

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI**  
**BEFORE SHRI PRAMOD KUMAR, VP AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. No. 694/Mum/2019

(निर्धारण वर्ष / Assessment Year:2014-15)

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| DCIT-1(1)(1)<br>Room No.533/579, 5 <sup>th</sup> Floor,<br>Aayakar Bhawan, M. K.<br>Road, Mumbai-400020. | <b>बनाम/</b><br>Vs. | M/s. Blue Star Engineering<br>(Formerly known as Blue<br>Star Electro Mechanical<br>Ltd.)<br>Ground Floor, Kasturi<br>Building Jamshedji Tata<br>Road, Mohan. T. Advani<br>Chowk, Mumbai-400020. |
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आयकर अपील सं/ I.T.A. No. 149/Mum/2019

(निर्धारण वर्ष / Assessment Year: 2014-15)

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|---|--------------------------|--|
| M/s. Blue Star Engineering<br>(Formerly known as Blue<br>Star Electro Mechanical Ltd.)<br>Ground Floor, Kasturi<br>Building Jamshedji Tata<br>Road, Mohan. T. Advani<br>Chowk, Mumbai-400020. | <b>बनाम/</b><br>Vs.      | DCIT-1(1)(1)<br>Room No.533/579, 5 <sup>th</sup> Floor,<br>Aayakar Bhawan, M. K.<br>Road, Mumbai-400020. |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAECB1558M   |                          |  |
| (अपीलार्थी /Appellant)  | ..                       | (प्रत्यर्थी / Respondent)  |
| Assessee by:  | Shri Niraj Sheth         |  |
| Revenue by:   | Shri Tharian Oommen (DR) |  |

सुनवाई की तारीख / Date of Hearing: 16/03/2021

घोषणा की तारीख /Date of Pronouncement: 07/06/2021

**आदेश / O R D E R**

**PER AMARJIT SINGH (JM):**

The assessee as well as revenue have filed the above mentioned appeals against the order dated 06.11.2018 passed by the Commissioner of Income Tax (Appeals) -02, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y. 2014-15.



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2. The assessee has filed the present appeal against the order dated 06.11.2018 passed by the Commissioner of Income Tax (Appeals) -02, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2014-15.

3. The assessee has raised the following grounds: -

*"1. That on the facts and in the circumstances of the case, the Ld. CIT (Appeals) was not justified and grossly erred in not allowing deduction of leave encashment claimed on provision basis amounting to Rs.4,97,882/- for the purpose of computing total income under normal provisions of the Act.*

*2. That on the facts and in the circumstances of the case, the U. CIT(Appeals) was not justified and grossly erred in treating the receipts of Rs.22,13,259/- wrongly appearing in Form 26AS as income of the appellant for the purpose of computing total income under normal provisions of the Act.*

*3(a). (a) That on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified and grossly erred in erred in denying deduction for provision for doubtful advances u/s 36(1)(vii) r.w. Sec. 36(2) amounting to Rs. 22,64,464/- for the purpose of computing total income under normal provisions of the Act.*

*3(b). That on the facts and in the circumstances of the case, without prejudice to Ground No. 3(a) taken herein above, Ld. A.O. be directed to allow the claim of provision for doubtful advances as business loss u/s 28 of the Act.*

*"4. That the appellant craves leave, to add, to amend, modify, rescind, supplement, or alter the ground stated here-in-above, either before or at the time of hearing of this appeal."*

4. The appellant is a Public Limited Company and a wholly owned subsidiary of Blue Star Limited which was incorporated on 22.06.2010. The appellant is engaged in business of providing contractual services relating to plumbing and fire-fighting projects. The appellant had filed its Original Return of Income for the impugned Assessment Year on



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29.11.2014 showing loss of Rs.27.49,37,991/- under the provisions of the Income Tax act, 1961 (here-in-after referred to as the Act) other than Section 115JB of the Act was worked out at Rs.(-) 20,24,92,408/-. A revised return was filed on 30.03.2016 at a loss of Rs.16,85,14,222/- under normal provisions and at loss of Rs.227,72,858/- under MAT provisions.

### **ISSUE NO. 1**

5. This issue has not been pressed by the Ld. Representative of the assessee, therefore, this issue is being decided in favour of the revenue against the assessee being not pressed.

### **ISSUE NO.2**

6. Under this issue the Ld. Representative of the assessee has challenged the receipts of Rs.22,13,259/- which has wrongly been shown in Form 26AS as income of the assessee. It is contended by the Ld. Representative of the assessee that the appellant claimed TDS credit of Rs.91,36,076/- on the basis of credit appearing in Form 26AS. The Ld. Representative of the assessee has argued that the entry of receipts of Rs.22,13,259/- from Goa Hotels and Clubs Pvt. Ltd., D. S. Gupta Construction Pvt. Ltd. were not recorded and raised by the appellant as though in Form 26AS, therefore, the same is liable to be deleted. However, on the other hand, the Ld. Representative of the DR agreed to re-confirm the transactions. Since both the parties agreed to re-confirm the transactions, therefore, we set aside the finding of the CIT(A) on this issue and restore the issue before the AO to re-consider all the entries and to decide the matter of controversy in accordance with law. Needless to say that an opportunity of being heard is required to be given to the assessee.



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Accordingly, this issue is decided in favour of the assessee against the revenue.

### **ISSUE NO.3a**

7. Under this issue the assessee has challenged the disallowance of Rs.22,64,464/- on account of doubtful advances u/s 36(1)(vii) r.w.s. 36(2) for the purpose of computing total income under normal provisions of the Act. At the very outset, the Ld. Representative of the assessee has argued that the issue has squarely covered by the decision of Hon'ble Apex Court in the case of **Vijaya Bank Vs. CIT (2010) 323 ITR 366 (SC)**. However, on the other hand, the Ld. Representative of the revenue has refuted the said contention. In the case of **Vijaya Bank (supra)**, it has been held that deduction for bad debts u/s 36(1)(vii) can be claimed where assessee made the provisions for bad and doubtful debts in Profit & Loss Accounts and simultaneously reduces it from debtor/ loan and advances in the assets side of the Balance-sheet. It is also held that after insertion of the Explanation to Section 36(1)(vii), the assessee is required not only to debit the P & L Account but simultaneously also reduce the loan and advances or the debtor from the assets side of the balance-sheet to the extent of corresponding amount so that at the end of the year, the amount of loan advances/debtor is shown as net of provision for impugned bad debts. Once a provision in respect of doubtful debts stood created and ultimately carried to the Balance-sheet, wherein Loans and Advances or debtors stood reduced by the amount of such provision, then such treatment amounted to actual write off because, in the final analysis, at the year end, the so called provision does not remain and the balance-sheet only carries the amount of loans and advances or debtors, net of such provision made by the assessee for the



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impugned bad/doubtful debt. It is also held that it is not necessary to square up each individual account. A provision for doubtful debt such presented in accounted would be regarded as an allowable expenditure u/s 37(1)(vii) of the Act. Thereafter, the ITAT Mumbai in the case of **Bank of India Vs. DCIT (2012) 139 ITD 493 (Mum)** also took the similar view. No doubt, the Ld. Representative of the DR has refuted the said contention but the issue has already been settled in the above mentioned case. However, the CIT(A) has allowed the doubtful debts but declined the claim of doubtful advances of Rs.22,64,464/- on the ground of that the assessee is not in the banking business. The claim has wrongly been declined, therefore, we set aside the finding of the CIT(A) on this issue and allowed the claim of the assessee.

### **ISSUE NO.3b**

8. Issue no. 3b is academic in nature, therefore, need not required to be adjudication.

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9. The revenue has filed the present appeal against the order dated 06.11.2018 passed by the Commissioner of Income Tax (Appeals) -02, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2014-15.

10. The revenue has raised the following grounds: -

*1. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was right in allowing depreciation on customer contract by holding that customer contract falls within the expression 'any other business or commercial rights of similar nature', as defined in Explanation-3 to sec. 32(1)(ii) of the Act?"*



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2. *"Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was right in allowing depreciation on customer contract: without appreciating the fact that customer contracts are trade contracts give rise to revenue receipt on transfer, whereas intangible asset, as shown in Expl.-3 to sec. 32(1)(ii) of the Act, capital receipt?"*

3. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in allowing the provision for doubtful debts u/s. 36(1)(vii) of the Act by holding that the assessee has complied with the provisions of sec. 36(2)(1) of the Act; without appreciating the fact that the assessee is not a banking and finance company, as such sec. 36(1)(vii) is not applicable in its case and that sec. 36(2) of the Act is also not applicable in case of provisions."*

*The appellant craves leave to add to, amend or withdraw the aforesaid ground of appeal."*

**11.** The facts are similar which have been narrated above while deciding the appeal bearing ITA. No.149/Mum/2019, therefore, there is no need to repeat the same.

### **ISSUE Nos. 1 & 2**

**12.** Under these issues the revenue has challenged the allowance of claim of the depreciation. Before going further, we deem it necessary to advert the finding of the CIT(A) on record.:-

*"5.2 I have considered the A.O's order, the submissions made by the appellant and the details filed. The AO has disallowed the depreciation claimed by the appellant on customer contracts by holding that -*

*(i) The customer contract of the previous owner that has been passed on to the current owner continues to be on the same terms and conditions,*

*(ii) There was no erosion of value over time in respect of such assets to justify the claim of depreciation.*

*(iii) Further, it has been noted that this was a recurring issue and following the decision of AO in earlier years the claim of depreciation has been disallowed.*



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*5.3 The appellant has cited several decisions in support of its claim for depreciation on the ground that the customer contracts were in the nature of intangible assets and was eligible for depreciation in terms of Explanation 3(b) to Sec. 32(1) of the Act. It has also relied on the decision of this office in appellant's own case for the preceding A.Y's i.e A.Y.2011-12, A.Y.2012-13 and A.Y.2013-14, wherein this ground has been decided in favour of the appellant, following the decision of the jurisdictional Tribunal in the case of India Capital Markets Pvt. Ltd Vs. DCTT (supra), vide order dated 29.07.2016, 30.09.2016 & 20.04.2017 respectively. Following the precedence i.e. the orders of the CIT(A)-2 Mumbai in the appellant's own case for the A.Y.2011-12, A.Y.2012-13 and A.Y.2013-14, it is held that the appellant is eligible for depreciation on the customer contracts in terms of Explanation 3(b) to Sec. 32(1) of the Act. Accordingly, the AO is directed to allow depreciation in respect of the customer contracts for AY 2014-15. This ground is Allowed."*

**13.** On appraisal of the above mentioned finding, we find that the claim of the assessee has been allowed on the basis of decision of Hon'ble ITAT in the assessee's own case for the 2011-12 in ITA. No. 6412/Mum2016 dated 31.12.2019 and ITA. No.5242/Mum/2017 for the 2013-14 dated 31.12.2019 and ITA. No. 252/Mum/2017 for the A.Y.2012-13 dated 29.08.2018 wherein this ground has been decided on the basis of decision of Hon'ble ITAT in the case of **India Capital Market P. Ltd. Vs. DCIT (2013) 56 SOT 32 (Mum)**. The facts are not distinguishable at this stage. No law contrary to the law relied by the Ld. Representative of the CIT(A) has been produced before us. Since the issue has squarely covered by the decision of Hon'ble ITAT in the assessee's own case, therefore, the finding of the CIT(A) is quite correct which is not liable to be interfere with at this appellate stage. Accordingly, this issue is decided in favour of the assessee against the revenue.

**ISSUE No.3**



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**14.** This issue has been discussed and decided in favour of the assessee while deciding the issue no. 2 bearing ITA. No.149/Mum/2018, therefore, this issue is decided in favour assessee against the revenue.

**15.** In the result, the appeal filed by the assessee is hereby partly allowed and the appeal filed by the revenue is hereby dismissed.

Order pronounced in the open court on 07/06/2021

Sd/-  
**(PRAMOD KUMAR)**  
उपाध्यक्ष / VICE PRESIDENT  
मुंबई Mumbai; दिनांक Dated : 07/06/2021  
*Vijay Pal Singh/Sr. P.S.*

Sd/-  
**(AMARJIT SINGH)**  
न्यायिक सदस्य/JUDICIAL MEMBER

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

**(Assistant Registrar)**  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai