IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "A" : PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

I.T.A No.1349/PUN/2016
Assessment Year 2011-12

DCIT, Central Circle-2, 3rd Floor, Kendriya Rajaswa Bhavan, Gadkari Chowk, Old Agra Road, Nashik.	vs	M/s. Ajanta Infrastructure Pvt. Ltd., API Compound, M.I.D.C. Chikalthana, Aurangabad. PAN AAECA7855J
Appellant		Respondent

Revenue by :	Shri Ramnath P. Murkunde
Assessee by :	Smt. Deepa Khare
Date of hearing :	07.12.2022
Date of pronouncement :	23.12.2022

ORDER

PER SATBEER SINGH GODARA, J.M. :

This Revenue's appeal for A.Y. 2011-12 arise against the CIT(A)-1, Aurangabad's order dated 08.03.2016, passed in case No.ABD/CIT(A)/486/2013-14, in proceedings under section 143(3) of the Income Tax Act, 1961 ["In short Act"].

2. Heard both the parties. Case file perused.

3. The Revenue raises the following substantive grounds in the instant appeal :

I. *"On the facts and the circumstances of the case, the Ld. CIT(A) is correct in allowing the interest expenses to the*

tune of Rs.2,07,73,671/- added by the AO as agreed by assessee, when the amount on which interest expenses are claimed are forwarded for non-business purpose. The Ld. CIT(A) did so without even calling for remand report and entertained additional evidences.

II. *On the facts and the circumstances of the case, whether the Ld. CIT(A) is correct in deleting the expenses of Rs.45,22,884/- disallowed by the A.O when it has been established by the A.O in the assessment order that such expenses relate to the purchase of properties which have not been purchased during the year and hence could have utmost been capitalized.*

III. *On the facts and circumstances of the case, whether the Ld. CIT(A) is justified in allowing the depreciation of Rs.9,95,762/- on the vehicles, which are not owned by the company, without considering that section 32 of the Income Tax Act, 1961 has strictly stipulated that the ownership of vehicle is must before claiming of depreciation.*

IV. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in allowing the interest expenses of Rs.7,40,661/- on the vehicles not owned by the company.*

V. *On the facts and circumstances of the case, the decision of the Ld. CIT(A) is against the interest of revenue to allow the claim of bad debts amounting to Rs.1,75,47,667/- without considering that these debts are not related to receipts offered in the current year or earlier years.*

VI. *On the facts and circumstances of the case, whether the Ld. CIT(A) is justified in allowing the expenditure relating to the registration fee and stamp duty fee amounting to Rs.47,22,150/- when the same can be capitalised against the property for which expenses has incurred.*

VII. *On the facts and circumstances of the case, Whether it is justified on the part of the Ld. CIT(A) to allow the appeal of the assessee on those additions/disallowances which have been made on agreed basis*

VIII. *The Appellant craves to add, alter, modify, delete and amend any of the above grounds as per the circumstances of the case."*

4. It emerges during the course of hearing that the Revenue's I and VI substantive grounds raise identical pleadings that the impugned disallowance u/s.36(1)(iii) qua the assessee's interest claim of Rs.2,07,73,671/- and registration/stamp charges of Rs.47,22,150/-, had indeed

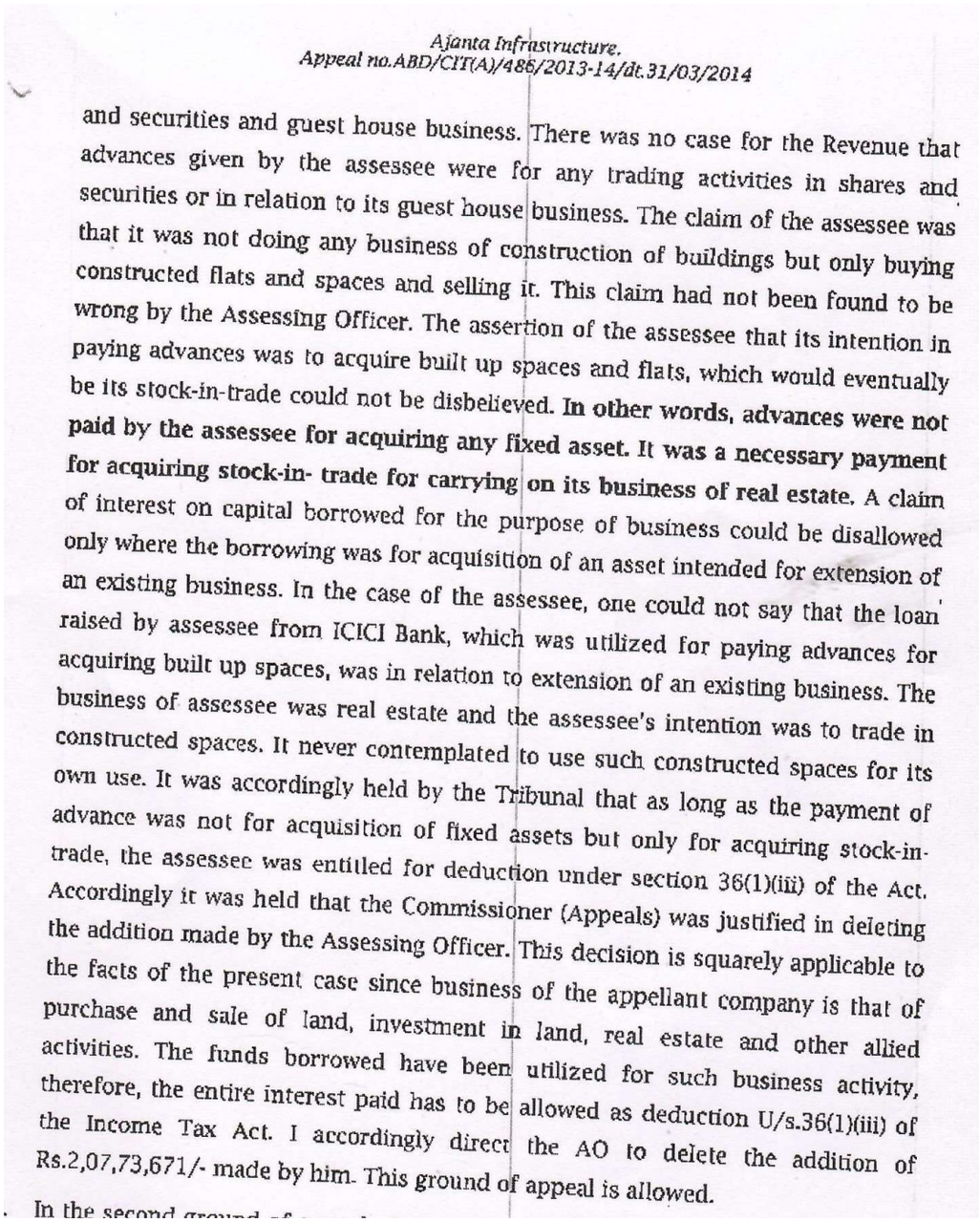
been made by the Assessing Officer on "agreed" basis and therefore, the same ought to have been affirmed by the CIT(A). We note in this factual backdrop that the CIT(A)'s detailed lower appellate discussion qua the instant former issue reads as follows :

made by the AO.

5. **I have duly considered the submissions of the appellant.** The appellant company is engaged in the business as land developers, real estate dealer, builders & doing other allied activities. The appellant company had been making investments in the properties through Various SPV Companies (Special Purpose Vehicle), also called flagship company which are floated for a particular project. The Assessing Officer without comprehending the nature of assessee's business had disallowed the interest to the extent of Rs.2,07,73,671/- on the ground that it was required to be capitalized or includible in the cost of a particular project. On the other hand, the appellant company was carrying on business of real estate, construction, investments etc. The appellant company had paid the advances in question for purchase of property through various flagship companies called SPV. The appellant company also derived profits from the properties by way of confirming party to the transaction. The appellant company mainly purchased disputed properties and after settlement of disputes/litigation, these properties were sold or disposed off. The income was offered to tax as "income from the business". The funds to these SPV companies were advanced by the appellant company for purchase of property. Sometimes the parties to the dispute were made partners in these flagship companies. To meet the shortage of funds, sometimes even the investors were also made partners in SPV companies for a particular project. There was a misconception in the mind of the AO that since interest was related to the immovable property, therefore it should have been capitalized. In fact, the interest could be capitalized only if it was incurred for acquiring a capital asset. Whereas, in the case of appellant company, the investments were not for acquiring the capital assets but towards the trading assets. However the Assessing Officer disallowed the interest on ground that it related to capital expenditure as well as that the funds were invested for non-business purpose. There was no material on record to suggest that these advances were given for non business purpose as alleged by the AO. Under pressure from the AO, the appellant company agreed for addition of Rs.2,07,73,671/- on account of interest which was required to be capitalized. However after realizing its mistake, the appellant has challenged the addition in the present appeal. **The Hon'ble Supreme Court in the case of**

Pullangode Rubber Produce Co. Ltd. Vs. State of Kerala (91 ITR 18) has held that it was always open to a person, who made the admission, to show that the statement to offer income was incorrect and had material to substantiate so. Further, the appellant company could not be compelled to accept the addition as agreed during the course of assessment proceedings if the said addition was not offered to tax in the return of income. This view is fortified by the recent decision of Jurisdictional Bombay High Court in the case of CIT Vs. Everest Kento Cylinders Ltd. in ITA No.1165 of 2013 dated 08.05.2015 wherein it was held that having considered the fact that a sum of Rs.4,47,649/- was not conceded in the return but was ad-hoc acceptance during the course of assessment proceedings, the assessee was not bound by it. The Tribunal as the second fact finding authority had gone into factual aspects in great detail and therefore having interpreted the law as it stood on the relevant date, the order passed could not be faulted. An amount cannot not be assessed merely on admission. The worth of an admission has to be considered along with other material and its effect depends to a large extent upon the circumstances in which it is made. No amount of admission contrary to law can create estoppels against law. Further, it is also a settled law that if an admission or surrender made by an assessee is shown to have been impelled under mistaken belief or by misunderstanding etc., the same cannot act as an estoppels. This proposition of law is supported by the decision of Hon'ble Supreme Court in the case of Narayanan Vs. Gopal AIR 1960 SC 235. **In the case of ACIT Vs. Ajeet Seed Ltd. Aurangabad in ITA No.115/PN/2012 for AY 2002-03 to 2008-09 dated 22-03-2013,** the Hon'ble ITAT Pune has considered this issue at length. The issue involved in the cited case was that the CIT(A) had erred in admitting the grounds of appeal of the assessee in respect of additions which were made on agreed basis i.e. additions/disallowance conceded by the assessee during assessment proceedings and he erred in holding that the Hon'ble Bombay High court had not laid down that appeal against addition of surrendered amount was per se incompetent in the case of Ramchandra & Company Vs. CIT (168 ITR 375). Out of 5 additions contested in appeal, additions on 3 accounts were agreed during the assessment proceedings. However, the assessee had contested the same as it was of the opinion that said additions were agreed under mistaken belief of fact and law and also due to misunderstanding. The decision of Bombay High Court in Ramchandra & Company Vs. CIT (supra) relied upon by the Assessing Officer was

rendered on the peculiar facts of the case. In that case, the assessee traded in oil seeds and other items and maintained separate trading account with quantitative tally. In one account, there was discrepancy of 360 bags which the assessee was unable to reconcile. The Assessing Officer therefore added sale proceeds of 360 bags as unaccounted sales. Further, the assessee did not object to the said addition in the grounds of appeal nor did he approach the Assessing Officer with the plea that the addition needed rectification as the surrender was made under a mistaken belief of facts. At the hearing of appeal, no one appeared on behalf of the Assessing Officer and "taking advantage of this fact", the assessee raised **additional ground** objecting to the addition of surrendered amount. The Hon'ble Pune Tribunal on appreciation of the facts held that the assessee was entitled to contest the additions on above three accounts which had been agreed upon under mistaken belief and misunderstanding of facts. It was held that the reasoned factual finding of the CIT(A) needed no interference from its side. It was further held that the decision of Hon'ble Bombay High Court in the case of Ramchandra & Company Vs. CIT (168 ITR 375) was not applicable to the facts of the assessee's case as the CIT(A) had found that the additions were to be decided on merit and same could not be dismissed on technical grounds. Accordingly I hold that in the present case the appellant company is competent to file appeal in respect of alleged agreed addition since the same was made under mistaken belief of law and fact. It is not in dispute that the appellant company had given advances for acquiring lands which formed part of its trading stock and these were not for acquiring any capital assets as alleged by the AO. **In the case of Cellica Developers (P.) Ltd. Vs. DCIT (45 taxmann. com 367),** the assessee had raised a loan from ICICI bank which was utilized for making payment of advance money to builders in order to acquire flats. The assessee claimed that it was engaged in the business of buying and selling real estate and, thus, interest paid on loan amount was to be allowed as deduction under section 36(1)(iii). The Assessing Officer rejected assessee's claim holding that interest paid for financing the advance had to be capitalized. The Commissioner (Appeals) opined that advances given by the assessee for acquiring flats was only a part of its regular business. Loans raised for such business could only be treated as business loan and interest had to be allowed. On Revenue's appeal, the Hon'ble Kolkata ITAT held that business of assessee as mentioned in the Tax Audit Report, was real estate, trading in shares



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and securities and guest house business. There was no case for the Revenue that advances given by the assessee were for any trading activities in shares and securities or in relation to its guest house business. The claim of the assessee was that it was not doing any business of construction of buildings but only buying constructed flats and spaces and selling it. This claim had not been found to be wrong by the Assessing Officer. The assertion of the assessee that its intention in paying advances was to acquire built up spaces and flats, which would eventually be its stock-in-trade could not be disbelieved. **In other words, advances were not paid by the assessee for acquiring any fixed asset. It was a necessary payment for acquiring stock-in- trade for carrying on its business of real estate.** A claim of interest on capital borrowed for the purpose of business could be disallowed only where the borrowing was for acquisition of an asset intended for extension of an existing business. In the case of the assessee, one could not say that the loan raised by assessee from ICICI Bank, which was utilized for paying advances for acquiring built up spaces, was in relation to extension of an existing business. The business of assessee was real estate and the assessee's intention was to trade in constructed spaces. It never contemplated to use such constructed spaces for its own use. It was accordingly held by the Tribunal that as long as the payment of advance was not for acquisition of fixed assets but only for acquiring stock-in-trade, the assessee was entitled for deduction under section 36(1)(iii) of the Act. Accordingly it was held that the Commissioner (Appeals) was justified in deleting the addition made by the Assessing Officer. This decision is squarely applicable to the facts of the present case since business of the appellant company is that of purchase and sale of land, investment in land, real estate and other allied activities. The funds borrowed have been utilized for such business activity, therefore, the entire interest paid has to be allowed as deduction U/s.36(1)(iii) of the Income Tax Act. I accordingly direct the AO to delete the addition of Rs.2,07,73,671/- made by him. This ground of appeal is allowed.

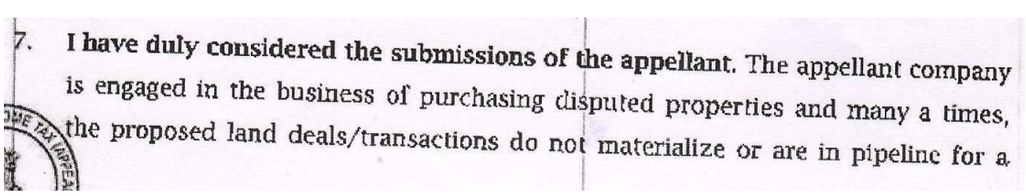
In the second ground of

5. We now advert to the Revenue's foregoing substantive arguments. It emerges from a perusal of pages 4 and 5 of the assessment order dated 10.03.2014 that assessee in fact had nowhere given its consent in respect of the impugned disallowance. It rather claimed "capitalization" of the corresponding interest pertaining to the alleged interest

free advances with a further plea that the same had been invested for the purpose of purchasing properties in future only. Ms. Khare has also filed on record complete copy of the said letter dated 28.01.2014 wherein no such blanket agreement emerges as it is projected at the Revenue's behest. Faced with the situation, we reject the Revenue's instant first and foremost sole substantive ground seeking to revive section 36(1)(iii) interest disallowance of Rs.2,07,73,671/-.

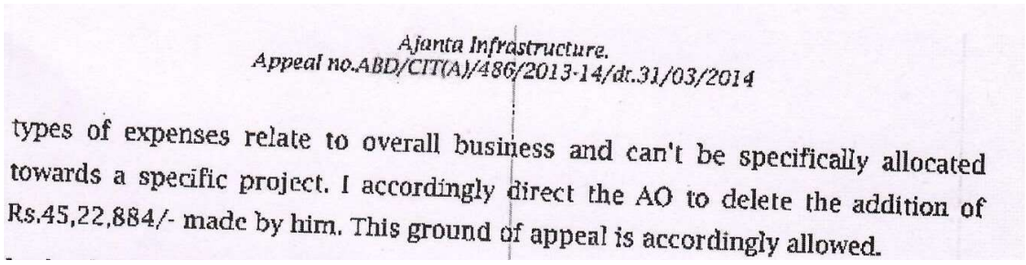
6. The outcome of the Revenue's VI sole substantive ground is also found to be no different when the assessee had made similar request of capitalization of the impugned registration fee and stamp duty charges than giving it's consent for blanket disallowance in the relevant previous year. We thus affirm the CIT(A)'s detailed discussion regarding the Revenue's I and VI substantive grounds. Rejected accordingly.

7. We now advert to the Revenue's II substantive ground seeking to revive assessee's expenditure claim of disallowance of Rs.45,22,884/- made by the Assessing Officer and deleted in the Ld. CIT(A)'s detailed discussion as follows :



7. **I have duly considered the submissions of the appellant.** The appellant company is engaged in the business of purchasing disputed properties and many a times, the proposed land deals/transactions do not materialize or are in pipeline for a

long period. The appellant company had claimed expenses of Rs.75,38,139/- towards **food & hotel expenses, telephone expenses, travelling expenses, vehicle repair & maintenance expenses and medical expenses.** Out of above, the AO had already made a disallowance @ 30% on account of personal expenses amounting to Rs.22,61,441/-. This addition had been accepted by the appellant company and not contested in appeal. However the AO further proceeded to disallow the expenditure of Rs.45,22,884/- out of balance amount of Rs.52,76,698/- on the ground that these expenses related to the purchase of properties which did not materialize or projects were in pipeline. On careful consideration of the facts & circumstances of the present case, I find that the impugned addition has been made by the AO in a routine manner as he was not able to correlate a particular expenditure with a particular project. Considering the nature of such expenses, it could be easily said that these were incurred while carrying out day to day business operations of the appellant company without having any nexus with a particular project or purchase of land. In fact, the AO did not have any material on record to arrive at such a conclusion that the expenses related to a particular project. The addition appears to have been made just for the sake of making an addition. I fully agree with the arguments of the appellant company that once the AO had made disallowance @ 30% out of total expenditure towards personal element, the balance 70% expenses were deemed to have been incurred for the business purpose. In such an eventuality, further disallowance of 60% expenses was not called for. These types of recurring expenses were liable to be allowed U/s 37 of the Act irrespective of the fact whether purchase transactions had materialized or not. It was also immaterial whether some projects were in pipeline because these expenses could not have been allocated to a particular project. It is a settled law that only costs incurred toward a particular project, or otherwise related to construction activity, would stand to be allocated and, thus, capitalized as a part of the project cost. 'Capitalized' here is not to be construed in the regular, classical sense of the relevant expenditure being not of revenue nature, but only in the sense of it being accumulated under a particular head of account (i.e., WIP), for being set off, under the matching principle, at the time the corresponding revenue is recognized. Indirect costs could therefore include only production/project overheads, and not general office and administrative expenses like travelling expenses, hotel & food expenses, telephone expenses etc. These



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types of expenses relate to overall business and can't be specifically allocated towards a specific project. I accordingly direct the AO to delete the addition of Rs.45,22,884/- made by him. This ground of appeal is accordingly allowed.

7.1. It has come on record that not only the assessee had itself disallowed 30% of the total claim of Rs.75,38,139/- coming to Rs.22,61,441/- as personal in nature but also Assessing Officer disallowed a further equal figure, coming to Rs.45,22,884/- without any rhyme or reason.

7.2. Learned DR could hardly dispute that the assessee's corresponding five claims of food/hotel/ telephone/vehicle repair/maintenance and medical heads had been duly accepted in principle since we are dealing with estimated and not wholesome disallowance.

7.3. Faced with the situation, we do not see any justification on the Assessing Officer's part in reiterating the impugned disallowance before us. The CIT(A)'s foregoing detailed discussion deleting the impugned disallowance is confirmed therefore.

8. The Revenue's III and IV substantive grounds challenge correctness of the CIT(A)'s detailed discussion granting depreciation and interest deductions of Rs.9,95,762/- and Rs.7,40,661/-, respectively to the assessee as against the Assessing Officer's action rejecting the same in the course of assessment. The Revenue vehemently argued in support of the assessment findings that assessee is neither entitled for claiming impugned depreciation nor these interest expenses once the vehicles in question had been purchased in the names of it's directors only.

8.1. All these Revenue's arguments fail to impress upon us. Learned authorised representative took us to the assessee's depreciation schedule page-116 in the balance sheet wherein no addition in the corresponding motor vehicle assets block has been found to have been made in the relevant previous year. That being the case, we quote sec.43(6)(b) that "written down value" in such an instance would be the actual cost of acquisition of the assets less all the actually allowed depreciation in the preceding assessment years. The CIT(A)'s detailed discussion appears to have followed hon'ble apex court's landmark decision in Mysore Minerals [1999] 239 ITR 775 (SC) that what matters

in such a claim of depreciation is the concerned assessee's dominion and control over the asset than the actual ownership thereof as it is claim at the Revenue's behest before us. We thus uphold the CIT(A)'s detailed discussion granting the impugned depreciation relief to the assessee to the tune of Rs.9,95,762/-.

9. Coming the later interest limb disallowance of Rs.7,40,661/- claimed by the assessee, the very reasoning follows since this taxpayer only had been seeing the cost of these motor cars all along once the assets are recorded in it's balance-sheet. The Revenue's instant IV and V substantive grounds are rejected accordingly.

10. Lastly comes bad debts disallowance issue of Rs.1,75,47,667/- made by the Assessing Officer and deleted in the CIT(A)'s detailed discussion as follows :

11. **I have duly considered the submissions of the appellant.** It is seen that the appellant company had claimed bad debts of Rs.6,36,21,402/- during the year under reference. The AO allowed the claim of Rs.4,60,73,737/- on account of settlement between M/s Automobile Products of India Ltd. and API, Kamgar Sanghatana, Aurangabad account but in respect of balance amount of Rs.1,75,47,665/-, the AO held that the above debts were not related to the business of the appellant company. The AO was of the opinion that amount of Rs.1,75,47,665/- was transferred to bad debts account since it was irrecoverable. The AO rejected the claim of the appellant company by holding that full details of advances made to various persons were not furnished and mere filing of ledger

extracts was not sufficient. However the appellant company had given detailed explanation about its claim of bad debts. For example, advances were given to Bose Corporation Ltd. against purchase of speaker system for conference hall. Subsequently the Board of Directors of the appellant company did not approve the alleged purchases. Since the advance given to Bose Corporation Ltd. was on non refundable basis, it did not refund the amount. Similarly the appellant company had taken term loan from M/s L & T Finance Ltd. in the year 2008-09. The loan was repaid in installments along with interest. However by mistake, excess interest of Rs.4,67,322/- was paid. The appellant was under bona fide belief that M/s L & T Finance Ltd. would refund the excess amount. Since it remained unrealized for a long period, it was written off in the books of account. The appellant company had given advance of Rs.30 lacs to Vyankatesh Enterprises against purchase of the property but the agreement could not be executed due to some dispute. The agreement was cancelled but Vyankatesh Enterprises did not refund the amount. Similarly advance of Rs.5.80 lacs was given to Shri Ravikiran Madhukar Saoji against brokerage for a land deal. This deal did not materialize and the party also did not refund the amount in question. Since there was no hope of recovery, it was written off as bad debt. The appellant company had given advance of Rs.10 lacs to Shri Hasmukh Jain for excavation work at Empire Mall. The excavation work performed by him was not up to the satisfaction hence the contract was given to some other party. Out of above amount, a sum of Rs.4 lacs was adjusted towards excavation work and balance amount of Rs.6 lacs was written off since it was irrecoverable. Thus a detailed explanation was submitted by the appellant company for each & every entry but the AO was not satisfied. On careful consideration of the facts & circumstances in the present case, I am inclined to accept the arguments of the appellant company. As far as write off of amount of Rs.1,75,47,665/- is concerned, the requirement on the part of the assessee to establish that debts in question had really turned bad is no longer there with effect from April 1, 1989, and it is left to the business prudence of the assessee to claim such deduction by merely writing off such debts as bad debts in the books of account and debiting them to the profit and loss account of the assessee. It is only when such a debt is irrecoverable in the opinion of the assessee, in terms of the amendment in law after April 1, 1989, then a simple book keeping entry to write it off is enough to entitle the assessee to claim such a deduction. It is not in dispute

that such a write off entry was made by the appellant company in its books of account. If even after such write off, the appellant recovered any part of such bad debts in future, it would naturally be credited again in its books of account and taxed in the year of its receipt on recovery. **This view finds support from the decisión of Hon'ble Supreme Court in the case of T R F Ltd. Vs. CIT (323 ITR 397).** As far as amount which was in the nature of the advances to various parties, is concerned, the same was closely connected with the business carried on by the appellant. It has to be allowed as a business loss being incidental to the business. No doubt, that the appellant had clubbed it with bad debts written off but merely on the ground of wrong nomenclature, the appellant could not be denied a deduction which was admissible to it. **In the case of CIT Vs. Crescent Films P. Ltd. (248 ITR 670),** the assessee had made temporary advances and loss on account of amount advanced was treated to be in the course of business. In that case, the assessee was carrying on business of distribution of films and had paid a sum of Rs. 7,50,000/- to the producers for a film under production. The film could not be completed and thus the amount lent by the assessee could not be recovered. After considering the nature of the advance, the deduction under section 37 was allowed by the Hon'ble Madras High Court by observing as under:

> "In this case, the sum of Rs. 7,50,000 paid by the distributor would have been lost to the assessee, had the picture not been completed as the money paid to him for acquiring distribution rights and without the picture, there was no likelihood of the assessee realizing his investment. In order to ensure that the picture was completed, the assessee had agreed to lend money and that lending was as separate transaction and was not part of the distribution arrangement. The money so lent having been found to have become irrecoverable by reason of the picture failing at the box office and the producer being unable to repay his debts, the money so lost to the assessee was rightly held by the Commissioner and the Tribunal to be a trading loss. Learned counsel for the Revenue, however, contended that the decision of this court in the case of CIT Vs. Coimbatore Pictures P. Ltd. [1973] 90 ITR 452 should govern this case. The fact that the assessee therein was also a distributor even as the assessee here is a

distributor, does not imply that decision, without anything more, will be applicable to this case as well. A decision is to be regarded as a precedent for its ratio decidendi and not for the facts in relation to which such ratio was laid down. The ratio of that case as we read it is that before a deduction can be claimed on the ground of business loss should have been incurred in the course of business, and it should be in the nature of revenue loss. We are in entire agreement with that proposition. On the facts of this case, the loss to the assessee being a revenue loss which had been incurred in the course of business, the assessee was entitled to deduct the same under section 37 of the said Act."

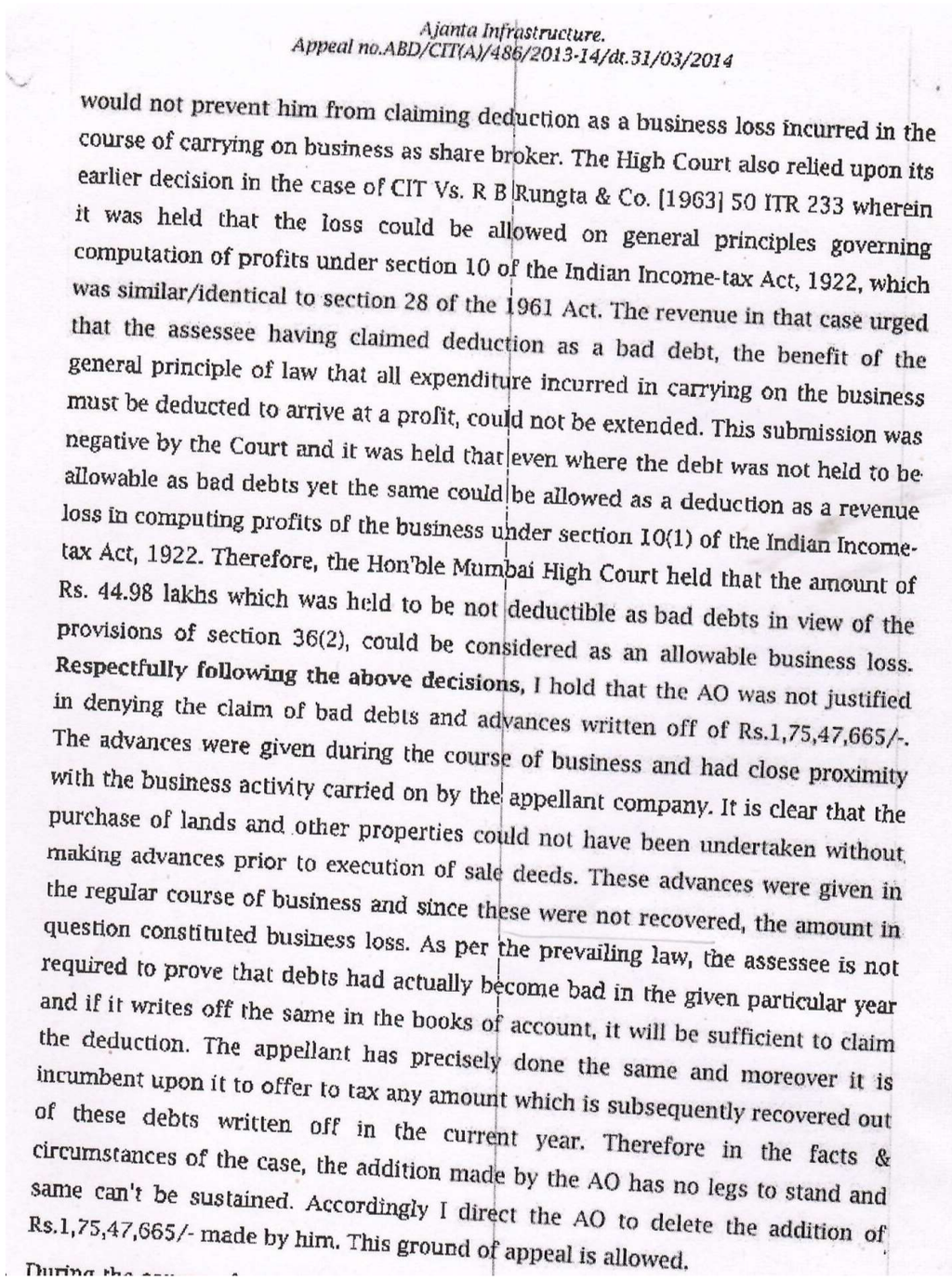
In the case of Ramchandar Shivnarayan Vs. CIT (111 ITR 263), an amount of Rs. 30,000/- was stolen which was borrowed from the creditors for purchasing Government securities. In spite of lodging a complaint, the amount could not be recovered. The claim of the assessee for deduction of Rs. 30,000/- as a business loss was allowed and it was treated to be part of trading loss. The Hon'ble Supreme Court while deciding the matter followed its earlier order in Badridas Daga Vs. CIT (34 ITR 10). In the case of Badridas Daga, an agent of the assessee withdrew from the firm's bank account large sums of money and applied them for satisfaction of his personal debts incurred in speculative transaction. A part of it was recovered from him but the balance of Rs. 2 lakhs odd was written off at the end of the accounting year as irrecoverable. The question for consideration was whether the amount embezzled by the assessee's agent was to be deducted in computation of the assessee's profits. The Hon'ble court laid down the following test (page 15) :

"The result is that when a claim is made for a deduction for which there is no specific provision in section 10(2), whether it is admissible or not will depend on whether, having regard to accepted commercial practice and trading principles, it can be said to arise out of the carrying on of the business and to be incidental to it. If that is established, then the deduction must be allowed, provided of course there is no prohibition against it, express or implied. The loss for which a deduction could be made under section 10(1) must be one that springs directly from the carrying on of the business and is

incidental to it and not any loss sustained by the assessee, even if it has some connection with his business."

The above test was considered in the case of Ramchandar Shivnarayan Vs. CIT and it was held that the loss was directly connected with the business operations and incidental to the carrying out of the business of purchase of Government securities to earn profit and hence it was a part of trading loss and deductible as such in arriving at the true profits of the assessee. **In the case of Commonwealth Trust (India) Ltd. (242 ITR 593),** the Hon'ble Kerala High Court held that if there was a direct and proximate nexus between the business operation and the loss or it was incidental to it, then the loss was deductible as without the business operation and doing all that was incidental to it, no profit could be earned. **In the case of Mohan Meakin Ltd. Vs. CIT (348 ITR 109),** it was held by the Hon'ble Delhi High Court that it was in the totality of overall situation of the matter that the assessee decided to write off the advances made to M/s. Kanpur Boot House. The reason as given by the assessee was apparently well-founded and was abruptly rejected by the Assessing Officer and the Tribunal. They did not appreciate the fact that the continuity of supply was essential to honour the agreement with the corporation and that it was to continue the business without any break that the advances were made to the manufacturer, M/s. Kanpur Boot House. It was only on account of non-recovery of the huge amount from the corporation that the work had to be cancelled and the supplies had to be abruptly stopped by the assessee and consequently production was necessarily required to be stopped. It is known practice that usually manufacturer gives advances to the workers which are adjusted or carried forward in the coming times against the works done by them. This was not an unusual practice which was liable to be outrightly rejected by the Department. When the assessee had written off the dues recoverable from the corporation and the same were accepted by the Department and it had also so written off, the advances made to M/s. Kanpur Boot House in its books of account, what else could be the proof with the assessee for its being unable to recover the same. The other reason for writing off was the demise of the proprietor, Bhagwan Das, of M/s. Kanpur Boot House and the assessee in its wisdom did not choose to take the matter to the court apprehending counter-claim and this decision of the assessee seemed to be well reasoned. In any case, the Revenue could not compel

the assessee to have recourse to litigation to recover the amount against the dead person or his legal heirs when in the given circumstances, the same might not be recoverable. The Commissioner of Income-tax (Appeals) rightly recorded that the debt had become bad and not recoverable and it would be a futile exercise to take any action against the legal heirs of the deceased. The advances made by the assessee in the case were certainly of a type which would be within the contemplation of the words "laid out or expended wholly and exclusively for the purposes of the business". As no portion of the said advances could be stated to be loss of capital expenditure, but it being a plain case of business loss, it would certainly be allowable to be deducted under the provisions of section 37 of the Act. It was further held that merely because the bad debt claim was not made out under one particular provision of the Act, but was so made out under another provision of law, assessee could not be deprived of the benefit of deduction of bad debts. **The decision of Hon'ble Mumbai High Court in the case of Harshad J. Choksi Vs. CIT (25 taxmann.com 567)** also supports the above view. The question raised before the Hon'ble Bombay High Court in the instant case was whether if an amount was held to be not deductible as a bad debt in view of non-compliance of the condition precedent as provided under section 36(2), could the same be considered as an allowable business loss. It was held by the Hon'ble Mumbai High Court that section 28 imposed a charge on the profits or gains of business or profession. The expression 'Profits and gains of business or profession' was to be understood in its ordinary commercial meaning and the same did not mean total receipts. What had to be brought to tax was the net amount earned by carrying on a profession or a business which necessarily required deducting expenses and losses incurred in carrying on business or profession. The Supreme Court in the case of Badridas Daga Vs. CIT (34 ITR 10) held that in assessing the amount of profits and gains liable to tax, one must necessarily have regard to the accepted commercial practice that deduction of such expenses and losses was to be allowed, if it arose in carrying on business and was incidental to it. On the basis of the aforesaid decision, it could be concluded that even if the deduction was not allowable as bad debts, the Tribunal ought to have considered the assessee's claim for deduction as business loss. This was particularly so, as there was no bar in claiming a loss as a business loss, if the same was incidental to carrying on of a business. The fact that condition of bad debts were not satisfied by the assessee



Ajanta Infrastructure.
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would not prevent him from claiming deduction as a business loss incurred in the course of carrying on business as share broker. The High Court also relied upon its earlier decision in the case of CIT Vs. R B Rungta & Co. [1963] 50 ITR 233 wherein it was held that the loss could be allowed on general principles governing computation of profits under section 10 of the Indian Income-tax Act, 1922, which was similar/identical to section 28 of the 1961 Act. The revenue in that case urged that the assessee having claimed deduction as a bad debt, the benefit of the general principle of law that all expenditure incurred in carrying on the business must be deducted to arrive at a profit, could not be extended. This submission was negative by the Court and it was held that even where the debt was not held to be allowable as bad debts yet the same could be allowed as a deduction as a revenue loss in computing profits of the business under section 10(1) of the Indian Income-tax Act, 1922. Therefore, the Hon'ble Mumbai High Court held that the amount of Rs. 44.98 lakhs which was held to be not deductible as bad debts in view of the provisions of section 36(2), could be considered as an allowable business loss. **Respectfully following the above decisions,** I hold that the AO was not justified in denying the claim of bad debts and advances written off of Rs.1,75,47,665/-. The advances were given during the course of business and had close proximity with the business activity carried on by the appellant company. It is clear that the purchase of lands and other properties could not have been undertaken without making advances prior to execution of sale deeds. These advances were given in the regular course of business and since these were not recovered, the amount in question constituted business loss. As per the prevailing law, the assessee is not required to prove that debts had actually become bad in the given particular year and if it writes off the same in the books of account, it will be sufficient to claim the deduction. The appellant has precisely done the same and moreover it is incumbent upon it to offer to tax any amount which is subsequently recovered out of these debts written off in the current year. Therefore in the facts & circumstances of the case, the addition made by the AO has no legs to stand and same can't be sustained. Accordingly I direct the AO to delete the addition of Rs.1,75,47,665/- made by him. This ground of appeal is allowed.

During the

11. We have given our thoughtful consideration to vehement rival stands against and in support of the impugned disallowance. We made it clear that this is not

even Assessing Officer's case that the assessee's impugned bad debts claim does not pertain to the amounts actually written off as such in the corresponding ledger accounts or it had not recognized the income therefrom in the past. All what the Assessing Officer has done is to simply conclude that the assessee had not filed the relevant details in respect of it's claim, which in-turn, stands reversed in the CIT(A)'s foregoing detailed discussion. We thus quote hon'ble apex court's landmark decision in TRF Ltd., vs. CIT [2010] 323 ITR 397 (SC) and conclude that the assessee has duly satisfied all the conditions of the impugned bad debt claim. This Revenue's V substantive ground is also declined.

12. No other ground or arguments has been raised before us.

13. This Revenue's appeal is dismissed.

Order pronounced in the open Court on 23rd December, 2022.

Sd/-	Sd/-
(DR. DIPAK P. RIPOTE)	**(SATBEER SINGH GODARA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Pune, Dated 23rd December, 2022

VBP/-

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. DR, ITAT, "A" Bench, Pune.
6. Guard File.

BY ORDER,

// TRUE COPY //

Senior Private Secretary
ITAT, Pune.