INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI
BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA No. 2630/Del/2023
(Assessment Year: 2020-21)

The Louis Berger Group Inc, Plot No. 3, Surinder Jakhir Bhawan, Sector-32, Gurgaon (Appellant) **PAN:AAACL4067F**	Vs.	ACIT, DCIT/ACIT, International Taxation, Gurgaon (Respondent)

SA No. 385/Del/2023
(In ITA No. 2630/Del/2023)
(Assessment Year: 2020-21)

The Louis Berger Group Inc, Plot No. 3, Surinder Jakhir Bhawan, Sector-32, Gurgaon (Appellant) **PAN:AAACL4067F**	Vs.	ACIT, DCIT/ACIT, International Taxation, Gurgaon (Respondent)

Assessee by :	Shri Deepak Chopra, Adv Shri Anmol Anand, Adv Ms. Priya Tandon, Adv
Revenue by:	Shri Vijay B. Vazanta, CIT DR Shri Amit Katoch, Sr. DR
Date of Hearing	20/09/2024
Date of pronouncement	15/10/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.2630/Del/2023 for AY 2020-21, arises out of the order of the ACIT, DCIT/ ACIT, International Taxation, Gurgaon [hereinafter referred to as 'ld. AO', in short] in Appeal No. ITBA/AST/S/143(3)/2023-24/1054542888(1) dated 24.07.2023.

2. Ground Nos. 1 to 3 raised by the assessee were stated to be not pressed by the ld AR at the time of hearing. The same is reckoned as a statement made from the bar and accordingly, Ground Nos. 1 to 3 are hereby dismissed as not pressed.

3. Ground Nos. 4 to 6 raised by the assessee are challenging the disallowance made by the ld AO on account of receivables from Louis Berger Consulting Pvt. Ltd (LBCPL) written off by the assessee as bad debt.

4. We have heard the rival submissions and perused the materials available on record. The assessee is a company incorporated under the laws of United States of America and operates in India through its project offices based at various locations across India. The Company renders a vast array of consultancy services in India in respect of infrastructure projects. Major work includes providing construction supervision and project management for projects in India in the field of Highways, Airport, Rail/Metro and urban development sectors through several projects offices in India. The return for AY 2020-21 was filed by the assessee electronically on 05.02.2021 declaring loss of Rs. 9,06,07,960/-. The ld AO noticed that during the course of assessment proceedings that the assessee had written off a sum of Rs. 11,22,24,005/- towards amounts receivable from M/s. Louis Berger Consulting Pvt. Ltd on one hand and on the other hand, the assessee had paid consultancy fees of Rs. 42.64 crores to the same concern during the year and did not choose to adjust the amount receivable from the said concern with the consultancy fees payable to the same concern. Accordingly, the ld AO issued a show cause notice on 10.09.2022 to explain the assessee as to why the deduction claimed on account of bad debts written off be not disallowed. The assessee filed its

response on 15.09.2022 justifying the claim of deduction by stating as under:-

> *"1. That as required by law, bad debt has been written off in its books of accounts as per section 36(1)(vii) rw section 36(2) of the Act*
>
> *2. The said debts could not be recovered by the assessee on account of commercial reasons*
>
> *3. That M/s Louis Berger Consulting Private Limited has disclosed the written off amount as its income*
>
> *4. That the company maintains accounts project wise and receivable of Rs. 11,22,24,005/- pertained to earlier projects which could not be recovered from M/s Louis Berger Consulting Private Limited."*

5. The ld AO observed that the assessee had not given the reasons for write off of such amounts even though substantial amount were continued to be paid by the assessee to the very same concern towards consultancy charges. Further, the ld AO observed that the assessee and Louis Berger Consultancy Pvt. Ltd are active business partners and observed that though the assessee had claimed that it is maintaining accounts project wise and that in respect of one particular project, a sum of Rs. 11,22,24,005/- due from LBCPL stood irrecoverable which forced the assessee to write off the same in its books of account as bad debt. Further, the ld AO observed that even if the project wise balance were maintained by the assessee still that would not prohibit the assessee to recover the amounts from the amounts payable to the very same party for different projects.

