

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH KOLKATA

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No.453/KOL/2023
Assessment Year: 2013-14**

Metal Box India Ltd. 3G, Meghdoot, 12, Rowland Road, Kolkata-700020. (PAN: AABCM9196M)	Vs.	Deputy Commissioner of Income-tax, Circle-11(1), Kolkata.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Manish Tiwari, AR
Respondent by : Shri P. P. Barman, Addl. CIT, Sr. DR

Date of Hearing : 01.05.2024
Date of Pronouncement : 10.05.2024

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as “the Ld. CIT(A)” passed u/s. 250 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for AY 2013-14 vide Appeal No. ITBA/NFAC/S/250/2022-23/1051567557(1) dated 29.03.2023.

2. Grounds of appeal raised by the assessee are reproduced as under:

“1. That on the facts and in the circumstances of the case, Ld. CIT(A) erred in confirming the action of AO who disallowed write off of doubtful assets amounting to Rs.64,80,760/-.

2. That on the facts and in the circumstances of the case, Ld. CIT(A) erred in confirming the disallowance amounting to Rs.47,00,000/- on account of provision of doubtful assets written back.

3. that the appellant craves leave to add, alter, adduce or amend any ground or grounds on or before the date of hearing of the appeal.”

3. Brief facts of the case are that the assessee filed e-return on 29.09.2013 declaring total loss of Rs.4,71,45,421/-. In the assessment order, the Ld. AO made disallowance of Rs.64,80,760/- on account of claimed write off of doubtful assets to the extent made against existing provision not allowed earlier. The disallowance was made as the assessee could not file the complete details of doubtful assets which had been written off during the year and also the claim of the assessee was not supported by documentary evidence. The assessee had also failed to explain that this deduction was not claimed in earlier years. Another sum of Rs.47 lakh was disallowed and added out of 'Provision of doubtful assets written back' as the assessee had offered for taxation a sum of Rs. 47 lakh under the head 'Provision for doubtful assets written back' and thereafter, had claimed the said provision as deduction in the computation of total income. During the course of assessment proceedings before the Ld. AO, the Ld. AR of the assessee stated that since it is provisional in nature, therefore, the credited amount has been reduced from the income of the assessee company. The AO held that it is for the assessee to prove whether the said provision of Rs. 47 lakh had already been offered for tax in earlier years and since the assessee could not explain that the provisions of Rs.47 lakh relates to which year and in which year the same had been offered for tax, the claim of the assessee was not acceptable and the same was added back to the income of the assessee. The AO also disallowed a sum of Rs.2,64,780/- u/s. 14A of the Act.

4. Against the order of the Ld. AO, the assessee contested all the three additions before the Ld. CIT(A) and while partial relief was granted by reducing the disallowance u/s. 14A from Rs.2,64,780/- to Rs.46,000/-, however, the other two additions of Rs.64,80,760/- (erroneously

mentioned at Rs.84,80,670/- in the computation of income by the AO) and another sum of Rs.47 lakh on account of amount written back out of provision for doubtful assets written back were confirmed. The assessee is in appeal before us against both the additions confirmed by the Ld. CIT(A).

5. During the course of hearing, the Ld. AR requested for setting aside the matter as in the earlier years too, the Hon'ble ITAT had set aside the matter for verification. The assessee during the year was a sick company dealing in metal container and other products and only two units were operational and the rest were closed. The assessee had filed an application before the Board of Industrial and Financial Reconstruction (BIFR) for revival in 1987. It was informed that a fresh revival scheme was approved by the Appellate Authority for Industrial and Financial Reconstruction (AAIFR) and in order to present a true and fair picture of account, the liabilities were written off for the closed units. It was also stated that in the AYs 2005-06 and 2004-05, the Hon'ble ITAT had restored the matter to the file of the AO for verification. It was also stated that in para 4 of the assessment order, the doubtful assets which had been written off were disallowed at Rs.64.80 lakh while in para 5, the amount credited under the head 'provision for doubtful assets written back' at Rs. 47 lakh and it was claimed as a deduction because the same was not allowed in any of the earlier year. Though it was not the income of the assessee but the same was also added back, which is erroneous on the part of the AO. The AO had disallowed the same as the assessee could not prove whether the said provision of Rs.47 lakh had already been offered for taxation in earlier years and also could not explain as to in which year the same had been offered for taxation and, therefore, the claim was not acceptable. It was also stated by the Ld. AR that the MD's son earlier was not available for the business but is now looking after the business and the required verification can be carried out now. Copy of

orders in ITA No. 2019/Kol/2013 for AY 2005-06 dated 02.06.2017 which relied upon the order in ITA No. 2018/Kol/2013 for AY 2004-05 dated 28.04.2017 was also filed.

6. As regards ground no. 1 of the appeal, a perusal of the order of the Hon'ble ITAT for AY 2005-06 shows that the issue has been elaboratively discussed therein. and certain facts relating to the assessee in para 2.2 are as under:

“2.2

The assessee stated that it became a sick industrial company and went to Board of Industrial and Financial Reconstruction (BIFR) for revival in 1987. The rehabilitation scheme sanctioned by BIFR on 10.6.1996 was not accepted. An appeal to Appellate Authority for Industrial and Financial Reconstruction (AAIFR) was filed. AAIFR sanctioned a fresh revival scheme in 2000. It goes without saying that stocks lying in closed units for such long time would not have any monetary value. Similarly, Sundry Debtors as well as Loans / Advances appearing in the books of these closed units cannot have any intrinsic value at such distant date. Therefore, the company wrote off obsolete stock, Sundry Debtors as well as Loans / Advances relating to these closed units aggregating to Rs 6,90,39,000/-. Such claim is allowable as a business loss within the meaning of section 28(1) and u/s 36(2) of the Act. It was submitted that the contention of the ld. AO that such claims are mere provisions is contrary to facts. The reason for which stock, Debtors and Loans/Advances were written off remains the same as in AY 2004-05. It was submitted that so far as Loans / Advances amounting to Rs 2,84,01,000/- written off, such advances were given to suppliers for delivery of goods in the course of running units which were later on closed or were under lock out. Hence such trade advances were covered u/s 28(1) of the Act. It was argued that it is true that losses are not deductible unless it is incurred in carrying out the operation of business and is incidental to business. It was submitted that the business of the assessee company was never closed. Some of the units of the company were closed for several years. Moreover, the revival scheme was approved and finalized by Hon'ble Delhi High Court. It is well known that when a revival scheme is approved by competent authority, the said authority considers the entire position including accounts. The authority will not grant revival unless a true, correct and a realistic approach of assets / liabilities is placed before them otherwise the authority does not sanction the scheme. Therefore, writing off of obsolete stock, sundry debtors and loans / advances including writing back of liabilities in respect of closed units must be held as incidental to business.

2.3. Before the ld CITA, it was also explained that total amount written off on account of unrealized sundry debtors and advances of closed units was made by excluding provisions of Rs 3,92,47,000/- made from time to time under each head of account. It was the practice of the assessee company to reduce the book value of debts on account of provisions made there against. It is well known that provisions for doubtful debts made in the accounts are not allowable under IT Act.

Since the entire sundry debtors balance is written off and claimed as bad within the meaning of section 36(2) of the act, it is essential to write back those provisions which was accordingly done by the assessee. It was also submitted that it is well settled that IT Act does not allow provisions at any stage. Hence there should not be any controversy that total provisions of Rs 3,92,47,000/- under the head sundry debtors or loans / advances was claimed or allowed in earlier years.

2.4. The ld CITA however rejected all the contentions of the assessee and upheld the disallowances made by the ld AO. Aggrieved, the assessee is in appeal before us on the following grounds:-

1a.) That on the facts and in the circumstances of the case, the findings of Ld. CIT(A) that the appellant has failed to substantiate its claim and there confirming A.O.'s view that assessee's claim represents merely provisions erroneous and arbitrary.

1b.) That on the facts and in the circumstances of the case, Ld. CIT(A) has erred dismissing ground no.1 without giving any findings on judicial decisions relied upon.

