

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH KOLKATA

**BEFORE SHRI SAJNAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.1168/Kol/2018
Assessment Year: 2013-14**

Titagarh Wagons Ltd., 756, Anandapur Road, E.M. Bypass, Kolkata-700 107. (PAN: AABCT1377P)	Vs.	Commissioner of Income Tax (LTU), Kolkata.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Siddharth Jhajharia, FCA
Respondent by : Shri Sudipta Guha, CIT, DR

Date of Hearing : 23. 02.2023
Date of Pronouncement : 27.03.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the revision order of Ld. CIT (LTU), Kolkata vide F. No. CIT/LTU/Kol/263/TWL/2017-18/1223-1227 dated 28.03.2018 passed u/s. 263 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) against the order of ACIT (LTU)-2, Kolkata u/s. 143(3) of the Act, dated 25.03.2016.

2. Assessee has taken eight grounds of appeal challenging the initiation of revisionary proceedings u/s. 263 of the Act and passing an order thereon on a solitary issue of claim of deduction of Rs.3,24,45,459/- on account of bad debt actually written off in the books of the assessee. For the sake of brevity the grounds are not reproduced.

3. Brief facts of the case are that assessee is a public company engaged in the manufacturing and selling of railway wagons, heavy earth moving and mining equipments etc. The primary business segment of the assessee includes wagons and coaches, steel casting. Assessee filed its return of income on 26.09.2013 reporting total income of Rs.32,68,73,750/- and a book profit of Rs.37,34,25,665/- u/s. 115JB of the Act. Case was selected for scrutiny for which statutory notices were issued and served on the assessee and were duly complied with. In the course of assessment, Ld. AO enquired about the details of bad debts claimed by the assessee in the return for the year. Assessee made its detailed submission vide letter dated 24.02.2016 placed in the paper book at page 86 along with the relevant documentary evidences. Considering the submissions made by the assessee, Ld. AO accepted the claim in respect of bad debts actually written off during the year though certain additions and disallowances were made by the Ld. AO in respect of other transactions. Subsequently, Ld. CIT (LTU) from the perusal of assessment records, observed that assessee has debited an amount of Rs.3,77,66,000/- towards irrecoverable debts/advances written off after adjustment with the provision of Rs.3,44,45,000/-. Ld. CIT noted that assessee has claimed an amount of Rs.3,24,45,459/- as deduction in the computation of income on account of bad debts for advance given to Greysham & Co. Pvt. Ltd., which is a subsidiary of the assessee.

3.1. On these observations, a show cause notice was issued u/s. 263(1) of the Act dated 23.02.2018. The contents of show cause notice are reproduced as under:

"1. An assessment order 18.05 2016 was passed u/s 143(3) of Income Tax Act, 1961 in the case of M/s. Titagarh Wagons Limited by the Assessing Officer i.e Assistant Commissioner of Income Tax (LTU)-2, Kolkata. On examination of case records of the said assessment order, it has been observed that during the year under consideration, the Assessing Officer had allowed a sum of Rs.3,24,45,459/- debited/written off under the head Doubtful Advances/irrecoverable advance u/s 36 of Income Tax Act, 1961. In fact, assessee company offered an advance of Rs. 3,24,45,459/- (three Crores twenty four lakh forty five thousand and four hundred fifty nine) to M/s Greysham Private Limited (Vendor) for the purpose of supply of Air Brake equipment and Slack Adjuster during the period 2008 to 2010. Vendor was an Associated Company of the assessee i.e. M/s Titagarh Wagons Limited. Meanwhile, as per Assessee Company, the Vendor failed to supply goods for which advance offered due to bankruptcy and case was filed against for recovery of advance of Rs. 3,24,45,459/- Given..

2. No information as to date from which M/s. Greysham Private Limited became bankrupt has been submitted nor the details of Court where case is pending for disposal. It has also been noticed that assessee company for assessment year 2011-12 claimed deduction of Rs.3,24,45,459/- under the head Doubtful Advances/irrecoverable advance u/s. 36 of Income Tax Act,1961 which, however, was not considered for allowance by the Assessing Officer. Though assessee preferred appeal and is pending for disposal .

3. Prima facie, the assessee company has claimed deduction of Rs.3,24,45,459/- twice i.e. in the assessment year 2011-12 & again in 2013-14 while suit filed for recovery of advance given to M/s. Greysham Private Limited is still pending in the Court. As on date the total deduction claimed on identical ground is Rs.(3,24,45,459x2)= 6,48,90,918/-.

4. At the time of scrutiny assessment Assessing Officer allowed this sum of Rs.3,24,45,459/- (Three Crores Twenty Four Lakh Forty Five Thousand and Four Hundred Fifty Nine) as deduction from the income as claimed by the assessee. The assessee has claimed the deduction of Rs.3,24,45,459/- u/s. 36 of Income Tax Act, 1961.

.....

6. These [(i) to (xiii)] were some of the important issues required to be examined before allowing the writing off debt and specially looking into the close association between the parties involving a huge amount paid as advance to a known person and being claimed as bad debt. Furthermore, it was required to examine the legality of the allowance of this loss being capital in nature and being not a loan given in the ordinary course of business by the assessee or to purchase raw material required on day to day basis. It was not a routine revenue expenditure of the assessee being claimed as deduction out of business profit."

3.2. In response to the show cause notice, assessee furnished its reply which is reproduced in the impugned order. The reply of the

assessee contains threefold contentions, challenging the revisionary proceedings invoked by the Ld. CIT –

- (i) in the assessment year 2011-12 provisions of doubtful debts claimed by the assessee has already been added and accepted by the assessee at the stage of Ld. CIT(A).
- (ii) Ld. AO had already examined the claim of the assessee and allowed it after due application of mind in AY 2013-14.
- (iii) The advance made by the assessee and claimed as a bad debt is a business loss.

3.3. Ld. Counsel submitted that in respect of claim of deduction made on account of provision for doubtful debts in AY 2011-12, Ld. CIT categorically noted the relevant facts that AO had disallowed an amount of Rs.344.45 Lakhs debited in Schedule 20 of its P&L Account. Assessee had shown a recovery of Rs. 20 lakhs during the year and now the amount debited in the computation is Rs.324.45 lac. In the written submission filed before Ld. CIT(A) for AY 2011-12 the same ground was 'not pressed' for relief before the Ld. CIT(A).

3.4. Ld. CIT also took note of the observation made by Ld. AO while making disallowance in AY 2011-12 which are reproduced as under:

“B. Provision for Doubtful Advances:

- (i) *The assessee has debited an amount of rs.344.45 lakh in schedule-20 of its P&L A/c on account of 'provision for doubtful advances' for the assessment year under consideration.*
- (ii) *In this regard, the assessee was asked to furnish the details of doubtful advance vide notice u/s. 142(1) of the I T Act dated 07.01.2014. It is found from the submission of the assessee that the assessee had given advances to its associated company, M/s. Greysham & Co. (P) Ltd. In earlier years for supply of raw materials and other components such slack adjuster and air break equipments.*
- (iii) *The assessee was further asked to explain why provision for doubtful advances of 344.45 lakh will not be disallowed for want of substantial evidences.*

- (iv) *In reply the A/R of the assessee submitted a written submission which is reproduced as under:-*

"Your goodself has mentioned that the provision for advances debited in the profit and loss account at Rs. 344.45 lakh is not allowable. In such respect, your goodself may kindly appreciate that the assessee had given advances to its associated company M/s. Gresham & Co. (P) Ltd. For supply of raw material and other components such as slack adjuster, air break equipments in earlier years. The said company was manufacturing such components and which was being used in the final product manufactured by the assessee company. The advance was given to such company was adjusted towards supply made by said company to the assessee company. Since April 2010, manufacturing activity in the said associated company has been halted due to operational difficulties and other reasons and it had shut down its manufacturing activity since such time. As such, the amount of Rs 344.45 lakh is the unadjusted advance remaining since such period. Your goodself may kindly appreciate that the advance was given in the course of business and the said associated company was unable to return the same to the assessee company the assessee company has treated the same as business loss and the provision in such respect was debited in the P/L A/C and has been claimed as such in the computation of income. In such respect, your goodself may kindly appreciate that since the advance was given in the course of business, the assessee company unable to recover/adjust the same and it has claimed as business loss and the same is allowable. In such respect your attention is drawn to the following decision. "

- a) Mohan Meakin Ltd. V. CIT (2012) 348 ITR 109 (Del)
b) A.W.Figgis & Co. P. Ltd. v CIT (2002) 254 ITR 63(Cal).*

- (v) *The submission of the assessee was examined carefully and on perusal of the facts of the case, it is found that the assessee company without putting any effort for recovery/adjust of advance money from its associated company, it has claimed expense in the form of provision of doubtful advance. The contention of the assessee as mentioned in its submission is not acceptable. Hence, the entire amount of Rs 344.45 lakh debited in the P&L A/c as provision for doubtful advance is disallowed and added back to the total income of the assessee.*

[Disallowance: Rs.344.45 lakh]"

3.5. After considering the submissions made by the assessee, Ld. CIT drew his consideration to hold that Ld. AO has passed the assessment order without taking all the documents on record, conducting enquiry, examining the legal issues involved and the material placed on record,

making the order erroneous insofar as it is prejudicial to the interest of the revenue. He also directed the Ld. AO who may carry out the examination and verification from the accounts of Greysham & Co. Pvt. Ltd. for AY 2011-12 and AY 2013-14 regarding the adjustment and reflection in the final account. He also directed to examine the records of Greysham & CO. Pvt. Ltd., the treatment of the alleged advances in their final account and get information from M/s. Greysham & CO. (firm) on these transactions to come to a legally valid and appropriate conclusion with more accurate information. Aggrieved, the assessee is in appeal before the Tribunal.

4. Before us, ld. Counsel for the assessee placed on record, paper books in two volumes and written submission to substantiate its claim. Ld. Counsel for the assessee narrated the primary facts relating to the transaction in respect of which a claim of bad debt has been made. In this respect he submitted that issue in the matter pertains to write off of Rs. 3.24 crore given by assessee to Gresham & Co. Pvt. Ltd. against "supply of slack adjuster and spares" (input raw material) which are used in "Wagon" as accessories for "AIR BRAKE". Such supply was to be made by Greysham & Co., (firm) and for which advances were made by appellant company through its subsidiary Gresham & Co. Pvt. Ltd. to Greysham & Co (firm). On failure to supply by Greysham & Co. the assessee wrote off such sum and the claim was allowed by AO accordingly. The assessee had made tripartite agreement for takeover of business of Greysham & C. (firm) by Greysham Pvt Ltd. for which separate agreement were made and for which separate advances were given.

4.1. In this respect, attention was drawn to the notes on account of Greysham & Co. Pvt. Ltd. (for year ended 31.3.2010) which is reproduced hereunder :

"M/s. Greysham Pvt. Ltd. entered into a Business Transfer Agreement in September, 2008 with M/s Greysham & Co. a partnership firm engaged in the manufacture and sale of certain critical components e.g. Air Brake, lack Adjuster, etc. which are used in the manufacture of wagons by)TWL), the holding company. In terms of the said agreement the business and liabilities, rights, permission, privileges, etc. pertaining to the said firm would be transferred to the company on fulfilment of the terms and in the agreement. Pending this, the firm would continue to supply the components required by TWL directly. With a view to carry on the business and meet the working capital requirements, the firm has requested the company to provide necessary resources for which the company has entered into the following arrangements.

- (a) *In term of an agreement the M/s. Greysham Pvt. Ltd. has received amounts as interest free trade advance from Titagarh Wagons Ltd. (TWL), the holding company (outstanding balance as on 31.03.2011 Rs.3,44,45,459/- which is repayable by way of adjustments against bills for supply.*
- (b) *In terms of a separate agreement entered into between M/s Greysham Pvt. Ltd. and the aforesaid partnership firm, M/s Greysham Pvt. Ltd. has given to the said firm as interest free trade advance (outstanding amount Rs. 4,05,85,420/- as on 31.3.2011) which is recoverable (under a back to back arrangement) against the bills for supply as mentioned in (9) (a) above. However, the same is subject to confirmation the said advances are considered recoverable in terms of agreement above referred to M/s Greysham Pvt. Ltd. has filed a case for breach of one of the clause of the said agreement against the firm and its partners 'at Hon'ble City Civil Court. "*

4.2. Ld. Counsel further emphasized on the fact that assessee had claimed the deduction of the same amount towards provision for bad and doubtful debts in AY 2011-12 which was disallowed by Ld. AO. Against this disallowance, assessee went in appeal before the Ld. CIT(A)in Appeal No. 12/CIT(A)-22/ACIT-LTU-2/11-12/17-18/Kol wherein ground taken by the assessee for this disallowance was "not pressed". Ld. Counsel thus, asserted that this amount claimed by assessee as deduction has suffered its due tax in AY 2011-12 which has not been contested by the assessee. Relevant extract of the order of Ld. CIT(A) is reproduced as under:

15. Grounds No 9 and 10 relate to the claim of the appellant that in view of the facts and in the circumstances, the Ld. AO is wholly unjustified in adding **Rs.3,44,45,000/-** towards provision for **doubtful advances** without appreciating the facts in the matter that the said sum was business loss u/s 28(1) and the Ld. AO without appreciating the fact disallowed such sum and as such the action of the Ld. AO is bad and illegal and in view of the facts and in the circumstances is liable to be quashed / cancelled and it may kindly be held accordingly. It has been further contended that without prejudice to Ground No. 9 above, the Ld.AO may kindly be directed to allow such sum of Rs. 3,44,45,000/- in the year in which such sum has been written off and it may kindly be held accordingly

The impugned matter has been dealt with by the Ld.AO as follows:

B. Provision for Doubtful Advances:-

- (i) The assessee has debited an amount of Rs.344.45 lakh in scheduled-20 of its P & L A/C on account of 'Provision for doubtful advances' for the assessment year under consideration.
- (ii) In this regard, the assessee was asked to furnish the details of doubtful advance vide notice u/s 142(1) of the IT Act dated 07.01.2014. It is found from the submission of the assessee that the assessee had given advances to its associated company, M/s Greysam & Co. (P) Ltd. In earlier years for supply of raw materials and other components such slack adjuster and air break equipment.
- (iii) The assessee was further asked to explain why provision for doubtful advances of Rs.344.45 lakh will not be disallowed for want of substantial evidences.
- (iv) In reply the A/R of the assessee submitted a written submission which is reproduced as under:-

"Your good self has mentioned that the provision for advances debited in the profit and loss account at Rs.344.45 lakh is not allowable. In such respect, your good self may kindly appreciate that the assessee had given advances to its associated company, M/s Gresham & Co. (P) Ltd. For supply of raw material and other components such as slack adjuster, air break equipment in earlier years. The said company was manufacturing such components and which was being used in the final product manufactured by the assessee company. The said company was manufacturing such components and which was being used in the final product manufactured by the assessee company. The advance was given to such company was adjusted towards supply made by said company to the assessee company. Since April 2010, manufacturing activity in the said associated company has been halted due to operational difficulties and other reasons and it had shut down its manufacturing activity since such time. As such, the amount of Rs.344.45 lakh is the unadjusted advance remaining since such period. Your good self may kindly appreciate that the advance was given in the course of business and the said associated company was unable to return the same to the assessee company the assessee company has treated the same as business loss and the provision in such respect was debited in the P/L A/C and has been claimed as such in

the computation of income. In such respect, your good self may kindly appreciate that since the advance was given in the course of business, the assessee company unable to recover/adjust the same and it has claimed as business loss and the same is allowable. In such respect your attention is drawn to the following decision."

a) *Mohan Meakin Ltd. V. CIT(2012) 348 ITR 109(Del)*

b) *A.W. Figgis & Co. P. Ltd V. CIT(2002) 254 ITR 63 (Cal).*

(v) *The submission of the assessee was examined carefully and on perusal of the facts of the case, it is found that the assessee company without putting any effort for recovery/adjust of advance money from its associated company, it has claimed expense in the form of provision of doubtful advance. The contention of the assessee as mentioned in its submission is not acceptable. Hence, the entire amount of Rs.344.45 Lakh debited in the P & L A/C as provision for doubtful advance is disallowed and added back to the total income of the assessee.*

[Disallowance: Rs.344.45 lakh]

16. During the course of the appeal, it was submitted by the appellant that it does not wish to press for adjudication on these grounds.

17. FINDINGS & DECISION: [Grounds 9 & 10]

1. In view of the appellant's submissions that it does not wish to press these grounds, the same stand dismissed. The action of the Ld. AO in making the addition of **Rs.344.45 lakhs on the account of doubtful advances stands confirmed.**

2. The grounds **9 & 10 stand dismissed.**

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4.3. To this effect, Ld. Counsel also placed on record an affidavit dated 20.02.2023 from Shri Saurav Singhania, a director of the assessee wherein these facts have been affirmed. The relevant contents of the said affidavit are as under:

"1. That, the Authorised signatory has been duly authorized by the Board of Directors of the company and as such is competent to file this affidavit.

2. That, the captioned appeal has been filed by the appellant against the order of CIT(LTU) (order dt. 28.3.2018)

3. That, the subject matter in the aforesaid order u/s 263 pertains to write off of bad debt of Rs. 3,24,45,459/- (Rs. 3,44,45,000/- Less: Rs. 19,99,541/-).

4. That, the aforesaid amount write off i.e. Rs. 3,44,45,000/- was provided for in the books of account as "PROVISION TOWARDS DOUBTFUL DEBTS" in A.Y 2011-12 and the AO in the order passed u/s 143(3)/144C(4) dt. 18.5.2015 had disallowed such provision in normal computation of income.

5. That, the appellant in the proceedings before CIT(A) for A.Y 2011-12 in appeal No. 12/CIT(A)-22/ ACIT(LTU)-2011-12/17-18/Kol dt. 26.2.2018 [at ground No.9] had not pressed against the disallowance of the impugned amount shown as "provision for doubtful debt" and had withdrawn such ground before CIT(A).

6. That, the provision for doubtful debt in A.Y 2011-12 will not be pressed as claim for deduction of such assessment year in any further proceedings."

4.4. Ld. Counsel thus stated that in the year under consideration i.e. AY 2013-14, assessee has actually written off the amount of bad debts in the books of account and thus the same was claimed as deduction from the computation of income which was allowed by the Ld. AO after due examination and verification of the records and application of mind. Ld. Counsel referred to the order sheet entries to demonstrate that relevant enquiries were made and were complied with which are placed in paper book. He referred to order sheet entry dated 24.02.2016 in particular, wherein details of bad debts submitted are noted. Ld. Counsel also referred to the written submission made before the ld. AO vide letter dated 24.02.2016 and pointed to the details of bad debts written off by the assessee. He also referred to Note no. 1 disclosed in the audited financial statement of the assessee by the auditor, which Ld. CIT(A) has annexed to the impugned order as Annexure "C". In this respect, the same are reproduced as under:

Details of Irrecoverable debts written off

Journal No	Date	Party Name	Narration	Amount	Remarks
	31-Mar-13	Greesham and Company Private Limited	Greesham and Company Private Limited	32,445,459	Refer Note 1
TJ 30076	29-Sep-12	Eastern Guard Care Pvt. Ltd.	Eastern Guard Care Pvt. Ltd. - Balance Written Off	630,429	Advance against supply of labour written off
TIN 01876	31-Mar-13	Zonal Railways	Being provision made for ld and ed diff. to be deduct by railway on 12 co-en bogie supplied in march, payment of which yet to receive.	383,062	LD charges charged to Bad Debts written off
TJ 47733	31-Jan-13	D.L.W	Being amount deduct towards difference of excise duty by D.L.W transfer to sundr balance written off account.	364,424	LD charges charged to Bad Debts written off
TWJN 12376	31-May-12	Zonal Railways	Being amount outstanding against bill no. 1108,1117 and 1154 transfer to sundry balance written off and provision of ld account.	351,141	LD charges charged to Bad Debts written off
TJ 33324	30-Sep-12	JR Enterprise	Being the amount paid to JR Enterprise against their old dues which was earlier written off, now debited to Sundry Balance written off.	324,036	LD charges charged to Bad Debts written off
TJ 41130	30-Sep-12	Comet Technocom	Sundry Balance written off - Comet Technocom	314,836	Advance written off
TWIN 11433	28-Mar-12	Zonal Railways	Being payment received for 9 co-en bogie after deduction of LD and excise difference transfer to sundry balance w/off	287,296	LD charges charged to Bad Debts written off
TJ 25328	22-Aug-12	Zonal Railways	BEING THE WRONGLY RECTIFICATION ENTRY PASSED AS ON DATED 30/06/2012 VIDE THE IN. 017257_01 OF RS: 242841.34 & LEDGER BALANCE OF RS: 37530.88, NOW REVERSED AND THE WRITTEN OFF	165,020	LD charges charged to Bad Debts written off
TJ 52037	26-Feb-13	Zonal Railways	Being amount received for co-co bogie bill no 1055 and 867 after deducting ld and ed difference	191,531	LD charges charged to Bad Debts written off
Total				35,765,235	

Note 1

The Company had issued several purchase orders on Greysam and Company Private Limited for purchase of Air brake equipment and slack adjuster. The Company had given advances to the tune of Rs 5.45 crores during the period 2008 to 2010 for the purchase of raw material. The aforesaid raw material is a DM item which as per the norms of the Indian Railways has to be purchased from the Part I vendor registered with RDSO. Greysam and Co. had the necessary registration for the said product.

The vendor had supplied part material against the above purchase orders upto 30th November 2011. In the meantime the vendor became bankrupt and was unable to supply the balance material. Hence the balance was written off from the books of accounts in the year 2013. Further a legal case has been filed against the vendor for the recovery of the money.

Since the above advance was for the purchase of raw material, the write off of the said advance should be considered as business expenditure and allowed as deduction.

Attachment –

- Ledger account of Greysam and Company Private Limited attached for reference.
- List of Purchase orders for supply of material and sample order copy

→ when a provision made
→ disallowed in the return by the department
→ write off later in the next year

4.5. Ld. Counsel also reiterated that the issue on which the present revisionary proceedings were initiated had been subject matter of addition in AY 2011-12 and as such the same cannot be considered in AY 2013-14 for disallowance. He also stated that the said sum was advanced for supply of raw material and the write off is due to irrecoverability of the same and as such is an allowable business loss. On a specific query by the Bench to the Ld. Counsel in respect of effect of recent decision by the Hon'ble Supreme Court in the case of PCIT Vs. Khyati Realtors Pvt. Ltd. (2022) 447 ITR 167 (SC), ld. Counsel made a detailed submission to demonstrate that it is distinguishable in the present set of facts for its applicability. He submitted that the said decision of the Hon'ble Supreme Court does not apply to the facts of the assessee in view of the following :

“a) Advance given was for supply of slack adjuster which was required for finished products and as such in nature of raw material and was very much in course of business of appellant.

b) Advance was not capital asset, since said advance for Rs.35,00,000/- is a separate transaction and has not written off and is outstanding.

c) Such write off was claimed u/s. 28(i) as ‘BUSINESS LOSS’ and not u/s. 36(1)(vii) r.w. 36(2).”

4.6. He further submitted that in the said decision, according to the Hon’ble Supreme Court, it is mandatory for the assessee to prove that the advance against which claim of bad debt is made is “in its ordinary course of business”. In the present case, according to the Ld. Counsel, the advance in question was wholly and exclusively for the purpose of business of the assessee since assessee is in the business of manufacturing of railway wagons and the claim is in respect of advance given by it to Greysham Co. Pvt. Ltd. for supply of raw material, as a business loss.

5. Per contra, Ld. CIT, DR placed reliance on the order of Ld. CIT and submitted that it is a case of lack of enquiry at the end of the Ld. AO for which Ld. CIT has rightly observed that various agreements between Greysham & Co. (firm) and Greysham & Co. Pvt. Ltd. , subsidiary of assessee, had not been examined before allowing the claim of bad debts written off by the assessee. He also submitted that the claim of business loss by the assessee is not in the nature of revenue loss. According to him, it is a capital loss for the purpose of acquiring a capital asset and not allowable. He thus submitted that Ld. CIT has rightly set aside the order of Ld. AO directing him for fresh assessment.

6. We have heard the rival contentions and perused the material available on record. At the outset, we note that this issue had already

been considered and dealt with in AY 2011-12 wherein claim of the assessee on account of provision for bad and doubtful debts had been disallowed by Ld. AO for which assessee had accepted the disallowance by not pressing the ground taken before the Ld. CIT(A) in the appeal filed by the assessee. Relevant extracts in this respect are reproduced above in this order.

6.1. For the year under consideration, assessee has claimed bad debts when it has only written off the advances given to Greysham & Co. Pvt. Ltd. for supply of raw material from its books of account. The claim is of the same amount which was disclosed in AY 2011-12 and has suffered its due taxes. We also take note of the affidavit by the director of the assessee affirming that disallowance made in AY 2011-12 on the issue raised by the Ld. CIT in the present revisionary proceeding has been accepted and not contested further even though the appeal for AY 2011-12 is pending for disposal before the ITAT, in ITA no. 1064/Kol/2018. To ascertain this fact, records of appeals for AY 2011-12 and 2012-13 pending before the Coordinate Bench of ITAT, Kolkata in ITA no. 1064/Kol/2018 and ITA No. 1065/Kol/2018, respectively as well as C.O No. 14 & 15 respectively were called for perusal . We note that assessee has not contested on this issue in the said appeals pending for disposal.

6.2. It is also noted that Ld. AO has duly examined and verified the records in respect of claim made by the assessee in the relevant disclosures were made in the audited financial statements of the assessee for AY 2011-12, placed on record. We also take note of the fact that assessee had given advance in earlier years for supply of raw material to Greysham Co. Pvt. Ltd. Supplies were made to the assessee in the earlier years. Subsequently, dispute arose between the

assessee and the supplier company resulting in the claim of bad debts by the assessee towards the balance advance lying with the supplier. The said advance against the supply of raw material is claimed by the assessee as a business loss and is allowable in computing the income of the assessee under the Act. From the above noted facts and observations, we find that the revisionary proceeding invoked by Ld. CIT did not meet the twin criterion enunciated in section 263 of the Act.

7. For this, let us take the guidance of judicial precedence laid down by the Hon'ble Apex Court in the case of *Malabar Industries Ltd. vs. CIT [2000] 243 ITR 83 (SC)* wherein their Lordships have held that *twin* conditions need to be satisfied before exercising revisional jurisdiction u/s 263 of the Act by the CIT. The twin conditions are that the order of the Assessing Officer *must be erroneous and in so far as prejudicial to the interest of the Revenue*. In the following circumstances, the order of the AO can be held to be erroneous order, that is (i) if the Assessing Officer's order was passed *on incorrect assumption of fact*; or (ii) *incorrect application of law*; or (iii) Assessing Officer's order is in *violation of the principle of natural justice*; or (iv) if the order is passed by the Assessing Officer *without application of mind*; (v) if the AO *has not investigated the issue* before him; [*because AO has to discharge dual role of an investigator as well as that of an adjudicator*] then in aforesaid any of the events, the order passed by the AO can be termed as erroneous order. Looking at the second limb as to whether the actions of the AO can be termed as prejudicial to the interest of Revenue, one has to understand what is prejudicial to the interest of the revenue. The Hon'ble Supreme Court in the case of *Malabar Industries (supra)* held that this phrase i.e. "*prejudicial to the interest of the revenue*" has to be read in conjunction with an

erroneous order passed by the AO. Their Lordships held that every loss of revenue as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interest of the revenue. When the Assessing Officer adopted one of the courses permissible in law and it has resulted in loss to the revenue, or where two views are possible and the Assessing Officer has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue unless the view taken by the Assessing Officer is unsustainable in law.

7.1. Further, from the submissions made by the Ld. Counsel in respect of decision of Hon'ble Supreme Court in the case of Khyati Realtors Pvt. Ltd. (supra), we note that decision is distinguishable on the facts of the present case. Considering the facts and circumstances of the case, the judicial precedence referred above and the threefold contentions taken by the Ld. Counsel as stated above, we are convinced to quash the impugned revisionary order passed u/s. 263 of the Act. Accordingly, grounds taken by the assessee in this respect are allowed.

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

Order pronounced in the open court on 27th March, 2023.

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 27th March, 2023

JD, Sr. P.S.

Copy to:

The Appellant:

1. Appellant:
 2. The Respondent:
 3. CIT (LTU), Kolkata
 4. ACIT,(LTU-2), Kolkata.
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata