

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'A' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Manish Borad, Accountant Member**

**I.T.A. No. 395/KOL/2020
Assessment Year: 2014-2015**

Hosch Equipment India Limited,.....Appellant
4th Floor, Gariahat Mall,
13, Jamir Lane, Kolkata-700019
[PAN: AAACH6640J]

-Vs.-

Assistant Commissioner of Income Tax,.....Respondent
Circle-10(2), Kolkata,
Aayakar Bhawan, 3rd Floor,
P-7, Chowringhee Square,
Kolkata-700069

Appearances by:

Shri K.P. Singh, A.R. & Shri Gourav Shah, ACA, appeared on behalf of the assessee
Shri Biswanath Das, Addl. CIT, appeared on behalf of the Revenue

Date of concluding the hearing : March 31, 2022

Date of pronouncing the order : May 9th, 2022

O R D E R

Per Manish Borad, Accountant Member:-

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-4, Kolkata dated 22.01.2020 for the assessment year 2014-15.

2. It is noted that there is a delay of 90 days on the part of the assessee in filing this appeal before the Tribunal. In this regard, the assessee has filed an application seeking condonation of the delay due to lockdown as a result of COVID 19 pandemic and keeping in view the reasons given therein, we are satisfied that there was a sufficient cause

for the delay of 90 days on the part of the assessee in filing this appeal before the Tribunal. Even the ld. D.R. has not raised any objection in this regard. The delay of 90 days on the part of the assessee in filing this appeal before the Tribunal is accordingly condoned and the appeal of the assessee is being disposed of on merit.

3. The assessee has raised the following grounds of appeal:

“1(a) That on the facts and in circumstances of the case and in law, the Learned Assessing Officer (hereinafter referred to as the 'Ld. AO') has erred in adding and the Learned Commissioner of Income Tax (Appeals) [hereinafter referred to as 'Ld. CIT(A)'] has erred in confirming the addition of an amount of INR 25,71,378 on account of trade receivables written off.

1(b) That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in confirming the addition of trade receivables written off on the alleged ground that there was no Board Resolution to specify the formula or guidelines adopted while writing of the trade receivables without giving any opportunity of being heard to the appellant.

1(c) That on the facts and in circumstances of the case and in law, the Ld. CIT(A) erred in stating that no documentary evidence were produced before him during the course of appellate proceedings as to how the quantum was decided and whether these amounts were routed through profit and loss account without appreciating the fact that the appellant had written off the aforesaid amount in its books of books in Note No. 24 of the Statement of Profit and Loss.

*1(d) That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the disallowance made by the Ld. AO of trade receivables written off without considering the principal laid down by the **Hon'ble Supreme Court of India** in the case of **TRF Limited** wherein it was held that trade receivables written off should be allowed if it is written off as irrecoverable in the books of accounts of the Company.*

1(e) That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the disallowance made by the Ld. AO of trade receivables written off without considering the affidavit from the appellant and the certificate from the Tax Auditor which was submitted during the course of appellate proceedings regarding inadvertent mistake occurred in the Tax Audit Report mentioning Trade receivable as “Capital expenditure”

The Appellant submits that the following grounds are independent and without prejudice to one another. That the appellant craves leave to add to and/ or amend, alter, modify or rescind the grounds hereinabove before or at the time of hearing of the appeal”.

4. Brief facts of the case are that the assessee is a Limited Company engaged in manufacturing of Belt Scraper. The return of income for the year under consideration was filed by the assessee on 25.11.2014 declaring total income of Rs.2,65,23,210/-. The case was selected for scrutiny followed by serving of notice under section 143(2) and 142(1) of the Act. After considering the submission of the assessee, various additions including the disallowance of trade receivables written off Rs.25,71,378/- were made and the income assessed at Rs.3,18,39,544/-. Being aggrieved, the assessee has preferred appeal before the Id. CIT(Appeals) and partly succeeded. Now the assessee is in appeal before the Tribunal, wherein sole issue challenging the finding of the Id. CIT(Appeals) confirming the disallowance of trade receivables written off.

5. Ld. Counsel for the assessee has filed a paper book containing 114 pages dated 14th March, 2022 and submitted that the alleged amount is a trade receivable but wrongly mentioned as a capital expenditure by the tax auditor. Necessary certificate from the Tax Auditor and affidavit from the Company is being brought and placed on record. The alleged amount is purely a trade advance written off and deserves to be allowed as business expenditure.

6. Per contra, ld. D.R. supported the orders of the lower authorities.

7. We have heard the arguments of both the parties and also perused the relevant material available on record. We notice that the Assessing Officer while examining the records and audit report came across the observation of the auditor on Point 21(a) of Form No. 3CD

annexed to Tax Audit Report on Form 3CB as per the provision of section 44AB of the Act. In this column, the auditor has mentioned a sum of Rs.25,71,378/- as a capital expenditure not allowable as business expenditure. Based on this observation, the Assessing Officer made a disallowance of Rs.25,71,378/-.

8. We further find that before the Id. CIT(Appeals) and before us, Id. Counsel for the assessee has demonstrated with the necessary documents including the affidavit from the company, certificate from the tax auditor and details of customer-wise trade receivables written off to prove that there was an apparent mistake by the tax auditor by mentioning the word 'capital expenditure' in place of bad debts written off. In the certificate issued by the tax auditor placed at page 73 of the paper book, it has been certified by Chaturvedi & Company, Chartered Accountants vide Certificate dated January 20, 2020 that *"we hereby confirm that Hosch Equipment (India) Limited, Kolkata had debited a sum of Rs.25,71,378/- on account of trade receivables shown under debit side of its Profit and Loss Account vide Note no. 24 Other Expenses for the year ending 31.03.2014"*. The said bad debts and other receivables written off are of revenue nature and the affidavit to this effect has also been filed for and on behalf of the Company.

9. We have also perused the details of customer-wise trade receivables written off placed at page 74 of the paper book and *prima facie* the lists contains name of various customers mainly including Essar Projects (India) Limited, Larsen & Toubro Limited, Tata Steel Limited, TRF Limited, Ultratech Cement Limited etc. So there is no doubt that the alleged amount is a bad debts written off.

10. We, therefore, under the given facts and circumstances of the case and also respectfully following the ratio laid down by the Hon'ble Supreme Court in the case of *TRF Limited -vs.- CIT reported in (2010) 190 taxman 391 (SC)* hold that since the assessee has written off a bad debt i.e. trade receivable shown as revenue in earlier period which is not recoverable and made necessary entries in the books of account, it is no more necessary for the assessee to establish that the debt, in fact, has become irrecoverable. We, therefore, reverse the finding of the ld. CIT(Appeals) and delete the disallowance of Rs.25,71,378/- made by the ld. Assessing Officer and allow the claim of trade receivables written off by the assessee in the Profit & Loss Account. Thus grounds raised by the assessee are allowed.

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

Order pronounced in the open Court on May 9th, 2022.

**Sd/-
(Rajpal Yadav)
Vice-President (KZ)**

**Sd/-
(Manish Borad)
Accountant Member**

Kolkata, the 9th day of May, 2022

- Copies to :*
- (1) ***Hosch Equipment India Limited,
4th Floor, Gariahat Mall,
13, Jamir Lane, Kolkata-700019***
 - (2) ***Assistant Commissioner of Income Tax,
Circle-10(2), Kolkata,
Aayakar Bhawan, 3rd Floor,
P-7, Chowringhee Square, Kolkata-700069***
 - (3) ***Commissioner of Income Tax(Appeals)-4, Kolkata;***
 - (4) ***Commissioner of Income Tax- Kolkata,***
 - (5) ***The Departmental Representative***
 - (6) ***Guard File***

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***By order
Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata***

Laha/Sr. P.S.