

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 1125/DEL/2020
[Assessment Year: 2015-16]**

Matrix Cellular (International) Services Ltd., 7, Khullar Farms, 140 New Mangla Puri, Mandi Road, Mehrauli, Delhi-110030.	<u>Vs</u>	Addl. CIT, Special Range-6. New Delhi.
PAN- AAECM5169M		
APPELLANT		RESPONDENT
Appellant represented by		Sh. Gautam Jain, Adv. & Sh. Lalit Mohan Adv.
Respondent represented by		Sh. Jeetender Chand, Sr. DR
Date of hearing		20.10.2022
Date of pronouncement		15.11.2022

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-37, New Delhi, dated 18.02.2020, pertaining to the assessment year 2015-16. The assessee has raised following grounds of appeal:

- “1. That on the facts and circumstances of the case and in law, the impugned order passed by the Learned Commissioner of Income Tax (Appeals) - 37, New Delhi [‘CIT(A)’] confirming the action of Learned assessing officer in making an addition of INR 6,61,34,424/-, is a vitiated order and thus, bad in law.
2. That on the facts and circumstances of the case and in law, in complete

ignorance of the facts of the case, the Learned CIT(A) has erred in holding that the claim of advances written off in the books of accounts is against the matching principle of accounting without appreciating the provisions of section 37(1) read with section 36(l)(vii) of the Act.

3. *That on the facts and circumstances of the case and in law, the Learned CIT(A) has ignored the fact that the balance amount of advance unrecoverable and written off during the relevant year under consideration is an allowable expense, and thus, affirming the view of the learned assessing officer is misconceived, erroneous and unjustified.*

4. *That on the facts and circumstances of the case and in law, the Learned CIT(A) has erred in confirming the calculation of interest by Learned Assessing Officer under Section 234A and 243 B of the Act.*

5. *That on the facts and circumstances of the case and in law, the Learned CIT(A) has erred in not adjudicating the ground regarding initiating penalty proceedings under section 271(1)(c) of the Act.”*

2. Facts giving rise to the present appeal are that in this case the assessee filed its return of income declaring taxable income of Rs. 21,28,68,520/- on 30.11.2015. The case was selected for scrutiny assessment and the assessment u/s 143(3) of the Income-tax Act, 1961 (in short “the Act”) was framed vide order dated 26.10.2017. Thereby the Assessing Officer disallowed the claim of bad debt amounting to Rs. 6,61,34,424/- and added the same in the income of the assessee. Hence the Assessing Officer assessed income at Rs. 27,90,02,940/-. Aggrieved against this the assessee preferred appeal before the learned CIT(Appeals), who after considering the submissions sustained the addition. Now the assessee is in appeal before this Tribunal.

3. The only effective ground is against sustaining the addition of Rs. 6,61,34,424/- by disallowing the claim of the assessee of bad debt/ business loss. Learned counsel for the assessee vehemently argued that the authorities below failed to appreciate the facts in

right perspective. He submitted that there is no dispute with regard to the fact that the amount in question was given as advance to meet various expenses relating to common facilities such as office rent, electricity expenses, security expenses, office maintenance, salary and general repair and maintenance. He submitted that Matrix Cellular International Service Limited, appellant herein, is an Indian Company, duly registered under the provisions of Companies Act, 1956. The appellant entered into a Memorandum of Understanding with Matrix Cellular Service Private Limited ('MCSPL') on 1.4.2008 for sharing various common facilities such as office rent, electricity expenses, security expenses, office maintenance, salary and general repair and maintenance, for which it was agreed that the appellant shall pay its share to MCSPL. Accordingly, the assessee advanced certain amounts to MCSPL to meet the cost of share of overheads and other costs. During financial year 2011-12 the contract with Vodafone, its major client, was cancelled due to which operations of MCSPL was temporarily terminated and an amount of INR 24,00,61,424/- was recoverable from MCSPL. Therefore, in order to secure the advance money given to MCSPL, the appellant company entered into an escrow arrangement to secure the recovery of advance and it was agreed that in case MCSPL fails to pay the outstanding amount, then the appellant's shareholder shall have the right to require the existing shareholders to sell/transfer shares held in escrow account. Therefore, on the basis of this agreement an amount of INR 17,39,27,000/- was considered as likely to be recoverable and balance amount of INR 6,61,33,424/- had been provided for in the books of account as amount doubtful to be recoverable.

4. Before the learned CIT(Appeals) it was contended that the said provision was duly added back to the total income being provision in nature in FY 2011-12. During the year under consideration the assessee recovered Rs. 1,73,92,700/- from MCSPL and wrote off Rs. 6,61,33,424/- as business loss against provision created in books of account. Since the amount advanced was in the nature of revenue and was given for business purpose, the actual write off the same has been claimed as an allowable expenses u/s 37 of the Act. He contended that even before learned CIT(Appeals) the assessee had claimed it as a business loss. However, the learned CIT(Appeals) failed to advert to this contention of the assessee that even if it is not allowable u/s 37 it would be allowable as business loss u/s 28 of the Act. He submitted that the findings of the authorities below are contrary to settled principles of law. Per contra, learned Sr. DR opposed these submissions and supported the orders of authorities below.

5. We have heard the respective parties and perused the material available on records. The assessee in this case is aggrieved by the disallowance of its claim regarding bad debt/ business loss. It is emphatically argued by the learned counsel for the assessee that if the claim is not admissible u/s 37 of the Act, even then this is allowable u/s 28 as business loss. The learned CIT(Appeals), however, has not adverted to the contention of the assessee that claim of the assessee would be allowable as business loss. We find merit into this contention of learned counsel for the Assessee. It is not the case of Revenue that the assessee has made bogus claim. It is well settled law that the Assessing Officer is required to tax the income which is chargeable to tax. If the tax payer has genuine claim,

same needs to be allowed. We, therefore, direct the Assessing officer to allow claim of business loss and delete the impugned addition. Grounds no. 1 to 3 are decided in the terms indicated here-in-above.

6. Ground no. 4 is consequential. We hold accordingly.

7. Ground no. 5, against initiation of penalty proceedings u/s 271(1)(c) of the Act, being premature is hereby dismissed.

8. Appeal of assessee is partly allowed.

Order pronounced in open court on 15th Nov. 2022.

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER
MP

Copy forwarded to:

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

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI