

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT
DB-II), MUMBAI**

BEFORE SHRI C.N. PRASAD, JM

&

SHRI M.BALAGANESH,AM

**ITA No.7228/Mum/2018
(Assessment Year :2008-09)**

M/s. Garodia Syntex Pvt. Ltd 8/12, Bhaskar Lane 1 st Floor, Room No.15-16 Bhuleshwar, Mumbai – 400 002	Vs.	Income Tax Officer 4(2)(2) Aayakar Bhavan M.K.Road, Mumbai – 400 020
PAN/GIR No.AABCG3860A		
(Appellant)	..	(Respondent)

Assessee by	Shri Rajiv Khandelwal, C.A.
Revenue by	Shri V. Vinod Kumar, Sr AR
Date of Hearing	07/07/2020
Date of Pronouncement	13/07/2020

आदेश / ORDER

PER C.N. PRASAD (J.M)

This appeal in ITA No.7228/Mum/2018 for A.Y.2008-09 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-9, Mumbai in appeal No. CIT(A)-9/Cir.4/228/2013-14 dated 21/06/2013 (Id. CIT(A) in short) against the order of assessment passed u/s.154 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 06/05/2013 by the Id. Income Tax Officer 4(2)(2),Mumbai (hereinafter referred to as Id. AO).

2. The first issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in upholding the action of the Id. AO in making the disallowance of Rs.1,55,128/- in respect of advances given to staff which were written off vide proceedings u/s.154 of the Act dated 06/05/2013 in the facts and circumstances of the case.

3. We have heard rival submissions and perused the materials available on record. We find that the assessee is engaged in the business of manufacturing and trading of cloth. The original assessment was completed u/s.143(3) of the Act on 29/12/2010 determining total income at Rs.13,10,560/-. Later this assessment was sought to be rectified u/s.154 of the Act by the Id. AO. The assessee had debited a sum of Rs.1,55,128/- on account of loans and advances to staff members which were written off and this sum was debited by the assessee under the head 'Miscellaneous Expenses'. In the opinion of the Id. AO, this write off of staff advances is not allowable as deduction and accordingly, the Id. AO sought to rectify the assessment to disallow the said sum vide proceedings u/s.154 of the Act dated 06/05/2013. We find that the Id. CIT(A) had upheld the action of the Id. AO by stating that the said loss arising on account of write off of staff advances is a capital loss and hence, not allowable as deduction.

3.1. At the outset, we find that assessee has given loans and advances to its staff members which had been written off by the assessee due to its irrecoverability and in view of the fact that the said staff members had left the services of the assessee company. These facts are not in dispute before us. We find that the loans and advances given to the staff members were done during the course of regular business of the assessee and in the event of its irrecoverability, due to whatever reason,

the same becomes the allowable business loss as it is more in the nature of staff welfare. Hence, we direct the Id. AO to grant deduction for the same. In any case, we find that the write off of staff loans and advances has been disallowed by the Id. AO in the proceedings u/s. 154 of the Act dated 06/05/2013. This we find is a debatable issue and in any case cannot be done vide proceedings u/s.154 of the Act. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of T.S. Balaram vs. Volkart Brothers in 82 ITR 50 as the said issue of write off on account of staff loans and advances would not be a patent and glaring mistake apparent from the record within the meaning of Section 154 of the Act. We find that the case laws relied upon by the Id. DR which were relied upon by the Id. CIT(A) in his appellate order are factually distinguishable in as much as in those cases, the advances *per se* were given for capital purposes and those advances were written off which were held to be capital loss by the Hon'ble Bombay High Court in the case reported in 364 ITR 244 and by the Co-ordinate Bench of Cochin Tribunal in the case reported in 33 Taxmann.com 575. Hence, the reliance placed on those decisions would not come to the rescue of the revenue. Accordingly, the grounds 1 & 2 raised by the assessee are allowed.

4. The last issue to be decided in this appeal is with regard to the Id. AO raising a demand of Rs.74,111/- on the pretext that refund of Rs.67,740/- was issued to the assessee vide intimation u/s.143(1) of the Act, which according to the Id. AR was not at all received by the assessee.

5. We have heard rival submissions. This matter requires factual verification by the Id. AO. If the refund has already been issued to the assessee, then the action of the Id. AO is correct. In case if the refund is

not issued to the assessee or not adjusted with the demand of any other assessment years by the Id. AO, then the Id. AO is directed to modify the computation of taxes accordingly. Accordingly, the ground No.3 raised by the assessee is allowed for statistical purposes.

5. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced on 13/07/2020 by way of proper mentioning in the notice board.

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Mumbai; Dated 13/07/2020
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai

