

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI**(DELHI BENCH 'C' : NEW DELHI)****(Through Video Conferencing)****BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**ITA No.4015/Del/2018
(Assessment Year : 2014-15)

M/s. HBA Studio Pvt. Ltd. L-41, Connaught Circus, New Delhi-110001 PAN – AABCH8171R	Vs.	DCIT, Circle-11(1), New Delhi
(APPELLANT)		(RESPONDENT)

Assessee by	Shri Tapas Misra, Adv.
Revenue by	Shri Brij Mohan Singh, Sr. DR

Date of hearing:	03.03.2022
Date of Pronouncement:	15.03.2022

ORDER**PER ANUBHAV SHARMA, JM:**

The assessee has preferred this appeal against the order u/s 250(6) of the Income Tax Act, 1961(hereinafter referred to as “The Act”) passed on 14.03.2018

in appeal no. 671/16-17 by Commissioner of Income Tax (Appeals)-4, New Delhi (hereinafter referred to as “Ld. FAA or Ld. First Appellate Authority) by which the appeal against order dated 24.10.2016 u/s 143(3) DCIT, Circle-11(1), New Delhi (hereinafter referred to as “the Ld. Assessing officer or AO) was partly allowed.

2. The brief facts are HBA Studio Private Limited formerly known as Hirsch Bedner Associates Private Limited, the Appellant, filed its original return of income ROI on 29 November 2014 declaring a total income of Rs. 3,93,39,370/- and claiming a refund of Rs 320. The Appellant’s return was selected for scrutiny assessment. The assessment order dated 24 October 2016, was passed by the Deputy Commissioner of Income tax Circle 11(1) under section 143(3) of the Act wherein the income of the Appellant was assessed at Rs. 4,59,85,300/-. In framing the assessment Learned Assessing Officer made disallowance in respect of the advances written off amounting Rs. 66,45,934/- and disallowance of TDS credit amounting to Rs 1,03,354/-

3. Aggrieved by the assessment order passed by the Learned Assessing Officer for AY 2014-2015 the Appellant preferred the appeal before CIT(A). In appeal the CIT(A) had confirmed the disallowance of Rs. 66,45,934/- observing that *“absence of any dispute and / or of legal recourse, writing off the advances in short period of time and appellant’s omission to furnish cogent explanation in this regard leads me to a firm basis to infer that advances written off amounting to Rs. 66,45,934/- is not allowable. Accordingly addition of Rs.66,45,934/- made by A.O. is confirmed”*. However allowed credit of TDS of Rs.1,01,950/-.

4. Now before the Tribunal the assessee has raised following grounds of appeal:-

1. *“ That the Learned Commissioner of Income Tax*

(Appeals) [Ld. CIT(A)] has erred in confirming the disallowance of Rs. 66,45,934 on account of 'advances written off being loss sustained in the course of business and allowable under section 28 r.w.s 37(1) of the Income-tax Act, 1961 ("the Act").

2. That the Ld. CIT(A) has erred in holding that the assessee has not discharged its onus to substantiate that advances have not been written off prematurely.

3. That the Ld. CIT(A) has erred in holding that it is necessary for assessee to highlight factors on the basis of which advances were written off whilst maintaining that it not necessary for assessee to establish that debt has become irrecoverable.

4. That the assessment as made and order of the Ld. CIT(A) are against law and facts of the case involved.

5. That the grounds of appeal as herein are without prejudice to each other.

6. That the appellant respectfully craves leave to add, amend, alter and / or forego any ground(s) at or before the time of hearing."

5. Arguments were heard and on behalf of assessee it is submitted that all the grounds are interconnected. It is contended that it is engaged in hospitality interior design worldwide providing services in interior and graphic designs and in providing art consultancy. It was submitted that high-end decorative and display products are purchased by the assessee from external vendors to be applied or placed in the premises of the clients and the assessee had placed orders for a particular project namely Shadara Kempinski Hotel and certain vendors were identified and for certain articles advances were paid however, the project was

abandoned and vendors to whom advances were paid refused to repay the advance amounts and the same was written off from the accounts and treated as business expense in accordance with the provisions of Section 37(1) of the Act. He relied the judgment of Delhi High Court in (i) Mohan Meakin Ltd. vs. Commissioner of Income-tax, Delhi [2011] 11 taxmann.com 141 (Delhi HC), (ii) CIT vs. Samara India (P.) Ltd. [2013] 35 taxmann.com 79 (Delhi) , (iii) Minda (HUF) Ltd. v. JCIT [2006] 101 ITD 191 (Delhi Trib.), (iv) ACIT vs. Set India (P) Ltd. [2010] 3 ITR (Trib.) 454 (MUM), (v) Vijayashanthi Builders Ltd. vs. JCIT [2016] 69 taxmann.com 31 (Chennai-Trib.), (vi) Badridas Daga v. CIT[1058] 34 ITR 10 (SC) (vii) DCIT v. Friends Shoe Company [2016] 74 taxmann.com 100(Visakhapatnam-Trib.), (viii) Chenab Forest Co. vs. Commissioner of Income-tax [1974] 96 ITR 568 (J.& K.HC), (ix) Jethabhai Hirji and Jethabhai Ramdas vs. CIT [1979] 120 ITR 792 (BOM.HC) (x) Lord's Dairy Farm Ltd. vs. CIT [1955] 27 ITR 700 (Bom.HC) to contend that advances lost towards procurement of stock in trade in the hands of the taxpayer in the course of business would be allowable as business expense. Ld. Counsel specifically referred to the judgment in the case of TRF Ltd. vs. CIT (2010) 323 ITR 397 to contend that the assessee is not required to prove that the amounts have become irrecoverable in the light of amendment in Section 36 (1)(vii) of the Act with effect from 01.04.1999.

6. On behalf of the revenue it was contended that the orders of lower tax authorities have no infirmity and are based on correct appreciation of facts and law.

7. Appreciating the arguments and matter on record it can be observed that the assessee has placed on record the purchase orders on four vendors referred to in para 6.2 of order of Ld. FAA advances shown non recoverable to whom were disallowed. They mentions that under the head "project Shadara Kempinki Hotel"

the orders were placed. The project being abandoned led to non-return of the money nor supplying of the articles as they were actually no more required. That is how justification to treat the advances as non-returnable is claimed.

7.1 The Bench is of considered view that when advance is paid to prospective vendors and the same is forfeited due to discharge of the contract, on account of failure of the assessee himself to honour the contract, there can be no reason to expect the assessee to pursue any remedy or recourse under law to either get the article delivered or the amounts refunded. There was no other recourse to the assessee then to consider the advances as non-recoverable and treat them as expenses while writing them off. In the light of aforesaid discussion of facts and circumstances and relying on the judgment of Hon'ble Supreme Court of India in **T.R.F. Ltd. Case** (supra), as there is no necessity to establish that the debt has in fact become irrecoverable, the findings of Id. First Appellate Authority cannot be sustained.

8. Consequently, the grounds are sustained and appeal is allowed. The impugned assessment order and order of Ld. FAA, in regard to impugned addition of Rs. 66,45,934/- are set aside.

Order pronounced in open court on this 15th day of March, 2022.

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Date:- 15 .03.2022

Binita, SR.P.S

Copy forwarded to:

1. Appellant

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI