

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E' NEW DLEHI**

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No. 4139/Del/2017 & 378/Del/2018
Assessment Year: 2013-14 & 2014-15**

M/s. Om Sweets Pvt. Ltd., vs. DCIT, Circle 19(1) & 2,
GL-23, Shaheed Bhagat Singh Marg, New Delhi.
Jail Road, Hari Nagar, New Delhi.

PAN : AAACO5022H

(Appellant)

(Respondent)

Assessee by : Sh. Bharti Sharma, Advocate
Revenue by : Sh. Vipul Kashyap, Sr. DR

Date of hearing: 11/08/2021

Date of order : 28/09/2021

ORDER

PER K. NARASIMHA CHARY, J.M.

Aggrieved by the orders dated 28.04.2017 and 16.10.2017 passed by the Commissioners of Income Tax (Appeals)-7 and 40, New Delhi ("Ld. CIT(A)"), for the assessment year 2013-14 and 2014-14, M/s. Om Sweets Pvt. Ltd. ("the assessee") preferred these appeals.

2. Brief facts of the case are that the assessee is a company and engaged in the business of manufacturing of sweets, Namkin and running restaurants. During the scrutiny of Income-tax return filed by

the assessee for the assessment years 2013-14 and 2014-15, learned Assessing Officer found that the assessee claimed a loss of Rs.2,57,000/- and Rs.90,000/- on chit fund for these two years respectively and claimed that they have participated in the chit funds for requirement of the funds for running of the company. Learned Assessing Officer did not agree with the assessee and observed that there are number of options for requirement of funds other than Chit funds and on this premise, Id. Assessing Officer disallowed the claim of the assessee u/s. 37 of the Income-tax Act, 1961 ("the Act" for short).

3. Assessee preferred appeals before the learned CIT(A) and the Id. CIT(A) placed reliance on the decision reported in Soda Silicates and Chemical Works vs. CIT, 179 ITR 588 and returned a finding that the member of the chit fund company is not entitled to any loss in transaction and such a loss cannot be allowed u/s. 37 of the Act. Learned CIT(A), accordingly, upheld the disallowance made by the Id. Assessing Officer.

4. Aggrieved by such orders of the authorities below, the assessee preferred these two appeals contending that inasmuch as the assessee participated in the chits for raising the funds for running the company and utilized the funds for the purpose of business. Any loss incurred in such transactions is allowable under law. Reliance is placed on the decisions reported in CIT vs. Kovur Textiles & Co., (1982) 136 ITR 61 (AP HC), CIT v. Kottayam Co-operative Bank Ltd. (1974) 96 ITR 181 (Ker), DCIT v. P.U.R. Polyurethane Products (P) [1999] 64 TTJ 507(Del. Trib), ITO v. Singh Radio Co. (India) (P.) Ltd. [1991] 59 Taxman 367(Del. Trib), ITO v. Chawla Bros [1990] 38 TTJ 402 (Del. Trib.), ACIT v. K.S. Shetty and

Co., (2003) 263 ITR 71, (Chennai Trib.), Rajees vs Income-Tax Officer, 1997 63 ITD 330, (Cochin Trib.), M/s. S.G.R. Chemicals Pvt. Ltd. v. ITO, ITA no. 932/Hyd/2016, order dt. 17.04.2018, Hyd. Trib., Chaluvadi Anjaneyulu (HUF] v. ITO, ITA no. 248/VIZ/2014, order dt. 11.01.2019, (Viz. Trib.), M/s. Indus Steels and Alloys Ltd., v. DCIT, ITA no. 2382 & 2383/Bang /2018, order dt. 30.07.2019, Bang. Trib., M/s. V. Kay Translines (P] Ltd., v. ITO, ITA No. 1562/Mum/2010, order dt. 29.12.2010, (Mum. Trib.). Learned AR further submits that in view of the conflict in the decisions on this aspect between Soda Silicates and Chemical Works (supra) and Others, the beneficial interpretation has to be given according to the decision of Hon'ble Supreme Court in CIT v. Vegetable Products Ltd. [88 ITR 192].

5. Learned DR, per contra, heavily places reliance on the orders of the authorities below and justified the impugned order on the ground that inasmuch as the Id. CIT(A) followed the decision of Hon'ble Punjab & Haryana High Court in Soda Silicates and Chemical Works(supra), such an order cannot be found fault with.

6. We have gone through the record in the light of submissions made on either side. Only issue involved in these appeals is whether or not the loss arising out of chit fund transactions entered into by the assessee for the purpose of raising the funds to be utilized in the business, is an allowable deduction. This issue is no longer *res integra* by a numbers of decisions stated (supra). In CIT vs. Kovur Textiles & Co. (supra), Hon'ble Andhra Pradesh High Court held that when the assessee contributed to the chit funds and bid it, the difference between the contributed amount and the bid amount is an allowable

deduction. Subsequently, in DCIT v. P.U.R. Polyurethane Products (supra), ITO vs. Singh Radio Co. (supra), Chawla Bros. (supra), K.S. Shetty and Co. (supra), SGR Chemicals Pvt. Ltd.(supra) and many other decisions cited above, it was consistently held that the loss arising due to the difference between the contribution to the Chit and the bid amount is allowable deduction if the purpose of transaction in the chit is to raise the funds for the purpose of business. It is submitted by the Id. AR that CBDT issued instructions to all Commissioners of Income-tax vide letter dated 25.03.1992 stating that instruction No. 1175 holds good. In Instruction No. 1175 issued by the CBDT at paragraph No. (b), it was stated that in the hands of the subscribers, a few will be receiving more than what they have subscribed and this extra amount is in the nature of interest and as such, taxable. It is further clarified that Members who take the money earlier from the chit will necessarily have to contribute more which means that they incur loss, which is nothing but interest paid for moneys taken in advance and the claim of such a loss will have to be considered for the purpose of allowance according to the provisions of the Act depending upon how the money was utilised by the subscriber. All the decisions of the Tribunal, noted above, are unanimous on the point that when for the purpose of raising the funds to be utilized in the business, the assessee participated to the Chits, the loss arising on account of the difference between the amount contributed and the bid amount is an allowable deduction.

7. While respectfully following the same, we are of the considered opinion that if the purpose of assessee's participation in the chit is for the purpose of raising funds, and if the assessee utilized the said funds

for the purpose of business, then the difference in the subscription paid by the assessee and the prize amount received shall be treated as business income/loss. We, therefore, set aside the impugned order and remand the issue to the file of Id. Assessing Officer for the purpose of this fact verification. If the purpose of participation in the chit and utilization of funds is for the purpose of business, Id. Assessing Officer will allow the difference between the subscription amount paid and the prize money received, if it is loss, as business loss.

8. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on this 28th day of September, 2021.

Sd/-

(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 28/09/2021

'aks'

Sd/-

(K. NARSIMHA CHARY)
JUDICIAL MEMBER