

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G" NEW DELHI**

**BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

आ.अ.सं./I.T.A No.7986/Del/2019
निर्धारणवर्ष/Assessment Year: 2014-15

Think Works Pvt. Ltd., M-130, FF, GK Enclave-2, New Delhi.	बनाम Vs.	ACIT Circle 25(1), Room No. 192-A, C.R. Building, I.P. Estate, New Delhi.
PAN No. AAECB2519E		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	Shri Satish Singh, CA
राजस्वकीओरसे /Revenue by	Shri M. Barnwal, CIT DR & Shri Sanjay Kumar, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	03.02.2023
उद्घोषणाकीतारीख/Pronouncement on	24.03.2023

आदेश /O R D E R

PER C.N. PRASAD, J.M.

This appeal is filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-9, New Delhi dated 16.07.2019 for the AY 2014-15 in sustaining the disallowance of Rs.48,00,000/- in respect of security deposit paid to landlord for the property taken on lease.

2. Briefly stated the facts are that, the assessee company filed return of income on 30.09.2014 declaring income of Rs.1,91,67,620/-. The assessment was completed u/s 143(3) of the Act on 19.12.2016 determining the income of the assessee at Rs.2,40,25,810/-. In the course of assessment proceedings, the Assessing Officer noticed that the assessee claimed expenses of Rs.48,00,000/- being forfeiture of security deposits by the landlord. The Assessing Officer required the assessee to furnish the details. Assessee in its reply stated that it had given security deposit to the landlord and as per the agreement the assessee company cannot terminate lease deed during the lock in period of two years and since during the relevant assessment year as the assessee has no liquidity and was unable to pay the rent periodically, the lease deed was terminated for non-payment of lease rentals and the security money was forfeited by the land lord. However, the Assessing Officer disallowed the expenses stating that the assessee accepted that these expenses pertained to AY 2015-16 and not for AY 2014-15. The assessee carried the matter before the Ld.CIT(Appeals) and contended that he has never given any such statement in the course of assessment proceedings that this expenditure pertains to AY 2015-16. The Ld. Counsel also furnished an affidavit to support its stand. The assessee also contended that when the expenditure actually relates to AY 2014-15 how can the assessee give a statement that it relates to AY 2015-16. Assessee contended that all the documents including annual report shows that the expenditure

pertains to the AY 2014-15 only. However, the Ld. CIT(Appeals) dismissed the appeal of the assessee, disbelieving the submissions of the assessee that the expenditure was never stated to be relating to the AY 2015-16.

3. Before us, the Ld. Counsel for the assessee submits that the settlement was reached between the assessee and the landlord in the month of March, 2014 so the assessee has shown the expenditure in the profit and loss account in the AY 2014-15. The Ld. Counsel submits that the Assessing Officer, however, treated the said expenditure as pertaining to the AY 2015-16 alleging that the assessee had given statement that this expenditure pertains to next financial year. The Ld. Counsel placing reliance on the Delhi Bench of the Tribunal in the case of T&T Communication Services India Pvt. Ltd. vs. ACIT in ITA No. 1016/Del/2015 dated 15.02.2018 submits that the Tribunal held that the security deposit forfeited due to breach of contract is deductible expenses. Ld. Counsel also placed reliance on the decision of the Hon'ble Supreme Court in the case of CIT vs. Nainital Bank Ltd., 55 ITR 707.

4. Ld. DR strongly placed reliance on the orders of the authorities below.

5. On hearing the rival submissions and perusing the orders of the authorities below, we find that the claim for expenses of Rs.48,00,000/-

in respect of the security deposit forfeited by the landlord was disallowed on the ground that the same is an allowable expenditure for the AY 2015-16 as per the statement given by the assessee itself. It is observed that the assessee before the Ld.CIT(Appeals) contended that no such statement has been given by the assessee that this expenditure pertains to the AY 2015-16.

6. On perusal of the assessment order, it is noticed that the allowability of expenses in respect of security deposit forfeited by the landlord is not in question by the Assessing Officer but the only reason given for disallowance of this expenditure was stated to be related to AY 2015-16 and not for AY 2014-15. It is the submission of the Ld. Counsel that this expenditure was debited to profit and loss account for the AY 2014-15 and the annual reports were also furnished before the Ld. CIT(A). However, the same were not considered.

7. In our opinion, when this expenditure was already debited to profit and loss account for the AY 2014-15 on the basis of the settlement arrived at by the assessee with the landlord in the month of March, 2014, the same cannot be disallowed on the pretext that the assessee has given statement that it relates to the AY 2015-16. Taking the totality of facts and circumstances into consideration, we are of the view that since there is no dispute about the allowability of the expenses in principle and also since the assessee stated that this expenditure was debited to profit and

loss account for the AY 2014-15 the claim of the assessee is allowable in the AY 2014-15 subject to verification by the Assessing Officer. The Assessing Officer is directed to verify the submission of the assessee that this expenditure was debited to profit and loss account for the AY 2014-2015 and if it is proved that the said expenditure has been debited to profit and loss account for AY 2014-15, the claim of the assessee be allowed. Ground raised by the assessee is partly allowed.

8. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 24/03/2023

Sd/-
(G.S. PANNU)
PRESIDENT

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 24/03/2023

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi