

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.1255/Bang/2017
Assessment Year: 2013-14

M/s. Mindlogicx Infotech Ltd. Techllano, 1011-B Graphite India Road Hoodi Circle, Near Whitefield Bengaluru 560 048 PAN NO : AADCM5149A	Vs.	ACIT Circle-4(1)(2) Bengaluru
APPELLANT		RESPONDENT

ITA No.1414/Bang/2017
Assessment Year: 2013-14

Deputy Commissioner of Income-tax Circl-4(1)(2) Bangalore	Vs.	M/s. Mindlogicx Infotech Ltd. Bengaluru 560 048
APPELLANT		RESPONDENT

Appellant by	:	Shri B.S. Balachandra, A.R.
Respondent by	:	Shri G. Manoj Kumar, D.R.

Date of Hearing	:	18.07.2022
Date of Pronouncement	:	16.08.2022

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

These cross appeals filed by the assessee and revenue against the order passed by CIT(A) dated 30.3.2016. The revenue has raised following grounds of appeal:-

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- 1) *“The Order of the Ld. CIT (A), in so far as it is prejudicial to the interest of the Revenue, is opposed to law and the fact and circumstances of the case.*
- 2) *On facts of the case, Whether the Ld CIT (A) is right in holding that the unutilized amount of commitment of Rs. 6,02,97,000/- has accrued to the assessee during the AY 2014-15, simply on the ground that M/s BCCL has communicated the above unutilized amount to the assessee vide letter dated 04.02.2014.*
- 3) *3. On facts of the case, the Ld CIT (A) has failed to appreciate that the deferred revenue expenditure of Rs. 6,02,97,000/- for deduction was available to the assessee during AY 2011-12 as per parr 2.2 pf the agreement dated 15.10.2007 as the extended time limit to use the unutilized amount expired on 10.01.2011.*
- 4) *For these and other grounds that may be urged at the time of hearing, it is prayed that the order of the CIT (A) in so far as it relates to the above grounds may be reversed and that of the Assessing Officer may be restored.*
- 5) *The' appellant craves leave to add, alter, amend and / or delete any of the grounds that may be urged.”*

2. Facts are of the case are that the assessee is stated to be in the business of software development and support services. The Assessee has written-off an amount of Rs. 10.76 crores in the P&L account as deferred revenue expenditure. It was submitted before the AO that the entire amount of Rs. 15 crores was paid to M/s Bennett Coleman & Company Pvt Ltd (BCCL) on 29/11/2007. The Assessee contended that, the claim for advertising on this account was agreed to be spread-over to 3 years. However, due to certain difficulties regarding the period of utilization, the balance unclaimed amount of Rs. 10,76,06,710/- was forfeited by BCCL. The Assessee claimed the written-off for the entire amount in the year under consideration. The AO, for the various reasons explained in the impugned order proceeded to disallow the expense claim to the extent of R's. 10,76,06,710/-.

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3. On appeal, Ld. CIT(A) observed that out of Rs.1,07,70,670/-, an amount of Rs.6,02,97,000/- has been forfeited by the BCCL vide their letter dated 4.2.2014. Being so, said amount has to be allowed as a business loss in the assessment year 2014-15 instead of assessment year 2013-14. However, the balance amount of Rs.4,73,09,710/- is an excess claim of loss cannot be allowed in any assessment year. Against this, the assessee as well as revenue is in appeal before us.

4. The Ld. A.R. submitted regarding the addition regarding unrecoverable advance of Rs.10,76,06,710 as follows:-

4.1 The above assessee had an agreement with advertisement agreement with Bennett Coleman & Co Ltd on 29/11/2007. The agreement is mainly to cover advertisements relating to corporate campaigns, financial information and recruitment requirements of the appellant company by BCCL Media. The assessee company has paid Rs.15 Crore (Rupees Fifteen Crore only) for annual commitment utilized by the BCCL media company in three installments in the following manner

First Term	Rs.7.50 Cr
Second Term	Rs.4.00 Cr
Third Term	Rs.3.50 Cr

4.2 The commencement date of the agreement is **15/10/2007 to 14/10/2010** as per assessee company the BCCL media utilized only Rs.4,23,93,290/- only and the outstanding balance of Rs.10,76,06,710/- shown in the assessee. balance sheet as on 31/3/2012. But the BCCL media vide letter dated 04/02/2014 has mentioned that the company has utilized Rs.8,97,03,000/- out of the

total commitment of Rs.15,00,00,000/- and the un-utilized amount is Rs.6,02,97,000/-

4.3 As per the assessment order the A.O. made an addition of Rs.10,76,06,710/- but the A.O. before adding the above amount has mentioned in his order at page 5 that " Further assessee has irrationally claimed Rs.10,76,06,710/- as bad debts whereas BCCL confirms that it is forfeiting Rs.6,02,97,000/- only" but finally the A.O adds Rs.10,76,06,710/-. The assessee filed an appeal before the Ld. CIT (A) and the Ld. CIT (A) confirmed an addition of Rs.4,73,09,710/- and the balance amount of Rs.6,02,97,000/- gave a direction to the learned A.O. to write off in the subsequent year period.

4.4 But the assessee company vehemently opposed since the agreement came to end on 14/10/2010 and there was communication between the assessee and the company. There was a dispute between the assessee and BCCL that the company had only utilized Rs.4,23,93,290/- but the BCCL has given a letter stating that the company has utilized Rs.8,97,03,000/-. As per un-utilized amount shown in the appellant books is Rs.10,76,06,710/- as on 31/03/2012, assessee claimed the amount for the assessment year 2013-14 since the BCCL had clearly stated that the assessee had not utilized before the expiry of the agreement that is before 14/10/2010 hence the BCCL forfeited the amount as per article 2.5 of the agreement. As stated above assessee was showing in the balance sheet as on 31/3/2011 and 31/3/2012 a sum of Rs.10,76,06,710 after earnest efforts for utilizing the balance amount and later on proved that the BCCL, hence the assessee

claimed in 2013-14 AY as deferred revenue expenditure in profit and loss account.

4.5 Hence, the Ld. A.R. requested to allow the deferred expenditure at Rs.10,76,06,710/- for the assessment year 2013-14 and to allow the appeal in the interest of equity and justice.

5. The Ld. D.R. submitted that the claim of assessee cannot be allowed either as a bad debt or business loss in the assessment year under consideration as these are crystalized neither as a bad debt nor as business loss and the order of the AO to be upheld.

6. We have heard the rival submissions and perused the materials available on record. In this case, assessee entered into an agreement with Bennett Coleman & Company Ltd. ("BCCL").

6.1 The Assessee has entered into an advertisement agreement with Bennett Coleman & Co. Ltd. on 29/11/2007 accordingly to which BCCL agrees to place advertisement of the value of Rs. 15Cr in the BCCL media for 3 years. As per para 2.2 of the agreement, the annual commitment to publish the ad is as follows:-

Sub term	Annual commitment (in cr)
First sub-term	7.5
Second sub-term	4
Third sub-term	3.5
Total	15

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6.2 The company was entitled to utilize the unutilized total commitment for the term of 3 months from the end of the term. Otherwise, as per para 2.5 of the agreement, total commitment unutilized in terms of article 2.2 above shall stand forfeited.

6.3 As per the agreement, the commencement date of the agreement was 15/10/2007 and sub-term ended on 14/10/2010. If any advertisement not utilized for 3 months after the expiry of the term, i.e. after 10/01/2011 would stand forfeited. Hence, as per the agreement the amount is forfeited in the AY 2011-12. Though this fact was known to the assessee the amount is forfeited, there is no cogent reason as to why the said amounts were not written-off in the AY 2011-12 itself.

6.4 It is observed by the AO that, from the letter dated 04/02/2014 given by BCCL to the assessee it is mentioned that, Rs. 8,97,03,000/- is utilized by the assessee out of total commitment of Rs. 15,00,00,000/- and balance amount of Rs. 6,02,97,000/- is forfeited. Though BCCCL has forfeited Rs. 6,02,97,000/-, assessee is claiming Rs. 10,76,06,710/- without any basis. Further pointed out that assessee has failed to reconcile the exact figure of written-off while claiming of the entire sum arbitrarily without any basis. It is also noted that, the formal communication from the BCCL about the forfeiture was received only in AY 2014-15 and thus, there was no prudent reason why assessee wrote-off said expenses in AY 2013-14, itself.

6.5 Since assessee is in receipt of huge capital gains during the relevant AY, it was only in order to reduce the tax liability that the assessee is resorting to claim the deferred revenue expenditure write-off. It is further highlighted by the AO that assessee has incurred business loss during the earlier years, because of which same is not claimed as written-off in the earlier year.

6.6 It is also observed that there is no rationality in writing-off of the deferred revenue expenditure in the relevant AY 2013-14 and also that assessee is unable to prove that the said expenses have actually become bad-debts during the relevant AY to claim even as business loss.

7. The Ld. CIT(A) considered the letter dated 4.2.2014 and observed that an amount of Rs.6,02,97,000/- has to be allowed as a business loss in the assessment year 2014-15 and balance amount cannot be allowed. Now the claim of the assessee is that entire amount of Rs.6,76,06,710/- to be allowed as bad debt or business loss in the assessment year under consideration i.e. 2013-14.

8. First of all, to allow it as bad debt u/s 36(1)(vii) r.w.s. 36(2) of the Income-tax Act,1961 ['the Act' for short] subject to following conditions to be fulfilled:-

- a. Debtor loan should be in respect of business which is carried on by the assessee in the relevant financial year.
- b. The debt should have been taken into computation of income of the assessee of the accounting year or of an earlier accounting year or should repay money lent in the ordinary course of assessee's business of banking or money lending.
- c. The amount of debt or lend, or part thereof which is claimed as a deduction should become bad.
- d. The amount should be written off as irrecoverable in the accounts of the assessee for that accounting year in which the claim for a deduction is made for the first time.

9. The contention of the Ld. A.R. is that entire debt has been written off i.e. 10,76,06,710/- in the assessment year under consideration and same to be allowed as a bad debt. In our opinion,

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the condition laid down as above is not fulfilled as the said amount not gone into the computation of income in any assessment year including the present assessment years. Being so, unless and until fulfilled all the above conditions in section 36(1)(vii) r.w.s. 36(2) of the Act cumulatively, the claim of assessee as bad debt cannot be considered. On this reason, we hold that the claim of assessee is devoid of merits.

10. Coming to the claim of the assessee as a business loss, in this assessment year, there was no evidence to show that said loss has been crystalized in this assessment year under consideration. The assessee's claim is based on the letter dated 4.2.2014 received from BCCL, wherein mentioned that an amount of Rs.8,97,03,000/- has been utilized by the assessee out of total amount of Rs.15 crores and balance amount of Rs.6,02,97,000/- has been forfeited. It is evident from the said letter that the amount of Rs.6,02,97,000/- has been forfeited and the assessee is entitled to claim this amount as business loss that amount in the assessment for the assessment year 2014-15 and not in the assessment year 2013-14, since the letter received from BCCL is dated 4.2.2014 i.e. financial year 2013-14 relevant to assessment year 2014-15. Before us, Ld. D.R. submitted that the amount of Rs.6,02,97,000/- has been crystalized as business loss in the financial year 2010-11 and relevant to the assessment year 2011-12 in view of the para 2.2 of the agreement dated 15.10.2007 as the extended time limit to use the unutilized amount expired on 10.1.2011. We find force in the argument of the Ld. D.R. that Ld. CIT(A) considered the letter dated 14.2.2014 given by BCCL to the assessee without going into the agreement entered by the assessee with BCCL on 29.12.2007. As per this agreement, the commencement date of agreement was 15.10.2007 and sub-term ended on 14.10.2010. If any advertisement not utilized for 3 months

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after the expiry of the term i.e. after 10.1.2011 would stand forfeited. Hence, as per agreement the amount forfeited in the assessment year 2011-12 only. As recorded by the AO, this fact was known to the assessee that BCCL forfeited the amount in the assessment year 2011-12 only. Being so, the assessee must have claimed this as a loss to the tune of Rs.6,02,97,000/- in the assessment year 2011-12 and not in the assessment year 2013-14. On this count, Ld. CIT(A) taken note of the letter dated 4.2.2014 without noticing the contents of the agreement entered between assessee and BCCL. In view of this, we are of the opinion that Ld. CIT(A) not justified in directing the AO to consider the loss of Rs.6,02,97,000/- in the assessment year 2014-15. We vacate this finding of the Ld. CIT(A). To sum up, the claim of assessee cannot be allowed in the assessment year 2013-14 or in the assessment year 2014-15.

11. In the result, the appeal filed by the assessee is dismissed and the appeal of the revenue is allowed.

Order pronounced in the open court on 16th Aug, 2022

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 16th Aug, 2022.
VG/SPS

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Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar,
ITAT, Bangalore.**