

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “SMC” BENCH: NEW DELHI**

(THROUGH VIDEO CONFERENCING)

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.3796/Del/2017
Assessment Year : 2012-13

Sports & Leisure Apparel Ltd., B 25, Qutab Institutional Area, New Delhi PAN-AAACS2959M	vs	DCIT, Circle-24(1), New Delhi.
APPELLANT		RESPONDENT
Appellant by	Sh. M.P.Rastogi, Adv.	
Respondent by	Sh. R.K.Gupta, Sr.DR	
Date of Hearing	02.08.2021	
Date of Pronouncement	11.08.2021	

ORDER

PER KUL BHARAT, JM :

This appeal filed by the assessee for the assessment year 2012-13 is directed against the order of Ld. CIT(A)-8, New Delhi dated 29.03.2017.

The assessee has raised following grounds of appeal:-

1.1. *“The learned CIT[A] has erred in confirming the disallowance of Rs.1,27,476/- amounts written being notice pay etc debited to employees at the time of their separation in the earlier years and credited to Income / expense Salaries & allowances but could not be recovered.*

1.2. *The learned CIT [A] has erred in not deleting the Write off of amounts treated as income / credited to expense in earlier years and written off in the current as they are allowable under sections 28 and 37 of the Act.*

2. *The learned CIT [A] has erred in not clearly directing that the disallowances made under normal provisions are not includable to book profits/ income computed u/s 115JB of the Act -as they are not covered by Explanation to Section 115JB of the Act.*

3. *The interest charged u/s 234B is wrong.*

4. *That the above grounds are independent and without prejudice to each other.”*

2. Facts giving rise to the present appeal are that the assessee filed return of income declaring income at NIL (income declared u/s 115JB at Rs.45,95,551/-) on 29.09.2012. The case was selected for scrutiny under CASS and the assessment was framed u/s 143(3) of the Income Tax Act, 1961 (“the Act”) vide order dated 30.01.2015. By framing the assessment, the Assessing Officer made various disallowances i.e. disallowance of Rs.12,79,430/- on account of non-deduction of tax; Rs.1,27,476/- on account of disallowance of bad debt/advance written off in the P&L A/c; and Rs.13,97,196/- on account of commission paid in excess to agreement. Thus, the Assessing Officer computed total taxable income under normal income of Rs.5,59,008/- under the provision of section 115JB of the Act is Rs.73,99,653/-. The Assessing Officer observed that since the tax payable in normal income is less than the tax payable on book profit u/s 115JB of the Act. Therefore, taxable income was taken at Rs.73,99,653/- u/s 115JB of the Act.

3. Aggrieved against this, the assessee preferred appeal before Ld. CIT(A) who after considering the submissions, partly allowed the appeal. Thereby, Ld.CIT(A) deleted the addition made on account of disallowance of commission of Rs.13,97,196/-, deleted the addition Rs.12,79,430/- made on account of non-deduction of tax. However, Ld.CIT(A) confirmed the

addition of Rs.1,27,476/- made on account of disallowance of claim of bad debt written off.

4. Aggrieved against this, the assessee preferred appeal before this Tribunal.

5. Ground No.1.1 to 1.2 raised by the assessee in this appeal are against the confirming the disallowance of Rs.1,27,476/- made by the Assessing Officer.

6. Ld. Counsel for the assessee vehemently argued that the authorities below have failed to appreciate the facts in right prospective and had made disallowance without appreciating the facts in right prospective. He further reiterated the submissions as made in the written synopsis. He submitted that the employees who had left the employment of the assessee without giving notice for making payment in lieu of notice period. He submitted that the amount was credited to the salary account of the respective employees. Similarly, in the case of shortage of garments and uniform expenses also credited to respective heads, hence stood recoverable from the respective employees. Since, this amount could not be recovered, therefore, these amounts were written off in the subsequent years. Ld. Counsel for the assessee has also submitted a written synopsis which is reproduced as under for ready-reference:-

“This has reference to the written submissions dated 21st June 2021 along with a paper book compilation

It also has reference to certain further documents which were directed to be furnished on the last date of hearing on 20th July 2021

It is recapitulated that the two grounds of appeal before your kind self is effectively is one with regard to Disallowance of Rs 1,27,476 due from ex-employees written off which was termed as "Bad Debts / Advances w/off" in the Profit & Loss account

The company had debited the accounts of employees towards

(1) Shortage of garments in the custody of employees-which finally got credited to the Profit & Loss account

(2) Cost of Uniforms provided to employees and they had left service without continuing employment for a reasonable lime after issue-which finally got credited to Uniforms expense.

(3) Notice pay deducted from employees for not giving the mandatory notice of one month before their leaving service for days of short notice

Details of such were submitted before the Authorities below and also before you at page 3 of the Paper Book already submitted before your kind self. The said page is enclosed again for your kind ready-reference.

The following further documents were directed to be furnished on the last date of hearing on 20th July 2021.

Regarding Shortage of Garments:

Ledger Account of Sales Recovery from employees for the earlier financial year (2010-111 - to establish that they are credited to the Statement of Profit and Loss Account-which is marked as Page S-1

Please find also find enclosed:

The Statement of Profit & Loss for the year ended on 31-3-2011 which is marked as Page S-2

The Grouping of Sales of each State which got credited to the Statement of Profit & Loss for the year ended in 31-3-2011 which is marked as Page S-3

It will be observed that the Sales Recovery from employees -on account garment shortage during FY 2010-11 is Rs 5.93 lacs, out of which only a small part of Rs. 1.1 lakhs has been written off as bad debts etc during the year under appeal

Regarding recovery on account of uniforms:

Ledger Account of Uniforms for the earlier finance year (2010-11) – to establish that the recoveries got credited to the expense Statement of Profit and Loss Account-which is marked as Page S-4

The Grouping of Personnel Expenses which got debited to the Statement of Profit & Loss for the year ended on 31-3-2011 which is marked as Page S-5

The Sub-grouping of Salaries, Wages and Bonus groups in Personnel Expenditure which got debited to the Statement of Profit & Loss for the year ended on 31-3-2011 which is marked as Page S-6

Please find enclosed Salary vouchers for the 12 months of Financial year 2010-11 to show how the personnel expenses are accounted for Hope that your kind self will find the above in order

Therefore it is once again prayed that the disallowance of Rs 1,27,476 ma kindly be deleted.”

7. Ld. Sr. DR opposed these submissions and submitted that the authorities below were justified in disallowing the claim of the assessee. He submitted that the claim of the assessee does not fall within the ambit of bad debts. He submitted that the assessee apparently has claimed bad debt on three counts: **firstly**, notice pay receivable from the employees who left without making payment of notice period; **secondly**, such employees

were given uniform by the assessee wherein these uniforms as per the assessee were to be returned which the employees did not return; and **thirdly**, garments handed over to the such employees were not returned back, therefore, the assessee made relevant entry in the journal. He further contended that no accounting principles permit the claim of the assessee.

8. In re-joinder, Ld. Counsel for the assessee contended that the claim falls within the ambit of bad debt even the assessee is eligible to claim a business loss u/s 28 of the Act. He contended that the assessee company debited the accounts of the employees towards shortage of garments in the custody of the employees which was finally credited to the P&L A/c. Secondly, cost of uniform provided to the employees who have left service without continuing for a reasonable time after issue of uniform which was finally credited to the uniform expenses. Further, notice pay deducted from employees for not giving the mandatory notice of one month before their leaving service. Regarding, shortage of garments, Ld. Counsel for the assessee drew my attention to the ledger account of sales recovery of employees in the earlier Financial Year 2010-11 they were credited to the expense statement of P&L A/c. The grouping of personnel expenses which got debited to the statement of P&L A/c for the year ended on 31.03.2011 in respect of recovery on account of uniforms.

9. I have heard the rival contentions and perused the material available on record and gone through the orders of the authorities below. The moot question for determination is whether all these three items would fall

within the category of debt and even if they do not fall within the category of that whether such expenses are allowable as business expenditure. The contention of the assessee has been through out that the transactions have occurred during the course of business and routed through P&L A/c. Therefore, the amounts which are recoverable from the employees under different items would certainly fall within the ambit of the debt.

10. Undisputedly, in this case, so far item related to shortage of garments is concerned and returning of uniform, both these items are directly related to the course of business of the assessee. Therefore, the authorities below ought to have allowed the claim of the assessee. I, therefore, direct the Assessing Officer to delete the addition. However, in the case where the employees had left employment without paying mandatory notice pay, the assessee has not brought on record that what steps were taken to recover this amount to demonstrate that in fact these were recoverable from the employees. In the absence of such evidence, no interference is called for. Thus, Ground of appeal No.1 raised by the assessee is partly allowed.

11. Ground of appeal No.2 raised by the assessee reads as under:-

2. The learned CIT [A] has erred in not clearly directing that the disallowances made under normal provisions are not includable to book profits/ income computed u/s 115JB of the Act -as they are not covered by Explanation to Section 115JB of the Act.

12. Ld. Counsel for the assessee submitted that Ld.CIT(A) failed to give clear direction to the Assessing Officer to exclude the disallowance made under normal provisions for computing the book profits/income u/s 115JB of the Act. Ld. Counsel for the assessee further submitted that Ld.CIT(A) ought to have given a clear direction for excluding the disallowance made under normal provisions for computing the book profit.

13. On the contrary, Ld. Sr. DR opposed these submissions and supported the order of Ld.CIT(A).

14. I have heard the rival contentions and perused the material available on record. In agreement with the Ld. Counsel for the assessee that as per the explanation 2 of section 115JB of the Act, the amount disallowed could not have been added for the purpose of section 115JB of the Act. As per the explanation, the following amounts are to be added while computing the book profits:-

(a) "the amount of income-tax paid or payable, and the provision therefor; or

(b) the amounts carried to any reserves, by whatever name called, other than a reserve specified under section 33AC; or

(c) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities; or

(d) the amount by way of provision for losses of subsidiary companies; or

(e) the amount or amounts of dividends paid or proposed ; or

(f) the amount or amounts of expenditure relatable to any income to which section 10 (other than the provisions contained in clause (38) thereof) or section 11 or section 12 apply; or

(fa) the amount or amounts of expenditure relatable to income, being share of the assessee in the income of an association of persons or body of individuals, on which no income-tax is payable in accordance with the provisions of section 86; or

(fb) the amount or amounts of expenditure relatable to income accruing or arising to an assessee, being a foreign company, from,—

(A) the capital gains arising on transactions in securities; or

(B) the interest, 76[dividend,] royalty or fees for technical services chargeable to tax at the rate or rates specified in Chapter XII, if the income-tax payable thereon in accordance with the provisions of this Act, other than the provisions of this Chapter, is at a rate less than the rate specified in sub-section (1); or

(fc) the amount representing notional loss on transfer of a capital asset, being share of a special purpose vehicle, to a business trust in exchange of units allotted by the trust referred to in clause (xvii) of section 47 or the amount representing notional loss resulting from any change in carrying amount of said units or the amount of loss on transfer of units referred to in clause (xvii) of section 47; or

(fd) the amount or amounts of expenditure relatable to income by way of royalty in respect of patent chargeable to tax under section 115BBF; or

(g) the amount of depreciation,

(h) the amount of deferred tax and the provision therefor,

(i) the amount or amounts set aside as provision for diminution in the value of any asset,

(j) the amount standing in revaluation reserve relating to revalued asset on the retirement or disposal of such asset,

(k) the amount of gain on transfer of units referred to in clause (xvii) of section 47 computed by taking into account the cost of the shares exchanged with units referred to in the said clause or the carrying amount of the shares at the time of exchange where such shares are carried at a value other than the cost through statement of profit and loss, as the case may be.”

15. I, therefore, direct the Assessing Officer to compute book profits as per explanation 2 of section 115JB of the Act. Thus, Ground of appeal No.2 raised by the assessee is allowed.

16. Ground No.3 raised by the assessee is against the charging of interest u/s 234B of the Act. No submission as made on behalf of the assessee as to how the charging of interest is incorrect. This being consequential in nature. I hold accordingly. Thus, Ground No.3 raised by the assessee is allowed.

17. Ground of appeal No.4 raised by the assessee is general in nature, needs no adjudication.

18. In the result, the appeal of the assessee is partly allowed.

Above decision was pronounced on conclusion of Virtual Hearing in the presence of both the parties on 11th August, 2021.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Amit Kumar

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI