

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above cross appeals by the assessee and Revenue are preferred against the order dated 17.02.2023 by NFAC, Delhi pertaining to Assessment Year 2017-18. Both the appeals were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. The representatives of both the sides were heard at length, the case records carefully perused. Documentary evidences brought on record carefully perused.

975/DEL/2023 [Assessee's appeal]

4. The solitary grievance of the assessee relates to the disallowance on account of deposit from customers.

5. At the very outset, the ld. counsel for the assessee stated that the assessee impugned quarrel was there in A.Y 2010-11 and this Tribunal has decided the quarrel in favour of the assessee and against the revenue.

6. The ld. DR could not bring any distinguishing decision in favour of the revenue.

7. We have carefully perused the orders of the authorities below. We find force in the contention of the ld. counsel for the assessee. This Tribunal, in assessee's appeal for A.Y 2010-11 in ITA No. 5671/DEL/2018 has considered a similar dispute and held as under:

"36. We are of the considered view that section 41(2) of the Act was inserted W.E.F 1.04.1998 to provide for a levy of balancing charge in respect of certain depreciable assets, namely, building, machinery, plant or furniture which is owned by the assessee in respect of which depreciation is claimed u/s 32(1)(i) of the Act, that is, assets of an undertaking engaged in generation or generation and distribution of power which was, or has been used for the purpose of business.

37. It is clear that section 41(2) of the Act applies only if the assets are owned by the power generating undertaking and since the assessee is not a power generating company, the ld. CIT(A) grossly erred in applying provisions of Section 41(2) of the Act.

38. Coming to the applicability of provision of Section 41(1) of the Act which is also not applicable on the facts of the case, as twin conditions have to be satisfied (i) deduction in respect of a trading liability should be claimed in the previous year and (ii) the subsequent year liability must be written back effectively resulting into a benefit.

39. Facts on record show that the assessee has not claimed any trading liability. Containers and bottles are shown under the head "Current Assets" and deposits are shown as "Liabilities". There is no evidence brought on record to show that liability has ceased to exist. In our considered view, the cessation of liability can only occur either by operation of law or debtors unequivocally declaring his intention to not honour his liability when payment is demanded by the creditor.

40. For this proposition we draw support from the decision of the Hon'ble Supreme Court in the case of Sugauli Sugar Works [P] Ltd 102, taxmann 713 and the onus is on the revenue to bring on record tangible evidence to show that liability has ceased to exist, especially when it is continued to be shown in the books of accounts of the assessee.

41. Thus, considering from all possible angles, neither provisions of section 41(1) of the Act apply [Assessing Officer fails] nor provisions of section 41(2) and 43(6) of the Act [CITA fails]. This ground by the assessee is allowed and similar grievance in revenue's appeal is dismissed."

8. Respectfully following the decision of the co-ordinate bench [supra], we direct the Assessing Officer to delete the impugned addition. The solitary grievance of the assessee is allowed.

9. In the result the appeal of the assessee in ITA No. 975/DEL/2023 is allowed.

ITA No. 928/DEL/2023 [Revenue's Appeal]

10. Coming to the appeal by the Revenue, the first grievance is in relation to the deletion of addition made by the Assessing Officer on account of disallowing expenditure incurred on inventory loss and leakages being 20% of the amount of expenditure debited to the profit and loss account.

11. The ld. counsel for the assessee pointed out that the impugned issue has been considered and decided by this Tribunal in earlier A.Y in assessee's own case.

12. The ld. DR fairly conceded to this.

13. We have carefully perused the orders of the authorities below. We find that similar quarrel was considered by the co-ordinate bench in ITA No. 5810/DEL/2018 for A.Y 2010-11. The relevant findings read as under:

"52. We have carefully perused the orders of the authorities below. The undisputed fact is that since the assessee is engaged in the business of manufacturing and distribution of non-alcoholic beverages which are perishable in nature, these beverages are supplied in glass and plastic bottles which are susceptible to breakage. Such breakage and expiry of the products leads to inventory losses which was at Rs. 9,29,17,122/- in the year under consideration.

53. We find that the write off of inventory is based on actual loss and not on estimation. Therefore, in our considered view, the Id. CIT(A) was correct in allowing the same as business expenditure. Such action of the Id. CIT(A) cannot be faulted with. This ground is dismissed."

14. On finding parity of facts, respectfully following the findings of the co-ordinate bench [supra], we decline to interfere.

15. In the result, the appeal of the Revenue is dismissed.

16. To sum up, in the result the appeal of the assessee in ITA No. 975/DEL/2023 is allowed whereas the appeal of the Revenue in ITA No. 928/DEL/2023 is dismissed

The order is pronounced in the open court on 14.09.2023.

Sd/-

**[ANUBHAV SHARMA]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 14th SEPTEMBER, 2023.

VL/

Copy forwarded to:

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

Asst. 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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