandum. Clause 5 of the memorandum speaks as under:-

*“5. To take or otherwise acquire and hold shares in any other company having objects, altogether or in part, similar to those of this company, and to underwrite, solely or jointly with another or others, shares in any such company, if the acquisition of such shares seems likely to promote further or benefit the business or interest of this company.”*

The assessee disclosed the above investment in schedule D of this financial report as Unquoted trade investment. For this year, the assessee stated in the ‘notes to account’ that the assessee has invested the above sum and the unit is closed since long. The company has been intimated by IDBI that the assets of the company have been sold and no amount is due to the assessee. Accordingly, the management is of the view that there is **permanent diminution** in the value of investment hence; such investment is written off during the year. Accordingly, in the profit and loss account the assessee has written off the above sum under the head of ‘other expenses’ in schedule ‘O’. It is apparent that the above investment does not qualify in clause 5 of the memorandum of the company. That clause allows investment in any other company, which has a similar object. The Twenty First Century Battery Ltd wanted to set up the facilities for manufacturing of certain batteries for which financial assistance was provided by the assessee. The company went into liquidation, all the assets of the company were sold and the investment made by the assessee in that company was not having any value and therefore it was written off. The revenue authorities have held it as capital loss. We also of the view that in the above facts and circumstances the loss booked by the company is merely an accounting loss. Further, the loss is as ‘investment’, which was invested by the assessee as a capital asset. It was also disclosed in the balance sheet as an investment. Further, to qualify as a business loss it is necessary that such loss should have been incurred during the year. The unit was sold and closed since long back as mentioned in the annual accounts; the loss also does not qualify even otherwise as allowable business loss during the year

as assessee did not prove that such loss has been incurred during the year. The reliance on the decision of DCIT Vs. Gujarat Small Industries Corporation [supra] does not apply to the facts of the case. As in that case, the investment made by that assessee in M/s. Girnar Scooters Ltd was treated to be a trading investment and further there was a transfer of the shares on its sale during that year, such losses were incurred. In the present case, neither there is a trading investment shown by the assessee nor there is transfer of shares by sale. The reliance on the decision of Hon'ble Bombay High Court in CIT Vs. Colgate Palmolive Ltd [370 ITR 728] was also devoid of any merit. In that case, the investment was made for the purpose of business and there was sale of shares of the subsidiary company. Here there is no sale of the shares. The diminution in the value of the assessee was stated to be a business loss is also devoid of any merit because it can only apply to the long-term investment. Only in long-term investment, the provision for permanent diminution is required. The current investment of the above sum would have been always been valued at the end of each year at the lower of cost and fair market value. Looking from the aspects of the accounting as assessee has heavily relied on the accounting policy, as per accounting standard 13 for accounting of investments classified investments in two broad categories, (1) Current investments and (2) Long term investments. Thus, The financial statement of an enterprise presents fixed assets, investments and current assets into different categories. As far as investments are concerned, these are classified into long-term investments and current investments. A current investment refers to an investment that is readily realizable and is held for not more than one year from the date on which such an investment is made. Long-term investment refers to an investment other than the current investment even though such investments are readily marketable. To determine the carrying amount for current investments to be stated in the balance sheet, the lower of cost or fair value of such an investment must be considered. The carrying amount of the long-term investment is typically the cost of such an investment. However, if there is a permanent reduction in the value of the long-term investment, the carrying amount of such an investment is also reduced. Also, such a reduction is charged to P&L statement. However,

such a reduction in the carrying amount is reversed when there is an increase in the value of such an investment or the reasons that lead to a reduction in its carrying amount do not exist anymore. Thus, apparently as per accounting policy and Notes to Accounts also the investments in the above company are long-term investments. In view of the above facts, we do not find any infirmity in the orders of the lower authorities and confirmed their action. Accordingly, the solitary ground of appeal is dismissed.

9. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 13/05/2020.

-Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

-Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 13/05/2020  
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR  
ITAT, New Delhi