

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'E' BENCH,  
NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT, AND  
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER**

ITA No. 8183/DEL/2019 [A.Y. 2016-17]

M/s Matrix Clothing Pvt Ltd  
Village Mohammadpur,  
Khandsa Road, Gurgaon

Vs.

The Addl C.I.T.  
Special Range - 6  
New Delhi

PAN - AABCM 8475 B

(Applicant)

(Respondent)

Assessee By : Shri Salil Aggarwal, Sr. Adv  
Shri Shailesh Gupta, Adv  
Shri Madhur Aggarwal, Adv

Department By : Shri Vipul Kashyap, Sr. DR

**Date of Hearing : 30.01.2024**  
**Date of Pronouncement : 05.02.2024**

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-**

This appeal by the assessee is preferred against the order of the  
ld. CIT(A)-37, New Delhi dated 25.07.2019 pertaining to A.Y. 2016-17.

2. Grievances of the assessee read as under:

*"1. That the learned Commissioner of Income Tax (Appeals) has grossly erred in law and on facts in sustaining a disallowance of a sum of Rs. 65, 58, 482/- claimed under section 80JJAA of the Act, which disallowance is based on misconceived application of the provisions of 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.*

*2. That the learned Commissioner of Income Tax (Appeals) has grossly erred in law and on facts in sustaining an addition of a sum of Rs. 1, 24, 49, 000/-. which was received as advance from M/s Bihar Rural Livelihoods Promotion Society and treating the same as income in the hands of assessee on complete misreading of agreements and also on misconceived application of the provisions of law.*

*2.1 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.*

*3. 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. 60, 70, 759/- 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.*

*3.1 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.*

*3.2 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.*

*4. That the learned Commissioner of Income Tax (Appeals) has further erred in sustaining a disallowance of Rs. 3, 00, 000/- 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.*

*4.1 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.*

*4.2 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. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidence brought on record duly considered in light of Rule 18(6) of the ITAT Rules.

4. Ground No. 1 relates to the disallowance of deduction u/s 80 JJA of the Income-tax Act, 1961 [the Act, for short].

5. While scrutinizing the return of income, the Assessing Officer noticed that the assessee has claimed deduction u/s 80 JJAA at Rs. 65,58,482/-. The Assessing Officer found that the assessee is claiming deduction since A.Y 2014-15 in which year it was allowed, as the assessee had filed Form No. 10DA. In A.Y 2015-16 also, claim of deduction was allowed. However, during the year and consideration, the Assessing Officer found that the assessee has not filed Form No. 10DA and therefore, did not comply with the provisions of section 80 JJAA of the Act and accordingly, disallowed the claim of deduction and made addition of Rs. 65,58,482/-.

6. Action of the Assessing Officer was confirmed by the Id. CITA.

7. Before us, it has been stated that in the initial A.Y 2014-15, the assessee had filed Form No. 10A and claim was allowed. Similarly, in A.Y 2015-16, also, claim was allowed and merely because Form 10DA was not filed electronically, claim has been disallowed during the year under consideration. It is the say of the ld. counsel for the assessee that the assessee has fulfilled all the mandatory conditions for claiming the said deduction and, therefore, is very much eligible.

8. We find that there is no dispute about the eligibility of claim u/s 18JJAA of the Act which has been allowed in A.Ys 2014-15 and 2015-16. In our considered view, the assessee deserves claim of deduction, though Form 10 DA was not furnished. We, accordingly, restore this issue to the file of the Assessing Officer. The assessee is directed to furnish Form 10DA along with necessary details for the Assessing Officer to verify claim for the year under consideration and the Assessing Officer is directed to examine the same and decide the issue afresh after affording reasonable and adequate opportunity of being heard to the assessee. Ground No. 1 is allowed for statistical purposes.

9. Ground No. 2 relates to the addition on account of advance received from Bihar Rural Livelihood Promotion Society, amounting to Rs. 1,24,49,000/-.

10. The underlying facts in the issue are that the assessee entered into a contract for hiring of Project Implementation Agency [PLA] for Rural Youth Placement Linked Skill Development Training Programme under Aajeevika Skills, Guidelines 2013 with Bihar Rural Livelihoods Promotion Society [BRLPS] on 19<sup>th</sup> August, 2014. Under the contract the assessee had to train 1500 candidates and get them placed in the government industries. The contract was for a total consideration of Rs. 4,97,94,000/-.

11. The payment terms read as under:

1 <sup>st</sup> Installment -10% of Project cost	On submission of a bank guarantee (1 % of total project cost)
2 <sup>nd</sup> Installment - 15% of project cost	Against submission of Inception report for opening of training centers and achievina 10% of physical target for training only
3 <sup>rd</sup> Installment - 50% of project cost	Spending 60% of funds disbursed as 1 <sup>st</sup> and 2 <sup>nd</sup> instalment and achievina 40% of physical target for training

4th Installment - 15% of project cost	Spending 90% of funds disbursed as 1 <sup>st</sup> 2 <sup>nd</sup> and 3 <sup>rd</sup> instalment and achievina 90% of physical target for training
5 <sup>th</sup> Installment -	On achievina all taragets and submission of project closure documents.

11. Bank guarantee was provided on 03.09.2014, but BRLPS did not release the first installment as per the terms mentioned above. The first installment was received by the assessee amounting to Rs.1,24,49,000/- vide letter dated 17.08.2015. This advance payment was treated as income for the year under consideration by the Assessing Officer on the ground that the assessee has received first and second installment on satisfaction of release conditions and no significant risk is attached to the said receipts from BRLPS and therefore, the same is treated as income of the assessee.

12. Contention of the assessee that it is an advance has been dismissed by both the lower authorities.

13. A perusal of the payment terms mentioned elsewhere show that the assessee was to receive 10% of the project cost as first installment on the date of providing bank guarantee to BRLPS. The bank guarantee

was provided on 03.09.2014 but BRLPS defaulted in releasing the first installment.

14. First installment was ultimately released on 24.08.2015. The special conditions of contract dated 19.08.2014, were revised by Ajeevika Skills, Guidelines - 2013 and the same can be understood from the following chart:

5. The covering letter 24<sup>th</sup> August 2015 issued by BRLPS for releasing of 1<sup>st</sup> Installment clearly mentioned that payment has been released under the head "Advance to M/s Matrix Clothing Pvt. Ltd". Copy is enclosed as **Annexure 7 (Pages 123)**
6. The Comparative chart showing Payment terms as per Special Conditions of the Contract and Aajeevika Skills Guidelines are as follows:

Special conditions of contract dated 19.8.2014		Aajeevika Skills Guidelines 2013	
Installment	Release conditions	Installment	Release conditions
1 <sup>st</sup> Installment - 10% of Project cost	On submission of a bank guarantee (1% of total project cost)	1 <sup>st</sup> Installment - 25% of Project cost	On sanction of project and signing of MOU
2 <sup>nd</sup> Installment - 15% of project cost	Against submission of Inception report for opening of training centers and achieving 10% of physical target for training only	2 <sup>nd</sup> Installment - 50% of project cost	Spending 60% of funds disbursed as 1 <sup>st</sup> and 2 <sup>nd</sup> instalment and achieving 40% of physical target for training
3 <sup>rd</sup> Installment - 50% of project cost	Spending 60% of funds disbursed as 1 <sup>st</sup> and 2 <sup>nd</sup> instalment and achieving 40% of physical target for training	3 <sup>rd</sup> Installment - 15% of project cost	Spending 90% of funds disbursed as 1 <sup>st</sup> 2 <sup>nd</sup> and 3 <sup>rd</sup> instalment and achieving 90% of physical target for training
4 <sup>th</sup> Installment - 15% of project cost	Spending 90% of funds disbursed as 1 <sup>st</sup> 2 <sup>nd</sup> and 3 <sup>rd</sup> instalment and achieving 90% of physical target for training	4 <sup>th</sup> Installment - 10% of project cost	On achieving all targets and submission of project closure documents
5 <sup>th</sup> Installment - 10% of project cost	On achieving all targets and submission of project closure documents.	-	-

From the above table, it is evident that only the release conditions of 1<sup>st</sup> installment under Aajeevika Skills Guidelines is different from release condition as per Special conditions, rest of the conditions are same for release of 2<sup>nd</sup> , 3<sup>rd</sup> and 4<sup>th</sup> installment.

15. We find that in the subsequent A.Ys, the assessee has offered grant receipt as income of the assessee, which can be understood from the following chart:

**Matrix Clothing Private Limited**

Detail of Deen Dayal Upadhyaya Grameen Kaushalya Yojana (DDUGKY) by BRPLS

**1. Detail of Grant received/Income Offered and Expense Incurred under DDUGKY Project -1**

Rs. in Lacs

Financial Year	Amount of Grant Received	Income considered	Expense Incurred
2014-15	-	-	5.68
2015-16	124.49	-	26.59
2016-17	-	-	129.38
2017-18	226.22	251.40	89.88
2018-19	-	169.58	195.92
2023-24	43.73		-
<b>TOTAL</b>	<b>394.43</b>	<b>420.98</b>	<b>441.77</b>

Note : Against the grant received of Rs. 394.43 lacs Company has offered income of Rs. 420.98 lacs as per accrual accounting system and balance of Rs. 26.55 lacs is receivable from BRPLS

15. Since the assessee has complied with the terms and conditions of the MOU and income has been offered in the subsequent years, as per the aforementioned chart, we do not find any merit in making addition during the year under consideration. Therefore, considering the facts, we direct the Assessing Officer to delete the addition of Rs.1,24,49,000/-. Ground No. 2 is accordingly allowed.

16. Ground Nos. 3 and 4 relate to the addition of Rs. 60,70,759/- and Rs.3 lakhs on account of disallowance of advance written off.

17. While scrutinizing the return of income, the Assessing Officer noticed that the assessee has debited Rs. 60,70,759/- on account of extraordinary items. The assessee was asked to furnish explanation and in its reply, the assessee submitted that it had given loan to Centre of Excellence in Designing Private Limited in earlier year.

18. This company was equally promoted by the assessee and another large leather garment exporter called Crew Boss Products Ltd. Outstanding advance to the said joint venture company stood at Rs. 59,86,559/- as on 31.03.2015. This company went into liquidation along with joint-venture partner Crew Boss Products Limited. Therefore, there was no hope for recovery of loan and balance outstanding was written off.

19. The Assessing Officer denied claim on the ground that provisions of Section 36(2) of the Act do not apply on the facts of the case as the amount written off was not offered as income in the earlier years.

Similarly, write off of advance amounting to Rs.3 lakhs was also added back giving similar reasons. The disallowances were confirmed by the ld. CIT(A).

20. An identical issue arose in A.Y 2014-15 and 2015-2016 and the Tribunal in ITA No. 6072 and 6073/DEL/2019 had considered the issue. Relevant findings read as under:

"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 ITA Nos. 6072 & 6073/Del/2019 6 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 ITA Nos. 6072 & 6073/Del/2019 7 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 Madhani 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 ITA Nos. 6072 & 6073/Del/2019 8 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 ITA Nos. 6072 & 6073/Del/2019 9 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."

21. Finding parity of facts, respectfully following the decision of the coordinate bench (supra), we direct the Assessing Officer to decide the issue in line with the directions given by the coordinate bench (supra). Ground Nos. 3 and 4 are treated as allowed for statistical purposes.

22. In the result, the appeal of the assessee in ITA No. 8183/DEL/2019 is allowed in part for statistical purposes.

The order is pronounced in the open court on 05.02.2024.

Sd/-

[SAKTIJIT DEY]  
VICE PRESIDENT

Sd/-

[N.K. BILLAIYA]  
ACCOUNTANT MEMBER

Dated: 05<sup>th</sup> FEBRUARY, 2024.

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	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	