IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER

ITA No.1082/Bang/2024
Assessment year : 2020-21

Adarsh Developers, No.2/4, Langford Garden, Richmond Town, Bangalore – 560 025. **PAN: AAGFA 3674G**	Vs.	The Deputy Commissioner of Income Tax, Central Circle 2(1), Bangalore.
APPELLANT		RESPONDENT

ITA No.1160/Bang/2024
Assessment year : 2020-21

The Deputy Commissioner of Income Tax, Central Circle 2(1), Bangalore.	Vs.	Adarsh Developers, No.10, Vittal Malya Road, Bangalore – 560 001. **PAN: AAGFA 3674G**
APPELLANT		RESPONDENT

Assessee by	:	Shri Hemant Pai, CA
Revenue by	:	Ms. Neera Malhotra, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	08.04.2025
Date of Pronouncement	:	29.04.2025

O R D E R

Per Prashant Maharishi, Vice President

1. M/s Adarsh Developers (assessee) and The Deputy Commissioner of Income tax CIT, CC 1(2), Bangalore [The ld. AO] has preferred cross appeal against the appellate order passed by the Commissioner of Income Tax (Appeals)-15, Bangalore [ld. CIT(A)] dated 30.3.2024 for AY 2020-21 wherein the appeal filed by the Assessee against the assessment order passed by the ld AO was partly allowed. Both the parties are aggrieved and are in appeal before us.

2. At the time of hearing, the ld. AR submits that in appeal of the assessee in ITA No.1082/Bang/2024 dispute has been settled under Vivad Se Vishwas Scheme, 2024 (VSVS) and Form 4 has also been issued on 25.1.2025 and therefore the appeal does not survive.

3. On examination of the above Form, it is correct that the dispute in appeal filed by the assessee has been settled and therefore ITA No.1082/Bang/2024 is dismissed as withdrawn.

4. Now only appeal in ITA No.1160/Bang/2024 filed by the ld. AO survives, wherein the appeal filed by the assessee against the assessment order passed by the AO u/s. 143(3) of the Act dated 20.9.2022 was partly allowed.

5. The grievance of the ld. AO is as per the following grounds of appeal:-

"1. Based on the facts and circumstances of the case, the learned CIT(A) was not correct in deleting the addition made by the AO

2. The CIT (A) erred in deleting the addition made on account of write off of Sundry Advances given to M/s Adarsh Reality and Hotels P Ltd (ARHPL) without appreciating the fact that the advances had not become bad as the advances was being regularly repaid by ARHPL and the outstanding was reducing year on year.

3. The CIT(A) erred in deleting the addition made on account of write off of Sundry Advances U/s 37 when the advances made related to capital advances given on account of transfer of land and licences to ARHPL by the assessee.

4. The CIT(A) erred in deleting the addition made on account of write off of sundry advances U/s 37 just on the ground that the advances were written off in the books of account which applicable only to trade receivables written off under section 36

5. The CIT(A) erred in deleting the addition made on account of write off of sundry advances on the ground that the amount written off is offered to tax by M/s ARHPL, when the same could/ not be offered to tax as per provisions of section 28 by M/s ARHPL

6. The brief facts of the case show that assessee is a partnership firm, engaged in the business of construction, filed its return of income on 15.2.2021 declaring total income of NIL. This return was processed u/s. 143(1) at Rs.11,54,94,482. Subsequently return was picked up for scrutiny for 6 reasons and notice u/s. 143(2) was issued on 29.6.2021. The assessment proceedings were concluded by passing the assessment order u/s. 143(3) of the Act on 20.9.2022 wherein the total income of the assessee was assessed at Rs. 489,90,33,206. Many additions/ disallowances were made by the ld. AO, however only dispute before us is concerning allowability of deduction on account of the write off of advances of Rs. 468,80,84,462. There were certain

other additions/disallowances made to the total income of assessee, but same were not challenged by either party before us, therefore those matters are concluded.

7. Therefore, the facts relating to addition/disallowance of Rs. 468,80,84,462 is culled out from the assessment order. The facts show that as per Profit & Loss account the assessee has claimed the above amount as sundry advances written off being amount given to one associate concern namely Adarsh Realty & Hotels P. Ltd. (ARHPL). The ld. AO issued a show cause notice to the assessee stating that the above sum is proposed to be disallowed as it does not satisfy condition u/s. 36 (2) and not allowable u/s. 37 also, that the above loss is incurred during the year to the assessee. The AO noted that write off amount is in respect of investment made by the assessee in another company which is subsidiary [(sic) associate concern/ Special Purpose vehicle] of the assessee and same are written off. The AO further verified the ledger account of Adarsh Realty & Hotels P. Ltd. (ARHPL) and found that the amount outstanding as on 31.3.2020 is less than the amount outstanding as on 31.3.2019 and further the amount outstanding as on 31.3.2021 is also lower than the amount outstanding as on 31.3.2020. Therefore, according to the AO, there is no basis for write off as part of the advances is duly recovered during the current year and next financial years. The AO further noted that the assessee has further advanced the amounts to the company even after write off of advances during the year clearly

indicating that assessee expects the that company to do well and repay the amount.

8. The assessee answered the query stating that the above advances are given to ARHPL for expansion of the business of the assessee and same were written off and claimed as deduction u/s. 37 as that company could not do the business profitably. It was stated that the subsidiary was funded with share capital of Rs.15 crores and loan of Rs.746 crores to set up for creating infrastructure in hotels and tied up with reputed brand of hotels to enhance the business. Being a new entity and on account of intense competition the business could not run successfully and subsidiary could not even break even resulting into continuous losses eroding its net worth which became negative on 31.3.2019. There were huge commitments to the financial institutions of Rs. 385 crores as on 31.3.2020, whereas net worth of the subsidiary company was negative of Rs. 375 crores. Therefore, the assessee has written off the loans & advances to the tune of Rs.465 crores as not recoverable as the advances given by the assessee is wholly and exclusively incidental to the business of the assessee. The assessee further submitted that when the loan itself is justified on the grounds of commercial expediency, even write off of such loan is incidental to the business. The assessee further relied upon several judicial precedents.

9. The ld. AO rejected the contention of the assessee stating that the amount written off was investment in shares. Further some of the

judicial precedents where it a is allowed as bad debts , in those cases assessee offered interest on loan given as income , hence the bad debt was allowed u/s. 36 and therefore such judicial precedents are not applicable to the facts of the case. The AO further held that to improve the net worth of the subsidiary, the assessee could have converted the loan given to equity to improve the net worth of the subsidiary company. The ld. AO further noted that the loan could be said to be not recoverable only when the lender is not in a position to recover the amount. But in this case, the write off is not correct because the amount of advance is actually reduced from year to year. On page 11 of the assessment order, the ld. AO tabulated the amount outstanding for each of the year to show that the amount is reducing every year. The AO was of the view that the write off of the loan in the current year and bad debt has also not accrued during the year.

