

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI**

BEFORE

SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

AND

MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA Nos. 6072 & 6073/Del/2019
Asstt. Years 2014-15 & 2015-16

Matrix Clothing Pvt. Ltd. Khandsa Road, Village Mohammadpur Gurgaon Haryana 122001 PAN AABCM8475B	Vs.	Addl. CIT, Spl. Range-6 New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri Salil Aggarwal, Sr. Advocate Shri Shailesh Gupta, Advocate
Department by:	Ms. Smita Singh, Sr. DR
Date of Hearing:	07.08.2023
Date of pronouncement:	13.09.2023

ORDER

PER ASTHA CHANDRA, JM

The two appeals filed by the assessee are directed against two separate orders both dated 21.05.2019 of the Ld. Commissioner of Income Tax, (Appeals) – 37, New Delhi ("**CIT(A)**") pertaining to Assessment Year ("**AY**") 2014-15 and 2015-16. Since common issue is involved in both the appeals, these were heard together and are being disposed of by this common order.

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

AY 2014-15 – ITA No. 6072/Del/2019

“1. That the learned Commissioner of Income Tax (Appeals) has grossly erred both in law and on facts in sustaining a disallowance of a sum of Rs. 57, 19, 947/-claimed as business loss, on account of advance written off given to its joint venture company in past assessment years during the normal running of business and while sustaining the instant disallowance, the learned CIT (A) has proceeded on irrelevant and extraneous considerations, and as such the disallowance so sustained is wholly untenable either on facts or in law.

1.1 That the adverse findings recorded by the learned AO and Commissioner of Income Tax (Appeals) are perverse and have been recorded with preconceived notions and without considering the submissions/evidences/material produced on record and also without providing fair and proper opportunity of being heard, hence such findings are vitiated and deserves to be deleted.

1.2 That while sustaining the said disallowance the learned CIT (A) has failed to appreciate the fact that the assessee company has never claimed the said expenditures under section 36(2) of the Act, rather the said expenditures are allowable as business loss under section 28 or 37 of the Act, as the same have been incurred during the normal carrying on of business and the genuineness of the same being not disputed, the same should have been allowed, as such

2 That the learned Commissioner of Income Tax (Appeals) has further erred in sustaining a disallowance of Rs. 5,61,999/- on account of loans to employees and debit balance of suppliers written off, which disallowance is based on irrelevant and extraneous considerations, and as such the disallowance so sustained is wholly untenable either on facts or in law.

2.1 That while sustaining the said disallowance the learned CIT (A) has failed to appreciate the fact that the assessee company has never claimed the said expenditures under section 36(2) of the Act, rather the said expenditures are allowable as business loss under section 28 or 37 of the Act, as the same have been incurred during the normal carrying on of business and the genuineness of the same being not disputed, the same should have been allowed, as such.

2.2 That the adverse findings recorded by the learned AO and Commissioner of Income Tax (Appeals) are perverse and have been recorded with preconceived notions and without considering the submissions/evidences/material produced on record and also without providing fair and proper opportunity of being heard, hence such findings are vitiated and deserves to be deleted.”

AY 2015-16 - ITA No. 6073/Del/2019

“1. That the learned Commissioner of Income Tax (Appeals) has grossly erred both in law and on facts in sustaining a disallowance of a sum of Rs. 57, 19, 947/-claimed as business loss, on account of advance written off given to its joint venture company in past assessment years during the normal running of business and while sustaining the instant disallowance, the learned CIT (A) has proceeded on irrelevant and extraneous considerations, and as such the disallowance so sustained is wholly untenable either on facts or in law.

1.1 That the adverse findings recorded by the learned AO and Commissioner of Income Tax (Appeals) are perverse and have been recorded with preconceived notions and without considering the

submissions/evidences/material produced on record and also without providing fair and proper opportunity of being heard, hence such findings are vitiated and deserves to be deleted.

1.2 That while sustaining the said disallowance the learned CIT (A) has failed to appreciate the fact that the assessee company has never claimed the said expenditures under section 36(2) of the Act, rather the said expenditures are allowable as business loss under section 28 or 37 of the Act, as the same have been incurred during the normal carrying on of business and the genuineness of the same being not disputed, the same should have been allowed, as such

2 That the learned Commissioner of Income Tax (Appeals) has further erred in sustaining a disallowance of Rs. 1, 57, 255/- on account of advance to supplier written off, which disallowance is based on irrelevant and extraneous considerations, and as such the disallowance so sustained is wholly untenable either on facts or in law.

2.1 That while sustaining the said disallowance the learned CIT (A) has failed to appreciate the fact that the assessee company has never claimed the said expenditures under section 36(2) of the Act, rather the said expenditures are allowable as business loss under section 28 or 37 of the Act, as the same have been incurred during the normal carrying on of business and the genuineness of the same being not disputed, the same should have been allowed, as such.

2.2 That the adverse findings recorded by the learned AO and Commissioner of Income Tax (Appeals) are perverse and have been recorded with preconceived notions and without considering the submissions/evidences/material produced on record and also without providing fair and proper opportunity of being heard, hence such findings are vitiated and deserves to be deleted.”

3. Briefly stated, the assessee company is engaged in the business of manufacturing of garments having its factory at Gurgaon. It has also installed windmills in Gujarat and is selling electricity to Gujarat State Electricity Board. For AY 2014-15 the assessee e-filed return on 25.11.2014 declaring income of Rs. 16,58,88,120/-. The case was selected for scrutiny under CASS. Statutory notices were served and responded to. The Ld. Assessing Officer (**“AO”**) completed the assessment on total income of Rs. 17,47,55,280/- on 04.11.2016 under section 143(3) of the Income Tax Act, 1961 (**the “Act”**) disallowing therein, inter-alia, loan of Rs. 57,19,974/- written off and bad debt of Rs. 5,61,999/- written off. For AY 2015-16 the assessee e-filed return on 28.09.2015 declaring income of Rs. 21,23,20,010/-. The case was selected for scrutiny under manual selection. Statutory notice(s) served were responded to. The Ld. AO completed the assessment on 27.11.2017 on total income of Rs. 22,06,27,070/- under section 143(3) of the Act including therein inter-alia disallowance of loan written off Rs. 57,19,974/- and bad debt written off Rs. 1,57,255/-.

4. Aggrieved by the aforesaid disallowances, the assessee filed appeal before the Ld. CIT(A) who passed separate order both dated 21.05.2019 confirming the said disallowances for both the AY(s) by making common observation as under. For the sake of brevity we have reproduced the observation of the Ld. CIT(A) for AY :-

“5.3 Ground No. 3 *pertains to disallowance of expenses claimed of Rs.57,19,947/- being 20% of the outstanding loan written off. I find that similar addition was made for AY. 2012-13. The Ld.CIT(A) has deleted the addition. However, on appeal before ITAT by Revenue, the Hon'ble ITAT reversed the decision of CIT(A) and restored the addition made by the AO. The extract from the order of Hon'ble ITAT, ITA No. 6554/DEL/2016 for A.Y. 2012-13 dated 23rd March, 2018 is reproduced as under:*

“4.6 We have perused the submissions advanced by both the sides in the light of the records placed before us.

4.7 The issue before us is that assessee who is engaged in the business of manufacturing of garments advanced loans to certain concerns and the same have become non-recoverable which were written off and claimed before Lat. AO as bad debts. Assessing Officer disallowed it as it did not satisfy the conditions of section 36 (2) of the Act. Before Ld CIT (A) assessee took the plea that it would be business loss which has been accepted by Ld. CIT (A)

It is now the case of assessee that such losses are allowable as bad debts. Ld. DR has argued that even the loss is not allowable. According to us any loss is allowable to assessee under section 28 itself while computing business income of assessee if:

- *such loss has been arisen during the course of the business of assessee;*
- *and it should have occurred during the year under concern*

4.8 In the present case the write off of loss has not arisen during the course of business of assessee as money lending is not the activity that is carried on by assessee and it has never been the claim of assessee nor it has been proved before the authorities below. There has been no evidence that is placed on record to prove that the loss has occurred during the year. Therefore the claim of loss by assessee does not hold good on both these counts. The reasons given by Ld. CIT (A) to allow the claim as business loss are irrelevant and is without considering the provisions of the Act. Ed. CIT (A) also accepted that the issue stands covered in the favour of assessee by the decision of Hon'ble Gujarat High Court in the case of Manohar N Shah reported in 280 ITR 462. We have perused the said decision of the Hon'ble Gujarat High Court, and it is observed that the loss proved to have been arisen during the year which was actually a business loss.

4.9 Therefore we are inclined to reverse the findings of Ld. CIT (A) and restore the order of Ld.

4.10. Accordingly this ground raised by revenue stands allowed.”

*The facts of the case are identical to the facts of the case decided by ITAT for AY. 2012-13. Respectfully, following the above decision of Hon'ble ITAT, addition of Rs.57,19,947/-made by the AO is confirmed. **Ground No. 3 is dismissed.***

5.4 Ground No. 4 pertains to addition of Rs. 5,61,999/- on account of bad debt written off. The finding of the AO in the assessment order is as follows:-

"15. It is seen that the assessee company has debited the P&L account an amount of Rs.27,87,105/-on account of bad debts written off. The AR of the assessee company was asked vide not sheet entry dated 24.10.2016 to furnish details in this regard. In response to the query the AR of the assessee company vide its letter dated 05.10.16 submitted the details of the bad debts claimed. It is seen that the break-up of bad debts is Rs 22,25,106 (sales debtors written off) Rs. 1,03,872/- (loans to employees written off) and Rs.4,58,127/- (debit balances of supplies written off). As per provisions of section 36(2) of the Act, only those amounts that were taken in to account for computing the income for previous year or in an earlier previous year are to be allowed. Out of the bad debts claimed by the assessee, only an amount of Rs.22,25, 106 was booked as revenue in earlier years and is accordingly allowed. The balance amount of Rs.5,61,999/- is disallowed."

*I have carefully gone through the finding of the AO, submission of the Ld. AR and the case laws relied upon by the Ld. AR. The AO has disallowed the claim of bad debt on the ground that the appellant did not fulfil the conditions laid down u/s 36(2) for claiming bad debt. When there is express provision under act that only those amounts that were taken in to account for computing the income for previous year or in an earlier previous year are to be allowed as per section. 36(2) of the Act. Therefore, I do not find any reason to interfere in the finding of the AO, the additions made by the AO is confirmed. **Ground of appeal no.4 is dismissed.**"*

5. Dissatisfied, the assessee is in appeal before the Tribunal and all the grounds in both the AYs relate to the said disallowances.

6. The Ld. AR made common submission in respect of the disallowance of Rs. 57,19,974/- in both the AYs. It was submitted that the assessee never claimed the said expenditures under section 36(2) of the Act. He further submitted that the said expenditures are allowable as business expenditure/losses under section 28 or 37 of the Act as the same have been incurred during the normal carrying on of business. According to him, the genuineness of the expenditures have not been disputed and therefore, the same should have been allowed.

6.1 The Ld. AR pointed out that against the order of the Tribunal in the assessee's case for AY 2012-13, appeal has been filed before the Hon'ble

Delhi High Court and a question of law has been framed on the issue for consideration vide order dated 15.05.2019 in ITA No. 1123/2018.

6.2 The Ld. AR referred to the judgment of the Hon'ble Supreme Court in PCIT vs. Khyati Realtors (P) Ltd. 447 ITR 167(SC) and the decision of Hon'ble Delhi High Court in Mohan Meakin Ltd. vs. CIT 348 ITR 109(Delhi) in support of his submission that the order of the Tribunal for AY 2012-13 on the issue in assessee's own case should not be followed.

7. The Ld. DR supported the order of the Ld. CIT(A) who has followed the order of the Tribunal in assessee's own case for AY 2012-13.

8. We have carefully considered the rival submissions of the parties and perused the records. It is not in dispute that the assessee had advanced loan to its joint venture partner, namely M/s. Centre of Excellence in Design Limited (**"COED"**) in which the assessee had a stake of 50% during the year prior to AY 2012-13. It is also an admitted position that the loan was given as a measure of commercial expediency in the ordinary course of assessee's business. This is finding of fact recorded by the Tribunal in assessee's own case in ITA No. 2949 & 2950/Del/2014 for AY 2009 & 2010 in its order dated 30.03.2017 (copy at pages 306-319 of Paper Book).

9. In AY 2012-13, the assessee debited a sum of Rs. 57,19,947/- being 20% of the total loan advanced to COED on account of write off to P&L account and claimed it as an allowable deduction but the Ld. AO disallowed the same on the ground, inter alia that conditions laid down in section 36(2) of the Act were not fulfilled. On appeal, the Ld. CIT(A) deleted the said disallowance holding that it being a genuine loss should be allowed as business loss under section 28 accepting the plea raised before him that the said amount is allowable under section 28(i) read with section 36(1)(vii) as normal business loss. The Revenue challenged the finding of the Ld. CIT(A) before the Tribunal which reversed the findings of the Ld. CIT(A) observing that the loss did not arise during the course of business of the assessee and that it did not occur during the year. The assessee is in appeal before the

Hon'ble Delhi High Court and the question of law "*whether, the ITAT is correct in reversing the finding of the CIT(A) that loss arising on account of write off of part of loans and advances given by the appellant to the joint venture i.e. Centre of Excellence in Design Ltd. ("COED") had arisen during the year in the course of its business and hence is a business loss allowable under section 28 of the Act*" is subjudice before the Hon'ble Delhi High Court. In AY 2013-14 also the appeal of the assessee was allowed by the Ld. CIT(A) holding that the impugned sum was allowable as business loss under section 28 of the Act. The appeal there against filed by the Revenue has been dismissed by the Tribunal in ITA No. 4321/Del/2017 dated 31.10.2019 on account of low tax effect.

10. It is observed that the assessee vide its letter dated 05.01.2016 (copy at page 82-83 of Paper Book) and 11.09.2017 filed before the Ld. AO during assessment proceedings for AY 2014-15 and 2015-16 respectively had claimed that the chances of recovery of the impugned sum is nil and the same is allowable as an expense under section 37(1) of the Act. The Ld. AO ignored the assessee's claim in both the years. Before the Ld. CIT(A) the assessee submitted that it has written off Rs. 57,19,947/- in each of the two years being 20% of the total loan/advance given to JV Company in its audited financials. It was also asserted that nowhere the assessee has claimed the said amount as bad debt in the profit and loss account. It was submitted that the loss is allowable under section 28(i) r.w. section 36(1)(vii) or 37(1) as a normal business loss. Support was derived from the decision of Hon'ble Supreme Court in Madnani Development Corporation Pvt. Ltd. (1986) 161 ITR 165 (SC) wherein it is held that business losses are allowable on ordinary commercial principles of computing profits, provided they are of non-capital nature. Reliance was also placed on the decisions of Hon'ble Gujrat High Court in CIT vs. Mahendra N. Shah (2006) 280 ITR 462(Guj); decision of Hon'ble Calcutta High Court in Turner Morrison & Co. Ltd. (2001) 245 ITR 724 (Cal); decision of ITAT Hyderabad in Gulf Oil Corporation Ltd. vs. ACIT (2012) 24 taxman.com 325 and decision of Hon'ble Bombay High Court in DI (International Taxation) vs. Deutsche Bank

AG (2014) 48 taxmann.com 323 (Bom.). However, the Ld. CIT(A) followed the order (supra) of the Tribunal for AY 2012-13 and dismissed the appeals of the assessee in both the AYs without considering and recording any finding on the submissions/contentions raised by the assessee before him.

11. On the facts and in the circumstances of the assessee's case we are of the considered view that it would be appropriate and expedient as also in the interest of justice and fair play to set aside the order of the Ld. CIT(A) in both the AYs and restore the matter back to the file of the Ld. AO to decide the issue afresh in accordance with law after considering the submissions/contention raised by the assessee before him and the Ld. CIT(A). He shall also allow reasonable opportunity of hearing to the assessee to present its case before him. We order accordingly.

12. As regards the disallowance of Rs. 5,61,999/- being bad debt written off in AY 2014-15, the Ld. AO discussed the issue in para 15 of his order. The said sum of Rs. 5,61,999/- comprised of Rs. 4,58,127/- being debit balances of suppliers written off and Rs. 1,03,872/- being loans to employees written off. The Ld. AO made the disallowance for the reasons that conditions laid down under section 36(2) were not fulfilled. On appeal the Ld. CIT(A) confirmed the impugned disallowance. In AY 2015-16 the Ld. AO disallowed Rs. 1,57,255/- claimed by the assessee as bad debt written off. The Ld. AO discussed the issue in para 18 of his order. According to him in FY 2012-13 the assessee had given an advance of Rs. 1,79,133/- to M/s. Alok Industries for purchase of raw material. The said party supplied material of Rs. 21,890/- out of the advance given. The other raw material supplied was defective and was returned. The assessee advanced Rs. 7,29,816/- during FY 2013-14 against which supplies were received of Rs. 7,29,804. Balance of Rs. 1,57,255/- was outstanding as on 31.03.2014 which has been written off as bad debt in FY 2014-15. The Ld. AO disallowed the assessee's claim on similar ground. The assessee did not get relief from the Ld. CIT(A). The assessee is therefore in appeal before the

Tribunal against confirmation of the impugned disallowance in both the AYs.

13. We have heard the Ld. Representative of the parties and perused the records. It is not in dispute that the loans/advances were given by the assessee in the course of carrying on of its business. These became irrecoverable due to which the assessee has written them off in its books of account. It is observed that neither the Ld. AO nor the Ld. CIT(A) had doubted the genuineness of the amounts written off. The assessee knows its interest best. If in the best judgment of the assessee, the amounts became irrecoverable and wrote them off in its books of account, it is an allowable deduction in computing the business income of the assessee. We, therefore, direct the Ld. AO to delete the impugned disallowances in both the AYs.

14. In the result, the appeals of the assessee are treated as allowed for statistical purposes for both the AYs 2014-15 and 2015-16 subject to directions contained in para 11 above.

Order pronounced in the open court on 13th September, 2023.

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

Dated: 13/09/2023

Veena

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
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