1c.) That on the facts and in the circumstances of the case, Ld. CIT(A) is wrong unjustified in confirming addition made by the A.O. on account of sundry debtors and loans/advances written off in the accounts for aggregate amount Rs.6,90,39,000/-.

2.) That on the facts and in the circumstances of the case, Ld. CIT(A) is wrong and unjustified in dismissing ground no.2 and confirming the action of A.O. who failed to consider that following provisions written back in the account can't be treated as income since such provisions were not allowed while computing income in earlier year.

a) Sundry Debtors written back - Rs. 3,92,47,000/-

2.5. The ld AR argued that the first two grounds are covered by the order of this tribunal in assessee's own case for the immediately preceding asst year i.e. AY 2004-05 wherein the issues were set aside to the file of the ld AO for denovo adjudication and prayed for following the same direction for the year under appeal also. In response to this, the ld DR fairly agreed for the same."

7. Further, a perusal of pages 3 and 4 of the order of the Hon'ble ITAT for AY 2004-05 relied upon in AY 2005-06 shows that the assessee pleaded before the Hon'ble ITAT as under:

“It is submitted that profit to be assessed is the real profit an(d) they must be ascertained on ordinary principles of commercial trading an(d) commercial accounting. The profit should be computed after deducting losses unless the losses are expressly or by necessary implications disallowable under the Act. Reliance is placed to the ratio of decision in Calcutta Co. Ltd. -vs.- CIT 37 ITR 1 (SC) and various other cases.

It is true that losses are not deductible unless it is incurred in carrying out the operation of business and is incidental to business. It is submitted that the business of the appellant company was never closed. Some of the units of the company were closed for several years. Moreover, the revival scheme was approved and finalized by Delhi High Court. It is well known that when a revival scheme is approved by competent authority the said authority considers the entire position including accounts. The authority will not grant revival unless a true, correct and a realistic approach of assets/liabilities is placed before them before granting the scheme for revival. Therefore, writing off obsolete stock, sundry debtors and loans & advances including writing off liabilities in respect of closed units must be held in course of carrying out its business and thereby incidental to business.

8. Loss of stock in trading is deductible in computing business profit within the meaning of section 28(1). Reliance is placed to the decision in CIT -vs.- Nainital Bank Ltd. 55 ITR 707 (SC).

9. It is true that loss allowable u/s 28(1) must be in respect of a trading asset. Whether the loss suffered by the assessee was trading loss or not could depend on the answer to the question whether the loss was in respect of trading asset or a capital asset in the former case. It would be a trading loss but not so in the later. (Sutlez Cotton Mills Ltd. -vs.- CIT (1979) 116 ITR 1 (SC)].”

8. The Hon’ble Tribunal set aside the impugned order of the Ld. CIT(A) in AY 2005-06 by relying upon para 8 of the order of AY 2004-05:

“8. As submitted by the ld. counsel for the assessee, the nature of the two relevant amounts thus was different and the same was duly explained in Notes to Account as filed by the assessee along with its profit & loss account. It appears that the Assessing Officer, however, did not appreciate the exact nature of the said amounts and proceeded to make disallowance of Rs.645 lakhs on wrong presumption that the amount of Rs.1826.21 lakhs debited by the assessee to the profit & loss account on account of inventories, sundry debtors, loans and advances written off was a mere provision and not loss. Even the ld. CIT (Appeals) could not appreciate the specific submission made

on behalf of the assessee before him in support of its case on this issue pointing out the exact nature of relevant amounts debited and credited to the profit & loss account and proceeded to uphold the order of the Assessing Officer on this issue merely on the ground that no details whatsoever regarding obsolete stock details, etc. of closed units as well as loss and advances claimed to be written off were filed by the assessee. The claim of the assessee on the issue under consideration thus has been disallowed by the Assessing Officer and the disallowance so made has been confirmed by the Id. CIT(Appeals) without properly examining/verifying the same on merit in accordance with law and even the Id. D.R. has not been able to rebut or controvert this position. We, therefore, set aside the impugned order of the Id. CIT(Appeals) on this issue and restore the matter to the file of the Assessing Officer with a direction to decide the same afresh on merit in accordance with law after due examination/verification and after giving the assessee proper and sufficient opportunity of being heard."

Thus, while deciding the appeal for the AY 2005-06 by following the decision for the AY 2004-05, the matter was restored to the file of the AO with a direction to decide the same afresh on merits in accordance with law after due examination/verification of the contention of the assessee and providing reasonable opportunity of being heard.

9. The issue is identical in this year. However, a copy of the order of the BIFR and its directions are not placed on record before us and the required verification has been neither made by the AO nor by the Ld. CIT(A). Therefore, respectfully following the decision of the Coordinate Bench for AY 2005-06, which has relied upon the decision in AY 2004-05, we deem it proper to set aside the issue to the file of the AO with a direction to decide the same afresh on merit in accordance with law after due examination/verification of the contention of the assessee, the records and the order of the BIFR dated 10.06.1996 relating to sanction of the rehabilitation scheme and the subsequent appeal to the AAIFR which sanctioned a fresh revival scheme in 2000 and thereafter allow necessary relief to the assessee in accordance with law in view of the decisions cited before the Hon'ble ITAT and mentioned in the order of the

Hon'ble ITAT for AY 2004-05, as reproduced in para 7 (supra). This ground of appeal is, therefore, allowed for statistical purposes.

10. Regarding ground no. 2 of the appeal relating to the other addition of Rs.47 lakh, the Ld. CIT(A) has held as under while confirming the addition:

“4.3 Notices u/s 250 of the Act were issued to the appellant during the appellate proceedings to provide it opportunities to furnish relevant documentary evidence in support of its grounds of appeal. The appellant in its submission stated that that when Rs. 47,00,000/- has once included in Accounts and thereafter claimed later as deduction in computation of income - the net effect on Income of appellant comes to Nil. It also submitted that while inclusion of write back to income is in favour of revenue the AO failed to understand the necessity of deduction from income as this is provision in nature.

4.4 However, as already mentioned by the AO in the Assessment Order under consideration, the appellant has not explained that the aforesaid provision of Rs.47,00,000/- under consideration in this ground relates to which year and in which year the same had been offered to tax. The same could also be not established or verified at the appellate stage.

4.5 In view of the above, there is no reason to interfere with the decision of the Assessing Officer, and the ground of appeal is dismissed.”

The Hon'ble Tribunal, on similar grounds, has observed in para 7 on page 8 of the order for the AY 2004-05 as under:

“The amount of Rs.1181.22 lakhs, on the other hand, was representing credit to the profit & loss account on account of liabilities written back and the nature of the same of the same was explained in Note No. 10 to Account as under:-

“10. Some secured and other creditors have taken upfront full and final settlement of their dues which have resulted in a write-back of liabilities, which are no longer required, aggregating to Rs.140.05 lakhs. Also, in respect of some Units, which have remained closed for now over seven years, there is a write-back of liabilities, which are so longer required, aggregating to Rs.1,181.22 lakhs. In the latter instance, the liability, if any, which may arise in future would be accounted for on its crystallization”.

11. On this issue as well, the Hon'ble ITAT set aside the order of the Ld. CIT(A) and restored the matter to the file of the AO with a direction to decide the same afresh on merits in accordance with law after due examination/verification and after giving the assessee proper and sufficient opportunity of being heard.

12. Prima facie, the assessee's claim appears to be justified as the amount was credited during the year and since it was not claimed as a deduction in any earlier year being a mere provision, the same was liable to be reduced from the total income as it was written back in the books of account. However, the claim requires verification of record. The AO is, therefore, directed to verify whether any deduction was claimed out of the provisions for doubtful assets in any earlier year and if the answer is in the negative, the addition of Rs.47 lakh is directed to be deleted. The assessee shall file necessary evidence in support of the claim before the Ld. AO along with the copy of the order of the BIFR/AAIFR and audited accounts filed for the prior years concerned. This ground is also allowed for statistical purposes.

13. Ground No. 3 is general in nature and does not require separate adjudication.

14. The appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 10th May, 2024.

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Rakesh Mishra)
Accountant Member

Dated: 10th May, 2024

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent.
 3. CIT(A), NFAC, Delhi
 4. The CIT,
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata