

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM
आयकर अपील सं./ITA No.142/RPR/2018
(Assessment Year: 2014-2015)

ACIT, Circle-2(1), Raipur	Vs	Hi-Tech Abrasive Pvt. Ltd. 740, Sector-B, Urla Industrial Area, Raipur
PAN No. :AAACH 5950 M		

AND

Cross Objection No.14/RPR/2018
(Arising out of ITA No.142/RPR/2018)
(Assessment Year: 2014-2015)

Hi-Tech Abrasive Pvt. Ltd. 740, Sector-B, Urla Industrial Area, Raipur	Vs	ACIT, Circle-2(1), Raipur
PAN No. :AAACH 5950 M		

(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारित की ओर से /Assessee by	:	Shri R. B. Doshi, CA
राजस्व की ओर से /Revenue by	:	Smt. Ila M. Parmar, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	14/07/2023
घोषणा की तारीख/Date of Pronouncement	:	19/07/2023

आदेश / ORDER

Per Arun Khodpia, AM :

The present appeal by the assessee is directed against the order passed by the CIT(A)-I, Raipur, dated 01.02.2018 for the assessment year 2014-2015, on the following grounds:-

1. "Whether on points of law and on points of facts & circumstances of the case, the Ld. CIT(A) was justified in deleting the addition of Rs. 1,73,76,465/- made by the A.O on account of loss claimed under the head of impairment loss?"
2. Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified in allowing the relief to the assessee by giving a finding that the loss is allowable as Short Term Capital Loss as per provision of section 50 of the Act, without appreciating the fact that the assessee has not incurred any actual loss rather had claimed deduction notional loss

merely making book entry which is disallowable u/s 37 of the Act?”

3. *Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified in giving a finding that the assessee has sold the block of asset which is contradictory to the fact on record that the assessee has merely made an entry of provisions for impairment loss in books of account which is a notional loss not an actual loss, thereby rendering the decision which is perverse?”*
4. *“Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A) was justified in giving a finding which is contrary to the ratio of decision of Hon’ble ITAT Kolkata Bench “B” in the case of M/s Empire & Singlo Tea Ltd. Vs DCIT [201 I-LL-823-20] and Hon’ble Chennai bench “B” in the case of DCIT-II (I), Chennai vs. M/s Ennore Port Ltd. [2011-11-1129-22]?”*
5. *“Whether on points of law and on facts & circumstances of the case, the Ld. i CIT(A) was justified in accepting fresh evidence produced by the assessee if any, without allowing the AO, proper opportunity to examine the same, thereby violating the provisions on law under Rule 46A of the IT Rules?”*
6. *“ Whether on points of law and on facts & circumstances of the case, the Ld. CIT(A), the order of Ld. CIT (A) thereby giving a decision in favour of the assessee and against the revenue though there is no nexus between the conclusion of fact and primary fact upon which conclusion is based?”*
7. *“ The order of Ld. CIT (A) is erroneous both in law and on facts”.*
8. *“ Any other ground that may be adduced at the time of hearing”.*

2. Further, the assessee has filed an application which was received by the Registry on 04.10.2022 regarding admission of additional ground, which reads as under:-

“Without prejudice to the other grounds of cross objection, the assessee is entitled for depreciation at Rs. 49,04,386/- which was claimed at Rs. 26,75,615/- in the return and allowed at the - Same figure. The AO failed to take note of (he fact that depreciation claimed in the return was less than the amount allowable to the assessee.”

However, at the time of hearing, Id. AR did not press the additional ground. Accordingly, the additional ground raised by the assessee is dismissed as not pressed.

3. The assessee has also filed cross objection wherein the assessee has supported the addition deleted by the Id. CIT(A) of Rs.1,73,76,465/- made by the AO under the head impairment loss. However, the assessee has agitated the sustenance of addition of Rs.17,877/- made by the AO u/s.36(1)(va) of the Act representing employees' contribution to PF/ESIC.

The grounds raised in the cross objection are as under :-

1. *Ld. CIT(A) was not justified in confirming the addition of Rs. 17,877/- u/s 36(l)(va) representing employee's contribution to PF/ESIC. The addition of Rs. 17,877/- made by AO and sustained by CIT(A) is arbitrary, illegal and not justified.*
2. *Ld. CIT(A) erred in not allowing the deduction of Rs. 1,73,76,465/- as a business loss.*

4. First, we shall decide the appeal of the Revenue.

5. Brief facts of the case are that the assessee is a company having income from manufacturing of steel shots & Grits, C.I. Shots & Grits, M.S. Ingot mould and trading of Iron and steel. The assessee has filed its return of income electronically on 28.11.2014 declaring a loss of Rs.6,59,21,282/-. The case of the assessee was selected for scrutiny through CASS under the category 'Complete Scrutiny' for A.Y.2014-2015 with the reasons mentioned below :-

- (i) *Low net profit or loss shown from large gross receipt.*
- (ii) *Large other expenses claimed in P&L a/c*
- (iii) *Low income shown by large contractors.*
- (iv) *Mismatch in sales turnover reported in Audit Report and ITR*
- (v) *Mismatch in amount paid to related persons u/s.40A(2)(b) reported in Audit Report and ITR.*

6. Statutory notices were issued and in response the assessee's AR has submitted necessary submissions and supporting documents from time to time. Certain additions were proposed by the Id. AO, which was later added to the income of the assessee. The addition which is the subject matter of the present appeal, is pertaining to a loss claimed by the assessee under the head impairment loss on disposal of fixed asset for Rs.1,73,76,465/-. While making this addition, Id.AO has observed that the assessee in its profit and loss account has added a sum of Rs.1,73,76,465/-, details of which were given at Note-23 under the head "other expenses" of the profit and loss account, having sub-head "impairment loss on disposal of fixed asset". The assessee was asked to explain as to how such loss is entitled to be allowed under the provisions of Income Tax Act, 1961. In reply, the assessee has explained that the loss due to impairment of two assets identified during the year amounting to Rs.1,73,76,465/- have been dealt according to Accounting Standard (AS)-28 issued by the Institute of Chartered Accountant of India and accounting policy being consistently adopted by the company. It was the observation of the Id. AO that the impairment loss of disposal of fixed assets is of capital in nature and the same should be disallowed under the provisions of I.T. Act. Id. AO further noted that the assessee should have set off the loss generated out of disposal of fixed asset with any gain under the same head and the unabsorbed portion should have been carried forward to the next year. In absence of any capital gain the

assessee tried to set off the same against the business loss which is not allowable under the Act and thereby claimed higher business loss to the extent of a capital loss incurred by the assessee in the previous year under consideration. Therefore, the claim of higher business loss to the extent of capital loss incurred by the assessee was disallowed and added back to the returned income of the assessee.

7. Aggrieved by the order of the AO, the assessee preferred an appeal before the Id. CIT(A) wherein the issue was deliberated at length by the Id. CIT(A) and after considering the submissions of the assessee, Id. CIT(A) has held that in the present case, since the entire block has been exhausted then the net amount of consideration minus WDV will be taxed as short-term capital gain. Such observation of the Id. CIT(A) was alleged by the department as erroneous on facts and bad in law, therefore, the department has filed this appeal to represent its case before the Tribunal.

8. Ld. CIT-DR at the outset, reiterated the facts of the case. It was the submission of the Id. CIT-DR that impairment loss on disposal of fixed assets was claimed by the assessee by showing the same in its profit and loss account since the said loss was not a real loss, actually incurred by the assessee, the assessee's fixed assets are impaired resulting into unrealistic value being shown in the books of accounts than the realizable value of these fixed assets. Therefore, such loss was recorded by the assessee in its books of accounts but according to Section 41(2) of the Act, loss in the case of assets, sold, discarded, demolished or destroyed

are allowed to be claimed but not the case where the assessee continue to hold the fixed assets and loss or impairment in the value of asset is calculated and recorded in the books of accounts on the basis of registered valuer's report. Ld. CIT-DR relied upon the judgment in the case of Uniworth Textiles Ltd., reported in [2022] 140 taxmann.com 140 (Kolkata-Trib), wherein in para 5.1 the coordinate bench of the Tribunal has held as under :-

“5.1 After hearing the rival parties and perusing the material on record, we find that the deletion of addition by Id CIT(A) on account of loss resulting from impairment of fixed assets based on the valuation done by Government Registered approved Valuer is not in consonance with the provisions of the Act. The Id Counsel of the assessee referred to the provisions of section 41(2) of the Income Tax Act, 1961 (hereinafter referred to as the Act) when he was queried that under what provisions of the Act the loss on impairment in the value of fixed assets was claimed. We have perused the provisions of section 41(2) of the Act carefully and in our view the section deals with the loss arising from building, machinery, plant or furniture which are owned by the assessee and in respect of which depreciation is claimed under clause (i) of sub-section (1) of section 32; and which has been used for the purposes of business which is sold, discarded, demolished or destroyed and the moneys payable in respect of such building, machinery, plant or furniture, as the case may be, together with the amount of scrap value, if any, exceeds the written down value, then so much of the excess as does not exceed the difference between the actual cost and the written down value shall be chargeable to income-tax as income of the business of the previous year in which the money is payable for the building, machinery, plant or furniture. Thus, we do not find any substance or merit in the contentions of the Ld. A.R that the assessee's case is covered by the provision of Section 41(2) of the Act as the provisions of Section 41(2) deals with the charging of income in the year in which is sold, discarded, demolished or destroyed, but not the case where the assessee continue to hold the fixed assets and loss or impairment in the value of asset is calculated on the registered valuer report. The case cited by the Ld. A.R. before us namely Indowind Energy Ltd. v. Dy. CIT [IT Appeal No. 938 (MDS) of 2015, dated 27-10-2016] is not applicable as the said decisions was rendered in the context of book profit u/s 115JB of the Act. Under these circumstances we are inclined to reverse the order of the Ld. CIT(A) by allowing the ground no. 1 raised by the revenue.”

9. Further, It was the submission of Ld CIT-DR that the Id. CIT(A) was not justified in deleting the addition of Rs.1,73,76,465/- made by the AO on account of loss incurred under the head impairment loss. Ld. CIT(A) was unjustified while allowing the relief to the assessee by giving a finding that the loss is allowable as short-term capital loss as per Section 50 of the Act without appreciating the fact that the assessee has not incurred any actual loss rather had claimed deduction on notional basis merely by making book entry which is disallowable u/s.37 of the Act. Therefore, the order of the Id. CIT(A) on this issue deserves to be reversed.

10. Contrary to the submission and contention of the Revenue, learned AR on behalf of the assessee, submitted that the assessee has debited a sum of Rs.1,73,76,465/- to the profit and loss account on account of impairment loss on disposal of fixed assets. The AO held that the expenditure is of capital nature and should have been set off against any capital gain. In absence of any capital gain, the claim is not allowable. The learned AO drew our attention to pages 6 & 7 of the order of learned CIT(A), wherein, at para 3.2, assessee's submissions were extracted, the same are reproduced hereunder for the sake of clarity:

i) Appellant was in the process of hiving off one of its production division (ingot mould division) which was not operational since the year 2004. The value of assets of this division had eroded substantially. The plant and machinery, electrical installations and tools and equipment etc. pertaining to such division were sold/discarded during the year under appeal, for total consideration of Rs. 28,37,688/-.

ii) The total written down value of above assets on the date of sale was 2,02,14,153/- whereas the assets were sold/discarded for

total sum of Rs. 28,37,688/-. As per provisions as contained in para 14.3 of Accounting Standard 10, the gains / loss arising on disposal of fixed assets are required to be recognized in the profit and loss account. In order to comply with above provisions, the difference of Rs. 1,73,76,465/- was charged to profit and loss account. The amount was written off as per the requirement of Accounting Standard 10 and as per the accounting policy regularly and consistently followed by appellant. It may further be appreciated that appellant, being a company, is mandatorily required to follow Accounting Standards as prescribed u/s 211 of the erstwhile Companies Act, 1956.

So far as the quantum of deduction is concerned, the same is not disputed by the AO and the Auditors have also certified the same. The amount was written off as per the requirement of Accounting Standard issued by ICAI.

iii) In this context, we rely on the following decisions: -

ACIT vs. M/s. ITD Cementation India Ltd. - LT.A. No. 2991/Mum/2011 (ITAT Mumbai)

In that case, it was held by Hon'ble ITAT that though section 145 requires some of the Accounting Standards to be mandatorily followed by the assessee, it does not preclude assessee from following other Accounting Standards.

Further in that case, AO had disallowed provision for foreseeable loss created in accordance with Accounting Standard 7. The loss claimed by that assessee had not arisen in the year under dispute but was claimed as per Accounting Standard-7. It was held by Hon'ble ITAT that where the assessee claims allowance of provision for foreseeable loss created in accordance with Accounting Standard, same is allowable in nature. A copy of this decision is enclosed herewith."

11. Based on the aforesaid submission, it was the contention of learned AR that since the assets were sold during the year and on the date of sale, the written down value of the asset was Rs.2,02,14,153/-, whereas the asset was sold/discarded for total sum of Rs.28,37,688/-. Therefore, the difference of Rs.1,73,76,465/- was charged to profit and loss account, which is according to accounting norms prescribed in Accounting Standard and as per the accounting policy regularly and consistently followed by the assessee. The assessee, being a company, is

mandatorily required to follow the Accounting Standards as prescribed under section 211 of the erstwhile Companies Act, 1956. It was the submissions of learned AR that the quantum of deduction is not disputed by learned AO and the Auditors have also certified the same. The amount was written off as per the requirement of Accounting Standard issued by ICAI. Learned AR further drew our attention to the observations of learned CIT(A), wherein, learned CIT(A) has allowed the contention of the assessee and has observed as under:

“3.3 Facts being as above the issue is regarding sale of production division of the assessee company for an amount of Rs. 2837688/- whereas the WDV of the assets as per the books was Rs. 20214153/-. The assessee has debited the difference in its account which has been disallowed by the AO as capital in nature.

On these facts Sec. 50 of the Income Tax Act deals with capital gains arising out of the sale of depreciable assets. As per the provision of that section where the sales consideration exceeds WDV of the book of assets and the entire block has been exhausted then the net amount of consideration minus WDV will be taxed a short term capital gain. Corollary to this, in the present case since the entire block has been exhausted and the net result is loss such loss will be treated as short term capital loss. The AO is directed to treat the amount of Rs. 1,75,76,465/- as short term capital loss.”

12. Carrying the arguments further, learned AR of the assessee submitted that in case the claim of the assessee regarding impairment loss is not allowed to the assessee, in that case, alternatively, the assessee should be allowed a higher depreciation of Rs.49,04,386/-, which was claimed at Rs.26,75,615/- only in the return, and was allowed at the same figure. This issue was raised by the assessee by filing an additional ground as requested on 10th September 2022. However, this ground was later withdrawn by learned AR, therefore, the same has

become infructuous and accordingly dismissed. Learned AR placed reliance on the order of learned CIT(A) and has prayed to sustain the findings of the same.

13. We have considered rival submissions and perused the materials on record as well as relevant provisions of the Act pertaining to the issue in hand. It is an admitted fact that the assessee has claimed impairment loss on disposal of fixed assets for Rs.1,73,76,465/- and the said loss was calculated as prescribed in Accounting Standard AS-10 issued by the Chartered Accountants of India and accounting policy being consistently adopted by the assessee company. Regarding the claim of assessee of impairment loss, it was the contention of the Revenue that the same is not allowable as per the provisions of section 41(2) of the Act. Provisions of section 41(2) of the Act are furnished hereunder for ready reference:

“41. (1)

(2) Where any building, machinery, plant or furniture,—

(a) which is owned by the assessee;

(b) in respect of which depreciation is claimed under clause (i) of sub-section (1) of section 32; and

(c) which was or has been used for the purposes of business,

is sold, discarded, demolished or destroyed and the moneys payable in respect of such building, machinery, plant or furniture, as the case may be, together with the amount of scrap value, if any, exceeds the written down value, so much of the excess as does not exceed the difference between the actual cost and the written down value shall be chargeable to income-tax as income of the business of the previous year in which the moneys payable for the building, machinery, plant or furniture became due.

Explanation.—Where the moneys payable in respect of the building, machinery, plant or furniture referred to in this sub-section become due in a previous year in which the business for the purpose of which the building, machinery, plant or furniture was being used is no

longer in existence, the provision of this sub-section shall apply as if the business is in existence in that previous year.”

14. In this regard, the ITAT, Kolkata Bench 'A' in the case of Uniworth Textiles Ltd., reported in [2022] 140 taxmann.com 140 (Kolkata – Trib.), has categorically held that the provisions of section 41(2) deals with the charging of income in the year in which the asset is sold, discarded, demolished or destroyed, but not the case, where the assessee continue to hold the fixed assets and loss or impairment in the value of asset is calculated on the registered Valuer Report.

15. In the present case, since the assessee itself has claimed the impairment loss in profit and loss account and it is evident from the computation of income of the assessee that the block of assets, which were the subject matter of impairment loss, are still in existence, therefore, it cannot be said that the assessee is not holding the said fixed assets. We, therefore, are of the considered opinion that since the assessee itself has accepted that the claim of impairment loss on disposal of fixed assets which was calculated and accounted for according to the guidelines prescribed under the Companies Act, which are not binding while calculating the taxable income of the assessee under the provisions of the Income Tax Act, therefore, the observations of learned CIT(A), which are not factually correct that the entire block of asset has exhausted, is an erroneous finding not in concurrence with the actual facts of the case, wherein as per computation of total Income by the assessee the block is showing as in existence, is liable to be quashed.

Consequently, the addition made by the Assessing Officer stands confirmed.

16. Before concluding our observations, since we are approving the findings of learned AO regarding disallowing the claim of the assessee for impairment loss, in the interest of justice, the entitlement of depreciation which should have been allowed to the assessee according to the provisions of section 32 of the Income Tax Act, is hereby directed to be allowed. Assessee is directed to submit necessary information with supporting evidence before the Ld AO to avail benefit of depreciation which is allowable to it.

17. In the result, the appeal of the Revenue is partly allowed for statistical purposes.

C.O. No.14/RPR/2018

18. The cross objection filed by the assessee is directed against the appeal of the revenue in ITA 142/RPR/2018 filed against the order dated 01.02.2018 passed by learned Commissioner of Income Tax (Appeals)-I, Raipur, for assessment year 2014-15. The assessee has raised the following ground in its cross objections:

1. *Ld. CIT(A) was not justified in confirming the addition of Rs.17,877/- u/s 36(1)(va) representing employees' contribution to PF/ESIC. The addition of Rs.17,877/- made by AO and sustained by CIT(A) is arbitrary, illegal and not justified.*
2. *Learned CIT(A) erred in not allowing the deduction of Rs.1,73,76,465/- as a business loss.*

3. *The cross objector reserves the right to add, amend or alter any of the ground(s) of cross objection.*

19. Ground no. 1 of the cross objections regarding the addition of employees' contribution to PF/ESIC is not pressed by learned AR of the assessee. Accordingly, the same is dismissed as not pressed.

20. Ground no. 2 pertaining to disallowance of deduction of Rs. 1,73,76,465/- as a business loss. This issue has already been dealt with in the foregoing paragraphs while deciding the appeal in ITA No. 142/RPR/2018, and the addition was directed to be confirmed subject to allowing the depreciation in accordance with the provisions of law. Therefore, this ground of cross objection is also disposed of accordingly.

21. In the result, cross objection filed by the assessee is dismissed.

22. To sum up, the appeal of the Revenue is partly allowed for statistical purposes, and the cross objections of the assessee are dismissed.

Order pronounced in the court on 19/07/2023.

Sd/-
(RAVISH SOOD)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ARUN KHODPIA)

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 19/07/2023

Prakash Kumar Mishra & RK, Sr. P.S (on tour)

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),

4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT,
Raipur
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur