

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'B': NEW DELHI  
(Through Video Conferencing)**

**BEFORE,  
SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.3817/Del/2019  
(ASSESSMENT YEAR 2012-13)**

Delhi Call Centre Private Limited 1-10 Lajpat Nagar-II New Delhi-110 024. PAN -AABCD 9233C <b>(Appellant)</b>	Vs.	Dy.CIT Circle-7(1), New Delhi. <b>(Respondent)</b>
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Appellant By	<b>Dr. Rakesh Gupta, Adv. Sh. Somil Agarwal, CA</b>
Respondent by	<b>Sh. Jagdish Singh, Sr. DR</b>
Date of Hearing	<b>17.12.2020</b>
Date of Pronouncement	<b>16.03.2021</b>

**ORDER**

**PER SUDHANSHU SRIVASTAVA, JM:**

This appeal is preferred by the assessee against order dated 28.02.2019 passed by the Learned Commissioner of Income Tax (Appeals)-34, New Delhi {CIT(A)} for Assessment Year 2012-13.

2.0 The brief facts of the case are that the assessee company was engaged in the business of running a Call Center in earlier Assessment Years, although the assessee was no longer in operation during the year under consideration. The return of income was filed declaring a loss of Rs.47,44,408/-. Subsequently, the return was revised declaring income at Rs. NIL. The case was selected for scrutiny and subsequently, the assessment was completed at an income of Rs.3,17,71,620/- after allowing set off of brought forward losses amounting to Rs.1,03,64,510/- and after making the following additions and disallowances:

- (i) Disallowance of depreciation: Rs.4,46,250/-
- (ii) Notional interest: Rs.5,25,000/-
- (iii) Write back of Sundry Creditors: Rs.4,37,38,637/-
- (iv) Difference in computation  
of short term capital loss: Rs.21,70,651/-

2.1 Aggrieved, the assessee approached the Ld. First Appellate Authority, who was pleased to adjudicate the appeal of the assessee as under:

- (i) The disallowance of depreciation on Car amounting to Rs.4,46,250/- was upheld.
- (ii) The Notional interest added to the income of the assessee amounting to Rs.1,20,000/- was also confirmed.
- (iii) The challenge to addition pertaining to writ back of sundry creditor amounting to Rs.4,37,38,637/- was sustained to the extent of Rs.2,56,68,848/- and the balance addition of Rs.1,80,69,789/- was deleted.
- (iv) The short term capital gain was confirmed to the extent of Rs.2,56,68,648/-.

2.1 Aggrieved, the assessee is now before this Tribunal challenging the order of the Ld. CIT(A). The following grounds have been raised by the assessee in this regard:

*“1. That on the facts and in the circumstances of the case the learned CIT(A) was not justified in upholding the disallowance of depreciation on car amounting to Rs.4,46,250/-*

*2. That on the facts and in the circumstances of the case the learned CIT(A) was not justified in sustaining the disallowance of Rs.1,20,000/- on account of notional interest.*

*3. That the learned CIT(A) has grossly erred in law in reducing the liability of unpaid creditor of Rs.4,37,38,637/- from*

*the opening WDV of Block of Licence of Rs.1,19,78,771/- and sustaining an addition of Rs.2,56,68,848/- u/s 50 of the Act.*

3.1 *That the learned CIT(A) ought to have appreciated that the write back of creditor for licence of Rs.4,37,38,637/- in books was not taxable under the provisions of the Income Tax Act.*

3.2 *That the learned CIT(A) failed to comprehend that write back of creditor of Rs.4,37,38,637/- for licence and sale of licence are two unrelated separate transactions.*

4. *That on the facts and in the circumstances of the case the learned CIT(A) was not justified in upholding the addition of Rs.21,70,651/- being the difference in the returned short term capital loss of Rs.2,02,40,640/- and Rs.1,80,69,989/-, the revised short term capital loss.”*

3.0 The Ld. Authorized Representative (AR) submitted that ground No.1 of the appeal challenges the action of the Ld. CIT(A) in upholding the disallowance of depreciation on Car to the extent of Rs.4,46,250/-, on the ground that the invoice of Car purchase was not produced for verification. The Ld. AR submitted that although the invoice could not be produced due to the reason of the relevant papers having been filed with the financing bank, all the same the Department had allowed interest on Car loan as deductible expenditure and no disallowance had been made on account of Car

running expenses. It was submitted that, accordingly, it was apparent that the Department had accepted that the car had been used for the purposes of the business of the assessee company and, therefore, although the invoice for the car purchase could not be produced due to the reason of the same being in possession of the financing bank, no disallowance of depreciation could have been made.

3.1 In ground No.2, the assessee has challenged the addition of Rs.1,20,000/- on account of notional interest on loan. It was submitted that the assessee had given a loan of Rs.10,00,000/- to M/s Chander Rani Enterprises Ltd. and no interest had been charged on this loan, but the Assessing Officer had made a notional addition @ 12% on this loan. It was submitted that the advance/loan had been given for the purposes of business of the assessee company and, further, the assessee company had sufficient reserves and shareholders' funds to make the loan as would be evident from the balance of the company. It was submitted that the advance had not been made from any interest bearing loan. Reliance was placed on numerous judicial precedents

for the proposition that if the assessee had sufficient interest free fund at its disposal, no disallowance/addition can be made towards notional interest on interest free advance/loan.

3.2 With respect to ground No.3, it was submitted that during the year under consideration, the assessee had shown loss on sale of fixed assets grossing to Rs.5,39,16,901/- and the net loss on sale of assets at Rs.1,01,78,264/-. It was submitted that the Assessing Officer had required the assessee to explain why the gross loss should not be added back to the assessee's income and it had been submitted during the course of assessment proceedings that it pertained to purchase of license which was specific to the business of the assessee and since the assessee company had started incurring losses, the asset value of the said license had become redundant and the company was unable to pay for the cost of the license to the company in United Kindom (UK). It was further submitted before the Assessing Officer that the assessee company had written back the amount of creditors at Rs.4,37,38,637/- which related to the purchase of fixed assets and did not constitute income of the assessee. It was further submitted that the provisions

of Section 41(1) of the Income Tax Act, 1961 (hereinafter called 'the Act') would not apply as it was not a trading liability and further the assessee had not claimed any deduction there from either in this year or in earlier years. It was submitted that the entire loss on sale of fixed asset amounting to Rs.5,39,16,901/- had been added back in the computation of income by the assessee as was evident from the copy of the computation placed in the Paper Book. It was further submitted that write back of liability of Rs.4,37,38,637/- being liability in respect of fixed assets was not taxable and only the net sum of Rs.1,01,78,264/- has been added back. It was further submitted that both the loss on sale of fixed assets as well as write back of creditors has been duly reflected in Schedule 17 of the Annual Accounts. The Ld. AR also submitted that what is the taxable under the Income Tax Act is only Revenue receipts and that receipts of capital nature are not taxed under the scheme of the Act. Reliance was placed on numerous case laws on this issue also. The Ld. AR also submitted that provisions of section 50 (1) & (2) of the Act were not applicable in this case and, therefore, both the Lower Authorities were incorrect in invoking the provisions in this regard.

3.3 With respect to Ground No.4, the Ld. AR submitted that this ground challenged the action of the Ld. CIT(A) in upholding the addition of Rs.21,70,651/- being the difference in returned short term capital loss of Rs.2,02,40,640/- and Rs.1,80,69,989/- i.e., revised short term capital loss. It was submitted that in effect the assessee had not been allowed the benefit of set off of brought forward loss.

4.0 Per contra, the Ld. Sr. Departmental Representative (DR) placed reliance on the concurrent findings of both the Lower Authorities and vehemently argued that the disallowances/additions had been rightly made.

5.0 We have heard the rival submissions and have also perused the material on record.

5.1 As far as Ground No.1 regarding disallowance on depreciation is concerned, the only objection to the allowance of depreciation by the Lower Authorities is that the assessee could not produce copy of purchase invoice of the vehicle. It is undisputed

that the Department has allowed interest on vehicle loan as well as has also allowed the expenditure towards car running. Thus, in fact, it is accepted by the Department that the assessee has a vehicle which is used for the business purposes. Although, the assessee could have made efforts to obtain a copy of the purchase invoice from the hypothecating bank and produced it before the Lower Authorities, all the same, it is our considered opinion that the assessee should not be penalized for his failure to produce the purchase invoice, specially, when the Department has in principle accepted the assessee's claim of interest on car loan as well as claim of Car running expenditure. Therefore, in view of the facts of the case, we delete this disallowance.

5.2 As far as ground No.2 is concerned, it challenges the addition on account of notional interest added to the income of the assessee in respect of an amount of Rs.10,00,000/- advanced to M/s Chander Rani Enterprises Pvt. Ltd.. We have gone through the audited financial statements of the assessee and it is seen that the share holders' funds (Share Capital and Reserves & Surplus) as on

31<sup>st</sup> March, 2012 stood at Rs.4,88,60,427/- whereas the long term borrowing stood only at Rs.11,84,274/- and the short term borrowing stood at Rs.4,05,944/-. Thus, it can be safely concluded that the advance of Rs.10,00,000/- given by the assessee was given from interest free funds/reserves of the assessee. In such a situation, we are unable to uphold the addition on account of notional interest to the income of the assessee and we direct the deletion of the same.

5.3 As far as the ground No.3 of the appeal is concerned, the same challenges the action of the Ld. CIT(A) in reducing the liability of unpaid creditors of Rs.4,37,38,637/- from the opening written down value of block of license of Rs.1,19,78,771/- and sustaining an addition of Rs.2,56,68,848/- u/s 50 of the Act. The facts leading to this controversy are that during the year under consideration, the assessee had shown loss on sale of fixed assets grossing to Rs.5,39,16,901/- and the net loss on sale of assets at Rs.1,01,78,264/-. The Assessing Officer had required the assessee to explain why the gross loss should not be added back to the

assessee's income and it had been submitted during the course of assessment proceedings that it pertained to purchase of license which was specific to the business of the assessee and since the assessee company had started incurring losses, the asset value of the said license had become redundant and the company was unable to pay for the cost of the license to the company in United Kindom (UK). It was further submitted before the Assessing Officer that the assessee company had written back the amount of creditors at Rs.4,37,38,637/- which related to the purchase of fixed assets and the same did not constitute income of the assessee. It has been argued that the provisions of Section 41(1) of the Act would not apply as it is not a trading liability and further the assessee has not claimed any deduction therefrom either in this year or in earlier years. It has been submitted that the entire loss on sale of fixed assets amounting to Rs.5,39,16,901/- has been duly reflected in the audited financial statements (Schedule 17) and that write back of liability of Rs.4,37,38,637/-, being liability in respect of fixed assets was deducted therefrom and only the net sum of Rs.1,01,78,264/- has been added back in the computation.

As far as the contention of the assessee regarding non-applicability of Section 41(1) of the Act is concerned, we are in full agreement with the same. The Hon'ble Apex Court in the case of CIT vs. Mahindra And Mahindra Ltd. reported in [2018] 404 ITR 01 (SC) has laid down that waiver on loan amounts to cessation of liability other than the trading liability and it is neither taxable as perquisite u/s 28 (iv) of the Act nor taxable as a remission of liability u/s 41(1) of the Act. On similar reasoning the write back of sundry creditors pertaining to purchase of assets would not constitute income of the assessee. We have also gone through Note No.17 in Notes to the Financial Statements and it is seen that in the audited financial statements, the assessee has declared loss on sale of fixed assets of Rs.5,39,16,901/- and has, thereafter, deducted the unpaid creditors for license amounting to Rs.4,37,38,637/- and has thus declared a net loss of Rs.1,01,78,264/- only. It is this, amount of Rs.1,01,78,264/- which has been reflected in the computation of income filed by the assessee. This, in our considered opinion, is not correct. The fact remains that the assessee has finally paid an amount which is much less than the agreed/ invoiced amount

towards the purchase of fixed assets. The amount less paid is Rs.4,37,38,637/-. Thus, in fact, the actual cost of the fixed assets to the assessee has been reduced by Rs.4,37,38,637/- and to this extent the stand of the Department is correct that the assessee should have reduced the cost of assets by the amount of Rs.4,37,38,637/-. Further, we are in agreement with the contention of the Ld. Authorized Representative that provisions of Section 50 (1) & (2) of the Act are not attracted in this case. As there has been no transfer of assets in the present case, short term capital gains cannot be computed in this case. Accordingly, this issue will have to be re-examined by the Assessing Officer after duly taking into account our directions that provisions of Section 41(1) and Section 50(1) & 50(2) are not attracted in this case. However, the amount of sundry creditors written back i.e. Rs.4,37,38,637/- will have to be reduced from the cost of fixed assets and Written Down Value would have to be adjusted accordingly. Thus, Ground Nos.3, 3.1 & 3.2 have to be reconsidered and reexamined by the Assessing officer. We direct that the same be done after giving adequate opportunity to the assessee to present its case.

5.4 Since, Ground No.4 is related to Ground No.3 of the assessee appeal, the same is also restored to the file of the Assessing Officer. The Assessing Officer is directed to allow set off of brought forward losses as per law thereafter.

6.0 In the final result, the appeal of the assessee stands allowed for statistical purposes.

Order pronounced on 16<sup>th</sup> March, 2021.

Sd/-  
**(ANIL CHATURVEDI)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

Dated: 16/03/2021

PK/PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI