

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.: **101 & 102/CHNY/2021**

निर्धारण वर्ष/Assessment Years: 2010-11 & 2011 - 12

BYD India Pvt. Ltd.,
(formerly known as BYD
Electronics India Pvt. Ltd.),
Developed Plot No.OZ-7,
SIPCIT Industrial Growth Centre,
Oragadam,
Sriperumbudur Taluk,
Kancheepuram – 602 105.

The ACIT / DCIT,
vs. Corporate Circle -1(2),
Chennai.

PAN: AADCB 0819N

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri R. Sivaraman, Advocate
: Shri AR.V. Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 27.09.2022

घोषणा की तारीख/Date of Pronouncement : 30.09.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

These appeals by the assessee are arising out of the common order of Commissioner of Income Tax (Appeals)-1, Chennai, in ITA No.27, 194/2014-15 & 2015-16 dated 16.12.2019. The assessments were framed by the ACIT (OSD) / DCIT, Company Circle 1(2), Chennai for the assessment years 2010-11 & 2011-12

u/s.143(3) r.w.s. 92CA of the Income Tax Act, 1961 (hereinafter the 'Act') vide orders dated 12.03.2014 & 20.03.2015 respectively.

2. At the outset it is noticed that these appeals are barred by limitation by 426 days and the order of CIT(A) was received by assessee on 16.12.2019 and due date for filing of appeals was 15.02.2020 but assessee filed these appeals before Tribunal on 15.04.2021 and thereby there is a delay of 426 days. The Id.counsel for the assessee stated that delay attributable with a cause is only 40 days and for this, he filed affidavit stating the reasons that this being a Chinese company and assessee was in China since, December, 2019 i.e., the Director of the assessee company. The assessee cited the following reason given in affidavit:-

“I state that the impugned order was received and handed over immediately to the office of Mr. N.Narasimhan, Chartered Accountant for further action and I state that the impugned order received in the office of the Chartered Accountant was misplaced by the audit assistant as well not informed to the Chartered Accountant. I state that during the course of the recovery proceedings initiated in December 2020, there was thorough scrutiny of income tax records and I state that as a consequence the non filing of the appeal was noticed. I state that after obtaining a copy from the Income Tax Department, the appeal was presented belatedly in the Registry of the Appellate Tribunal on 9.12.2020.

I state that the mistake committed in the office of the Chartered Accountant would constitute reasonable cause for condoning the delay in filing the captioned appeal.”

Rest of the period falls under the Covid-19 pandemic exemption and hence, he requested that the delay be condoned. When this was confronted to Id. Senior DR, he only opposed condonation of delay.

2.1 After hearing both the sides and going through the facts that the Director of the company was traveling to China during the above 40 days and balance period is due to Covid-19 pandemic and the Hon'ble Supreme Court in Miscellaneous Application No.665 of 2021 vide order dated 23.03.2020 has given directions that the delay are to be condoned during this period 15.03.2020 to 14.03.2021 and they have condoned the delay up to 28.02.2022 in Miscellaneous Application No.21 of 2022 vide order dated 10.01.2022, we condone the delay in filing of these appeals by assessee and admit the appeals for adjudication.

3. The only common issue in these two appeals of assessee is as regards to the order of CIT(A) confirming the action of AO in not considering the rental deposits written off amounting to Rs.2,89,42,376/- in assessment year 2010-11 and Rs.70,29,260/-

in assessment year 2011-12 as revenue and allowing the same u/s.37(1) of the Act. The facts and circumstances are identical in both the years and hence, we will take the facts from assessment year 2010-11 in ITA No.101/Chny/2021.

4. Brief facts are that during the year under consideration the assessee company had debited a sum of Rs.2,89,42,376/- as doubtful advance/deposits written off. The AO asked the assessee to clarify the same. The assessee submitted that the assessee company had entered in to lease agreement with M/s. Mahaveer Safety Glass Co. Pvt. Ltd on February 2008 for the property at Plot Nos.D-9 & D-10 in SIPCOT Industrial Park, Irungottukottai and had paid a sum of Rs.2,89,42,376/- as rental advance. Since the required permission was not taken by owner of the land from SIPCOT, the lease was not finalised. The rental deposit was not returned back to the assessee, therefore the assessee had written off from the book. The Id.AO considering the assessee's submission stated it was a capital loss not revenue expenditure and therefore, the same is not allowable as deduction. Hence, the AO disallowed the amount of Rs.2,89,42,376/- and added to the total income. Aggrieved, assessee filed an appeal before the CIT(A). The CIT(A) confirmed the addition made by AO by observing as under:-

The facts of the case have been carefully considered. The appellant paid a sum of Rs.2,89,42,376/- as rental deposit under the lease agreement executed between the company and M/s.Mahaveer Safety Glass Company Pvt Ltd. As the lease deed did not materialise, the rental deposit had to be returned to the appellant. In order to recover the said deposit, the appellant had taken various measures to recover the rental deposit such as filing a suit before the High Court. In this context, the Lease and Rental Agreement between the lessor, M/s. Mahaveer Safety Glass Company Pvt Ltd and the lessee, the appellant was examined. It was agreed that the lessor would hand over to the appellant possession of parcel of land measuring 50,000 sq.mts with constructed warehouse for a period of 3 years with effect from 1/2/2008. It was stated that the lessee i.e. the appellant would pay an advance of Rs.1,70,00,000/- to the lessor after signing the agreement which would be refunded on termination of lease and handing over of possession of the said property to the lessor. The said advance amount did not carry any interest. As the lessor had not obtained the requisite permission from SIPCOT, the lease deal did not materialise. In order to recover the said deposit, the company filed a suit before the High Court. In their order dated 7/8/2014, the Madras High Court appointed an Arbitrator to hear the case and to pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the High Court order. It is noted that whereas the High Court order is dated 7/8/2014, the appellant had written off the said advance from their books during the F.Y 2009-10. In other words, the appellant had written off the said amount even before the declaration of the decision of the High Court and the outcome of the arbitration proceedings. Furthermore, the advance pertains to a capital asset and therefore cannot be treated as a revenue expenditure. In the light of these material facts, the appellant's claim for deletion of disallowance of doubtful advances written off cannot be accepted. This ground of appeal is dismissed.

Aggrieved, assessee is in appeal before the Tribunal.

5. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the assessee company has claimed a sum of Rs.2,89,42,376/- as deposits written off on

account of payment of deposits on account of lease rental in term of agreement entered with Mahaveer Safety Glass Co. Pvt. Ltd., dated Feb,2008 for the property at Plot Nos.D-9& D-10 in Sipcot Industrial Park, Irungattukottai. The assessee could not occupy the property since the required permission was not taken by the owner of the land from Sipcot and lease could not be finalized. The assessee has filed recovery proceedings by filing a suit before the Hon'ble Madras High Court but that is pending. In the mean time, the assessee had made this claim of rental deposits as write off and claimed as allowable expenditure u/s.37(1) of the Act. For this proposition, the Id.counsel for the assessee filed copy of judgment order of Hon'ble Madras High Court in the case of CIT vs. Pricol Ltd., [2021] 139 taxmann.com 459, wherein exactly on identical facts, the facts narrated by Hon'ble High Court read as under:-

“4.The assessee is a company which was engaged in the business of manufacturing Dash Board instruments, sensors accessories, auto components, etc. The return of income for the Assessment Year under consideration, AY 2003~04, was processed under Section 143(1) on 10.12.2003, and subsequently, the case was taken up for scrutiny and notice under Section 143(2) was issued on 13.10.2004. On such scrutiny assessment, the Assessing Officer pointed out that the assessee had deposited a sum of Rs.6 Crores as security with M/s.Terra Agro Technologies Ltd. for leave and license operations to take over the operations of M/s.Terra Agro Technologies Ltd. for a period of 24 months with effect from January, 2001, with monthly lease rent of Rs.50 Lakhs. The assessee was able to carry on the business only for six months, i.e., upto July, 2001 only, and suffered loss and business could not be continued thereafter. Hence, the assessee wrote off the said security deposit paid to

M/s.Terra Agro Technologies Ltd. as irrecoverable security deposit for the previous Assessment Year relevant to AY 2003~04. The Assessing Officer disallowed the return of income on the ground that it was not incurred in the course of the assessee-s business and it was a capital item reflected in the assessee-s balance sheet. Against such order, the assessee preferred an appeal to the Commissioner of Income Tax (Appeals)-I, Coimbatore, who dismissed the appeal by order dated 01.12.2006. Aggrieved by the same, the assessee preferred an appeal before the Tribunal, which has been allowed by the impugned order.”

The Hon’ble Madras High Court has considered this issue and confirmed the order of Tribunal treating the same as business expenditure by observing in para 6 as under:-

“6. From the facts noted by the Tribunal as mentioned above, while granting relief to the assessee by treating the expenditure as business expenditure, the Tribunal took note of the fact that the Assessing Officer and the Commissioner of Income Tax (Appeals) have not disputed the details regarding the income and expenditure furnished by the assessee and the Assessing Officer only concluded that, since the security deposit is in the nature of a capital expenditure, the same cannot be allowed as a business loss. Though the Commissioner of Income Tax (Appeals) had rendered a finding that the transaction itself was a sham transaction, the Tribunal rightly noted that the Assessing Officer has not disputed or doubted the genuineness of the transaction. Furthermore, the Tribunal noted that the income and expenditure from business was accepted by the Revenue authorities for the earlier years treating the business activity of dehydrated vegetables as a separate and discontinuation of the business of the assessee, is not a correct view taken by the authorities when the assessee has considered both the business activities as its business and offered the income and expenditure for the earlier years, which was accepted.”

5.1 As the issue is exactly identical, respectfully following the Hon’ble Madras High Court decision in the case of Pricol Ltd., *supra*, we direct the AO to allow the claim of assessee. Since facts are

identical in assessment year 2011-12 also, taking a consistent view, we allow the claim of assessee.

6. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the open court on 30th September, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 30th September, 2022

RSR

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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|------------------------|--------------------------|-----------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकरआयुक्त (अपील)/CIT(A) |
| 4. आयकरआयुक्त /CIT | 5. विभागीयप्रतिनिधि/DR | 6. गार्डफाईल/GF. |