

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI
BEFORE SHRI ABY T. VARKEY, JM AND SHRI OM PRAKASH KANT, AM

आयकर अपील सं/ I.T.A. No.624/Mum/2021
(निर्धारण वर्ष / Assessment Years: 2015-16)

Sunbeam Monochem Pvt. Ltd. 201/B, Runwal And Omkar Esquare, Opp Sion Chunabhatti Signal, Eastern Express Highway, Sion East, Mumbai-400022.	बनाम/ Vs.	PCIT-8 Room No. 611, 6 th Floor, Aayakar Bhavan, Maharshi Karve Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCS8172P		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Devendra Jain	
Revenue by:	Shri Byomakesh Pradipta Kumar Panda (DR)	

सुनवाई की तारीख / Date of Hearing: 28/12/2022
घोषणा की तारीख /Date of Pronouncement: 10/03/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This appeal preferred by the assessee is against the order of the Ld. Principal Commissioner of Income Tax-8 [hereinafter referred to as the "PCIT"], Mumbai dated 26.02.2021 for assessment year 2015-16 passed under section 263 of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2. The assessee has raised the following grounds of appeal:

1. "The Learned Pr. Commissioner of Income Tax has erred in passing order under Section 263 of the Income Ta Act setting aside the original assessment order passed by the AO.
2. The Learned Pr. Commissioner of Income Tax has erred in holding that the AO has failed to make necessary enquiries



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to bring on record all facts necessary for determining true character and nature of income.

3. The Learned Pr. Commissioner of Income Tax has erred in holding that the assessment order dated 30.11.2017 was erroneous and prejudicial to the interests of the Revenue.
4. The order appealed against is bad in law and is against the principles of natural justice.
5. The order appealed against is based on surmises and conjectures.”

3. Brief facts of the case are that, the assessee had filed return of income for AY. 2015-16 on 24.09.2015 declaring total loss of Rs.10,82,871/-. Later on, the case of assessee was selected for scrutiny and assessment was completed u/s 143(3) of the Act dated 30.11.2017 in which the AO had accepted the returned loss by the assessee. The Ld. PCIT, on perusal of the assessment records found fault with the assessment framed by the AO. The AO accordingly issued a show cause notice u/s 263 of the Act, dated 12.03.2020 (*hereinafter mentioned as 'SCN'*) calling upon the assessee to explain as to why the assessment order passed u/s. 143(3) of the Act, dated 30.11.2017, should not be revised on two counts viz., (i) Expenses on account of bad debts of Rs.21,38,381/- and (ii) Write off of expenses of Rs.70,04,793/- [being the difference between the expenses incurred on loss of fire and insurance claim received]. In response thereto, the assessee is noted to have furnished his explanation before the Ld. PCIT, which is found available at Pages 51 to 52 of the paper book. After considering the explanation given by the assessee to the SCN,



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the Ld. PCIT rejected the same and passed an order u/s 263 of the Act on 26.02.2021 revising the order passed u/s 143(3) of the Act on both the aforementioned issues, by observing as under:

“..It was found that in the assessee's case, written off bad debt of Rs.21,38,381/- was the amount which could not be recovered from 2 parties i.e. Amar Dalal and Mercury Investments Intermediates Pvt Ltd. Assessee company advanced an inter corporate deposit to Mercury Investments Intermediates Pvt Ltd. in which Shri Amar Dalal was Director. As it was evident that this is not the case of a trade debt but of advance given. Bad debts arises on debtors and not on creditor. Further as per section 36(1)(vii) of Income Tax Act the precondition for claiming bad debt is that the debt in question should have been actually written off in the books and secondly, the debt which is claimed to be bad, should have been taken into account in computing the income of the assessee of the P.Y. in which such debt is written off or of any earlier P.Y. As the advance given by the assessee was not debited in the P and L account not being a trade debt in current AY, the same could not be allowed to be written off as bad debt. In this case the amount of Rs.21,38,381 claimed as bad debt by assessee is nothing but the advances given hence it can not be allowed as bad debt u/s 36(1)(vii) of the Act.

Further, With regard to expenses of Rs.70,04,793/- written off, the assessee stated that a fire broke out in the factory, assessee incurred expenses of Rs.1,06,75,992/-, but insurance company settled the same at Rs.36,71,198/- and hence balance of Rs.70,04,793/- was written off and claimed in P&L account. The assessee stated that it has submitted survey report prepared by



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AB Phadake & CO. C.A. showing expenses incurred, final claim and balance written off in respect of plant and machinery, building and stock to the AO during the assessment proceedings. However, AO accepted this report without making any independent inquiries with regard to expenses incurred as loss in fire. Further, the that the building and plant were depreciable assets and thus, fall under the purview of definition of 'Capital Asset' u/s 2(14). In view of this, capital gain on depreciable assets should be calculated in accordance with the specific provision of section 50 laid down for depreciable assets, which says that STCG shall be the difference between full value of consideration and opening WDV of block of assets. As per proviso (1A) of section 45(1), where any person receives at any time during the any previous year any money under insurance from an insurer on account of damage to or destruction of any capital assets as a result of accidental fire, then any profits or gains arising from receipts of such money shall be chargeable to income tax under the head capital gain and shall be deemed to be the income of such person of the previous year in which such money was received. AO did not verify this aspect.

Further, assessee claimed depreciation on opening WDV of building and plant which apparently included the part or full of building and plant which were destroyed in fire. Thus, assessee has taken dual benefit of claiming write off of loss and depreciation which is not permissible under Income Tax Act. AO erred by allowing the claim of assessee.

.....”



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4. According to Ld. PCIT, the AO had failed to make necessary enquiries and did not bring on record all facts necessary for determining its true nature & character and such omission on the AO's part resulted in the assessment order being erroneous and prejudicial to the interests of the Revenue. Aggrieved by the above order of the Ld. PCIT the assessee is now before us challenging the exercise of revisionary jurisdiction by the PCIT u/s 263 of the Act setting aside the above two (2) issues back to the file of the AO.

5. Assailing the action of the Ld. PCIT, the Ld. AR of the assessee argued that the usurpation of jurisdiction by the ld. PCIT and consequent order passed u/s 263 of the Act was bad in law because the conditions precedent for invoking the revisionary jurisdiction were never satisfied. It was argued that, it was not a case of improper enquiry or lack of enquiry as alleged by the Ld. PCIT in his impugned order. He first invited our attention the notice dated 22.08.2017 issued u/s 142(1) of the Act by the AO wherein he had *inter alia* required the assessee to submit details/explanation in relation to deduction claimed while computing business income (Sl No. 2 of the notice). Taking us through the response dated 20.09.2017, placed at Page 2 of the paper book, the Ld. AR showed us that complete details of the bad debts of Rs.21,38,381/- written off in the books of accounts was furnished before the AO. The Ld. AR explained that this amount written off comprised of the advances given to two parties i.e. (i) Shri Amar Dalal and (ii) M/s Mercury Investments Intermediates Pvt. Ltd, in the regular course of business. According to him, these ICDs carried interest @



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20% and the interest income derived in earlier years were assessed by way of 'business income' in those years. He showed us that, since these ICDs had become irrecoverable, necessary steps were taken by filing recovery suits against these parties. The Ld. AR invited our attention to the orders passed by the *Lok Adalat* filed before the AO, placed at Pages 37 to 38 of paper book, to show that the claims towards ICD & interest thereon was settled for Rs.25,00,000/-. According to the Ld. AR, the borrowers failed to fully honor the order of the Lok Adalat as well and therefore the assessee was left with no other option but to write off the irrecoverable debt, which was claimed as deduction from the profits of the business. The Ld. AR claimed that since the interest derived from these advances had been taxed by way of business income in earlier years and these advances were reflected by way of 'Current Assets' in the Balance Sheet, the assessee had rightly claimed deduction in respect of such bad debts u/s 36(2) r.w. 36(1)(vii) of the Act. According to Ld. AR therefore, not only did the AO make enquiry on this issue in the course of assessment but the view taken by the AO allowing this claim was a plausible view and therefore according to him, the exercise of revisionary jurisdiction u/s 263 of the Act on this issue by the Ld. PCIT was unwarranted

6. With regard to the issue of claim of restoration/fire expenses of Rs.70,04,793/-, the Ld. AR again brought to our notice that even this aspect was enquired into by the AO in the course of assessment to which detailed response was submitted by the assessee vide letter dated 20.09.2017 [Pages 2 to 27 of paper book]. The Ld. AR explained



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that fire had broken out in the factory which resulted in destruction & damages to the factory. In connection therewith, the assessee had lodged an insurance claim, which was settled at Rs.36,71,198/-. He showed us that, the entire insurance proceeds had been offered to tax as regular business income and that therefore the provisions of Sec. 45(1A) of the Act had no application. The Ld. AR further showed us that the assessee had incurred repairs & expenses of Rs.1,06,76,992/- towards the restoration of the factory premises which was destroyed in the fire. The Ld. AR pointed out that to substantiate the same, the assessee had furnished the break-up of the expenses incurred along with the ledger, supporting bills & survey report, which is found at Pages 4 to 27 of paper book.

Details	Expenses incurred
Plant & Machinery	30,26,190
Building	47,93,819
Stock	28,28,382
Fire fighting expenses	27,600
Total	1,06,75,991

7. The Ld. AR thereafter showed us that the above sum comprised of expenses incurred on repairs undertaken at the factory subsequent to the fire damages in order to restore the same and bring it back to the workable condition. According to him, these expenses were allowable u/s 30, 31 or 37 of the Act. He pointed out that Ld. PCIT had incorrectly assumed that this sum was in the nature of 'loss' and not 'expenditure' and therefore on this erroneous premise he had sought to invoke the provisions of Section 45(1A) of the Act. He showed that the amount of Rs.1,06,75,991/- represented expenses incurred on



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restoration of assets which was netted off against the insurance proceeds and the net expenditure of Rs.70,04,793/- was claimed as deduction from business profits. He accordingly contended that the impugned sum did not constitute 'loss' as alleged by the Ld. PCIT and therefore the invocation of provisions of Section 45(1A) read with 50 of the Act was clearly untenable. He thus urged that the revisionary jurisdiction exercised by the Ld. PCIT on both the issues was unsustainable and thus prayed that the order impugned before us be quashed.

8. Per contra, the Ld. CIT DR appearing on behalf of the Revenue fully supported the order of the Ld. PCIT. On the issue of claim of debt debts of Rs.21,38,381/-, he pointed out that the assessee was not able to show that it was in the business of money lending or that the advances were in the nature of trade debts. Referring to the documents furnished before the AO by the assessee, the Ld. DR contended that none of the ledgers furnished by the assessee revealed that interest was charged on these ICDs in earlier years or for that matter interest income derived therefrom had been offered to tax as 'business income'. The Ld. DR thus contended that nothing was brought on record by the assessee before the AO based on which a prudent person could infer that the bad debts of Rs.21,38,381/- were written off in the course of business. For this, the Ld. DR relied on the judgment of the Hon'ble Supreme Court in the case of Khyati Realtors Pvt Ltd (141 taxmann.com 461).



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9. On the issue of fire expenses of Rs.70,04,793/-, the Ld. DR contended that, the Ld. PCIT had rightly held that this sum written off was in the capital field. The Ld. PCIT is noted to have observed that since these expenses were incurred in relation to plant & machinery which were capital assets as defined u/s 2(14) of the Act, it ought to have been adjusted in terms of Section 50 of the Act. The Ld. DR also supported the order of Ld. PCIT wherein the latter had relied upon Section 45(1A) of the Act, which provided that any money received from insurance due to damage or destruction to capital assets would be taxable by way of capital gains. He thus argued that the directions of the Ld. PCIT requiring verification into this issue did not warrant any interference.

10. We have heard both the parties and perused the material placed before us. On perusal of the impugned order, it is noted that the broad finding of the Ld. PCIT is that the assessment order suffered from lack of enquiry & application of mind to the facts as well as the incorrect application of applicable legal provisions to the facts of the case. As a result, in the opinion of Ld. PCIT, the AO's order was erroneous and therefore liable for revision u/s 263 of the Act. The assessee has seriously contested these findings recorded by the Ld. PCIT before us. In the circumstances, therefore, before adjudicating the issues arising from the impugned order, we have to first examine the scope of revisionary jurisdiction u/s 263 of the Act. For that, let us take the guidance of the jurisprudence laid down by the Hon'ble Apex Court in **Malabar Industrial Co. Ltd. v. CIT (243 ITR 83)** wherein their



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Lordships have held that twin conditions should be satisfied before jurisdiction u/s 263 of the Act is exercised by the Id. CIT. The twin conditions, which need to be satisfied, are that (i) the order of the Assessing Officer must be erroneous and (ii) as a consequence of passing an erroneous order, prejudice is caused to the interest of the Revenue. In the following circumstances, the order of the AO can be held to be erroneous i.e. (i) if the Assessing Officer's order was passed on assumption of incorrect facts; or assumption of incorrect law; (ii) Assessing Officer's order is in violation of the principles of natural justice; (iii) if the AO's order is passed by the without application of mind; or (iv) if the AO has not investigated the issue before him. In the circumstances enumerated above, only the order passed by the Assessing Officer can be termed as erroneous for the purpose of Sec. 263 of the Act. Coming to the second limb, the AO's erroneous order can be revised by the Ld. CIT only when it is shown that the said order is prejudicial to the interest of Revenue. When this aspect is examined, one has to understand what is prejudicial to the interest of the Revenue. The Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd (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 Assessing Officer. The Hon'ble Supreme Court, held that for invoking powers conferred by S.263; the CIT should not only show that the AO's order is erroneous as a result of any of the situations enumerated above but CIT must also further show that as a result of an erroneous order, some loss is caused to the interest of the revenue. Their Lordships in the said judgment held that, every loss of revenue



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as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interest of the revenue. It was further observed that, when the Assessing Officer adopts 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 Ld. CIT does not agree, it cannot be treated as an order prejudicial to the interest of the revenue unless the view taken by the Assessing Officer is unsustainable in law.

11. Having regard to the principles laid down by the Hon'ble Apex Court (supra), we now proceed to examine as to whether, the Ld. PCIT was right in holding that, the AO did not make enquiries into the two (2) issues raised in the impugned order rendering the order to be erroneous and prejudicial to the interests of the Revenue. And, whether the AO's order is otherwise erroneous as the view taken by the AO based on the enquiries made by him was an unsustainable view in law and therefore the order was liable for revision u/s 263 of the Act.

12. We take up the first (1st) issue concerning the claim of bad debts of Rs.21,38,381/-. It is noted that, this amount, which was written off by the assessee, comprised of the irrecoverable advances given to two parties i.e. (i) Shri Amar Dalal and (ii) M/s Mercury Investments Intermediates Pvt. Ltd, in which Shri Amar Dalal was a Director. It is not in dispute that these amounts did not constitute trade debtors, nor was it offered to tax by way of sales/income in earlier years. Hence, this amount so written off did not constitute bad debts as generally



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understood in the context of Section 36(1)(vii) of the Act. Before the AO, it is noted that the assessee had furnished the relevant ledgers of these borrowers along with the legal suits initiated against them for recovery of dues, orders passed by the Lok Adalat etc. We therefore note that the assessee had substantiated before the AO that these advances had indeed become irrecoverable. The question however remains as to whether such write off was allowable as deduction from business profits or not. According to the Ld. AR, these loans were given in course of business and the interest earned therefrom in earlier years were offered to tax by way of 'business income' in those years. Accordingly, it was the assessee's contention that the write-offs were rightly allowed in terms of Section 36(2)(i) r.w. 36(1)(vii) of the Act or Section 28 of the Act by way of 'business loss'. On perusal of the ledgers of FYs 2011-12 to 2014-15 available at Pages 28 to 36 of paper book, we however note that there was nothing discernible from these documents that these advances carried interest or not. Also, it is not clear whether any interest income was offered to tax in earlier years under the head 'Business' which would justify the claim for write-off u/s 36(2)(i) of the Act. Upon query from the Bench, the Ld. AR, at the time of hearing, was unable to bring on record any evidence/detail to demonstrate the foregoing aspect. On these given facts, in our considered view, though the AO is noted to have enquired the information/details from the assessee but clearly he did not apply his mind thereto nor did he take his enquiry to its logical conclusion. Applying the legal principles, as discussed in Para 10 above, and having regard to the documents furnished by the assessee in the course



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of assessment, the view taken by the AO allowing the claim of bad debts cannot be said to be a plausible view taken in law. Hence, in our view, there was a clear omission in the enquiry/verification undertaken by the AO. We thus countenance the action of the Ld. PCIT setting aside this issue back to the file of the AO for denovo examination.

13. We now proceed to examine the next issue viz., the claim of fire restoration expenses of Rs.70,04,793/-. It is noted that this claim comprised of (i) loss on damage of stock of Rs.28,28,382/-, (ii) expenditure of Rs.78,47,609/- incurred on reinstating the building, plant & machinery and fire-fighting expenses. Against this gross sum of Rs.1,06,75,991/- [28,28,232 + 78,47,609], the assessee had netted off the insurance proceeds of Rs.36,71,198/- resulting in the net claim of Rs.70,04,793/-. Before the AO, the assessee had furnished the following explanation vide reply dated 20.09.2017, which read as under:

“Our client’s factory is situated at A/72, MIDC Industrial Area, Dombivali East, Thane, Maharashtra- 421201. It had taken up an insurance policy for Rs.1,08,00,000/- in respect of structure of Factory Building, stocks therein, Plant & Machinery Etc.

A fire took place on 9th November,2013. The assessee lodged a Fire insurance claim with the insurer for Rs.1,30,13,594/-. A survey report was prepared by A.B. Phadke & Co. Chartered Accountants. The copy of the same is enclosed herewith.



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Our client has incurred expenses in respect of restoration (fire claim). It had debited the following amounts under ledger account 'Expenses for Restoration (Fire Claim)':

Third Party Stock Lost in Fire	28,28,382/-
WIP Expenses for Restoration (Fire Claim)	46,26,238/-
Assets Lost in Fire on 09.11.2013	10,70,466/-
WIP Expenses for Restoration (Fire Claim)	<u>21,50,906/-</u>
	1,06,75,992/-

The net assessed loss was worked out at Rs.38,64,420/-. Our client had prepared a statement giving details of expenses incurred, claims lost, claims assessed and balance value of claims written off. Our client has written off Rs.70,04,793/- as the total loss shown in the P/L Account.”

14. From the above, it is noted that, a fire had broken out in the factory of the assessee resulting in loss of stock and damage to fixed assets including building, plant & machinery. The loss incurred due to damage of stock is noted to be Rs.28,28,232/-, which is found to have been reported by the independent surveyor in his final survey report as well. We find merit in the submission of the Ld. AR that AO did make enquiry on this aspect, to which the assessee had complied with and furnished the relevant details in relation thereto, and the view taken by the AO that this loss suffered on the damage of stock was in the revenue field and as such allowable as a deduction, is also a plausible view in law.



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15. As regards the expenses of Rs.78,47,609/- incurred by the assessee on reinstatement of fixed assets viz., plant & machinery & factory building, we note that the assessee had furnished complete details of these expenses along with supporting ledgers & invoices etc. before the AO, copies of which are available at Pages 4 to 20 of paper book. The Ld. AR also brought to our notice that the expenses incurred had also been acknowledged and reported by the independent auditor in his final survey report, which had been placed before the AO. [Pages 21 to 27 of Paper Book]. We therefore agree with the Ld. AR that it was not a case that there was no enquiry made by the AO on this issue as alleged by the Ld. PCIT. Instead, we note that the relevant explanation along with details & nature of expenses are noted to have been furnished by the assessee, in response to the notice issued by the AO u/s 142(1) of the Act.

16. On perusal of the impugned order, we find that the Ld. PCIT proceeded on the incorrect assumption of fact that impugned sum represented a 'loss' incurred in fire. Instead, we note that it primarily comprised of 'expenses' incurred on restoration of assets. The Ld. PCIT has misunderstood the concept of 'loss' and 'expenditure'. The Ld. PCIT has unnecessarily mixed up the two concepts. The claim of 'loss' is to be examined u/s 28 or 45 of the Act whereas the allowability of expenditure is to be ascertained under sections 30 to 43D of the Act, including section 37 of the Act.



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17. From the facts placed before us, it is noted that assessee had claimed the expenses of Rs.78,47,609/- by way of current repairs under Section 30, 31 or 37 of the Act as it did not result in creation of any new asset. According to Ld. AR, this factual position stands corroborated by the final survey report, which also states that the expenses incurred by the assessee resulted in restoration of the asset to its original condition. He thus contended that these expenses were rightly allowed by the AO, as deduction from the profits of the business. We find this claim of the assessee to be ably supported by the decision of the Hon'ble Delhi High Court in the case of **CIT Vs Volga Restaurant (253 ITR 405)**. In the instant case also, the expenses incurred by the assessee for restoring the fixed assets to its original condition, which had been damaged by fire, was held to be allowable as revenue expenditure while computing profits of the business. The relevant portion of the judgment reads as under:

“5. The expression 'current repairs' means expenditure on building, machinery, plant which is not for renewal or restoration. It is only for preserving or maintaining an already existing asset which does not bring a new asset into existence or does not give to the assessee a new or different advantage and they must be such repairs as are attended to as and when the need for them arises and that the question as to when a building, machinery, plant or furniture requires repairs and when the need arises, must be decided by not any academic or theoretical test but must be decided by the test of commercial expediency. As was observed by the Bombay High Court in the last quoted case,



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the test that has to be applied is that as a result of the expenditure which is claimed as an expenditure for repairs, what is really being done is to preserve and maintain an already existing asset. The object of such expenditure is not to bring a new asset into existence nor is its object the obtaining of a new or fresh advantage. But if the amount spent was for the purpose of bringing into existence a new asset or obtaining a new advantage, then such an expenditure would not be an expenditure of a revenue nature but it would be a capital expenditure.

6. Coming to the facts of the case, it has to be noted that the Tribunal has recorded the following finding on the factual aspects :

"We have carefully considered the submissions urged on both sides and perused the papers placed before us in the light of the authorities referred to above. From the details placed before us, it is clear that the assessee had entrusted the job of re-starting its air-conditioning plant to Voltas Ltd. but at the same time it had not given the entire work to Voltas Ltd. Rs. 75,804 was paid to Voltas Ltd. for repairing and replacing the air-conditioning plant and restarting it. The other equipments required for restarting the air-conditioning plant were acquired by the assessee itself such as two electric motors from M/s. Seimens India Ltd. for Rs. 9,839, three pumping sets for Rs. 6,465 from M/s. Rajasthan Krishi Udyog, six starters for Rs. 6,122 from Naval Electric & Machinery Stores. Apart from the above the assessee had spent a sum of Rs. 2,792 for electric wiring, etc. Rs. 17,656 was spent for repairing the furnishings as could be seen from the amount



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paid to M/s. Continental Furnishers. The assessee had also paid Rs. 4,283 to Behari Lal Sons Co. for pipes supplied by them and it also spent a sum of Rs. 1,041 on plastering and Rs. 1,523 for wall photographs. Thus, it would be seen that the various items of expenditure were incurred by the assessee by way of replacement and repairs of the damaged parts of the air-conditioning plant of its restaurant where some of the parts of the air- conditioning plant, such as electric motors, pumping sets, etc., were completely damaged, the assessee had to remove them and replace them with new motors and new pumping sets, starters, etc. But that does not mean that what the assessee put up was an entirely new air-conditioning plant after scraping the old plant which was damaged in the fire as a total loss. The materials placed before us clearly establish that the assessee had tried to retain as much as possible of the existing air-conditioning plant which was not damaged by the fire and tried to restore the same by replacing the damaged parts of the plant with new parts of machinery of the plant. The order of the Commissioner (Appeals) shows that the cost of providing a new air-conditioning plant of 27.5 tons would approximately be Rs. 2,15,000. In the light of the above fact, it would be clear that the expenses incurred by the assessee were only in the nature of revenue expenditure incurred for the purpose of repairing and restoring its damaged air-conditioning plant to its original working condition."

Applying the test laid down by the Apex Court, we are of the considered opinion that the Tribunal's view is in order. The answer to the first question is in the affirmative, in favour of the assessee and against the revenue."



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18. On these given facts, we find merit in the plea of the assessee that, not only did the AO make enquiries on this issue but even the view taken by the AO in accepting the allowability of expenditure was a plausible view in law.

19. The Ld. AR further pointed out to us that, the reliance placed by the Ld. PCIT on Section 45(1A) of the Act was misplaced and distinguishable in the given facts of the present case. Taking us through the legislative history, he brought to our notice that, the Hon'ble Supreme Court in the case of **Vania Silk Mills (P.) Ltd. v. CIT (191 ITR 647)** had earlier held that the destruction of right on account of the destruction of an asset cannot be equated with the extinguishment of the right on account of its 'transfer' and that therefore, the receipt of insurance proceeds was held to be in the nature of capital receipt not liable to tax. In order to overcome the decision in Vania Silk Mills (supra), Section 45(1A) was inserted vide Finance Act, 1999 with effect from 01.04.2000. It is noted that the Memorandum to the Finance Bill, 1999 provided that, the said Section was inserted as various Courts had held that, there is no transfer when the asset is destroyed and that the money received under insurance policy is a compensation by virtue of contract of insurance and not a consideration for transfer. Section 45(1A) of the Act therefore provided a deeming fiction, that profits and gains arising from insurance compensation shall be taxed under the head 'capital gains.' The Ld. AR explained that, by insertion of section 45(1A), the



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Legislature only sought to undo the ratio laid down in Vania Silk Mills (supra) in so far as the proposition that insurance compensation was not liable to tax. The Ld. AR, however, pointed out that, in the present case, the assessee had received insurance proceeds of Rs.36,71,198/-, which in its entirety, had been offered to tax as business income, and therefore the provisions of Section 45(1A) of the Act had no application.

20. In this regard, the Ld. AR invited our attention to the final survey report of M/s AB Phadake & Co, CA in which the auditor had reported the expenses incurred by the company and the final claim settled against it, which are as under: -

Details	Expenses incurred	Final claim settled by insurance company
Plant & Machinery	3026190	1391404
Building	4793819	112068
Stock	2828382	2333347
Fire fighting expenses	27600	27600
Total	10675991	3864419
Policy expenses	-	193221
Net claim received	10675991	3671198

21. The Ld. AR pointed out that, the insurance proceeds of Rs.36,71,198/- was never claimed as capital receipt not liable to tax. Instead, the entire proceeds were offered to tax by way of '**business income**'. Rather than crediting it separately in the accounts, the assessee netted off the insurance proceeds against the loss/expenses incurred in connection therewith [(1,06,75,991-36,71,198)=70,04,793].



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Alternatively, the assessee could have claimed deduction for the expenses of Rs.1,06,75,991/- and separately offered the insurance proceeds of Rs.36,71,198/- to tax. Any which ways, the net result/impact on the computation of business profits was the same.

22. Referring to the above table, the Ld. AR showed us that out of the total insurance proceeds of Rs.36,71,198/-, a sum to the extent of Rs.25,54,168/- was towards damaged stock, fire-fighting expenses & policy expenses, which admittedly was in the revenue field and therefore was rightly offered and assessed to tax by way of 'business income'. In so far as the remaining sum of Rs.11,17,030/- is concerned, it is noted that the same pertained to plant & machinery and building. The Ld. AR rightly pointed out that, the assessee had indeed offered the remaining sum of Rs.11,17,030/- by way of 'business income' and therefore the allegation of the Ld. PCIT that there was dual benefit claimed by the assessee is found to be patently erroneous. It is noted that, the insurance claim was lodged by the assessee having regard to the expenses incurred for restoration of the assets. Hence, we find merit in the contention of the assessee that the proceeds received from the insurance company had intimate nexus with the repairs/expenses incurred by the assessee. Accordingly, the action of the AO in allowing the assessee's treatment of the insurance proceeds as a business receipt and thereby netting it off against the expenses incurred cannot be said to be an *unsustainable view in law*.



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23. The Ld. PCIT however, observed that, this sum ought to have been adjusted from the block of assets in terms of Section 45(1A) read with Section 50 of the Act. Accordingly, the depreciation claim to that extent ought to be reduced u/s 32 of the Act. By not doing so, according to Ld. PCIT, the assessee had claimed dual benefit viz., excess claim of depreciation, which was impermissible in law. In this regard, the Ld. AR alternatively argued that, even if the Ld. PCIT's proposition is taken to its logical conclusion and the provisions of Section 45(1A) read with Section 50 of the Act is held to be applicable, then also there is no prejudice being caused to the interests of the Revenue. He pointed out that, the sum of Rs.11,17,030/- which was offered to tax as 'business income' would then have to be otherwise reduced from the computation of income under the head 'Profits & Gains of Business'. Correspondingly, it would have been adjusted from block of assets in terms of Section 45(1A) read with Section 50 of the Act and offered as 'Capital Gains, if any, or there would be a resultant decrease in the claim of depreciation. The Ld. AR demonstrated that, by doing so, the resultant decrease in claim of depreciation would be comparatively lesser than the exclusion/ deduction of the sum of Rs.11,17,030/- from the 'business income'. Consequently, the taxable income/loss for the relevant year would in fact stand further reduced. Having regard to the aforesaid explanation, we find merit in the Ld. AR's alternative plea as well, that there is no prejudice caused to the interests of the Revenue by the AO's action of assessing the insurance proceeds under the head 'Business Income'.



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24. Overall, therefore, we note that, not only the AO had enquired into this particular issue but he had adopted one of the views permissible in law. As noted above, the premise of the Ld. PCIT was based on the incorrect assumption of fact, and also the reasoning given by the Ld. PCIT for restoring this issue for fresh examination, is held to be unjustified. Accordingly, the order of the Ld. PCIT with reference to the second (2nd) issue is therefore set aside and accordingly cancelled.

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

Order pronounced in the open court on this 10/03/2023.

Sd/-

(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

Mumbai; Dated 10/03/2023.
Vijay Pal Singh, (Sr. PS)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai