

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI  
(DELHI BENCH 'C' : NEW DELHI)**

**BEFORE SH. N.K.BILLAIYA, ACCOUNTANT MEMBER  
AND  
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.7601/Del/2018, A.Y. 2015-16**

M/s. GNG Ltd. Village Babupur, Sector 108, Gurgaon, Haryana-122001	Vs.	ACIT, Circle - 4(1), Gurgaon
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Assessee by	Sh. Ankur Goel, Adv.
Revenue by	Sh. Ajay Kumar, Sr. DR

Date of hearing:	12.07.2023
Date of Pronouncement:	20.07.2023

**ORDER**

**PER ANUBHAV SHARMA, JM:**

The appeal has been preferred by the assessee against the order dated 13.09.2018 passed by the Commissioner of Income Tax (Appeals)-1, Gurgaon (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal No. 405/17-18 arising out of an appeal before it against the order dated 30.12.2017 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ACIT, Circle-4(1), Gurgaon (hereinafter referred as the Ld. AO).

2. Heard and perused the record. The assessee is in appeal raising following grounds;

1 *“That having regard to the facts and circumstances of the case , the Ld CIT (Appeals)-I, Gurgaon has erred in law and on the facts of the case in confirming the addition made by the Ld. ACIT Circle 4(1), Gurgaon rejecting the claim of the appellant for write off of the outstanding due from Sh Sanjay Aggarwal of Rs 4,00,000/- charged to Profit & Loss Account.*

2 *That having regard to the facts and circumstances of the case , the Ld CIT (Appeals)-I, Gurgaon has erred in law and on the facts of the case in confirming the addition made by the Ld. ACIT Circle 4(1), Gurgaon rejecting the claim of the appellant for write off of the outstanding due balance of Hughes Communications Ltd of Rs. 6,71,417/-by charging to Profit & Loss Account.*

3 *Without prejudice to the above grounds, the appellant craves to add, amend, delete, leave or amend any of the grounds stated above at the time of appeal.”*

3. The facts in brief are during the financial year 2020-21, assessee claims to have made advance of Rs. 4,00,000/- to Sh. Sanjay Agarwal practicing Chartered Accountant for receipt of services in connection with loans Syndication and enhancement of working capital limits with State Bank of India. The results did not come up therefore, the appellant repeatedly asked for refund of the said payment and finally during the year the aforesaid amount was written off and claimed as expenditure. Ld. Counsel submitted that due to mistake the said amount was claimed as expenditure deduction u/s 36(1)(vii) of the Act. It was submitted that in any case, the Ld. AO disallowed the said expenditure on the ground that the said advance payment cannot be claimed as bad debts u/s 36(1)(vii) of the Act because the said advance was not included as income of the appellant in any of the previous years. It was submitted that Ld. AO and Ld. CIT(A) have both have fallen in error as in any case even if wrong section

was cited the advance should have been allowed as expenditure u/s 37 of the Act. It was submitted that amount was paid for the purpose of business and therefore, its write off is allowable u/s 37. He relied judgment of Hon'ble Gujarat High Court in *S. R. Koshti vs. CIT 296 ITR 165 (Gujarat)* to contend that if under a mistake of misconception a wrong section has been cited that cannot be basis for denying the deduction. He also relied judgment of the Tribunal in *Altus Group (India) Pvt. Ltd., New Delhi v. DCIT, New Delhi. ITA 1226/DEL/2016 order Dated 14-11-2019.*

4. As with regard to ground of disallowance of Rs. 67,147/- returned to M/s. Hughes Communications Ltd. pursuant to court cases, Ld. Counsel submitted that sum of Rs. 7,81,481/- was received from this entity which had made a wrong payment and the appellant considered the credit in the bank account as its income and raised an invoice on 24.09.2011. However this entity filed a Civil Suit and in settlement of said Civil Suit a sum of Rs. 9,00,000/- was paid by the appellant and this repayment included an interest amount of Rs. 2,28,583/-. Ld. Counsel submitted that Ld. AO had disallowed the aforesaid expenditure on the ground that the said payment cannot be claimed as bad debts u/s 36(1)(vii) of the Act. While Ld. CIT(A) partly confirmed the disallowance on the ground of refund of capital is not allowable as deduction of bad debt, however interest payment was allowed u/s 37. Ld. Counsel submitted that the balance Rs. 6,71,417/- also relates to the initial receipt from Hughes Communications which was wrongly offered to tax. It was submitted that further this payment was made pursuant to a civil suit order from Court and it was incurred wholly and exclusively for the purpose of business.

5. Ld. DR however supported the findings of Ld. AO and submitted that the amount of Rs. 4,00,000/- was not towards any services so that cannot be allowed as an expenditure.

6. Taking up the Ground no 1 it comes up that the claim of assessee before us is that when in regard to interest payment to M/s. Hughes communication, the Ld. CIT(A) has been invoked his power to allow expenditure u/s 37 of the Act, he should also have exercised the powers with regard to Rs. 4 lakhs which had to be written off. Appreciating the matter on record, it comes up that the Revenue does not dispute the background of transactions under which the payment of Rs. 4,00,000/- was made to Sh. Sanjay Agarwal or the payment of Rs. 9,00,000/- to M/s. Hughes Communications under the Court decree. Ld. CIT(A) has held that as Rs. 4 lakhs was not trading debit and was never taken into account as part of income of any previous year in such circumstances write off advance of Rs. 4 lakhs is not allowable deduction u/s 36(1)(vii) of the Act.

7. There is no doubt that within the provisions of Section 36(1)(vii) of the Act the deduction was not allowable. A perusal of the submissions of assessee before Ld. CIT(A) and the grounds raised in the first appeal before Ld. CIT(A) show that assessee had not made any specific claim that instead of provisions of Section 36(1)(vii) of the Act, Ld. AO should have invoked Section 37 and allowed the write off as an expenditure. The submissions reproduced by Ld. CIT(A) on page no. 3 and 4 of the order show that before Ld. CIT(A) again the claim was made for being allowed u/s 36(1)(vii) of the Act only. If it was the claim of the assessee that the expenditure should be allowed u/s 37 of the Act then the issue had to be examined with regard to the fact that the expenditure was entirely and solely for the purposes of the business. There is no material on record to show as to what was the nature of

agreement or transaction entered into with Mr. Sanjay Agarwal, Chartered Accountant and how though services which were sought from him in the year 2010-11 were related to the purpose of business of assessee. In fact as the advances were paid in the year 2010-11 then in the relevant previous year 2014-15, the recovery of amount for non-provision of service by Mr. Sanjay Agarwal would also become time barred and which also needed the examination on facts. The judgment which Ld. Counsel has relied of Hon'ble Gujarat High Court in the case of *S.K. Koshti (Supra)* is non-applicable to the facts and circumstances as without raising the questions of facts before the Ld. Tax Authorities below a question of fact for the first time cannot be raised before the Tribunal. At the same time what transpires is that the ground no. 1 as raised in regard to this issue before this Tribunal also is that Ld. Tax Authorities have rejected the claim of assessee for write off of the outstanding due. It is not the claim here also that it was an expenditure allowable u/s 37 of the Act which the Ld. Tax Authorities have failed to allow. Thus Bench is of considered view that the assessee at this stage cannot seek relief to allow the claim u/s 37 of the Act merely because some relief has been given by Ld. CIT(A) in regard to other addition. **Thus, ground no. 1 is decided against the assessee.**

8. In regard to Ground no. 2 it can be appreciated that Ld. CIT(A) has considered the amount of Rs. 7,81,481/- as an advance received by the appellant and accordingly the interest was allowed u/s 37 of the Act. Ld. Tax Authorities have failed to appreciate that the amount was in fact not an advance but was received mistakenly and which under a Court decree had to be returned with interest. If interest was allowable u/s 37 of the Act, then the principal amount returned by virtue of order of the Court was also allowable, as both formed the composite money decree. Accordingly, the findings of Ld. CIT(A) in regard to ground no.2 are not sustainable, the same is

allowed. The Ld. AO shall allow the whole of the amount as allowable deduction u/s 37 of the Act. **Consequently, the appeal of assessee is allowed partly.**

**Order pronounced in the open court on 20<sup>th</sup> July, 2023.**

**Sd/-  
(N.K.BILLAIYA)  
ACCOUNTANT MEMBER**

**Sd/-  
(ANUBHAV SHARMA)  
JUDICIAL MEMBER**

**Dated : 20/07/2023**

\*Binita, Sr. PS\*

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

By Order

Assistant Registrar,  
ITAT, Delhi