

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

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

ITA No. 3876/DEL/2018 [A.Y. 2010-11]

Jai Prakash Associates Ltd
Sector - 128, Noida
Uttar Pradesh

Vs.

The Dy. C.I.T
Circle - 1
Noida

PAN - AABCB 1562 A

(Applicant)

(Respondent)

Assessee By : Shri Ashwani Kumar Garg, Adv
Department By : Shri Sandeep Kumar Mishra, Sr. DR

Date of Hearing : 30.04.2024
Date of Pronouncement : 07.05.2024

ORDER

PER NAVEEN CHANDRA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
ld. CIT(A) - 1, Noida dated 28.02.2018 pertaining to A.Y. 2010-11.

2. The grievances of the assessee read as under:

"1. That on the facts and law the learned Commissioner of Income Tax (Appeals) [CIT (A)] erred in upholding the disallowance of Rs.4,09,29,605/- on account of irrecoverable debts/advances written off during the year, on the ground that irrecoverability of the debts has not been proved.

2. That the disallowance of Rs.4,09,29,605/- for bad debts actually written off during the year is contrary to facts and law and is based on ignoring or not appreciating the facts, submissions, material on record, case laws in favour of the appellant and the Circular of the Central Board of Direct Taxes, No.12/2016 dated 30.05.2016 placed before him on the issue involved.

3. That in any case and without prejudice to other ground the deduction was liable to be allowed as business loss/expense u/s 28/37 of the LT. Act. The disallowance as made and as sustained by the Ld. CIT(A) is liable to be deleted in toto.

4. That the learned CIT (Appeals) erred in upholding the disallowance of prior period expenses of Rs.69,72,728/-, without considering/ appreciating that these expenses though pertaining to the preceding year the liability to pay the same crystallized in the current year and hence, these were allowable in the present year as per the mercantile system of accounting regularly followed by the appellant company. The provision of Section 35D,

are not at all applicable in this case. The disallowance is liable to be deleted.”

5(1). That the Ld. CIT (A) has erred on facts and in law in not deciding the issue I of depreciation allowable on certain assets already put to use by wrongly stating that the claim is no longer pressed by the appellant.

5(ii). That the Ld. CIT(A) should have decided and adjudicated upon the issue on the facts and law relating to the issue. There was no issue of commencement of business as the assessee is in the business of manufacturing and sale of cement for many years.

6. That the order of the Ld. CIT (A) is against the law and facts of the case involved.

7. That the Grounds of Appeal as herein are without prejudice to each other.

8. That the appellant craves leave to add, alter or forego any ground before or at the time of hearing

3. The appeals of the assessee in ITA Nos. 3876, 3877 and 3878/DEL/2018 for A.Ys 2010-11 to 2012-13 was initially dismissed vide ITAT order dated 21.10.2021. These appeals vide M .A Nos. 211 and 212/DEL/2021, MA No. 243/DEL/2021 for A.Y 2010-11 to

2012-13 was recalled vide ITAT order dated 13.02.2024. Accordingly, the appeal of ITA No. 3876/DEL/2018 was listed and heard.

4. At the very outset, the ld. counsel for the assessee submitted that under instructions from the assessee, he did not wish to press Ground No. 5(i) and 5(ii). Ground No. 5(i) and 5(ii) is, accordingly, dismissed as not pressed.

5. Ground Nos. 1 and 2 taken together relate to the disallowance of Rs. 4,09,29,605/- on account of bad debts actually written off.

6. Briefly stated, the facts of the case are that the Assessing Officer disallowed an amount of Rs. 4,09,29,605/- as sundry balances written off on the ground that no details or supporting documents were furnished in respect of such sundry balances written off.

7. Aggrieved, the assessee went in appeal before the ld. CIT(A) who was of the view that the claim of deduction was not maintainable as the assessee has not demonstrated that the debt has become irrecoverable.

8. Before us, the ld. counsel for the assessee vehemently stated that the ld. CIT(A) has erred in concluding that the irrecoverability of debts has not been established. The ld. counsel for the assessee further argued that the condition of establishing debt irrecoverability is no longer required w.e.f 01.04.1989. He relied on the decision of the Hon'ble Supreme Court in the case of TRF Limited 323 ITR 397 and CBDT Circular No12/2016 in support.

9. The ld. counsel for the assessee further contended that on the issue of sundry balances written off, the Assessing Officer's observation that no details as required were furnished is factually wrong as all details including ledger account of the debtors were filed and was on record of the Assessing Officer.

10. Per contra, the ld. DR argued that though the condition of establishing irrecoverability of debt is no longer required, the assessee however has to establish that the debt being written off was shown as income in the previous years and evidence to the extent that the same has been taxed in the previous year has to be produced. The ld. DR argued that the assessee has to further show that the debts were actually written off in the accounts.

11. The ld. DR contended that all the three conditions have not been made available by the assessee. Documents produced before the Assessing Officer do not show that the debts written off have been shown as income in the earlier years. Unless the Assessing Officer verifies that the debts written off have been shown by the assessee in the earlier years as income and taxed accordingly, justice cannot be achieved. He further argued that the issue may be restored to the file of the Assessing Officer for verification and fresh adjudication of the issue.

12. The ld. counsel for the assessee in his rejoinder argued that the amounts of debts written off are already available in the ledger account of the parties and unless the same were shown as income in earlier years, they could not have appeared in the ledger account. The ld. counsel for the assessee however fairly conceded that the Assessing Officer needs to verify whether the same was shown as income in the earlier years.

13. We have heard the rival submissions and have perused the relevant material on record. We are of the considered view that the issue needs to be examined by the Assessing Officer in respect of

taxation of the same as income in any previous year and it being written off in the books of account of the assessee. We, therefore deem it fit to restore this issue to the file of the Assessing Officer for verification as discussed above.

14. The assessee is directed to furnish necessary evidence in support of his claim for deduction and the Assessing Officer is directed to decide the issue afresh as discussed above after affording reasonable and adequate opportunity of being heard to the assessee. Thus, Ground Nos. 1 and 2 are allowed for statistical purposes.

15. Ground No. 4 relates to the upholding of disallowance of prior period expenses of Rs. 69,72,728/- by the ld. CIT(A).

16. Facts relating to this issue are that during the course of assessment proceedings, the Assessing Officer noticed that from Form No. 3CD, a sum of Rs. 69,72,728/- was debited in the profit and loss account as prior period expense. The Assessing Officer was of the view that this amount cannot be allowed without examining the fact as to whether this sum is relevant and related to the present year. Since no

details were filed in this respect, addition of Rs. 69,72,728/- was made by the Assessing Officer.

17. Aggrieved, the assessee went in appeal before the ld. CIT(A) who confirmed the finding of the Assessing Officer.

18. Before us, the ld. counsel for the assessee vehemently stated that the disallowance made by the Assessing Officer is very cryptic and factually wrong as all details were produced before him. He further argued that the ld. CIT(A)'s view was tangentially different as he mistook the issue as being relevant u/s 35D of the Act.

19. The ld. counsel for the assessee further argued that provisions of section 35D were not relevant at all on the issue of prior period expenses. He placed reliance on the decision of the Hon'ble Supreme Court in the case of Swadeshi Cotton and Flour Mills Pvt Ltd 53 ITR 134 [SC].

20. On the other hand, the ld. DR argued that the expenses do not pertain to this year and that it is not clear when these expenses became ascertainable. There is no evidence available to show that

these expenses were incurred or ascertained in this year. The ld. DR contended that the rationality of these expenses need to be examined and prayed for restoring the issue to the file of the Assessing Officer for further verification of the facts.

21. In rejoinder, the ld. counsel for the assessee fairly conceded that this issue needs verification from the Assessing Officer.

22. After hearing the rival submissions and perusing the relevant material on record, we find that the issue needs fresh adjudication. We, therefore, deem it fit to restore this issue to the file of the Assessing Officer for verification as discussed above.

23. The assessee is directed to furnish necessary evidence in support of his claim and the Assessing Officer is directed to decide the issue afresh after affording reasonable and adequate opportunity of being heard to the assessee. Accordingly, Ground No. 4 is allowed for statistical purposes.

24. In the result, the appeal of the assessee in ITA No. 3876/DEL/2018 is partly allowed for statistical purposes.

The order is pronounced in the open court on 07.05.2024.

Sd/-

Sd/-

**[MADHUMITA ROY]
JUDICIAL MEMBER**

**[NAVEEN CHANDRA]
ACCOUNTANT MEMBER**

Dated: 07th MAY, 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	