6. The ld AO observed that the claim of deduction has been made by the assessee only to avoid taxes and hence proceeded to disallow the same in the assessment. The ld AO while making this disallowance also placed reliance on the decision of the Hon'ble Jurisdictional High Court in

the case of CIT Vs. Abhinandan Investment Ltd in ITA No. 130/2001, wherein, it was held that it is important to understand the business purpose behind the transaction. If the said transaction was to contrive a loss, the same is to be disallowed.

7. We find that the assessee vide letter dated 15.09.2022 had furnished a detailed justification for write off of this bad debt with documentary evidence. In the said letter, the assessee had given project wise details of amounts receivable from various parties including LBCPL, National Highway Authority of India and Director of Civil Aviation, Govt of Goa whose debts were sought to be written off. The break up of the same is as under:-

Project	***Party Name***	***Amount written off as bad debts***	***Year in which the amount written off was recognized as revenue***	***Remarks***
ABQ 261	*National Highway Authority of India (NHAI)*	*644,664*	*FY 2014-15 and FY 2015- lb*	*Project wise ledger copies of bad debts written off and project wise copies of ledger of trade receivables evidencing the recognition of revenue have already been furnished vide submission dated 07 September 2022.* *The same are being reproduced as Artnexure 3 and Annexure 4 respectively.* *Sample communication | letters sent clients requesting to release outstanding payments are enclosed as Annexure 5.*
AFI 256	*Director (Civil Aviation Government of Goa f MOP A)*	***2,953,347***	*FY 2011-12 to FY 2016-17*	
Sub-Total		***3,598,011***		
ABQ 261	*National Highway Authority of India (NHAI)*	*1,191,963*	*FY 2014-15 and FY 2015- 16*	
AFI 256	*Director (Civil Aviation Government of Goa (MOPA)*	*1,391,831*	*FY 2011-12 to FY 2016-17*	
Sub-Total		***2,583,794***		
ABQ 262	*Louis Berger Consulting Private Limited*	***55,959,867***	*FY 2014-15 and FY 2015- 16*	
M 1	*Louis Berger Consulting Private Limited*	*4,026,817*	*Various years prior to FY 2012-13*	
M 2	*Louis Berger Consulting Private Limited*	*43,342,226*		

LBC AFI 256	*Louis Berger Consulting Private Limited*	*8,894,850*	*FY 2015-16*	
Total		***118,405,565***		

8. The assessee also gave detailed explanation as to why it had not adjusted the receivables with the payables by stating as under:-

> *"At the outset, in respect of the question of knocking off trade receivables with trade payable to Louis Berger Consulting Private Limited ('LBC') as asked by your goodself in the captioned notice, the Company submits that both the conditions stipulated under the Act for allowability of bad debts written off have been complied with, by the Company.*
>
> *Having said the above, the LBC in the prior years used to avail services of the Company and hence, amount was receivable from LBC in the past years. However, a part of receivable was not recovered by the Company from LBC, which has been written off during the year under consideration. Currently, the Company sub-contracts the work/projects won/obtained by it to LBC and hence, LBC earns revenue and payable is appearing in the books of the accounts. Since, the Company maintains its books of accounts project wise and subsequently, consolidates the same. In the present case, though on a consolidated basis, it appears that the same should have been knocked off, however, since the receivables and payables pertain to different projects/years, accordingly, same were not considered for knocking off.*
>
> *Having said that, it is humbly submitted that both the conditions stipulated under the provisions of the Act have been duly fulfilled by the Company for which adequate evidence has also been provided before your goodself. Accordingly, bad debts written off aggregating to Rs. 118,405,565 should be allowed to the Company and hence, no disallowance is warranted in this regard."*

9. The assessee also furnished the income recognized in respect of all these parties in earlier years to satisfy the compliance of provisions of Section 36(2) of the Act by stating as under:-

Financial Year	*Revenue recognized (in INR)*
FY 2009-10	*28,376,989*
FY 2010-11	*13,715,308*
FY 2011-12	*55,239,693*
FY 2012-13	*27,819,319*
FY 2013-14	*39.301,999*
FY 2014-15	*22.527.546*
FY 2015-16	*10,819.598*
FY 2016-17	*475.349*

