

**IN THE INCOME TAX APPELLATE TRIBUNAL
 MUMBAI BENCH "D", MUMBAI**

BEFORE SHRI AMIT SHUKLA (JUDICIAL MEMBER)

AND

SMT. PADMAVATHY S. (ACCOUNTANT MEMBER)

I.T.A. No.3077/Mum/2022
 (Assessment year : 2015-16)

ACIT-2(2)(1), Mumbai Room No.545, 5 th Floor Aayakar Bhavan, M.K. Road Mumbai-20	vs	M/s Messe Frankfurt Trade Fairs India Pvt Limited, 4 th Floor, R Kamani Marg, Asian Building, Ballard Estate Mumbai-401 104 PAN : AABCM0696G
APPELLANT		RESPONDENT

C.O. No.43/Mum/2023
 (Arising out of I.T.A. No.3077/Mum/2022)
 (Assessment year : 2015-16)

M/s Messe Frankfurt Trade Fairs India Pvt Limited, 4 th Floor, R Kamani Marg, Asian Building, Ballard Estate Mumbai-401 104 PAN : AABCM0696G	vs	ACIT-2(2)(1), Mumbai Room No.545, 5 th Floor Aayakar Bhavan, M.K. Road Mumbai-20
CROSS OBJECTOR		RESPONDENT

Present for the Assessee	Shri Ketan Ved alongwith Ms. Urvi Mehta
Present for the Department	Smt. Mahita Nair- (SR. AR)

Date of hearing	22/08/2023
Date of pronouncement	25/08/2023

O R D E R

Per Padmavathy S (AM):

This appeal by the revenue and the cross objection by the assessee are against the order of the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFACT)[in short, the 'CIT(A)] dated 07/10/2022 for A.Y.2015-16. The grounds raised by the Revenue and the cross objections of the assessee are as under:-

Revenue's Appeal

"1. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in allowing the assessee's claim of depreciation u/s 32 of the Act on intangible assets amounting to Rs.6,44,92,469/- for the entire year without appreciating the fact that the asset in question has been put to use for less than 180 days.

2. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in allowing the bad debts of Rs.4,73,469/- claimed as irrecoverable from M/s MEX Exhibitions Pvt Ltd without appreciating the fact that the assessee company did not file any such detail in respect of previous years in which the said amount was offered for taxation by the assessee."

Cross Objections

"1. *Re.: Addition of impairment loss of Rs. 82.71.220/- while computing 'book profits' under section 115JB of the Income-tax Act. 1961 T'Act'1:*

1.1 On the facts and circumstances of the case and the provisions of the law, the Assessing Officer ["AO"] / Commissioner of Income-tax (Appeals) ["CIT(A)"] erred in making an addition towards the actual impairment loss of Rs. 82,71,220A while computing 'book profits' under section 115JB of the Act holding that it is a notional loss and in nature of diminution in the value of the investment.

1.2 The AO / CIT(A) has erred in not appreciating that the said impairment loss represents an actual loss and it is neither a notional loss

nor a diminution in the value of the asset and hence, it cannot be added back while computing 'book profits' u/s. 115JB.

1.3 The Respondent submits that the Assessing Officer be directed to delete the addition of impairment loss of Rs. 82,71,220/- while computing the 'book profits' and to recompute its total income and tax thereon accordingly.

2. *Re.: Allowance of depreciation claim of Rs. 48,62,419/- on intangible assets acquired in Assessment Year 2014-15 and allegedly put to use in Assessment Year 2015-16:*

2.1 On the facts and circumstances of the case and the provisions of the law, the AO / CIT(A) erred in not allowing depreciation claim of Rs. 48,62,419/ on intangible assets while computing the total income for the year under consideration.

2.2 The Respondent submits that without prejudice to its claim that depreciation on intangibles acquired in Assessment Year 2014-15 ought to be allowed in Assessment Year 2014-15, the same should be allowed in Assessment Year 2015-16 once it is held that the same have been put to use in Assessment Year 2015-16.

2.3 The Respondent submits that the CIT(A) erred in not adjudicating the ground vis-a-vis allowance of depreciation claim of Rs. 48,62,419/-.

2.4 The Respondent submits that the AO be directed to allow the depreciation claim of Rs. 48,62, 419/- in the Assessment Year 2015-16 and to recompute its total income and tax thereon accordingly.”

2. The assessee is a company engaged in the business of conducting, promoting, planning and managing all kinds of trade fairs, exhibitions in India. The assessee filed the return of income for A.Y. 2015-16 on 27/11/2015 declaring a total income of Rs.2,75,01,655/-. The case was selected for scrutiny and statutory notices were duly served on the assessee. The Assessing Officer made a disallowance of depreciation on intangible assets to the tune of Rs.3,22,46,234/- and also disallowance of bad debts to the tune of Rs.4,73,469/-. The Assessing Officer also made an adjustment of Rs.82,71,220/- reported by the assessee as impairment loss to the books profits computed under section 115JB of the Act. Aggrieved, the assessee preferred appeal before the CIT(A). The CIT(A) deleted

the disallowances made by the Assessing Officer towards depreciation on intangible asset and also the disallowance of bad debts. With regard to the adjustment made to the book profit under section 115JB towards impairment loss, the CIT(A) upheld the action of the Assessing Officer. Aggrieved, the department as well as the assessee are before the Tribunal.

ITA No.3077/Mum/2022 (Revenue Appeal)

Ground No.1 – Disallowance of depreciation on intangible asset.

3. During the course of assessment, the Assessing Officer noticed that the assessee has made an addition to the intangible asset to the tune of Rs.20,25,41,857/- and Rs.5,54,28,018/- on account of trademark and goodwill. On the intangibles, the assessee company has claimed depreciation to the tune of Rs.6,44,92,469/-. The assessee submitted before the Assessing Officer that during the year under consideration the assessee has expanded its business by acquiring few events in newer segments (like LED lighting, media and digital) and the assessee has acquired few existing exhibitions vide an Asset Purchase Agreement dated 27th February 2014 which was approved by the shareholders on 16th June 2014 and the payment was made on 7th July 2014. The assessee further submitted that as part of these acquisitions the assessee acquired few brands and goodwill such as "LED Expo", "Media Expo" and Digital Signage Expo" which was capitalized in the books of accounts for an amount of Rs.25,79,69,875. The assessee also submitted that since the assessee has put to use the intangibles immediately on acquisition the depreciation on the same is claimed during the year. The Assessing Officer held that since the trade show happened only in December, 2014, the asset in question has been put to use only during the second

half of the financial year and is used for less than 180 days. Accordingly, the Assessing Officer disallowed 50% of the depreciation claimed by the assessee to the tune of Rs.3,22,46,234/-. Before the CIT(A), the assessee submitted that the rights for the trade show was acquired by the assessee on 03/07/2014 and immediately on acquisition of the rights, the assessee started exploiting the trade names / brands for many marketing / promotional campaigns from July 2014 onwards. Therefore, the assessee submitted that the rights acquired have been put to use immediately on acquisition, i.e. from July 2014 and accordingly, the assessee is eligible for 100% of the depreciation. The CIT(A), after considering the submissions of the assessee allowed the claim by deleting the disallowance.

4. The Ld.DR submitted that the trade fair happened only in December, 2014 and, therefore, the right acquired by the assessee towards conducting the trade fairs has actually been put to use only in December, 2014. Therefore, it was argued by the Ld.DR that the assessee is allowed only 50% of the depreciation.

5. The Ld.AR, on the other hand, submitted that immediately on acquisition of the right in July, 2014, the assessee started using the trade mark for marketing, promotion and booking. The Ld.AR further submitted that any exhibition / trade fair involves a systematic planning which is concluded in a phased manner and that there are many pre-works that happen before the actual exhibition starts. The Ld.AR argued that actual date of trade fair cannot be taken as the date for put to use since the assessee has been doing lot of pre-work before the start of the exhibition. Therefore, the Ld.AR submitted that the asset in the form of

intangibles has been used for more than 180 days and, therefore, eligible for 100% of the depreciation.

6. We heard the parties and perused the material on record. During the year under consideration, the assessee has expanded its business by acquiring the right to conduct certain new events and the payment towards the same was made on 03/07/2014. As per the acquisition of the events, the assessee company acquired few assets and goodwill and these exhibitions had the trademarks namely, “LED Expo, Media Expo & Digital Signage Expo towards which the payment was made. in accordance with the agreement entered into in this regard towards the acquisition of the said trademark and goodwill. From the perusal of the detailed submissions made by the assessee before the CIT(A), we notice that the assessee has carried out several activities before the actual conduct of the trade fair right from the date on which the right was acquired. The details of the pre-work done towards trade fairs as submitted by the assessee before the CIT(A) is reproduced here below for reference:-

“2.6. At the outset, your honour will appreciate that for holding any event/fair/exhibition, the preparations are required to commence at least well in advance. Under the facts of the case as well, for ensuring that LED Expo 2014 and Media Expo 2015 is successful, Immediately upon acquisitions, the appellant Initiated the following activities.

- publicity and promotion of the event,*
- bookings of the trade show:*
- acceptance of application forms for rental of space / booth-normally application forms are received 6 months in advance;*
- invoices were issued as and when bookings were made and advances (50%) received from the exhibitors as well;*
- hiring of venue for holding the fair/exhibition/event; construction of stand.*

2.7. Under the facts of the appellant, it commenced publicity and bookings in July 2014 and Aug 2014 respectively. The advance payments were also received from various parties. The details thereof is tabulated hereunder.

Name of the event	LED Expo - Dec 2014	Media Expo - Jan 2015
Commencement of July 2014 publicity campaign based on The exhibitors data base (Refer Annexure B of the Additional Evidence) – refer pg 136 to 144 of compilation	<u>July 2014</u> Published in Exhibition world - 14 July 2014 Published on LEDinside com on 15 July 2014	
Receipt of applications and booking of the trade fair /show(Refer Annexure C of the 145 compilation)	Enquiries started from Aug 2014 onwards and received application from various parties (sample attached herewith) <ul style="list-style-type: none"> • JSK Innovating Technology Pvt. Ltd – 1Aug 2014 • Arham Electronics and Electricals – 11 Aug 2013 • Philcon SwitchGear Pvt. Ltd • 19 Aug 2014 • Semitech Opto Devices- 12 Aug 2014 	Enquiries started from Aug 2014 onwards and received application from various parties (sample attached herewith) <ul style="list-style-type: none"> • Laxmi Sales Corporation – 20 Aug 2014 • B & R Digitals – 6 Nov 2013 • Canon Enterprises – 20 Oct 2014 • Fujifilm India Pvt ltd – 8 Dec 2014
Invoices raised for booth sale and advances received from various parties(Refer Annexure D of the Additional Evidence) – refer pg 169 to 176 of compilation) The said income forming part of Note 19 of the financials (refer pg 184 of the compilation) under Booth Rental Revenue and the same has been offered for tax during the year under consideration	Date of invoicing and receipt of advance from each of the above parties in the respective order <ul style="list-style-type: none"> • 20 August 2014 (received final payment directly – advance not received) • 19 August 2014 • 19 August 2014 (received final payment directly – advance not received) • 19 August 2014 	Date of Invoicing and receipt of advance from each of the above parties in the respective order <ul style="list-style-type: none"> • 25 August 2014 • 13 November 2014 • 12 November 2014 • 6 January 2015

7. From the above, it is clear that though the actual trade fair happened during the second half of the year, the assessee has started various activities for the purpose of conducting the trade fair using the rights acquired and such activities have commenced immediately on acquisition of the rights, i.e. from July 2014. It is relevant to note that the assessee would not have been able to carry out these activities without acquiring the right to the trade mark and good will and therefore, there is merit in the submission of the Ld.AR that the assets in question have been put to use immediately on acquisition, i.e. from July, 2014. In our considered view, the assets in question have been put to use for more than 180 days and accordingly eligible for depreciation at 100% of the depreciation. We therefore see no infirmity in the order of the CIT(A) deleting the disallowance made by the Assessing Officer. This ground of the revenue is dismissed

Ground No.2 – Disallowance of bad debts

8. The assessee has debited a sum of R.4,73,469/- to the P&L Account claiming it to be bad debts i.e. irrecoverable from M/s MEX Exhibitions Pvt Ltd. The assessee submitted before the Assessing Officer that the amount receivable are old outstanding of the trade shows of LED Expo and Media Expo which were in the books of M/s MEX Exhibitions Pvt Ltd from whom the assessee has purchased these trade fairs and accordingly has taken over the debts. The assessee further submitted that the said amount has been written off as bad debts for the reason that the same is irrecoverable. The Assessing Officer disallowed the claim by stating that the assessee did not file any details in respect of the fact that the amount was

offered to tax / treated as income in any earlier previous year. Accordingly, the Assessing Officer disallowed the claim of the assessee. The assessee submitted before the CIT(A) that the trade receivables was acquired as part of acquisition of business and that the assessee was supposed to recover the amount from the exhibitor who did not participate in the event and, therefore, has become irrecoverable. The assessee, in this regard relied on the decision of the Supreme Court in the case of TRF Ltd (323 IT 397). The CIT(A), after considering the submissions of the assessee deleted the disallowance.

9. The Ld.DR submitted that the ratio laid down in the case of TRF Ltd (supra) is that if the amount written off as bad debt has been offered to tax as income in any of the earlier previous year, then the mere write off of the debt in the books of account would suffice for the purpose of claiming deduction of bad debts. The Ld DR also submitted that the said ratio is not applicable in assessee's case since the assessee has claimed to have acquired the debt as part of business acquisition and that the debt has become irrecoverable. The Ld.DR further submitted that the assessee failed to substantiate the debt which is claimed as a deduction has been taken over as part of acquisition and that the same has become irrecoverable..

10. The Ld.AR reiterated the submissions made before the CIT(A) in order to claim that the bad debt should be allowed as a deduction under section 36(1)(iii) or as a business loss under section 28(1) or as incurred in the course of business under section 37(1).

11. We heard the parties and perused the material on record. We find that the amount written off as a bad debt as per the submissions of the assessee is a debt taken over as part of the acquisition of new business rights by the assessee. However, the Ld.AR could not substantiate that the debt recoverable was part of the agreement of acquisition of business rights by the assessee. The reason for disallowance of bad debts by the Assessing Officer is that the assessee did not furnish any details pertaining to the claim. On perusal of submissions made before CIT(A), we notice that the assessee had not substantiated the claim on merits but has merely relied on the judgment of the Supreme Court and also on other legal grounds. On perusal of the order of the CIT(A) we notice that the CIT(A) has also allowed the issue in favour of the assessee without giving any factual finding on merits and therefore we are unable to appreciate the basis on which the claim was allowed by the CIT(A). Further the assessee did not bring any new material on record before us to substantiate the claim are submitted by the assessee. Therefore in our considered view, the claim of the assessee cannot be allowed and accordingly, we set aside the order of CIT(A) to the extent of deleting the disallowance of bad debts claimed by the assessee. This ground of the revenue is allowed.

CO No.43/Mum/2023

Cross Objections No.1 – Addition of impairment loss to book profits u/s.115JB

12. The assessee in the cross objection is contending the adjustment of impairment loss to the book profits by the Assessing Officer. In this regard, the Ld.AR submitted that the assessee in the P&L Account has shown the impairment loss as an exceptional item for the purpose of presentation. The Ld.AR submitted that the impugned amount, in reality, is a 100% depreciation claim by the assessee

towards goodwill and trademark. In this regard, the Ld.AR drew our attention to the fixed asset schedule (page 202 of paper book), where it is clearly mentioned that the amount of depreciation includes amounts to the tune of Rs.19,76,250/- of goodwill and Rs.62,94,270/- of trademark towards impairment. The Ld.AR accordingly argued that it is not an adjustment as mention in clause (i) of Explanation 1 to section 115JB, which is there for the purpose of diminution in the value of investments. The Ld.AR, therefore, argued that the adjustment cannot be made to the book profits. The Ld.AR also submitted that as per provisions of section 115JB, it is the provision that needs to be adjusted, but not the actual write off which is the assessee's case here. The Ld.DR, relied on the order of the lower authorities.

13. We heard the parties and perused the material on record. From the perusal of the depreciation schedule, it is clear that the amount which is shown as impairment loss in the P&L Account is the actual depreciation claimed by the assessee as per the fixed assets schedule. Therefore, there is merit in the submissions of the Ld.AR that the amount is not a provision but is an actual write off. Clause (i) of Explanation 1 to section 115JB provides that the profits as per books shall be increased by the amount or amounts set aside as provision for diminution in the value of any asset. Since in assessee's case the amount shown as impairment loss is the actual write off of the asset, in our considered view the assessing officer is not correct in adding the said amount to the books profits invoking Clause (i) of Explanation 1 to section 115JB. We, therefore, hold that the adjustment made by the Assessing Officer to the book profits is not sustainable and accordingly, we direct the Assessing Officer to remove the adjustment made and

recalculate the book profit under section 115JB of the Act. The objection raised by the assessee is allowed

Cross Objections No.2 – Allowance of depreciation on intangible acquired in AY 2014-15

16. In this regard, the ld AR submitted that in AY 2014-15, a similar disallowance of depreciation to the tune of Rs.48,62,419 was made for the reason that the assets are not put to use in AY 2014-15 but in AY 2015-16. The Ld AR submitted that though the assessee is contending the issue on the allowability of depreciation in 2014-15 itself if the same is not allowed it should be allowed in AY 2015-16 i.e. the year under consideration. We therefore remit the issue to the Assessing Officer with a direction to allow the depreciation claim of assessee disallowed in AY 2-14-15 in the year under consideration in accordance with law after examination of the relevant details and evidences. Needless to say that the assessee be given a reasonable opportunity being heard. It is ordered accordingly.

16. In the result, the appeal filed by the revenue and the Cross Objection of the assessee are partly allowed.

Order pronounced in the open court on 25/08/2023

Sd/-

sd/-

(AMIT SHUKLA)	PADMAVATHY S.
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 25th August, 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