

**IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH KOLKATA**

**BEFORE SHRI P.M. JAGTAP, V.P & SHRI S. S. GODARA, JM**

**आयकर अपीलसं./I.T.A No.27/Kol/2017**

**(निर्धारण वर्ष / Assessment Year: 2011-12)**

<b>Oriental Carbon &amp; Chemicals Ltd</b> Duncan House 4 <sup>th</sup> Floor, 31, Netaji Subhas Road, Kol-1.	<b>Vs.</b>	<b>ACIT, Range-10, Kolkata</b>
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAACO3006F</b>		
<b>(Assessee)</b>	<b>..</b>	<b>(Revenue/Department)</b>

**आयकर अपीलसं./I.T.A No.251/Kol/2017**

**(निर्धारण वर्ष / Assessment Year: 2011-12)**

<b>ACIT, Circle-10(2), Kolkata</b>	<b>Vs.</b>	<b>Oriental Carbon &amp; Chemicals Ltd</b> Duncan House 4 <sup>th</sup> Floor, 31, Netaji Subhas Road, Kol-1.
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAACO3006F</b>		
<b>(Revenue/Department)</b>	<b>..</b>	<b>((Assessee)</b>

Appellant by : Shri U. H Rai, A/R

Respondent by : Shri Dhrubajyoti Ray, Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 21/02/2020

घोषणाकीतारीख/Date of Pronouncement : 12/06/2020

**आदेश / O R D E R**

**Per Shri S. S. Godara:**

These assessee's and Revenue's cross-appeals for assessment year 2011-12 arise against the Commissioner of Income Tax (A) - 15, Kolkata dated 16.11.2016 passed in Case No.403/CIT(A)-15/15-16/R-10/R&T/Kol involving proceedings u/s 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. We advert to the assessee's appeal ITA No.27/Kol/2017. Its first substantive ground seeks to reverse both the lower authorities' action disallowing bad debts claim of Rs.16,15,920/- during the course of assessment as upheld in the CIT(A)'s order under challenge. The lower appellate discussion to this effect reads as under:

**“3.6 Ground of appeal No.6**

*Assessee has claimed bad debt of Rs.16,15,920/-. The amounts written off, are of two types.*

*(i) Advance written off (ii) bad debts written off.*

*Major component of the written off amount was on account of advance in the name of Continental Carbon India Ltd. which stood at Rs.15,87,255/-. Another big amount was Rs.18,507/- on account of Sales Tax recoverable and the third biggest amount Rs.8,332/- was on account of short TDS allowed. Assessing Officer did not accept assessee's claim of bad debts as he found that decision for writing off these debts were taken on 27/05/2011, that is after the close of the previous year. It is further mentioned by the A.O that entry of bad debts in the final accounts is only a provision for diminution in the value of the assets. Without prejudice to the above stand, A.O has also mentioned that writing off sales tax recoverable amount and that of short TDS allowed would not qualify for deduction as per the provisions of the act. Further it was noticed that the amount of advance of Rs.15,87,255/-, in the name of Continental Carbon India Ltd., was in fact sales tax liability of the assessee company which was paid during the year. In the submissions, appellant has mainly explained its claim in respect of amount standing in the name of Continental Carbon India Ltd. It is mentioned that assessee had transferred its Carbon Black Division, as going concern, to Continental Carbon India Ltd. w.e.f 01/10/2000. As per the agreement, sales tax liability of Carbon Black Division, for period up to 30/09/2000, would be borne by the assessee. After the transfer of Carbon Black Division, sales tax liability arose in respect of this division which pertains to period prior to 30/09/2000. Hence, assessee had funded this liability by debting the advance head in the name of Continental Carbon India Ltd. and the same has been written off during the current year. Appellant has not made any submission in respect of other items of the debts/advances written off.*

*I have considered the facts of the case and submissions of the assessee. For transferring the Carbon Division to Continental Carbon India Ltd., assessee must have received some amounts which were capital in nature. Any subsequent receipt or payment related to the transfer of that division would be capital in nature. For the debt to be allowable to be written off as bad debt as per the provisions of the section 36(vii), it has to satisfy the conditions laid out in sub-section (2) of section 36. As is evident this amount of Rs.15,87,255/- would not qualify. Similarly, the sales tax recoverable amount of Rs.18,057/- and short credit of TDS by amount of Rs.8332/- will also not qualify for being written off as bad debts. Other amounts are small in nature but assessee has not explained as to why these were written off in the current year when the decision was taken in subsequent year. Under the facts and the circumstances mentioned above, A.O's action in disallowing bad debt of Rs.16,15,920/- is upheld.”*

3. Learned counsel submits during the course of hearing that both the learned lower authorities have erred in law and on facts in disallowing assessee's bad debts claim. It is fair enough in pressing for the main component of Rs.15,87,255/- only pertaining to M/s Continental Carbon India Ltd only. The Revenue's case going by the lower appellate discussion is that the impugned bad debts claim has been rightly declined since not pertaining to the assessee's business activities and also in view of the fact that its Board of Directors took decision to this effect only on 27.05.2011 i.e in previous year relevant to assessment year 2012-13 and not in impugned assessment year 2011-12.

4. We have given our thoughtful consideration to foregoing rival contentions. There is no dispute that hon'ble jurisdictional high court approved the corresponding amalgamation scheme regarding the assessee's Carbon Black Division as a going concern w.e.f. 01.10.2000 and also that the said scheme covered all liabilities paid on 30.09.2000. There is further no issue that the impugned sales tax liability of Rs.14,00,000/- pertains to the period before that which stood paid on 24.07.2002 and 19.09.2003 involving sums of Rs.10,00,000/- and Rs.4,00,000/-; respectively. This was only because of the reason that the department recovered the impugned sum from the assessee since it continued with its earlier sales tax registration. It then recorded the said sum in its books of accounts as due against the other entity M/s Continental Carbon India Ltd. for a period of almost 10 years and chose to write off the same in the impugned assessment year. Meaning thereby that the said sum continued in the assessee's books of accounts as due under the revenue head which was written off in the impugned assessment year.

5. Learned departmental representative at this stage submitted that both the lower authorities have rightly treated the impugned sum as a capital expenditure as well.

6. All this fails to convince us since the assessee has been recorded this sales tax liability sum in profit and loss a/c as a revenue item which was written off on

account of no changes of recovery as per the case law T.R.F. Ltd. vs. CIT [2010] 323 ITR 397 (SC) and in the light of section 36(1)(vii) r.w. sub-section (2) of the Act. Its Board of Directors only confirmed and ratified the impugned write off made in the relevant accounting period ending on 31.03.2011 vide its Resolution dated 27.05.2011. Meaning thereby that both the lower authorities have erred in observing that the impugned write off itself take place in the accounting period between 01.04.2011 to 31.03.2012 and not in 01.04.2010 to 31.03.2011.

We thus direct the Assessing Officer to delete the impugned disallowance. The assessee succeeds in its first substantive grievance in part in above terms.

7. The assessee's next substantive ground challenges correctness of both the lower authorities' action disallowing prior period expenses claim of Rs.4,26,975/- on the ground that the impugned export commission payments do not pertain to the relevant previous year in view of the mercantile system of accounting followed throughout.

8. We find no merit in the Revenue's instant stand. We notice from case records and mainly in pages 72 to 103 that the assessee received the corresponding export commission invoices of earlier assessment years in the relevant previous year only. Be that as it may, hon'ble Gujarat high court's decision in PCIT vs. Adani Enterprises in Tax Appeal No. 566/2016 holds that such a prior period expenditure claim is a revenue item in case of an assessee assessed at the maximum marginal rate throughout. We adopt the very ratio herein as well and direct the Assessing Officer to delete the impugned prior period expenses disallowance of Rs.4,26,975/-. The assessee's instant second substantive grievance also stands accepted.

9. Lastly comes the assessee's third substantive ground that both the learned lower authorities have erred in making section 115JB computation after including the section 14A disallowance pertaining to exempt income and bad debts figure hereinabove. Suffice to say, this tribunal's in ACIT vs. Vineet Investment Ltd. 82 taxmann.com 415 (Delhi-SB) has already decided this former issue in assessee's

favour that section 14A r.w.r 8D disallowance is not to be included for the impugned MAT computation. Coming to bad debts issue, we conclude that the impugned disallowance already stands deleted. We therefore accept the assessee's instant third substantive grievance as well. The assessee's appeal ITA No.27/Kol/2017 is partly accepted.

10. Coming to Revenue's cross-appeal ITA No.251/Kol/2017, it is agreed between the parties that the tax effect involved is less than Rs.50,00,000/- as per CBDT's Circular No.17/2019 dated 08.08.2019 applying the said threshold limit on pending cases as well.

11. Before parting, it is noted that the order is being pronounced after ninety (90) days of hearing. However, taking note of the extraordinary situation in the light of the COVID-19 pandemic and lockdown, the period of lockdown days need to be excluded. For coming to such a conclusion, we rely upon the decision of the Co-ordinate Bench of the Mumbai Tribunal in the case of *DCIT vs. JSW Limited in ITA No. 6264/Mum/2018 & 6103/Mum/2018, Assessment Year 2013-14, order dt. 14<sup>th</sup> May, 2020.*

12. This assessee's appeal is allowed and Revenue's cross-appeal is dismissed in above terms.

Order is pronounced in the open court on 12.06.2020.

**Sd/-**  
**(P. M. Jagtap)**  
**VICE-PRESIDENT**

**Sd/-**  
**(S. S. Godara)**  
**JUDICIAL MEMBER**

**कोलकाता /Kolkata;**  
**दिनांक/ Date: 12/06/2020**  
**RS**

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. The Assessee - Oriental Carbon & Chemicals Ltd
2. The Revenue - (i) ACIT, Range-10, Kolkata  
(ii) ACIT, Circle-10(2), Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A), Kolkata [sent through email]
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata [sent through email]
6. गार्डफाईल / Guard file.  
सत्यापितप्रति

True Copy

By Order

Assistant Registrar,  
I.T.A.T, Kolkata Benches,  
Kolkata.