

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH “C”,MUMBAI**

**BEFORE SHRI KULDIP SINGH (JUDICIAL MEMBER)  
AND  
MS. PADMAVATHY S. (ACCOUNTANT MEMBER)**

I.T.A. No.1699/Mum/2023      -      A.Y. 2016-17  
I.T.A. No.2266/Mum/2023      -      A.Y. 2017-18  
I.T.A. No.1700/Mum/2023      -      A.Y. 2019-20

Citygold Education Research Limited, Unit No.116, First Floor, Rehab Building No.4, Akruti Annex Road No.7, Marol, MIDC, Andheri (E), Mumbai-400 093 <b>PAN : AAFCA5195A</b>	vs	Deputy Commissioner of Income-tax, Central Circle-2(4), Mumbai Room No.802, 8 <sup>th</sup> Floor, Pratishta Bhavan, Old CGO Annexe, M.K. Road, Mumbai-400 020
<b>APPELLANT</b>		<b>RESPONDENT</b>

Present for the Assessee	Shri Vijay Mehta
Present for the Department	Ms Madhu Malati Ghosh ( CIT – DR)

Date of hearing	25/09/2023
Date of pronouncement	10/10/2023

**ORDER**

**Per Padmavathy S (AM):**

These appeals are against the order of the Commissioner of Income-tax (Appeals) [in short, ‘the CIT(A)], Mumbai passed for A.Ys. 2016-17 & 2019-20 dated 17/03/2023 and for A.Y. 2017-18 dated 11/05/2023.

2. The common issue contended in these appeals is the additions made by the Assessing Officer in the assessment completed under section 153A read with section 143(3) towards disallowance of bad debts / advances written off under section 37(1).

3. The assessee is a private limited company engaged in the business of disseminating and advance knowledge and promotes educational activities and to acquire, sell, construct, develop, promote or otherwise deal in the land, commercial, residential complexes, etc. A search action under section 132 of the Income-tax Act, 1961 (in short, the Act) was carried out in the case of Hubtown Limited and other group concerns including the assessee on 30/07/2019. The case was centralized with DCIT-7(3), Mumbai and the notice under section 153A was issued on 12/11/2020. In response to the said notices, the assessee filed a return of income on 05/02/2021 declaring total income at a loss of Rs.72,15,826/-. The Assessing Officer while completing the assessment under section 153A read with section 143(3) made addition towards disallowance of write off of assets/debts under section 37(1) of the Act. On appeal, the CIT(A) confirmed the additions made by the Assessing Officer. Aggrieved, the assessee is in appeal before the Tribunal.

4. During the course of hearing, besides filing concise grounds of appeal, with regards to the merits of the issue, the assessee also raised additional grounds on certain legal issues pertaining to the impugned additions. The additional grounds read as below:-

*“1. The Ld.CIT(A) has erred in not holding that the disallowance of Rs.8,45,866/- in respect of write-off of amounts in the books of Citygold Farming P. Ltd and Rs.18,16,839/- in respect of write-off of the amount in the books of Heddle Knowledge P. Ltd are without jurisdiction and bad in*

*law. The Ld.CIT(A) ought to have held that the Assessing Officer could not make any disallowance in respect of the transactions of the above referred two entities while determining the total income of the appellant.*

*2. The Ld.CIT(A) has erred in confirming the disallowance of Rs.8,45,866/- an dRs.18,16,839/- made by the Assessing Officer in the assessment order passed u/s 153A of the Act without reference to any seized material found during the course of search.”*

5. In support of the admission of this additional ground, the Id A.R. submitted that it involved adjudication of only legal issues and no fresh facts were required to be examined. The Id DR opposed the admission of additional ground. Keeping into consideration the entire conspectus of the facts and circumstances of the case and the additional ground raised before us we are convinced that its adjudication does not require any fresh investigation of facts. Respectfully following the judgment of the Hon’ble Supreme Court in the case of National Thermal Power Company Ltd. Vs. CIT [(1998) 229 ITR 383 (SC)] we admit this additional ground for disposal on merits.

6. The brief facts pertaining to the issue under consideration are that there was an amalgamation whereby M/s Citygold Farming Pvt Ltd, M/s Heddle Knowledge Pvt Ltd and Headland Farming Pvt Ltd have been amalgamated with the assessee with effect from 01/04/2018 vide order of the National Company Law Tribunal (in short, NCLT), Mumbai vide order dated 12/09/2019. Pursuant to search in the case of the assessee, the Assessing Officer issued the statutory notices calling for various details from the assessee. Based on the details submitted by the assessee, the Assessing Officer noticed that the financial accounts submitted by the assessee of M/s Citygold Farming P Ltd and M/s Heddle Knowledge P Ltd for the year ended 31/03/2016 there was a write off of advances and other debit balances to the tune of Rs.8,45,866/- and Rs.18,16,839/-, respectively. The Assessing Officer

issued summons under section 133 to one Shri Sandeep N Gharat, who is one of the farmers to whom advances were paid towards purchase of land. Based on the reply of Shri Sandeep N Gharat, the Assessing Officer concluded that there was no transaction between M/s Citygold Farming P Ltd and Shri Sandeep N Gharat so as to justify the write off of what is in the books. The Assessing Officer, on similar grounds, did not accept the write off in the case of M/s Heddle Knowledge P Ltd. The Assessing Officer held that the write off is against the advances of land and, therefore, capital in nature and cannot be allowed. Accordingly, he made the disallowance in the hands of the assessee under section 37(1) while completing the assessment under section 153A read with section 143(3) of the Act. On appeal, the CIT(A) held that there were incriminating material found during the course of search and that the Assessing Officer has correctly made the disallowance based on the material found and the statements recorded.

6. Through the additional grounds, the assessee is contending the disallowance on the legal ground that the write off of debts / advances are made in the books of accounts of M/s Citygold Farming P Ltd and M/s Heddle Knowledge P Ltd prior to the effective date of amalgamation and, therefore, cannot be disallowed in the hands of the assessee for the year under consideration while completing the assessment under section 153A of the Act.

7. The Ld.AR submitted that the search in the case of the assessee took place on 30/07/2019 and the six assessment years prior to the year in which the search took place including the year under consideration i.e. 2016-17 are subjected to assessment under section 153A. The Ld.AR submitted that as per the NCLT order dated 12/09/2019 (paper book page 1 to 42), the effective date of merger is 01/04/2018 and therefore, the assessment of the amalgamated entity can be done

only from A.Y. 2019-20. The Ld.AR further submitted that prior to the AY 2019-20, M/s Citygold Farming P Ltd and M/s Heddle Knowledge P Ltd were separate entity filing return of income of their own and their assessments cannot be clubbed with that of the assessee. The Ld.AR drew our attention to the financials of M/s. Citygold Farming P Ltd and M/s Heddle Knowledge P Ltd (pages 45 to 59 & 81 to 94 of paper book) in order to submit that the impugned disallowance were part of the statement of accounts of these companies and that in the computation of income these write offs have been considered by them. The Ld.AR further drew our attention to the fact that the Assessing Officer had issued notice under section 153C dated 328/07/2021 (page 77 of paper book) to Citygold Farming P. Ltd and notice under section 153A dated 13/11/2020 (page 96 of paper book) to Heddle Knowledge P Ltd. The Ld.AR submitted that these companies filed the return of income in response to these notices under section 153C / 153A by the Assessing Officer chose to consolidate the assessments of these entities under section 153A/153C as part of assessee's assessment under section 153A which is not correct. The Ld.AR also submitted that the assessment of M/s Citygold Farming P Ltd and M/s Heddle Knowledge P Ltd for the year under consideration could be completed in the name of the assessee in a representative capacity only and cannot be clubbed as part of assessee's assessments. Accordingly, the Ld.AR prayed that the disallowance made that do not pertain to the assessee and hence not tenable. Additionally the ld AR made a detailed written submission with the arguments on similar lines contending the additional grounds and the same is taken on record.

10. The Ld.AR with regard to the second additional ground submitted that the disallowance made by the Assessing Officer is not based on any seized material found during the course of search. The Ld.AR further argued that the findings given in the CIT(A)'s order stating that incriminating material were found during

the course of search, is factually incorrect since in the assessment order, the Assessing Officer has not stated any material to be incriminating that was found in the search. The fact that Assessing Officer has made disallowance based on the financial statements which were part of records makes it clear that the additions made in course of assessment under section 153A is not based on any seized material found during the course of search. Accordingly, the Ld.AR submitted that even on merits, the additions would not sustain. The Ld.AR placed reliance on the decision of the Hon'ble Supreme Court in the case of Abhisar Buildwell (P) Ltd (2023) 454 ITR 212 (SC).

8. The Ld.DR, on the other hand, submitted that the amalgamation order of NCLT is post the date of search and, therefore, the Assessing Officer has concluded the assessment by clubbing the entities. The Ld.DR further submitted that the additional ground through on the legal issue is raised for the first time before the Tribunal and, therefore, the lower authorities were not given proper opportunity to examine the same. Accordingly, the Ld.DR prayed that the issue can be remitted to the Assessing Officer. On merits, the Ld.DR submitted that the statement recorded from Shri Sandeep N Gharat clearly evidences that the write off are not genuine and, therefore, the Assessing Officer is justified in making the disallowance.

9. The Ld.AR in counter submitted that the statement of Shri Sandeep N Gharat is in response to summons and, therefore, cannot be treated as incriminating material found during the course of search. The Ld.AR further submitted that though the order of NCLT is dated post the date of search, the effective date as mentioned in the order is 01/04/2018 and, therefore, the order passed for the year under consideration is outside the purview of amalgamation. Accordingly, the

Ld.AR submitted that the write off in the hands of other two companies cannot be clubbed as income in the hands of the assessee.

10. We heard the parties and perused the materials on record. We notice from the panchanama submitted by the Ld.AR during the course of hearing that assessee is part of research conducted on 30/07/2019. The Assessing Officer while completing the assessment under section 153A read with section 143(3) made an addition by disallowing the amounts written off of assets / debts, under section 37(1) of the Act. On perusal of records we notice that the said write off is based on entries found in the statement of financials for the year ended 31/03/2016 of M/s Citygold Farming P Ltd and M/s Heddle Knowledge P Ltd. Pursuant to the search, the six assessment years for which the assessment under section 153A is to be done are assessment year 2014-15 to 2019-20. On further perusal of materials we notice that NCLT has issued the order approving the amalgamation of assessee with M/s Citygold Farming P Ltd and M/s Heddle Knowledge P Ltd with effective date from 01/04/2018. Accordingly, up to the 31/03/2018, these two entities had retained the status of individual entities and therefore up to assessment year 2018-19, these entities are to be assessed in their individual status or the assessee as a representative of these entities. Therefore for the year under consideration i.e. AY 2016-17 which is before the amalgamation, these two entities were not part of the assessee and thus there is merit in the argument of the Ld.AR that the claims made in the financials of the individual entities cannot be disallowed in the hands of the assessee prior to the date of amalgamation. It is also noticed that the Assessing Officer has issued separate notices of 153A / 153C to these entities in their individual names which makes it clear that prior to amalgamation, these entities have been treated as not part of the assessee. Therefore in our considered view, the disallowance of a claim made in the individual entity's financials cannot be added

as income in the hands of the assessee during the year which is prior to amalgamation. Further, we notice that the disallowance made is based on the amounts debited to the Profit and Loss account of these two companies and that the assessing officer has stated in the order under section 153A r.w.s.143(3) that the disallowance is done based on statement recorded from Shri. Sandeep N Gharat. Therefore the submission that the addition is made not based on any seized material but based on statement recorded has merits. Accordingly on this count also, we are of the view that the additions made by the Assessing Officer by way of disallowance under section 37(1) are not sustainable. In view of this, we delete the addition made by the Assessing Officer.

**I.T.A. No.2266/Mum/2023 – AY 2017-18**

11. For the Assessment year 2017-18 the assessee filed the return in response to notice under section 153A on 05.02.2021 declaring a loss of Rs.1,44,42,886. The Assessing Officer while completing the assessment of the assessee under section 153A r.w.s.143(3) made additions towards disallowance of debt written off in the books of M/s Citygold Farming P Ltd and also addition under section 50C towards sale of land by Headland Farming P Ltd below the stamp duty value .

12. The Ld.AR in this regard drew our attention to the relevant pages in the financial statement of Citygold Farming Pvt Ltd to which the write off of assets belonged to. With regard to the addition under section 50C, the Ld.AR submitted that the transaction of sale of land pertain to Headland Farming P Ltd. Therefore, the Ld.AR submitted that the arguments presented in connection with the additions made for A.Y. 2016-17 are equally applicable to the addition made for A.Y. 2017-18 also since it is prior to the effective date of amalgamation i.e.01.04.2018. The ld

AR made a detailed written submission with the arguments on similar lines contending the additional grounds and the same is taken on record

13. The Ld.DR supported the order of lower authorities.

14. We heard the parties and perused the material on record. We have already given in the finding with regard to the A.Y. 206-17 that the entries in the books of account of Citygold Farming Pvt Ltd & M/s Heddle Knowledge P Ltd prior to amalgamation cannot be part of the additions made under section 153A in the hands of the assessee. The assessment year 2017-18 is prior to the date of amalgamation i.e. 01/04/2018 and, therefore, our decision of 2016-17 is mutatis mutandis applicable to A.Y. 2017-18 also. Accordingly, we hold that the additions made under section 37(1) and section 50C basis the transaction in the books of Citygold Farming Pvt Ltd and Headland Farming P Ltd in assessee's hands is not tenable and liable to be deleted.

**I.T.A. No.1700/Mum/2023 – AY 2019-20**

15. For the assessment year 2019-20, the assessee filed the return of income on 31/10/2019 declaring a loss of Rs.5,76,65,389/-. The Assessing Officer while completing the assessment, disallowed a sum of Rs.40,99,309/- claimed towards write off assets / debts basis the entries in the financial statement of Citygold Farming Pvt Ltd.

16. The ld AR made a detailed written submission contending the issues and the same is taken on record. The Ld.AR during the course of hearing submitted that the company had given advance to several farmers, intermediaries in order to purchase certain particles of land. However, the project failed to take off and the assessee has requested the farmers and other intermediaries to refund the advance

given to them. It was submitted that despite several attempts, the assessee was not able to either get the refund of advance nor was able to acquire the parcels of land from certain parties. Considering the futility of keeping the sunk cost in the books of account, the assessee has written off the advance given by it to different parties.

17. The Ld.AR submitted certain additional evidence with regard to the advances which have been disallowed under section 37(1) by the Assessing Officer and prayed for the admission of additional evidence. The Ld.AR submitted that the additional evidence go to substantiate the claim of the assessee with regard to the disallowances made and, therefore, prayed that the additional evidences be admitted and the issue be adjudicated on merits.

18. The Ld.DR, on the other hand, vehemently opposed the admission of additional evidence and prayed that the order of CIT(A) be upheld.

19. We heard the parties and perused the material on record. With regard to the impugned additions made by the Assessing Officer, the additional evidences now produced go to the root of the issue and the core reason for making the disallowance under section 37(1) of the Act. Therefore, for a proper adjudication of the issue and for substantial cause, the additional evidence is admitted and taken on record.

20. From the perusal of the orders of the lower authorities, it is noticed the reason for the disallowance is that the write off is towards land advance which is capital in nature and that the assessee has not produced sufficient documents substantiating the claim that the write off is revenue in nature that is incurred wholly and exclusively for the purpose of business of the assessee. It is also relevant to note that the additional evidences now submitted have not been

examined by the lower authorities. Therefore, in the interest of justice, we remit the entire issue back to the Assessing Officer for a de novo verification of the issue under consideration. The assessee is directed to submit the additional evidences now submitted before us before the Assessing Officer also and co-operate with the proceedings before him. This appeal is allowed for statistical purpose.

21. In the result, appeals for A.Y. 2016-17 & 2017-18 are allowed and the appeal for A.Y. 2019-20 is allowed for statistical purpose.

**Order pronounced in the open court on 10/10/2023**

**Sd/-**

**sd/-**

<b>(KULDIP SINGH)</b>	<b>PADMAVATHY S.</b>
<b>JUDICIAL MEMBER</b>	<b>ACCOUNTANT MEMBER</b>

Mumbai, Dt : 10<sup>th</sup> October, 2023

Pavanan

**प्रतिलिपि अग्रेषित Copy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
6. गार्ड फाइल/Guard file.

**BY ORDER,**

//True Copy//

Asstt. Registrar / Senior Private Secretary,  
**ITAT, Mumbai**