

आयकर अपीलीय अधिकरण “SMC” न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI

श्री महावीर सिंह, उपाध्यक्ष के समक्ष ।

BEFORE SRI MAHAVIR SINGH, VICE PRESIDENT

आयकर अपील सं./ ITA No. 5733/Mum/2019

(निर्धारण वर्ष / Assessment Year 2013-14)

Mithu G. Hundalani 112, Embassy Centre, 207, Nariman Point, Mumbai-400 021	Vs.	The Income Tax Office,r Ward 3(2)(2), Aayakar Bhawan, 6 th Floor, Maharshi Karve, Road, Mumbai-400 020
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AAAPH4126J		

अपीलार्थी की ओर से / Appellant by	:	None
प्रत्यर्थी की ओर से / Respondent by	:	Smt. Smita Verma, DR

सुनवाई की तारीख / Date of hearing:	29.09.2021
घोषणा की तारीख / Date of pronouncement :	29.09.2021

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष के द्वारा /
PER MAHAVIR SINGH, VP:

This appeal of the assessee is arising out of order of the Commissioner of Income Tax (Appeals)-8, Mumbai [in short CIT(A)], in appeal No. CIT(A)-8/IT-551/2015-16 vide dated 13.06.2019. The Assessment was framed by the Income Tax Officer, Ward 3(2)(2), Mumbai (in short ITO/ AO) for the A.Y. 2012-13 vide order dated 22.02.2016 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. When this appeal was called for hearing, none was present from assessee but assessee filed an adjournment letter. This matter is coming for hearing on last three occasions and none



was present from assessee's side. Hence, seen the nature of additions and grounds of appeal, the matter is heard.

3. The first issue in this appeal of assessee is against the order of CIT(A) confirming the action of the Assessing Officer in making addition of long term capital loss on sale of furniture and fixtures. For this, assessee has raised the following ground No.1:-

“ 1. On the facts of the case and as per law, the learned commissioner of Income Tax (A) erred in confirming the addition of Long Term Capital Loss of Rs. 2,50,782/- on sale of furniture and fixtures as the furniture was not for personal use of the appellant and was installed in the flat given on Leave & License and no depreciation was claimed on cost of furniture and fixture.”

4. I have heard the learned Sr. Departmental Representative and gone through the facts and circumstances of the case. I noted that the assessee has claimed capital loss from sale of furniture amounting to ₹2,50,782/-. The assessee has purchases this furniture at ₹2,70,782/- and sold the same at ₹20,000/-. The assessee claimed loss on sale of furniture against long term capital gain declared at ₹46,28,711/-. According to Assessing Officer this is not a capital asset and hence, loss cannot be allowed. He disallowed the loss claimed by assessee on sale of furniture amounting to ₹2,50,782/-. The CIT(A) also confirmed the action of the Assessing Officer. Aggrieved, assessee is in appeal before Tribunal.



5. I noted from the facts of the case available on record. The assessee has provided furniture and fixture in Flat No.12, Natural Breeze, Dr. Annie Besant Road, Worli, Mumbai and the flat was given on leave and license basis on which composite rent was received inclusive of furniture. The assessee claimed that this is capital asset because it is not used for personal use of the tax payer. From the facts of the case I noted that the assessee has provided furniture and fixture in the flat and flat was given on leave and license basis on which composite rent was received. Once, this is a fact that the assessee once sold the furniture and fixture, the loss arising out of the same is allowable. Hence, I allow the claim of long term capital loss and direct the Assessing Officer accordingly. This issue of assessee's appeal is allowed.

6. The next issue in this appeal of assessee is as regards to the order of CIT(A) confirming the addition of ₹5,44,453/- on account of disallowance of bad debts. For this, assessee has raised the following ground No.2: -

“2. On the facts of the case and as per law, the learned Commissioner of Income Tax (A) has erred in confirming the addition of Rs. 5,44,453/- On account of bad debts though the same were business debts and have been written off in the Books of Accounts of the Appellant.”

7. I have heard the learned Sr. Departmental Representative and gone through the facts and circumstances of the case. The assessee is engaged in the business of letting out of cranes on



hire under the proprietary concern of M/s Ganesh Crane Services. The Assessing Officer during the course of assessment proceedings noticed from the computation of income that the assessee has shown business loss of ₹19,62,531/-, which mainly arose on account of claim of bad debts of ₹18,06,382/-. The Assessing Officer has narrated the entire detail of bad debts in its order in para 4.2. The Assessing Officer allow the claim of business loss to the extent of ₹2,76,023/- and disallowed the claim of balance bad debt totaling to ₹15,30,358/- in regard to item No.11 to 17 noted in the assessment order at Para 4.2. Aggrieved, assessee preferred the appeal before Commissioner of Income Tax (Appeals). The CIT(A) restricted the disallowance at ₹5,44,453/- from the following parties:

Sr.No	Name of the party to whom advances given	Amount in (Rs.)
1.	Staff Loan to Ishwar Singh	25000
2.	Creative Global	28218
3.	Credence Securities Pvt. Ltd.	25000
4.	Mahadeo Info Synergies	16236
5.	Namdeo Dhansal	500000

Aggrieved, assessee came in appeal before Tribunal.

8. During the course of hearing, now before me, the learned Sr. Departmental Representative vehemently supported the order of the learned Commissioner of Income Tax (Appeals).

9. I have gone through the details noted by CIT(A) in regard to Staff loan to Ishwar Singh amounting to ₹25,000/-, amount paid to Creative Global of ₹28,218/-, amount paid to Credence Securities Pvt. Ltd. of ₹25000/-, amount paid to Mahadeo Info Synergies of ₹16,236. I noted that these are personal payments



or on account of purchase of shares in personal account. These are not related to business activity and hence, CIT(A) has rightly confirmed the disallowance of bad debts in regard to the above mentioned parties.

10. Now coming to amount paid to Namdeo Dhansal amounting to ₹ 5 lacs, I noted that the payment to Namdeo Dhansal of ₹ 5 lacs was for obtaining job work of hiring of crane and after the payment made to Shri Namdeo Dhansal, he expired, the payment was never received back by the assessee and it was declared as bad debts. I find the explanation as reasonable and hence, delete the disallowance of bad debts on account of amount paid to Namdeo Dhansal of ₹5 lacs. Accordingly, this issue of the assessee's appeal is partly allowed.

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

Order pronounced in the open court on 29.09.2021 .

Sd/-
(महावीर सिंह /MAHAVIR SINGH)
(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 29.09.2021

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS



ITA No. 5733/Mum/2019
Mithu G. Hundalani; AY 13-14

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//

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai