

आयकर अपीलिय अधिकरण, "बी" न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष
Before Shri Duvvuru RL Reddy, Judicial Member &
Shri S. Jayaraman, Accountant Member

आयकर अपील सं./I.T.A. No.1476/Chny/2018
निर्धारण वर्ष/Assessment Year:2004-05

M/s. Heidelberg India Private Limited,
No. 333, GST Road, Chrompet,
Chennai 600 044.
[PAN: AABCH0615E]

The Deputy Commissioner of
Income Tax, Corporate Circle 2(2),
No. 121, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri S.P. Chidambaram, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri Suresh Periasamy, JCIT
सुनवाई की तारीख/ Date of hearing : 02.12.2020
घोषणा की तारीख /Date of Pronouncement : 16.02.2021

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 13, Chennai dated 05.01.2018 relevant to the assessment year 2004-05. In the grounds of appeal, the assessee has challenged the confirmation of disallowance of claim of deduction of forfeiture of advance rent.

2. Brief facts of the case are that the assessee filed its return of income for the assessment year 2004-05 on 28.10.2004 admitting Nil income. The return

filed by the assessee was processed under section 143(1) of the Income Tax Act, 1961 ["Act" in short]. Subsequently, the case was selected for scrutiny and the scrutiny assessment was completed under section 143(3) of the Act on 22.11.2006 with an assessed income of ₹.49,10,209/- under section 115IB of the Act. Aggrieved by the assessment order, the assessee filed an appeal before the Id. CIT(A), Mumbai, which was partly allowed. The assessee preferred second appeal before the ITAT and vide its order in I.T.A. No. 5549/Mds/2009 dated 13.01.2012, the Tribunal remitted back the issue to the Assessing for adjudication afresh. Accordingly notice under section 143(2) r.w. section 254 of the Act was issued. The assessee was asked to submit the supporting documents for forfeiture of advance by M/s. Blue Chips Business Centre Private Limited. Since the assessee failed to submit any supporting documents before the undersigned, the claim of deduction of forfeiture of ₹.43,05,170/- was rejected and concluded the assessment. On appeal, the Id. CIT(A) confirmed the assessment order under section 143(3) r.w.s. 254 of the Act since the assessee could not produce concrete supporting evidence.

3. On being aggrieved, the assessee is in appeal before the Tribunal. By filing copy of certificate of full & final settlement from Blue Chip Business Centre Private Limited, confirmation sought by the Assessing Officer from Blue Chip Business Centre Private Limited, copy of cheque issued for final

settlement, etc., the Id. Counsel for the assessee prayed for allowance of deduction claimed towards forfeiture of advance rent. On the other hand, the Id. DR strongly supported the orders of authorities below.

4. We have heard both the parties, perused the materials available on record and gone through the orders of authorities below. In this case, the assessee has claimed deduction of forfeiture of advance rental deposit of ₹.43,05,170/- for which the Assessing Officer sought for supporting evidence. Since the supporting evidence was not available at the time of assessment proceedings, the Assessing Officer disallowed the claim of deduction of the assessee. During the course of appellate proceeding, the assessee has filed copy of certificate of full & final settlement from Blue Chip Business Centre Private Limited, confirmation sought by the Assessing Officer from Blue Chip Business Centre Private Limited, copy of cheque issued for final settlement, etc., being supporting evidences towards its claim of deduction of forfeiture of advance. Accordingly, the Id. CIT(A) called for remand report from the Assessing Officer. In his remand report, the Assessing Officer has stated that:

From the records it is seen that the notice u/s 133(6) issued by the AO to M/s. Blue Chip Business Centre (P) Limited has returned unserved. The copy of the said response of M/s. Blue Chip Business Centre (P) Limited is not readily available on record. Further it is submitted that the additional evidence furnished by the assessee before the appellate authority does not change the facts of the case. The report is hereby submitted.

4.1 From the above remand report of the Assessing Officer it is clear that the said remand report is incorrect, because, on perusal of the paper book, we find that vide letter dated 27.03.2015 M/s. Blue Chip Business Centre Private Limited has very well acknowledged the receipt of the notice issued under section 133(6) of the Act, wherein, it was mentioned that M/s. Blue Chip Business Centre Private Limited issued a certificate dated 28.01.2015 stating payment of ₹.55 lakhs on 24.12.2003 vide cheque No. 169592 as full settlement of the dues. On perusal of the certificate dated 28.01.2015 issued by M/s. Blue Chip Business Centre Private Limited, it is clear that the said company has agreed to pay a sum of ₹.55 lakhs towards full and final settlement of all the claims [₹.98,05,170/-] and paid the sum. It is amply clear from the said certificate that the total dues to be paid to the assessee was ₹.98,05,170/- and M/s. Blue Chip Business Centre Private Limited paid only ₹.55 lakhs as has been agreed in the "Consent Terms" before the Hon'ble High Court of Bombay in Sum. Suit No. 1051 of 2001. Thus, it is clear that the balance due of ₹.43,05,170/- was not paid by M/s. Blue Chip Business Centre Private Limited and thereby the assessee has to forfeit the amount of ₹.43,05,170/- in its books of account and claimed as deduction. The above forfeiture of advance rent is in the nature of loss incurred in normal course of business, however, it is required to be ascertained as to whether the said expenditure incurred was capital or revenue in nature for the purpose of

allowing as deduction under section 37 of the Act. Accordingly, we remit the matter back to the file of the Assessing Officer for limited purpose to ascertain as to whether the claim of expenditure of forfeiture of advance rent is capital or revenue in nature and allow the deduction if the same is revenue in nature after affording an opportunity of being heard to the assessee.

5. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on the 16th February, 2021 at Chennai.

Sd/-
(S JAYARAMAN)
ACCOUNTANT MEMBER

Sd/-
(DUVVURUL RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, the 16.02.2021

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.