

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI
BEFORE SHRI RAJESH KUMAR, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.6987/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2015-16)

M/s. Drisha Impex Pvt. Ltd. AI/7, Link Palace, Off: Link Road, OPP: Toyota Showroom Malad (W), Mumbai-400064.	बनाम/ Vs.	DCIT-12(2)(1) Room No.262, 2 nd Floor, Aayakar Bhavan, Maharshi Karve Road, Churchgate, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCD9928L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri K. Gopal	
Revenue by:	Dr. Arvind Sontakke (Sr. AR)	

सुनवाई की तारीख / Date of Hearing: 08/11/2021
घोषणा की तारीख /Date of Pronouncement: 05/01/2022

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 24.10.2019 passed by the Commissioner of Income Tax (Appeals)-20, Mumbai (hereinafter referred to as the “CIT(A)”) relevant to the A.Y.2015-16.

2. The assessee has raised the following grounds: -

“1.1. The learned CIT(A) has erred in not allowing our claim for allowance of Rs.60,00,000/- (60 lakhs) being Sales Tax liability crystallized in this year.



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1.2. *The assessee should not be denied an allowance in this year, which is otherwise legally allowable on account of mistaken omission to claim the same in the year of payment.*

2.1 *The learned CIT(A) erred in not allowing our claim for Bad Debts written off of Rs.8,05,63,59/- as per additional evidences filed u/r 46A.*

2.2. *The learned CIT(A) should have entertained our fresh claim as per the decision of Bombay High Court in the case of CIT Vs. Pruthvi Brokers & Shareholders (2012) 349 ITR 336 (BOM)*

3.0. *The learned CIT(A) erred in not considering our claim for allowance of Rs.5,91,661/- being the defective supplies and breakages allowed as discount which is mere 0.9% of the total sales., which was disallowed by the AO without any discussion.*

4.0 *Any other ground that may be raised before the Tribunal with the permission of the Hon'ble Members."*

3. The brief facts of the case are that the assessee filed its return of income on 30.09.2015 declaring total loss of Rs.9,60,85,770/- for the A.Y.2015-16. The case was selected for scrutiny under CASS. Thereafter, notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee company was engaged in the business of Trading goods and merchandise. The AO during the assessment proceedings found that the assessee claimed the Rebate and Discount of Rs.8,11,55,252/-. The assessee submitted the following details as under: -

Name of the party	Opening balance	Sales during the year	Amount received	Closing balance
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Hanuman Apparels		13,36,31,932	7,10,23,876	6,26,08,056
Sai Outfits		35,33,10,529	17,42,27,805	17,90,82,178
Total		48,69,42,461	24,52,51,681	24,16,90,234

The AO called for details however complete details were not filed, therefore, the said Rebate and Discount was disallowed and added to the income of the assessee. AO also noticed that the assessee claimed in the profit and loss account sales Tax amount of Rs.66,23,009/- and accordingly details were called for. From the details furnished by the assessee it was found that an amount of Rs.60,00,000/- of Sales Tax belonging to the F.Y.2007-08 was paid in the F.Y.2009-10. The AO called upon the assessee as to how the same was claimed in the A.Y.2014-15 which was replied by the assessee that the assessment was finalized during the year and only thereafter it was transferred to the expense account. The reply of the assessee was not accepted by the AO and therefore, the same was disallowed and added to the income of the assessee. The assessee also claimed the defective supply brokerage to the tune of Rs.5,91,661/- which was also disallowed and added to the income of the assessee. The total income of the assessee was assessed at loss to the tune of Rs.(-)86,37,391/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who dismissed the appeal of the assessee, therefore, the assessee has filed the present appeal before us.

ISSUE NOS 1 & 2

4. Under these issues the assessee has challenged the order of Id. CIT(A) upholding the disallowance of Rs. 60,00,000/- being sales tax liability crystalized in the year by the AO. The contention of the Ld.



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Representative of the assessee is that the assessee purchased the material in the F.Y.2005-6 to 2009-10 from several parties to whom the assessee had given the full amount of purchase plus VAT . The dealers may not have paid the VAT etc., therefore, the dispute arose and subsequently the liability of the assessee was crystalized vide order dated 20.06.2014 and raised the claim in the A.Y.2015-16. The contention of the Ld. Representative of the revenue is that the payment was related to the A.Y.2010-11, therefore, the same is not liable to be allowable in the relevant assessment year. The assessee has mentioned the facts in its tax auditor report F.Y.2009-10 and column no. 17K. The dispute was settled vide order dated 20.06.2014 in which the fact was crystalized and accordingly the assessee paid the amount in the A.Y.2015-16. The assessee claimed the said expenses in view of the Mercantile System of Accounting and in accordance with the Companies Act 2013 or Companies Act 1956. It has been specifically mentioned that any expenditure which was crystalized in a particular Financial Year, is liable to be claimed in the P & L Account in the year of crystallization. Accordingly, the VAT was crystalized vide order dated 20.06.2014, therefore, the same was allowable in A.Y.2015-16. It is also contended that the expenditure is allowable on the date on which the actual payment occurred in view of the provisions u/s 43B of the Act. Anyhow, it is not in dispute that an amount is related to VAT which was crystalized vide order dated 20.06.2014 by Maharashtra VAT Department and the same was paid to the VAT Department. No doubt the assessee paid the amount in sum of Rs. 25,00,000/- on 4.12.2009, and an amount of Rs.25,00,000/- on 11.12.2009 and an amount of Rs.5,00,000/- on 30.01.2010 & an amount of Rs.5,00,000/- on 30.01.2010 aggregating to



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Rs.60,00,000/-. We note that the assessee was having a dispute with the Vat department which was settled vide order dated 20.06.2014, therefore, the same was debited in the A.Y.2015-16 which is liable to be allowed in accordance with the norms of Mercantile System of Accounting, hence, we set aside the finding of the CIT(A) on these issues and direct the AO to allow the claim of the assessee.

ISSUE NO.3

5. Under this issue the assessee as challenged the disallowance of Bad Debts written off of Rs. 8.05,63,591/-. The assessee supplied the material to the Hanuman Apparels in sum of Rs.23,87,76,957/- and to Sai Outfits Pvt. Ltd., of Rs.8,34,77,408/- respectively. The total to the tune of Rs.32,22,54,365/- was outstanding against Sai Outfits and Hanuman Apparels and the said amount was not paid by the parties, therefore, the assessee company the wrote off the said amount. The facts of the matter are that the amount was initially debited in the rebate and discounts account which was disallowed by the Id AO. Before Id CIT(A) the assessee filed additional evidences and claimed the aid amount as bad debts. Since the assessee wanted to adduce the additional evidences in support of the claim which nowhere seems unjustifiable in view of the decision of Hon'ble Bombay High Court in the case of **CIT Vs. Pruthvi Brokers & Shareholders (2012) 349 ITR 336(Bom)**. Therefore, in the interest of justice, we set aside the finding of the CIT(A) on this issue and restore the issue before the AO to decide the matter of controversy afresh on the basis of the additional evidence adduced before us in accordance with law. An opportunity of being heard is liable to be given to the assessee in



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

ISSUE NO.4

6. Issue no.4 is connection with the disallowance of claim of Rs.5,91,661/- being the defective supply and breakages allowed as discount which was only 0.9% of the total sales. On appraisal of the order of the AO, we nowhere found any discussion to disallow the said claim in the order of the AO as well as CIT(A) also. The reasons should be on record to disallow the claim of the assessee if any. Without any speaking order declining of claim seems unjustifiable, therefore, we restore the issue before the AO to decide the matter of controversy afresh in accordance with law.

7. In the result, the appeal filed by the assessee is hereby allowed for statistical purposes.

Order pronounced in the open court on 05/01/2022

Sd/-

(RAJESH KUMAR)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 05/01/2022

Vijay Pal Singh (Sr. PS)

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



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6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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