

**INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "A": NEW DELHI]**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)**

ITA. No. 3905/Del/2016
(Assessment Year: 2012-13)

Shri Bihari Lal Singhal, C/o. O. P. Sapra & Associates, Advocates, C - 763, New Friends Colony, New Delhi-110065. PAN: AIGPS4634Q	Vs.	ACIT, Circle : 34 (1) New Delhi.
(Appellant)		(Respondent)

Assessee by :	None;
Revenue by:	Shri K. A. Manu, Sr. D.R.;
Date of Hearing :	16/08/2021
Date of pronouncement :	16/09/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order passed by the Id. Commissioner of Income Tax (Appeals)-12, New Delhi, dated 23.05.2016 for assessment year 2012-13 wherein a solitary ground of appeal is raised being addition and disallowance of Rs.13,75,098/- being additional duty recoverable from the Customs Department, which was written off during the year under appeal is disallowed.
2. The brief facts of the case shows that assessee is an Individual, who is engaged in the business of trading of printed thermal paper rolls under the name and style of M/s. Hi-Tech Corporation. He filed return of income of Rs.57,64,527/- on 29.09.2012. During the course of assessment proceeding the Assessing Officer noted that assessee has claimed a sum of Rs.13,75,098/- as bad debt on account of special additional duty recoverable from the Customs Department. The assessee

wrote off the above sum wherein the Advocate of the assessee gave a report that it is not recoverable. Assessee also submitted the report of the Advocate. Assessee submitted that special additional duty is debited when the imports are made and the credit is given to the purchase account and, therefore, same is also taken into account while computing the income of the assessee. During the year the assessee has written off the above amount. Therefore, it satisfies the provision of Section 37(1)(vii) read with Section 36(ii) of the Act. The Id. Assessing Officer disallowed the claim of the assessee stating that Customs Department requires some documents as well as pointed out certain defects which are required to be fulfilled by the assessee which are not fulfilled and, therefore, the refund is not recoverable. Therefore, it was stated that recovery from the Customs Department cannot be claimed as bad debts. Thus, Rs.13,75,098/- were disallowed. The assessment order was passed on 27th March, 2015 determining total income of the assessee at Rs.72,44,215/-.

3. Assessee preferred appeal before the Id. CIT (Appeals). The Id. CIT (Appeals) dismissed the claim of the assessee holding that the claim is not bad and hence could not be written off and further the Customs Duty recoverable from the Government is not trade debt and hence it cannot be allowed. She further rejected the claim that it is a business loss also on the ground that it was not clear to her how it is a business loss. Thus, the appeal of the assessee was dismissed on this ground.
4. Despite notice, none appeared before us. Looking at the order-sheet also nobody is appearing on behalf of the assessee on last several occasions and, therefore, the issue is to be decided on the merits of the case.
5. The Id. DR vehemently supported the orders of the lower authorities.
6. We have carefully considered the rival contentions and perused the orders of the lower authorities. In the present case the fact shows that the assessee was to recover a sum of Rs.13,75,098/- as special additional duty refund from the Govt. of India. On 1.01.2012 the counsel of the assessee gave a report that certain defects in the claim of the assessee has been noted by the Customs Department and, therefore, out of the total refund of Rs.67,04,215/- sum of Rs.13,75,098/- could

not be recovered from the Customs Department. On the basis of the above report the assessee wrote off the above sum to the profit and loss account. Earlier when the claim was made, special additional duty was reduced from the import cost of material. Therefore, it is apparent that when the claim of the duty as recoverable was made, it was created as advance recovered after crediting the import duty cost of the material. When it is not recoverable it has been written off in the books of accounts. Therefore, there is a debt, which has already gone to reduce the profit by reducing the cost of imports, it is also written off in the books of accounts, the report of Advocate is also dated 1.02.2012 and, therefore, the claim of the assessee is correctly falls under Section 36(1)(vii) of the Act. Accordingly, the appeal of the assessee is allowed and the Assessing Officer is directed to delete the above disallowance.

7. In the result, the appeal is allowed.

Order pronounced in the open court on : 16/09/2021.

**Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated : 16/09/2021.

MEHTA

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	16.09.2021
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Date on which the typed draft is placed before the dictating member	16.09.2021
Date on which the typed draft is placed before the other member	16.09.2021
Date on which the approved draft comes to the Sr. PS/ PS	16.09.2021
Date on which the fair order is placed before the dictating member for pronouncement	16.09.2021
Date on which the fair order comes back to the Sr. PS/ PS	16.09.2021
Date on which the final order is uploaded on the website of ITAT	16.09.2021
date on which the file goes to the Bench Clerk	16.09.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	