10. We find that the assessee had duly complied with all the conditions prescribed in Section 36(2) read with section 36(1)(vii) of the Act to claim deduction on account of bad debts. The assessee is not required to prove that a particular debt had become bad debt in order to claim deduction on account of bad debt written off pursuant to the amendment made u/s 36(1)(vii) of the Act after 01.04.1989. This issue is no longer res integra in view of the decision of Hon'ble Supreme Court in the case of TRF Ltd reported in 323 ITR 397 (SC) , wherein, it was held as under:-

> *"4. This position in law is well-settled. After 1-4-1989, it is not necessary for the assessee to establish that the debt, in fact, has become irrecoverable. It is enough if the bad debt is written off as irrecoverable in the accounts of the assessee. However, in the present case, the Assessing Officer has not examined whether the debt has, in fact, been written off in accounts of the assessee. When bad debt occurs, the bad debt account is debited and the customer's account is credited, thus, closing the account of the customer. In the case of companies, the provision is deducted from sundry debtors. As stated above, the Assessing Officer has not examined whether, in fact, the bad debt or part thereof is written off in the accounts of the assessee. This exercise has not been undertaken by the Assessing Officer. Hence, the matter is remitted to the Assessing Officer for de novo consideration of the above-mentioned aspect only and that too only to the extent of the write off."*

11. Similar was the view taken by the Hon'ble Jurisdictional High Court in the case of CIT Vs. Autometers Ltd reported in 292 ITR 345 (Del) as under:-

> *"6. Section 36(1)(vii), as it stands w.e.f. 1st April, 1989, reads as follows:*

36. Other deductions.--(1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in Section 28--

(i)--(iv) xxxxxx

(vii) subject to the provisions of Sub-section (2), the amount of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessed for the previous year:

Provided xxxx Explanation: xxxx Prior to 1st April, 1989, the above provision read as follows:

Subject to the provisions of Sub-section (2), the amount of any debt, or part thereof, which is established to have become a bad debt in the previous year.

7. We find that there is a significant difference between the provision as it stood prior to 1st April, 1989, and the provision as stands today. Prior to 1st April, 1989, it was necessary for the assessed to establish that the debt had become bad, whereas now for the debt to be classified as bad, the assessed has only to write it off as irrecoverable in its accounts.

8. While making the amendment as above, the CBDT issued a circular bearing No. 551, dt. 23rd Jan., 1990, wherein it is stated in paras 6.6 and 6.7 that the earlier provision generated a considerable amount of litigation on the issue whether the assessed had been able to establish that the debt had become bad. It was to overcome this that the amendment was made resulting in a bad debt "now being straightaway allowed in the year of write off".

9. The interpretation of Section 36(1)(vii) of the Act was considered by this Court in CIT v. Morgan Securities & Credits (P) Ltd. in IT Appeal No. 1442 of 2006 decided on 7th Dec, 2006 [reported at (2007) 210 CTR (Del) 336--Ed.]. In that case, this Court referred to the circular as well as another decision of the Gujarat High Court being Dy. CIT v. Patidar Dinning & Pressing Co. (1999) 157 CTR (Guj) 177 and came to the conclusion that no substantial question of law arises for consideration.

10. We are of the view that there is no error in the view taken by the Tribunal. The amendment made to Section 36(1)(vii) of the Act was a conscious decision taken to eliminate litigation with regard to establishing what is bad debt.

11. It has also been brought to our notice by learned Counsel for the respondent that if an assessed writes off a debt as a bad debt without giving any reason, he will not get any benefit from this. This is for the reason that by virtue of Section 41(4) of the Act, where a deduction has been allowed in respect of a bad debt which is irrecoverable and if the

amount or a part thereof is subsequently recovered, then that amount shall be deemed to be profits and gains of business or profession of that relevant previous year.

12. Learned Counsel for the Revenue submits that the 1989 amendment incorporates only the year of allow ability but it does not dispense with the requirement of the assessed to prove that the debt has become a bad debt. We cannot agree with this interpretation as it would take the situation to what was prevailing pre-1st April, 1989.

13. Taking all these factors into consideration, we are of the opinion that no substantial question of law arises for our consideration. The appeal is dismissed."

12. In view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, the Ground Nos. 4 to 6 raised by the assessee are allowed.

13. Ground Nos. 7 and 8 raised by the assessee are challenging the disallowance of loans and advances given to the employees in the sum of Rs. 82,54,126/- which was written off by the assessee.

14. We have heard the rival submissions and perused the material available on record. The assessee during the year under consideration wrote off loans and advances of Rs. 82,54,126/-. The assessee was asked to provide details of the same along with copy of contract/ agreement. The assessee submitted vide reply dated 07.09.2022 with regard to loans and advances which were written off relate to advances given to employees of the company. The ld AO observed that the assessee failed to provide documentary evidence to support the same and accordingly issued a show cause notice as to why the same should not be disallowed in the assessment. The assessee gave the detailed reply on 15.09.2022 stating that the loans and advances given to the employees in the normal course of business and they had a direct nexus with the business of the assessee. It was pointed out that it is routine business activity carried out and the same had to be construed as an activity incidental to the business activity

of the assessee. The ld AO however did not heed to these contentions of the assessee and observed that if employees are advanced loans and advances over and above their salaries, such loans cannot be construed as having advanced for business purpose. With these observations, the ld AO proceeded to disallow the claim of deduction on account of write off of loans and advances in the sum of Rs. 82,54,126/-.

15. In our considered opinion, advance of loan by a company to its employees are certainly done in the normal course of any business and for whatever reason if those loans given become irrecoverable, the same would become a business loss to the assessee in terms of Section 28 of the Act and the same would be squarely allowable as deduction to the assessee. Reliance in this regard is placed on the decision of the Hon'ble Jurisdictional High Court in the case of CIT Vs. Triveni Engineering and Industries Ltd reported in 343 ITR 245 (Del) as under:-

> *"10. Mr. Ajay Vohra, learned counsel appeared on behalf of the respondent-assessee and supported the decision rendered by the CIT(A) as affirmed by the Tribunal. His submission was that under Section 28/37(1) of the Act, deduction is admissible for trading loss/loss incidental to business. The only test to be satisfied is that the loss must arise from/spring directly from the carrying on of business. In other words, the loss must be incidental to the trade itself, there must be some nexus between the trade and loss which should have been incurred by the assessee in the course of trade. In order that loss occasioned from non-realization of advances can be allowed, the loss should have been incurred by one in the character of trader and the same should fall on the assessee in that character. He relied upon the decision of the Supreme Court in the celebrated case of Badridas Daga(supra), wherein the Court while allowing the claim for loss on account of embezzlement by an employee, observed as under:*
>
> > *"7. The result is that when a claim is made for a deduction for which there is no specific provision in section 10(2), whether it is admissible or not will depend on whether, having regard to accepted commercial practice and trading principles, it can be said to arise out of the carrying on of*

the business and to be incidental to it. If that is established, then the deduction must be allowed, provided of course there is no prohibition against it, express or implied, in the Act."

11. He also relied upon the judgment in the case of Abdullabhai Abdulkadar (supra) wherein the Apex Court held that in case of loss arising out of advance made in a business or profession, the deciding point is whether advances are made for the purpose of business or profession or whether they are related to business or profession or result from it. While dealing with similar issue in the case of CIT v. Mysore Sugar Company Ltd. [1962] 46 ITR 649, it was held by the Apex Court as follows:

> *"8. To find out whether an expenditure is on the capital account or on revenue, one must consider the expenditure in relation to the business. Since all payments reduce capital in the ultimate analysis, one is apt to consider a loss as amounting to a loss capital. But this is not true of all losses, because losses in the running of the business cannot be said to be of capital. The questions to consider in this connection are: for that was the money laid out? Was it to acquire an asset of an enduring nature for the benefit of the business, or was it an outgoing in the doing of the business? If money be lost in the first circumstances, it is a loss of capital, but if lost in the second circumstances, it is a revenue loss. In the first, it bears the character of an investment, but in the second, to use a commonly understood phrase, it boy the character*

12. Mr. Vohra's plea was that the security deposits written off were given by the amalgamating company in the course of carrying on business in order to secure use of premises for purposes of business. Similarly, advances were given to employees employed with the amalgamating company, in the course of carrying on of the business. The same were written off due to non-recoverability thereof on account of disputes with the landlords/vacation of premises, termination of employees, etc. The security deposit/advances given to the employees were not for securing any capital assets or obtaining any enduring advantage in the capital field. The payment of security deposit to landlords was for obtaining use of premises for purposes of business against payment of rent, which payment is clearly in the revenue field, for facilitating carrying on of business more profitably and efficiently while leaving the fixed capital untouched. Advances to employees were given in the ordinary course of business by way of temporary financial accommodation to be recovered out of the salary paid to the employees. The

giving of such advances was necessitated in order to share up the personal finances of the employees, to meet any emergency/financial commitment and keep the employees motivated, contended and happy.

13. Insofar as deduction of advances given to the employees are concerned, which had become unrecoverable, that may not pose much of a problem. Advances were given to the persons who had been employed by the assessee-company and if they became unrecoverable, it would clearly be treated as business loss. Law on this aspect stands crystallized by the judgment of the Bombay High Court in the case of CIT v. Maina Ore Transport (P) Ltd., [2010] 324 ITR 100.

14. Thus, the AO was not correct in holding that this was not allowable even under Section 28 of the Act, as it does not spring directly from carrying on of the business and is not incidental thereto."

16. In view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, the Ground Nos. 7 and 8 raised by the assessee are hereby allowed.

17. Ground No. 9 raised by the assessee is challenging the disallowance of interest paid on late deposit of indirect taxes in the sum of Rs. 2,81,945/-.

18. We have heard the rival submissions and perused the material available on record. The ld AO observed that the assessee had incurred interest on late payment of GST and service tax and claimed the same as deduction on the ground that it is compensatory in nature. The ld AO however held that the same would be penal in nature and not allowable as deduction in view of Explanation 1 of Section 37 of the Act. We find that the issue as to whether interest on delayed payment of GST and service tax could be construed as penal in nature was the subject matter of consideration by the Hon'ble Supreme Court in the case of Lachmandas Mathuradas Vs. CIT reported in 254 ITR 799 (SC), wherein, it was held that interest payment on arrears of sales tax is compensatory in nature

and would be allowable as deduction while computing the business income. Respectfully following the same, the Ground No. 9 raised by the assessee is hereby allowed.

19. Ground Nos. 10 and 11 raised by assessee for seeking correct amount of TDS credit. This matter requires verification of the ld AO and hence, we deem it fit to restore this issue to the file of ld AO to grant TDS credit to the assessee as per law. Accordingly, Ground Nos. 10 and 11 are allowed for statistical purposes.

20. Since return of income has been filed by the assessee in the instant case belatedly, interest u/s 234A of the Act would be chargeable. Hence, Ground No. 12 raised by the assessee is hereby dismissed.

21. Ground No. 13 raised by the assessee is challenging the levy of interest u/s 234B of the Act which would be consequential in nature.

22. Ground no. 14 raised by the assessee is challenging the adjustment of refund already granted with the statutory interest u/s 244A of the Act, which would be consequential in nature.

23. Ground No. 15 raised by the assessee is challenging initiation of penalty proceedings u/s 270A of the Act, which would be premature for adjudication at this stage and hence, dismissed.

24. In the result, the appeal of the assessee is partly allowed for statistical purposes.

25. Since, the main appeal is hereby disposed of, the stay application preferred by the assessee becomes infructuous.

26. To sum up, the appeal of the assessee is partly allowed for statistical purposes and stay application of the assessee is dismissed as infructuous.

Order pronounced in the open court on 15/10/2024.

-Sd/-	-Sd/-
(SAKTIJIT DEY)	**(M. BALAGANESH)**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

Dated:15/10/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi