

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

**BEFORE SHRI R.S. SYAL, ACCOUNTANT MEMBER AND
SMT SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A .No. 1049/DEL/2010
(ASSESSMENT YEAR-2004-05)**

MCM Oil Mills Pvt. Ltd. 349, Naya Bans Delhi AAACM3590J (APPELLANT)	Vs	ITO Ward 6(1) New Delhi (RESPONDENT)
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Appellant by	Sh. V. K. Tulsiyan, CA
Respondent by	Sh. Rajesh Kumar, Sr. DR

Date of Hearing	29.03.2017
Date of Pronouncement	31.03.2017

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 28/01/2010 passed by CIT(A)- IX, New Delhi for Assessment Year 2004-05.

2. The grounds of appeal are as follows:

- “1. Whether the Ld.CIT(A) was justified by not allowing the trading loss of Rs.25,640/- just on account of non availability cash sale bills, made to the tune of Rs.81,360/-, out of the Opening Stock of Rs.1,07,000/-.
2. Whether the Ld.CIT(A) was justified by upholding the addition u/s 68 of Rs.11,50,000/- loan taken from the director, just because onfnon availability of few documents on record as regards creditworthiness although the same were filed with W.S.
3. Whether the Ld.CIT(A) was justified by not allowing the deduction of electricity security deposit amount of Rs.2,35,277/- with RSEB for the non-refund of security deposit/forfeited by RSEB.
4. Whether the Ld.CIT(A) was justified by not allowing the loss Rs.36,294/- on sale of business old car in cash”

3. The assessee company is engaged in the business of manufacture of edible oil. The return of income was filed on 30/10/2004 declaring loss of Rs.11,83,467/- notice u/s 143(2) of the Income-tax Act was issued on 10/12/2004. The same was duly served by the notice server of the Department. The case was fixed for hearing on 20/12/2004. The assessee failed to appear on those date. Another notice u/s 143(2) of the Act was issued on 10/2/2005. The same was duly served by a notice server and the case was fixed for hearing on 22/2/2005. A questionnaire dated 11/2/2005 was also issued and duly served. The assessee failed to appear or to file details as asked for in the questionnaire. Another notice u/s 143(2) of the Act was issued on 9/5/2006. The same was duly served by the notice server and the case was fixed for hearing on 18/5/2006. The assessee once again failed to appear. However, C.A of the assessee appeared on 23/5/2006 but did not produce any power of attorney in his favour or any detail asked as per a notice u/s 142(1) of the Act was also issued on this date (23/05/2006) and served upon C.A of the assessee. The case was fixed for hearing on 12/6/2006. On 12/06/2006, the C.A of the assessee appeared and filed a letter dated 12/06/2006 in which it has stated that the assessee had not received the questionnaire and requested for a copy of questionnaire and also for adjournment. The copy of questionnaire was given to the C.A of the assessee on the very same dated i.e. 12/6/2006. The case was adjourned to 3/7/2006 once again the assessee or his authorized representative failed to appear on this date. Yet another notice u/s 142(1) was issued on 12/7/2006 which was duly served upon the assessee. The case was fixed for hearing on 2/8/2006. The assessee again failed to appear. Therefore, another notice u/s 142(1) of the Act was issued on 3/8/2006 which was sent through speed post. The case was fixed for hearing on 21/8/2006. The authorized representative appeared and requested for adjournment he has filed details vide letter dated 6/9/2006

& 20/9/2006. The case was adjourned on 27/9/2006.

4. The Assessing Officer observed that the assessee company could not continue its manufacturing activities. Therefore, it has decided for the time being to suspend its own manufacturing activity but continues job work and letting out. The company had let out the whole factory along with plant and machinery to a third party for a monthly rent of Rs.30,000/- per months. The profit and loss account of the assessee shows that it has declared income from following during the relevant previous year:-

Sales:	Rs.31360
Insurance claim received:	Rs. 7028
Rent:	Rs.360000
Liabilities written off:	Rs. 303439
Bank interest written off:	Rs. 226228

The assessee declared sales of Rs.81360/- in its profit and loss account as mentioned above. The stock of the assessee stated to be decreased by Rs.107000/- in its profit and loss account. Thus, the assessee claimed trading loss of Rs.25640/- (Rs.107000 Rs. 81360/-.) The assessee was asked vide order sheet entry dated 20/9/2006 to file details regarding sales made by it and to file copy of its sales account. The assessee did not file any detail in this regard. The mandatory details as required in this regard as per Schedule VI of the Companies Act were also not found in the profit and loss of the assessee. Thus, the Assessing Officer held that the assessee was not able to establish the transactions of sales and purchase. The assessee claimed administrative and other expenses of Rs.2,16,000/- during the year. The Assessing Officer observed that the assessee did not conduct any business during the relevant previous year. The assessee should have claimed expenses u/s 37 of the Income Tax Act, 1961 only in relation to the business conducted by it. The Assessing Officer observed that if during the relevant period there was no business, the question of allowability of expenses would not arise. Therefore, the claim of the assessee for administrative and other expenses of Rs.2,16,000/- was rejected. The assessee also claimed an expense of

Rs.235278/- for “Security with RSEB w/o”. The assessee did not produce any detail regarding these expenses. The assessee should have not claimed this claim of bad debt u/s 37 of the Income Tax Act, 1961. Section 37(1) of the Income Tax Act, 1961 provides that “Any expenditure (not being expenditure of the nature described in Sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of business or profession shall be allowed in computing the income chargeable under the head “Profits and gains of business or profession”. Here, the words “not being expenditure of the assessee nature described in Sections 30 to 36 are important. The claim of bad debt and its allowability are specifically provided in Section 36(1) (vii) and 36(2) of this Act. Therefore, the question of their allowability u/s 37 does not arise. Therefore, the Assessing Officer held that the claim of the assessee for bad debt regarding security with RSEB was not allowable either in Section 36 or in Section 37 of the Income Tax Act, 1961. Therefore, the claim of the assessee for expense of Rs.235278/- in this regard was hereby rejected.

5. The Ld. AR submitted that the details were filed before the Assessing Officer but the opportunity to explain the same was not given to the assessee. The Assessing Officer has not disputed on closing and opening stock. The Ld. AR further submitted that the CIT(A) also ignored these aspect.

6. The Ld. DR submitted that the CIT(A) after going through the records has rightly upheld the said additions.

6. We have heard both the parties and perused all the records. It is pertinent to note that the Assessing Officer as well as CIT(A) has not dealt with the records related to the sale of edible oils. There is no clear finding given by the Assessing Officer as well as CIT(A) during the assessment proceedings as the assessee was not given proper opportunity to be heard. Therefore, in the interest of justice it will be appropriate to sent back the matter to the Assessing

Officer to verify all the ledger accounts along with bills and vouchers. The assessee be given hearing as per the principle of natural justice.

7. In result, the appeal of the assessee is partly allowed for statistical purposes.

The order is pronounced in the open court on 31st of March, 2017.

Sd/-

(R.S. SYAL)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 31/03/2017
R.Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

		Date	
1.	Draft dictated on	30/03/2017	Sr. PS
2.	Draft placed before author	30/03/2017	Sr. PS
3.	Draft proposed & placed before the second member	.2017	JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the	03.03.2017	PS/PS

	Sr.PS/PS		
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	05.03.2017	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		