10. The ld. AO further noted a point that during this AY, the assessee has earned profit on sale of land which would be chargeable to tax and would result into payment of taxes and therefore the entire transaction of write off was a colourable device to avoid the payment of tax. The ld. AO relied upon the decision of coordinate Bench in the case of VST Industries v. ACIT in ITA No.691/Hyd/2005 wherein the coordinate Bench relied upon the decision of Supreme Court and held that advances given to subsidiary cannot be allowed u/s. 36 or 37 of the Act. The ld. AO further rejected the contention of the assessee that part write off is possible. Thus, the ld. AO did not allow the above claim of Rs. 468,80,84,462 for the following 5 reasons: -

i. The assessee has not submitted any evidence that the loans accrued in AY 2020-21 to consider write off in that year.

ii. The subsidiary started having cash profit from the year ending 2019 which is within 5 years of starting of operation.

iii. The subsidiary has started repayment which reduces the outstanding liability by Rs. 119.61 crores over a period of 4 years.

iv. There is no valid basis for writing of Rs.468.81crores.

v. The only reason for write off in FY 2019-20 is to avoid payment of tax as the assessee has received certain unexpected receipts in FY 2019-20.

11. The assessee aggrieved with the same challenged this issue before the ld. CIT(Appeals) which has been dealt in as per ground no.6 in para no.8 of the appellate order. The ld. CIT(A) allowed the claim of the assessee as under:-

8.0 Ground of number 6: disallowance of advances to subsidiary written off.

8.1 During the course of the assessment proceedings, the AO noticed that in the P & L account, the appellant had claimed an amount of Rs.468,80,84,462/-

as sundry advances written off. The AO proposed to disallow this expense and issued a show cause notice to the assessee as follows:

> *"In respect of advances written off of Rs.468,80,84,462, the same is proposed to be disallowed as it does not satisfy the conditions mentioned in section 36(2)(i) and further if it is considered as expenditure u/s 37 as claimed by you, there is no basis for coming to conclusion that the amount of Rs.468,80,84,462 accrued during the year to be allowed as expenditure, in respect of various case laws submitted by you it is found that the write off amount is in respect of investment made (not advances given) in the company and also the amount is written off when the subsidiary is wound up."*

8.2 In response to this, the appellant gave his reply in which he explained that the same is claimed and is allowable u/s.37(1) of the I.T. Act and gave various case laws in support of his claim.

8.3 After carefully perusing the assessment order, the submissions made by the appellant during the course of appeal proceedings, the crux of this issue are elucidated as under:

1. The appellant, M/s. Adarsh Developers is a partnership firm. It has a wholly owned subsidiary M/s. Adarsh Realty and Hotels Pvt. Ltd. (ARHPL).

2. During the relevant previous year, the appellant has written off an amount of Rs.468,80,84,462/- as sundry advances.

3. The AO holds that this is not allowable as an expense u/s. 36(2)(i) of the Act.

4. The appellant on the other hand claims this as allowable u/s. 37(1) of the I.T. Act.

5. The AO relies on the Hon'ble ITAT Hyderabad's decision in the case of VST industries Limited V/s ACIT in ITA No.691/Hyd/2005 and decides that the advance to subsidiary is not allowable and on the decision of Hon'ble Apex Court in the case of Southern Technologies Ltd. Vs. JCIT (2010) 320 ITR 577 (SC) to buttress his argument that this is not allowable even u/s. 37 of the I.T. Act.

6. The appellant on the other hands places reliance on Shreno Ltd, Binani Cement, Pr. CIT v. Vaibhav Global Ltd., Principal Commissioner of Income-tax *v.* Industrial Development corporation of Odisha Ltd, Principal Commissioner of Income-tax *v* Natroyal Industries (P.) Ltd., Mahindra and Mahindra Ltd *v.* Commissioner of Income-tax [2023], REFEX Industries Ltd. *V* Deputy Commissioner of Income-tax [2022], Bombay HC in an earlier case CIT v. Colgate Palmolive (India) Ltd.&Honourable Supreme Court in the Case of Principal Commissioner of Income Tax -6 Vs Khyati Realtors Private Limited, SA Builders etc.

8.4 Upon careful perusal and analysis of the assessment order, appellant's submissions, material available on record and the legal pronouncements, the case is adjudicated as under:

Legal basis for the disallowance:

The AO has relied on the judgment of the Hon'ble ITAT Hyderabad's decision in the case of VST industries Limited V/s ACIT. The AO concludes that "*the Hon'ble ITAT by relying on the decisions of the apex court has held that the advances given to subsidiary cannot be allowed either U/s 36 or U/s 37 of the Income Tax Act 1961*".

8.5 The appellant on the other hand during the course of appellate proceedings has submitted an analysis of the above judgment of the Hon'ble Hyderabad ITAT. It is the appellant's submission that the Hon'ble ITAT Hyderabad's judgment is distinguishable on various accounts and he submits as under:

"The learned AO placed the reliance on decision of ***Hyderabad Tribunal in VST Industries (ITA No. 691/Hyd/2005) by the Assessing Officer in the Assessment Order is obviously misplaced and*** *is distinguishable from the facts and is totally diverse from the case of the appellant not applicable in the case of the assessee. In the said case, the advances are not in the ordinary course of business of the assessee, however, in the present case, the assessee has established in fact the investments are for expansion / furtherance of business activities of the assessee, and the losses incurred by the assessee M/s. Adarsh Developers is obviously in the*

ordinary course of the business and is within the range of business activity of the Assessee, hence the above case relied has no precedence and not applicable to the present case.

1. *The reliance placed by AO in the case of* ***VST Industries vsAssistant Commissioner of Income-taxCircle 3(4), Hyderabad [2010] 41 SOT 415 (Hyderabad), we would like to distinguish further that,***

Functional Analysis of VST Industries and Appellant and their Subsidiaries are as under;

Sl No	*In case of VST Industries*	*In the Case of the appellant*
1	Subsidiary Company GGCL	Subsidiary Company Adarsh Realty and Hotels Private Limited (ARHPL)
2	Objects of VST Industries and GGCL are not identical and diverse and engaged in different activities	**Objects of the appellant and ARHPL are identical and similar, i.e., Development of Real estate Projects, Hospitality and Infrastructure activities.**
3	Shares in GGCL were held after investment of funds in Subsidiary company.	Substantial shares of ARHPL are held by the appellant even prior to investment of funds in Subsidiary company in the form of further capital and investments in the form of advances in furtherance to the activities carried out by the assessee **by transferring all of its assets, like land, Statutory & Regulatory approvals, Hotel operation licenses etc., to its subsidiary.** (it is nothing but extension of Hospitality business through closely held subsidiary.
4	Subsidiary is wound up	Subsidiary is still operating on going concern basis and likely to yield better revenue in future as the Subsidiary loss has reduced after write off.
5	No question / chance of revival and no enduring benefits, slump sale at a loss. Shares are acquired only upon the CGCL become sick owing to non recovery of the debt.	**Anticipated enduring benefits and substantial return on investments to appellant, when shares are divested in ARHPL as and when there is a Sale/Exit scheme / opportunity for Parent Adarsh Developers. (appellant).**
6	The investments are made to commence new commercial activities by GGCL as per	**The investments are made with ARHPL is for expansion of business activities of the appellant with commercial**

	requisition of GGCL, which had no nexus with the existing business of VST Industries	***expedience of a similar business carried on by the appellant.***
7	There is no single instance of Parent is a regular investor in subsidiary for expansion of its main activities.	***The appellant is regular investor in shares of its various group entities (Special Purpose Vehicles) engaged in similar or identical activities (Special Purpose Vehicle) and the same is held as stock in trade and generally investments are held for longer duration of timeand profits on sale of the same is regularly offered as business income in the hands of the appellant***
8	There is no single instance of Parent has made profit after divesting the investments in subsidiary.	The appellant had divested investments in shares held in subsidiaries and offered the income derived from transfer of shares under the head business income in preceding years * (Notes 1 & 2 below)
9	In the case of VST Industries the amounts paid are trade debt and written off the same as bad debts u/s 36(1)(vii) Act, which require satisfaction of various conditions precedents	In the case of the appellant the amounts are treated as investments, advances to Subsidiaries and write off. The losses accrued is treated as business expenditure under residuary section 37(1) of the Act as amount no longer recoverable in the case of the appellant the amounts are treated as investments and write off amount is treated under residuary section 37(1) of the Act as amount no longer recoverable. The appellant shall be able to get back this loss once the shares of AHPL are offloaded to any third parties.
10	Investments in debts cannot be colored as revenue expenditure.	Loss on account of depletion in value of investments is revenue expenditure.
11	No matching revenue on the write off bad debts	***On the contrary the subsidiary has offered 100% from sale of shares of subsidiary in the return of income filed for the assessment year. There no loss caused to the revenue as the same is compensatory in nature.***

8.6 The major points arising out of the appraisal of distinctions as pointed out by the appellant and perusal of the order of the Hon'ble ITAT are as follows:

a) This decision has been taken primarily by holding that money advanced by the assessee was not a trading debt emerging from the trading activity of the assessee as it was a debt that arose out of investment activities.

b) Further, it has been noted that,in that case the appellant and its subsidiary were in totally diverse fields of business and therefore, the debt cannot be said to be incidental to the business of the assessee or accrued during the ordinary course of business.

8.7 In the instant case, during the course of appellate proceedings, the appellant has submitted as under:

2. "The Appellant submits that it is into, inter alia, hospitality business and owned hotels which were later transferred to a Special Purpose Vehicle M/s Adarsh Realty and Hotels Private Limited ("ARHPL"), a 100% wholly owned subsidiary of the Appellant.

3. Therefore, it is submitted that ARHPL is an alter ego of the Appellant carrying on hospitality business on its behalf. The Appellant has been advancing funds to ARHPL to carry out its day to day business activities.

*4. The appellant is a partnership firm, engaged in real estate, infrastructure and hospitality business. The appellant has in circa 2007-2010 moved its hospitality business to **ARHPL**).*

5. The appellant initially in the years 2002-03, 2004-05 and 2005-06 had purchased land at palace Road in its name to commence Infrastructure hospitality unit "Palace Shangri la." The details are furnished hereunder,

Sl No	Date	Name of the owner	Doc registra	Sy No	Extent (Sq ft)	Nature of Document

			tion			
1	10/11/2005	Skand Pvt Ltd	1-02972	56/3	16,326	Sale Deed
2	29/07/2002	V Nathan	1-1719	56/1	15,510	Sale Deed
3	31/12/2004	Sandur Manganese and Iron ore Ltd	1-2441	56	55,831	Sale Deed
		Total			87,217	

6. Subsequent to acquisition of land, the appellant had obtained approvals from various Statutory / regulatory authorities. In support of the above, we are listing out the certain documents issued by various Statutory / regulatory authorities,

Sl No	Date	Name of the authority	Nature of document	Remarks
1	9/7/2008	Ministry of Environment and Forests	Clarification	For setting up of Helipad
2	23/9/213	State level environment Impact Assessment Authority, Karnataka	Meeting Invitation	On environmental Impact for setting up of Hotel
3	2/7/2007	Karnataka State Pollution Control Board	Consent for Establishment of Hotel	None
4	7/5/2005	Karnataka Udyog Mitra	State Level Single Window clearance Committee	Clearance

We are furnishing herewith the copies of the orders / communication as **Annexure A.**

7. These approvals are subsequently transferred to ARHPL and the copy of the communication letters are attached herewith as **Annexure B.**

8. Apart from the above the appellant had entered into MOU and agreements with Shangri la around same period

(i) *Memorandum of Understanding dated 19th Day of February 2005.*

(ii) *Agreement between Shangri la Internation Hotels Management Limited and the appellant on 19/03/2005 captioned under* ***"HOTEL MANAGEMENT AGREEMENT"***

(iii) *Agreement between Shangri la Internation Hotels Management Limited Hong Kong and the appellant on 19/03/2005 captioned under* ***"HOTEL PRE-OPENING TECHNICAL SERVICES AGREEMENT"***

(iv) *Agreement between Shangri la Internation Hotels Management Limited Hong Kong and the appellant in the year 2005 i.e., on 12/07/2007 captioned under* ***"HOTEL PRE-OPENING TECHNICAL SERVICES AGREEMENT"***

We are furnishing herewith the copies of the agreements as **Annexure C.**

9. *The funding requirements for this project is necessarily required to be raised from banks and financial institutions, as the said funding is highly capital intensive and the gestation period for repayment is very high, the bankers and financial institutions were not keen / willing to fund to the appellant since the appellant is a Partnership Firm and not a Corporate Entity, they were of the opinion a separate SPV would be ideal for funding such mega project.*

10. *Owing to necessity of raising the money for the project the Firm has to agree to transfer the project to M/s. Adarsh Reality and Hotels Private Limited which is a subsidiary company of the Appellant Partnership Firm as the financial institutions have expressed their willingness for lending long term funds to Private Limited Company instead of Partnership firm.*

11. *On account of these compulsions the promoters were forced by circumstances have opted to migrate the Hospitality business from its existing partnership firm under M/s Adarsh Developers to ARHPL for raising funds, better and effective administration and for giving corporate out look to investors, customers and operators.*

12. *The appellant firm inter alia transferred the land owned by the Firm, agreements, licenses, clearances and all approvals connected with setting of Hotel is assigned, transferred, NOC obtained to shift to ARHPL.*

The details of land transfer is given as under,

Sl No	Date	Name of the owner	Doc registration	Sy No	Extent (Sq ft)	Nature of Document
1	11/11/2009	Adarsh Developers & its partners	GAN-1-01390/2009-10	56/1, 2, 3 , 4 & 5	87217	Sale Deed

13. After moving all the infrastructures, assets and licenses to ARHPL **Punjab National Bank** (the leader of consortium of lenders) inter alia had given sanction letters for Rs.395 crores on 22/03/2010 and funded the project. The details of the loan sanctioned to the project post transfer of projects to the Subsidiary Company are as under;

Sl. No.	Bank	Date of sanction	ROI	INR (in Crore)
1	Punjab National Bank	22/3/2010	13.00%	150.00
2	Bank of India	28/07/2010	13.00%	80.00
3	Indian Bank	19/07/2010	13.00%	75.00
4	Canara Bank (IFB)	12/8/2013	14.95%	40.00
5	Karur Vysya Bank	3/9/2010	13.00%	50.00
	Total			**395.00**

The summary of term sheet along with the terms sheets issued by the banks is attached herewith as **Annexure D.**

14. Simultaneously, apart from the bank funding the appellant has also made substantial investments in ARHPL in construction and development of "Palace Shangri la" .Further the appellant has also extended financial assistances to ARHPL for its day to activities.

The summary of ledger extracts of ARHPL is furnished herewith as **Annexure E.**

16. *In support of its claims appellant has furnished statement of account of ARHPL since 2014-15, the highest balance was as on 31/03/2018 was Rs 766.95 crores. The appellant has also invested in share capital in ARHPL as equity share capital to the tune of Rs. 150.00 crores in additions to loans and advances.*

17. *The appellant's claim is that, the investment in ARHPL is nothing but extension of business of the appellant through its 100% subsidiary and hence the business of the appellant and the ARHPL or in similar lines and the investments have passed the test of commercial expediency.*

18. *It is evident from the records that ARHPL was doing well since inception of hospitality business, however upon commencement of Palace Road Shangri la (a 5 star category Hotel) the losses has been mounted year on year owing to high operational expenses and lower occupancy rates.*

19. *The very reason behind development of a Star category Hotel by the Group is to position the Adarsh group as one of the top-notch builders in the Country who can build and showcase construction which is world class and can be a talk of the town that provides a better alternative to the existing Hotels in Bangalore. The Strategic location, Ambience, Quality of the development, best design was to bring qualitative appreciation in the Brand Value of the Parent Adarsh Developers.*

20. *The idea for the group to go for such a large Hotel in the Heart of the City can be summarized with the following stated advantages to the Group and Brand "Adarsh".*

21. *The Appellant places the following reasons for the development of the Star Hotel in the Group and its perceived, intended advantages for the Parent/Group and Commercial benefits it can reap over the decades"*

(i) Continues Annual Cash

(ii) Appreciating asset:

(iii) Diversification

(iv) Mixed use development

(v) Enhance prestige and appeal

(vi) Destination Creation

22. *In the case of the appellant the activities of both the investor and investee entities are identical, the same has been evidenced from the objects of both entities. The appellant has also established that the business activities and assets are transferred from appellant to*

investee company for the purpose of expansion of the activities of the appellant. Having said so the appellant has established the commercial expediency in making the investments in subsidiary company and the entire write off is allowable u/s. 37(1) of the Act....."

8.8 Based on an appreciation of the above facts submitted by the appellant, it can be seen that in the case on hand, there is enough material to show that the expenditure incurred for the subsidiary is incidental to the business of the appellant and is for the purposes for the business of the appellant as

(a) The appellant and its subsidiary are both in the hospitality business.

(b) It was the appellant who did all the ground work for setting up this business and then divested it to its subsidiary for reasons of commercial expediency.

8.9 Further, the AO assumes jurisdiction to disallow the above expense u/s. 36(2)(i) instead of section 37 based on the decision of the Hon'ble Apex Court in the case of Southern Technologies Ltd. *"wherein it was held that if a provision for doubtful debt was expressly excluded from section 36(1)(vii), then such provision could not be claimed as deduction under section 37, even on the basis of 'real income theory'. Hence there is no basis for the assessee to claim the expenditure U/s 37 of the Income tax Act."*

8.10 On this issue, the appellant submits that the above judgment of the Apex Court was in answer to the question, ***Whether provision on NPA is allowable under Section 37(1)*** andit was held as under:

"As stated above, Section 36(1)(vii) after 1.4.1989 draws a distinction between write off and provision for doubtful debt. The IT Act deals only with doubtful debt. It is for the assessee to establish that the provision is made as the loan is irrecoverable. However, in view of Explanation which keeps such a provision outside the scope of "written off" bad debt, Section 37 cannot come in. If an item falls under Sections 30 to 36, but is excluded by an Explanation to Section 36(1)(vii) then Section 37 cannot come in.If aprovision for doubtful debt is expressly excluded from Section 36(1)(vii)then such a provision cannot claim deduction under Section 37 of the IT Acteven on the basis of "real income theory" as explained above."

that section 36(1)(vii) explanation reads as follows:

"For the purposes of this clause any bad debt or part thereof written of as irrecoverable in the accounts of the assessee shall not include any provision for bad and doubtful debts made in the accounts of the assessee."

It is therefore, submitted that the Hon'ble Apex Court decision was with respect to the issue, whether provision for bad debt is allowable u/s. 37(i) whereas in our case, there is no provision for bad debt and it is a crystallised liability.

8.11 The appellant's submission is that the Hon'ble Supreme Court's decision in the above mentioned case is not applicable to it and the Assessing Officer based on the above decision could not go on to insist that the above expenditure will only be looked at from the angle of 36(2)(i) of the I.T. Act.It further submits that once outside the purview of 36(2)(i), the appellant satisfies all the conditions for claiming of expense u/s. 37(1) of the I.T. Act.

8.12 On a careful appraisal of the Assessing Officer's stand on this issue, as found in the assessment order and the appellant's submission, it emerges that the said judgment of the Hon'ble Supreme Court was with respect to the provision of doubtful debts enunciated in the explanation to section 36(2)(i). The said explanationdeals with allowability of ***provision for doubtful debts.*** Therefore, the contention of the appellant that its case is not covered by the Hon'ble Supreme Court's decision mentioned supra and that it falls u/s. 37(1) of the IT Act has merit.

8.13 Having thus analyzed the judicial aspect of the case, the following conclusions are drawn:

1. The decision of the Hon'ble Hyderabad ITAT in the case of VST Industries (supra) does not apply to the instant case per-se because in that case, it has been factually held that the subsidiary and the parent were not in the similar line of business and the investment was in the nature of capital expenditure. Whereas, in the instant case, the appellant has fairly demonstrated

that the said expenditure is for the purpose of the business of the appellant and it is revenue in nature. Further, it can be seen that in the case on hand, the appellanthas fairly demonstrated that the expenditure incurred for the subsidiary is incidental to the business of the appellant and is for the purposes for the business of the appellant.

2. The AO's reliance on the Hon'ble Supreme Court's judgment in the case of Southern Technologies Ltd is with respect to allowability for provisions of doubtful debt and therefore, is not applicable to the case on hand.

8.14 Factual matrix of the case:

Having analysed in detail the factual aspects of the case, the AO has drawn the following conclusions:

"The write off is not allowable for the following reasons

1. The assessee has not submitted any evidence that the loss accrued in AY 2020-21 to consider write off in that year

2. The subsidiary as per assessee's own estimation started having cash profits from year ending2019 which is with 5 years of starting operation

3. The subsidiary had started repayment as indicated by the amount outstanding which reducedby an amount of Rs.119,60,94,365 over period of 4 years

4. There is no valid basis for writing off Rs.468.81 crores

5. The only reason for write off in FY 2019-20 is to avoid payment of taxes as the assessee hadreceived certain unexpected receipts in the FY 2019-20

In view of the same, the amount of ***Rs. 468,80,84,462/-****, which is considered as expenditure*
u/s 37 is hereby disallowed under the provisions of IT Act, 1961."

8.15 As against these findings of the AO, the appellant has made the following submissions with respect to these points

"Having said so, ***Para wise Grounds taken by the appellant on the contention made by the AO for disallowing the bona fide written off made by the appellant***

1. The assessee has not submitted any evidence that the loss accrued in AY 2020-21 to consider of write off in that year.

The learned AO failed to appreciate the fact that in response dated 25/07/2022 to show cause notice the appellant has clearly mentioned the reasons for write off and has furnished the evidences in support of its claim by filing the resolution passed by the appellant and the company for writing off of the advances owing to inability of ARHPL to service the advances lend to it by the appellant. The reply filed by the appellant is borne on the records of the AO. We are furnishing herewith the copy of response filed to show cause notice for your kind perusal and records as ***Annexure G.***

The learned AO failed to appreciate the fact that the stand take by it is a business call, and the AO cannot sit on the arm chair of the business man and dictate the appellant on a particular manner in which the business decisions are to be made.

2. The subsidiary as per assessee's own estimation started having cash profits from year ending 2019 which is with 5 years of starting operation.

The appellant had projected / estimated the breaking even and flow cash profits at the end of 5 years from the commencement of Shangri la, Palace Road, operation. On the contrary the same could not be achieved owing to various underlying circumstances. This was the only estimate / projections at the time of commencement of operation of the Shangri la, Palace Road.

3. The subsidiary had started repayment as indicated by the amount outstanding which reduced by an amount of Rs.119,60,94,365 over period of 4 years

It is evident from the statement of accounts furnished, there is back and forth movement of funds as and when ARHPL is in need of funds the appellant has transferred to meet its day to day requirements.

It is evident that ARHPL after meeting its requirements for day to day expenses and servicing of principal and interest to the lenders has transferred back the remaining funds and tried to establish the fact that it is willing to settle the advances. On the contrary, the mounting expenses and commitments necessitated ARHPL keep borrowing funds from the appellant which resulted in repayment of funds.

The learned AO without appreciating this fact have commented and concluded that, repayment of loan Rs.119.61 crores within 5 years of standing operation, which is far beyond the truth from the facts and circumstances of the case.

In this regard we are hereby submitting the summary of outstanding balances each of the 5 years of standing operation for kind consideration of your honour,"

(INR in crores)

Sl No	Financial year	Opening balance	Closing balance	Remarks
1	2015-16	417.41	584.30	Substantial investments
2	2016-17	584.30	743.38	Substantial investments
3	2017-18	743.38	766.94	Marginal increase
4	2018-19	766.94	746.15	Marginal decrease
5	2019-20	746.15	234.62	**Reduction owing to write off of Rs. 468.81 crores advances**

There has been increase in balance of loans advances year on year a slight reduction in balance by appx Rs. 20.00 has triggered the learned AO that the appellant has started recovering the advances from ARHPL. The fact remains that ARHPL has incurred huge losses and is unable to repay the amount advanced to appellant. The decision to write off was a bona fide commercial decision taken by considering the facts and circumstances of case. The claim of deduction as made by the firm is correct and the same is ought to be allowed as deduction.

4. There is no valid basis for writing off Rs.468.81 crores.

The AO cannot assume the position of the business man and dictate the particular manner in which the business calls should be taken by the appellant. The factors enumerated above itself is a sufficient reasons and grounds as to why the written off of Rs. 468,80,84,462/- is justifiable.

The following is the basis the written of amount is determined

ARHPL Loss as per P&L without write-back	(41,84,74,178)

Add - Depreciation as per P&L	6,39,817,862
Add – Disallowed expenses	1,07,063,877
Less - Depreciation as per IT Act	(7,58,364,091)
ARHPL Total Loss without write-back	(4,29,956,530)
ARHPL Brought forward losses	(425,81,27,932)
Amount to be written off by Adarsh Developers	468,80,84,462

5. ***The only reason for write off in FY 2019-20 is to avoid payment of taxes as the assessee had received certain unexpected receipts in the FY 2019-20***

As explained earlier outbreak of covid 19, pandemic, Circa 2019-20, the hospitality industry took a big jolt / hit owing to worldwide restriction on travelling and tourism related activities has resulted in further strain on ARHPL, this has been witnessed across the globe.

Further to submit that, the transaction is revenue neutral as the same amount is offered by ARHPL as revenue no adverse implication to the revenue per se.

In the case of the appellant Covid outbreak and lockdowns was a last nail on the coffin meaning that the hope of any further recovery dashed with suspension of travel globally and closure of business indefinitely for a period of two years plus , hence the decision of the Partners to write off advances and investments made to ARHPL was ***taken on impenitent crystallization of the liabilities during the financial year 2019-2020. Even though there is a negative net worth from the past previous years something extra in the form of Covid-19 outbreak during the financial year 2019-2020 which is the triggering event for arriving at the conclusion that the amounts will not be recovered and hence the appellant decided to write off the advances which is not recoverable during the financial year 2019-2020.***

The moment debts have been written off in the books, it is to be allowed without expecting the assessee to demonstrate whether debts have actually become bad or not

*same is held in favor of the assessee in **Shreno Ltd and Binani Cement** case referred hereinafter.*

23. *The learned AO failed to appreciate the fact that, the appellant is holding substantial investments in its various group concerns engaged in the similar and identical business activities as expansion of its arms to avoid omnibus hassles and to have various commercial, business, administrative, statutory and regulatory advantages. The shares held are classified as stock in trade in its books of accounts and it is its business assets. As the net worth of the subsidiary has become negative and the revival of the company has become a challenge owing to Covid-19 pandemic and this resulted in further strain not on the appellant lead to write off of advances given to ARHPL.*

24. *The appellant inter alia has made substantial investments in the form of advances and equity share capital in various group entities. A detailed note has been submitted before your honor with respect to divestment of investments in group entities along with the share purchase agreements entered by the appellant to divest 100% shares in its subsidiary, this itself is a sufficient documentary evidence to prove the commercial expediency. The list of investments is attached herewith as **Annexure H***

25. *The appellant had entered into share purchase agreement and divested its 100% share holdings in one of its subsidiary M/s Akarshak Infrastructure Private Limited in favour of RMZ Hotels Private Limited vide through Share Purchase Agreement dated 5th April 2017. The consideration received / income derived from the same is treated as business income and offered to tax at maximum rate of tax during the financial years 2018-19 and 2019-20. Copy of the Share purchase agreement is attached herewith as **Annexure I.***

26. *The appellant had entered into share purchase agreement and divested its 100% share holdings in one of its subsidiary M/s Vismaya Infrastructure Private Limited in favour of Abhishaya Infrastructure Private Limited vide through Share Purchase Agreement dated 5th April 2017. The consideration received / income derived from the same is treated as business income and offered to tax at maximum rate of tax during the financial years 2018-19 and 2019-20. Copy of the sale deed is attached herewith as **Annexure J.***

27. Initially the appellant has intended to commence **"Palace Shangri la"** at Palace Road, Bangalore in its own name. Further to submit that, the appellant is in the business real estate sector, infrastructure, hospitality and allied activities for a period more than two decades and is constantly offering income in the returns of income filed for various preceding assessment years and paid taxes accordingly, the appellant is furnishing herewith the turnover of past 9 preceding assessment years along with the financial year relevant assessment year under consideration to establish the fact that there were no surprise incomes and charge off along with the Profit and Loss account;

Financial Year	Total Revenue	Book (+)Net Profit / (-)Net Loss	Status of Asst
2010-11	322,75,48,984	59,06,46,652	u/s 143(3) rws 153A of the Act
2011-12	353,21,86,378	1,02,41,86,206	u/s 143(3) rws 153A of the Act
2012-13	373,34,32,008	1,30,02,71,193	u/s 143(3) rws 153A of the Act
2013-14	502,88,96,759	1,30,22,85,135	u/s 143(3) rws 153A of the Act
2014-15	622,94,03,975	1,40,62,15,427	u/s 143(3) rws 153A of the Act
2015-16	460,59,33,927	1,29,17,66,228	u/s 143(3) rws 153A of the Act
2016-17	439,80,41,337	8,92,46,807	u/s 143(3) of the Act
2017-18	244,24,85,912	(43,77,04,681)	u/s 143(3) of the Act
2018-19	762,11,78,439	(27,91,215)	u/s 143(3) of the Act
2019-20	7,14,14,23,451	(17,65,12,650)	u/s 143(1) of the Act

28. From the above statistics extracted from the audited financial statements of the appellant which is borne on the records of the AO, the total turnover declared by the appellant is 714.14 crores and have incurred the book loss of Rs. 17.65 Crores. The learned AO failed to

appreciate the fact that in the previous year relevant to the assessment year under consideration.

29. *Having stated that, even in the previous year immediately preceding impugned assessment year the appellant has declared a turnover of Rs. 762.11 crores and have incurred loss of Rs. 0.28 Crores. There is neither major addition nor disallowance what so ever.*

30. *Similarly, from the table as depicted above, all the other assessment year are subject matter of compulsory scrutiny and there is neither major addition nor disallowance what so ever despite of losses posted in these years even when the turnover is more in the immediately preceding current year as shown in the table from the facts and circumstances of the case. In support of the claim of the appellant copy of the financial statements. ITR Vs and the assessment orders for last 3 years is attached herewith as **Annexure K.***

31. *Further to submit that, the AO is not justified in arriving at the conclusion that the entire advance is not written off hence the claim of the assessee is not allowable. It is not mandatory to write off the entire amount due in the same year, it is the business / commercial call taken by the appellant to write off partial amount for a sum equivalent to Rs. 468.81 crores to nullify the carry over losses by the investee company. 100% write off is possible only after the investee company is closed or wound up. The provisions of income tax law accepts and acknowledges the allowance of full or part amount as bad or irrecoverable, as the case may be, based on the facts and circumstances.*

8.16 Taking into consideration the assessment order and the above submissions of the appellant, the issue that remains to be adjudicated in this case is whether the write off of the advances paid to the subsidiary is allowable under section 37(1) of the IT act.

Section 37(1) reads as follows:

Any expenditure (not being expenditure of the nature described in sections 30 to 36 [* *] [Certain words omitted by Act 32 of 1985, Section 11 (w.e.f. 1.4.1986).] and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended*

wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".Explanation 1.—For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure.Explanation 2.—For the removal of doubts, it is hereby declared that for the purposes of sub-section (1), any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 (18 of 2013) shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.[Explanation 3.—For the removal of doubts, it is hereby clarified that the expression "expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law" under Explanation 1, shall include and shall be deemed to have always included the expenditure incurred by an assessee,—(i)for any purpose which is an offence under, or which is prohibited by, any law for the time being in force, in India or outside India; or(ii)to provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, and acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guideline, as the case may be, for the time being in force, governing the conduct of such person; or(iii)to compound an offence under any law for the time being in force, in India or outside India.]

8.17 It can be discerned that in order to qualify for deduction u/s 37(1). The expenditure has to be:

1. Wholly and exclusively for the purpose of business.
2. Not capital in nature.
3. Not personal expenses of the assessee.

8.18 The following conclusions can be drawn in the instant case with respect to these conditions:

1. Wholly and exclusively for the purpose of business.

The facts of the case as gleaned from the appellant submissions and available records is as follows:

a. The assessee firm is inter-alia into hospitality business.

b. This firm wanted to develop a five-star hotel and had bought the required land and requisite permission from local authorities and entered into a tie-up with an international hotel chain.

c. For want of funding requirements which needed a corporate identity the appellant firm and transferred its hospitality business assets including land and licenses to its wholly own subsidiary company.

d. It invested Rs.150 crores as share capital in this company.

e. The subsidiary took funding from Banks/Financial Institutions and started operations.

f. The appellant firm kept supporting its wholly owned subsidiary by way of advances to meet out its expenses.

g. Over a period of time, the advances given to subsidiaries mounted up and become irrecoverable.

h. During the relevant year, a part of these advances was written off.

8.19 The appellant submits that since the natureof its business and of its subsidiaries are similar and the advances given are in the normal course of business, it is wholly and exclusively for the purpose of business.The relevant portion of the appellant's submission is as follows:

"In the case of the appellant the activities of both the investor and investee entities are identical, the same has been evidenced from the objects of both entities. The appellant has also established that the business activities and assets are transferred from appellant to investee company for the purpose of expansion of the activities of the appellant. Having said so the appellant has established the commercial expediency in making the investments in subsidiary company and the entire write off is allowable u/s. 37(1) of the Act."

8.20 The appellant relies on various judicial pronouncements also to support its claim that these advances to its subsidiary is wholly and exclusivelyfor the purposes of business. A few of these judicial pronouncements are discussed below:

32. Odissa High court in the case of ***Principal Commissioner of Income-tax v. Industrial Development corporation of Odisha Ltd.*** *[2023] 147 taxmann.com 298 (Orissa) held (in para 14) write off of the commercial expediency on advances paid to subsidiaries which is akin to the case of the appellant on hand,*

*"**14.** In the present case, while the nomenclature used for the expenditure incurred may have been different during AYs 1989-90 and 1990-91 where it was 'loans and advances' which were subsequently written off, the fact remains that it was an irrecoverable expenditure as far as the Assessee was concerned. In the present AYs as well, what was paid as 'compensation' by the Assessee to the very same subsidiaries was to recoup the business losses of the subsidiaries, and was again irrecoverable as far as the Assessee is concerned. Considering that the expenditure was in the nature of moneys advanced to the subsidiaries, it cannot be said that there is no intimate connection between the Assessee and the two subsidiaries as far as the business activities are concerned. In that sense the decision of the ITAT to allow the expenditure cannot be said to be inconsistent with the dictum of the Supreme Court in Travancore Titanium Products Ltd. (supra).It must therefore be concluded that the expenditure incurred by the Assessee in the present cases is not*

only incidental to the business of the Assessee but also necessitated or justified by commercial expediency".

33. In the case of ***Principal Commissioner of Income-tax v Natroyal Industries (P.) Ltd. [2024] 159 taxmann.com 448 (Bombay),*** *In this case Assessee-company had written off trade advance given by it during course of business to a group company, which was declared as sick company, and claimed deduction of same under section 37(1) read with section 28(i) - Assessing Officer held that write off of trade advance was a premature action and disallowed claim of deduction - Tribunal held that decision taken by assessee to write off trade advance was based on commercial sense and cogent reasoning and deleted disallowance.*

34. In the case of **Mahindra and Mahindra Ltd *v.* Commissioner of Income-tax [2023] 151 taxmann.com 332 (Bombay),** it was held that, (para 27)

27. In the case at hand also the expenditure incurred were wholly incurred for the purpose of commercial expediency because MMC was a group company of appellant and appellant was, as could be seen from the orders passed by BIFR, keen in the preservation of MMC and to keep it as a going concern. The nexus between appellant and MMC is also not disputed. The Assessing Officer failed to appreciate the claim in the proper perspective. Appellant participated in the rehabilitation scheme of MMC and lent rehabilitation assistance by paying amounts to MMC as well as by converting its existing ICDs with MMC into rehabilitation assistance. Appellant also provided a guarantee of Rs. 200 lakhs to IDBI for the rehabilitation assistance disbursed by IDBI to MMC. If there was no commercial expediency, there was no reason for appellant to incur these amounts or participate in the rehabilitation scheme of MMC. Appellant was also the managing agents of MMC and MMC was also a Mahindra Group Company It is certainly not necessary for the name of Mahindra and Mahindra to be used in the name of MMC to prove it was a group company These expenditure/debts should be treated as having been incurred for the

purpose of business and directly relatable to the business of the assessee and thus eligible for deduction as business expenditure/loss in assessee's return of business income. The expenditure incurred by appellant or the debts that were recoverable from MMC, in our view, therefore, would certainly be deductible expenditure under section 28 of the Act.

35.A reference is also made in its earlier decision in the matter of Mahindra and Mahindra Ltd. v. CIT [2023] 151 taxmann.com 332/456 ITR 723 (Bom.) this Court has referred to the judgment in CIT v. Malayalam Plantations Ltd. [1964] 53 ITR 140 (SC) wherein the Apex Court has held as under, (para 26)

"The aforesaid discussion leads to the following result: The expression for the purpose of the business' is wider in scope than the expression for the purpose of earning profits. Its range is wide: it may take in not only the day to day running of a business but also the rationalization of its administration and modernization of its machinery; it may include measures for the preservation of the business and for the protection of its assets and property from expropriation, coercive process or assertion of hostile title; it may also comprehend payment of statutory dues and taxes imposed as a pre-condition to commence or for carrying on of a business; it may comprehend many other acts incidental to the carrying on of a business.

However wide the meaning of the expression may be, its limits are implicit in it. The purpose shall be for the purpose of the business, that is to say, the expenditure incurred shall be for the carrying on of the business and the assessee shall incur it in his capacity as a per- son carrying on the business.

35. In the case of ***REFEX Industries Ltd. V Deputy Commissioner of Income-tax [2022] 139 taxmann.com 213 (Chennai - Trib.) held that (para 10)***

purpose of business and directly relatable to the business of the assessee and thus eligible for deduction as business expenditure/loss in assessee's return of business income. The expenditure incurred by appellant or the debts that were recoverable from MMC, in our view, therefore, would certainly be deductible expenditure under section 28 of the Act.

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However wide the meaning of the expression may be, its limits are implicit in it. The purpose shall be for the purpose of the business, that is to say, the expenditure incurred shall be for the carrying on of the business and the assessee shall incur it in his capacity as a per- son carrying on the business.

35. In the case of ***REFEX Industries Ltd. V Deputy Commissioner of Income-tax [2022] 139 taxmann.com 213 (Chennai - Trib.) held that (para 10)***

10. Finally, on the given facts and circumstances, we concur with the submissions of Ld. AR that the investments in subsidiaries were made in the normal course of assessee's business to make business more profitable. Therefore, the resultant loss suffered by the assessee was rightly claimed as revenue expenditure/business loss by way of write-off in the Profit Loss Account. We order so. Accordingly, we direct Ld. AO to allow these three write-offs as deduction as claimed by the assessee. The grounds thus raised stands allowed.

(Emphasis supplied)

36. The Bombay HC in an earlier case CIT v. Colgate Palmolive (India) Ltd. [2015] 59 taxmann.com 139 / 370 ITR 728 (Bombay HC) had held that where a taxpayer made an investment in its 100% subsidiary for business purpose, the loss on sale of investment would be treated as business loss.

The aforesaid decision had been upheld by the Supreme Court (SC) CIT v. Colgate Palmolive (India) Ltd. [2017] SLP No.25987/2015 (SC)

37. Honourable Supreme Court in the Case of Principal Commissioner of Income Tax -6 Vs Khyati Realtors Private Limited Civil Appeal No.672 of 2020:

The second issue relates to the admissibility of an expenditure as a deduction,which does not fall within the provisions of Sections 28 to 43, and is not capital in nature, but is laid out or spent exclusively for the purpose of business, under Section 37 of the Act. A similar provision existed under the old Income Tax Act, 1922 as in the case of provision for bad debts, by Section 10(2).

38. The assessee had relied on a few High Court judgments which have ruled that even if a claim for deduction under Section 36(1) is not allowed, the possibility of its exclusion under Section 37 cannot be ruled out. This court is of the opinion that as a proposition of law, that enunciation is unexceptional, since the heads of expenditure that can be claimed as deduction are not exhaustive – which is the precise reason for

the existence of Section 37. Therefore, in a given case, if the expenditure relates to business, and the claim for its treatment under other provisions are unsuccessful, application of Section 37 is per se not excluded.

39. The appellant places further reliance on the ratio of decision of the Hon'ble Supreme Court in the case of S.A. Builders Ltd. v. CIT [2007] 288 ITR 1/158 Taxman 74 (SC)wherein the Hon'ble Apex Court held as under :

"if there is any nexus between the expenditure and purpose of the business (which need not necessarily be the business of the assessee itself), the revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of the board of directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. No businessman can be compelled to maximize his profits"

40. The Appellant places further reliance on the ratio of the decision of Hon'ble Madras High Court in the case of Commissioner of Income Tax Vs Spencer and Co Ltd., [2014] 47 taxmann.com 55 (Madras), wherein it was held as under -

"On a careful analysis of the matter in the light of the materials available on record and the decisions cited, we are of the view that since the amounts in question were incurred by the assessee for the business expediency of the wholly owned subsidiary companies and when it is not disputed that there existed a business nexus between the assessee and the subsidiary companies, such expenditure should be treated as having been incurred for the purpose of business and directly relatable to the business of the assessee and thus eligible for deduction as business expenditure in their return of business income. The assessing authority and the Commissioner of Income-tax (Appeals) failed to appreciate the claim in proper perspective. The alternative argument of learned senior counsel for the assessee that the claim of written off bad debts should be allowed as business expenditure or business loss, in our considered view, merit acceptance. The Tribunal has given a cogent and convincing reasons for reaching a finding of fact that expenditure incurred was directly relatable to the business of the assessee and should be allowed as business expenditure"

8.21 More importantly, the appellant relied on the Hon'ble Jurisdictional Karnataka High Court's decision in the case of in the case of M/s. Ace Designers. The operative part of this judgement is reproduced below;

> *".... In the backdrop of aforesaid well settled legal position, the facts of the case in hand may be adverted to. From the perusal of the note annexed to the income filed before the assessing officer, it is evident that assessee had set up an establishment in USA during Financial Year 1992-93 for the exclusive purpose of marketing assessee's products and for promoting its business in US and Latin America. It has further been stated in the note that looking to the stringent norms of product liability in US market, the assessee decided to have a separate Wholly Owned Entity in the US having limited liability. The approval for aforesaid purpose was obtained from the Reserve Bank of India. The assessee therefore, invested funds in equity for meeting the revenue expenses of Wholly Owned Subsidiary Company's balance sheet. However, WOS could not perform upto company's expectations and therefore, it was decided to wind up WOS operations in USA. While granting approval for closure of WOS, RBI permitted the company to write off the whole of investment made in WOS and unrealized export receivables. The assessee therefore, made a claim to write off the loss of Rs.3,41,23,200/- as revenue expenses allowable under the provisions of the Act.*
>
> *8. Thus, from perusal of the aforesaid facts, it is evident that the issue involved in this appeal is covered by decision of Bombay High Court in Colgate Palm Olive (India) Ltd. supra, which has been upheld by the Supreme Court. The ratio of aforesaid decision is where the assessee makes investment in its 100% subsidiary for business purpose, loss or sale of investment has to be treated as business loss of the assessee. In the instant case, the assessee made investment in the shares of WOS for the business purpose i.e., for the enhancement of business activity of the assessee in global market which primarily related to business operation of the assessee. The WOS suffered losses and therefore the assessee wrote off the assessment of Rs.3,41,23,200/- as business loss. The investment was made for the purpose of extension of business activity and not with a view to creating capital asset in the form of holding shares. It is also pertinent to note that the assessee never acquired any capital asset or expenditure of enduring benefits to WOS and there is no relinquishment or transfer of capital asset to any third party.*
>
> *In view of preceding analysis, the first substantial question of law is answered in the negative and in favour of the assessee. It is not necessary for us to answer the remaining substantial questions of law in view of our answer to the first substantial question of law. In the result, the order of the Tribunal dated 14.12.2012 to the extent of the findings contained against the assessee is quashed."*

The AO has not accepted the judgement by distinguishing it as below

"Assessee had made investment in equity of its wholly owned subsidiary; subsidiary was wound up it is loss on sale of investment"

However it can be seen that both *the whole of investment made in WOS and unrealized export receivables*have been allowed to be written off.

Therefore, respectfully following the principles as enunciated in the Hon'ble Jurisdictional Karnataka High Court's supra it is decided as under.

8.22 Based on facts of the case as discussed above and the various judicial pronouncements it can be seen that advances paid to the subsidiary is

1. Wholly for the purposes of business:

(i) The appellant has transferred one of the entity business to its subsidiary for operational reasons. Therefore, there is business nexus.

(ii) Income from subsidiary has been offered as business income in earlier years.

(iii) The appellant has made capital contribution of Rs. 150 Crores in its subsidiary. Therefore, to safe-guard this, advances made are for business of the appellant.

2. Not capital in nature.

The assessee invested Rs. 150 crores in its wholly owned subsidiary. Apart from this, it has advanced moneys for the dayto day operations of its subsidiary. The assessee also has fairly demonstrated that the income on sale of shares of its subsidiaries have been consistently offered as business income in the previous years.therefore it can be seen that said advances are not capital in nature.

3. Not personal expenses of the assessee.

This is fairly evident from the facts of the case and it is also not the case of the assessing officer.

4. Whether incurred during the year

The assessing officer has done a thorough analysis of the case and has observed that there is no valid reason for stating these advances become irrecoverable during the year. The relevant portion of the assessment order is as below:

"Further the assessee has not supported with any reasoning why the amount became irrecoverable during the AY 2020-21, the assessee has not submitted any evidence to support that how the expenditure could be considered as accrued during the year. On verification of ledger account of ARHPL, the entire year there is consistent transaction of amount being given and amount being received by the assessee, hence it is a running account wherein the assessee lends the amount whenever the subsidiary requires funding and receives back the amount whenever the subsidiary has funds."

8.23 With respect to the above contention of the AO, the appellant during the course of appellate proceedings has submitted as follows:

"As explained earlier outbreak of covid 19, pandemic, Circa 2019-20, the hospitality industry took a big jolt / hit owing to worldwide restriction on travelling and tourism related activities has resulted in further strain on ARHPL, this has been witnessed across the globe.

Further to submit that, the transaction is revenue neutral as the same amount is offered by ARHPL as revenue no adverse implication to the revenue per se.

In the case of the appellant Covid outbreak and lockdowns was a last nail on the coffin meaning that the hope of any further recovery dashed with suspension of travel globally and closure of business indefinitely for a period of two years plus , hence the decision of the Partners to write off advances and investments made to ARHPL was taken on impenitent crystallization of the liabilities during the financial year 2019-2020. Even though there is a negative net worth from the past previous years

something extra in the form of Covid-19 outbreak during the financial year 2019-2020 which is the triggering event for arriving at the conclusion that the amounts will not be recovered and hence the appellant decided to write off the advances which is not recoverable during the financial year 2019-2020.
The moment debts have been written off in the books, it is to be allowed without expecting the assessee to demonstrate whether debts have actually become bad or not same is held in favour of the assessee in Shreno Ltd and BinaniCementcase referred hereinafter."

8.24 Apart from the above written submissions, the appellant also relies on following judicial pronouncements:

44. The appellant places further reliance on the ratio of decision of the Hon'ble Supreme Court in the case of S.A. Builders Ltd. v. CIT [2007] 288 ITR 1/158 Taxman 74 (SC)wherein the Hon'ble Apex Court held as under :

"if there is any nexus between the expenditure and purpose of the business (which need not necessarily be the business of the assessee itself), the revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of the board of directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. No businessman can be compelled to maximize his profits"

45. The Appellant places further reliance on the ratio of the decision of the Hyderabad Tribunal in the case of Gulf Oil Corpn. Ltd v Assistant Commissioner of Income-tax, Circle 2(3), Hyderabad [2012] 24 taxmann.com 325 (Hyd.), wherein it was held as under -
for the purpose of' protecting the interests of business of the assessee. [Para 21]

The advance made by the assessee to EECL is incidental to carrying on the business by the assessee itself and, consequently, the borrowed money should be considered as having been utilized for the purpose of business of the assessee. The advance, thus, having been made in the normal course of business of the assessee, when written off, has to be held as falling in the revenue field, and, consequently, such amounts of advances written off, are allowable as deduction either as bad debt or as business loss, incidental to carrying on the business by the assessee. [Para 19]

In the light of the above discussion, applying the ratio of the Apex Court in the case of S.A. Builders Ltd. (supra), we allow the claim of the assessee for deduction

of Rs.1,41,21,000 being advances given by the assessee to its subsidiary company, M/s. EECL, since the same is written off as irrecoverable, consequent upon the latter company having been ordered to be would up by the BIFR. However, the company was not would up. Assessee's grounds on this issue are allowed [Para 20]".

(Emphasis supplied)

46. The Appellant places further reliance on the ratio of the decision of Hon'ble Gujarat High Court in the case of Principal Commissioner of Income Tax vs Shreno Ltd., [2021] 127 taxmann.com 813 (Gujarat), wherein it was held as under -

21. Dealing with this issue, the ld. CIT(A)has held that it was a genuine business transaction. The assessee has made huge advance of Rs. 22 crores. It has share capital of Rs. 2 crores in this concern, and everything will be at risk if subsidiary is not being revived. Thus, genuineness of the advancement in the shape of ICDs was not in doubt. These were for the purpose of business. The assessee has shown the interest income of Rs. 738 lakhs from F.Y.2008- 09 to F.Y.2010-11. This amount was offered for taxation. If some balance outstanding remains, and written off in the accounts, then it is not for the Revenue to verify the genuineness or to ask the assessee to show whether debts have actually been become bad or not. The moment debts have been written off in the books, it is to be allowed without expecting the assessee to demonstrate whether debts have actually become bad or not.

A reliance can be made to the decision of Hon'ble Supreme Court in the case of TRF Ltd. 230 CTR 14 (SC). It is altogether irrelevant, whether QFL actually paid tax or not. If a liability has ceased, then it will be added back in the taxable income of the QFL. Now, if that concern was suffering huge loss, then that cannot be the reason to disallow claim of the assessee. If this type of logic is being accepted, then every business organization was required to show profit only. This is a misplaced notion at the end of the ld. CIT(A) for rejecting the claim of the assessee. We allow this ground of appeal, and delete disallowance of bad debts. In the other words, claim of bad debt at Rs. 170.91 lakhs is allowed. "

Emphasis supplied

8.25 On a careful analysis of the facts of the case, it is seen that the trigger point for the appellant to write off the advances given to its subsidiaries was the Covid lockdown because of which the hospitality industry suffered huge losses.

The appellant has submitted the Board resolution wherein reference is made to the lock down forced by Covid because of which the recovery of these loans has become impossible. Further, judicial pronouncements also buttress the argument of the appellant that *"the moment debts have been written off in the books, it is to be allowed without expecting the assessee to demonstrate whether debts have actually become bad or not"*.

8.26 Therefore, it can be seen that the advances written off is allowable u/s. 37(1) of the Act as all the conditions are met considering the facts of the case.

8.27 More importantly in the case on hand, corresponding income equivalent to the write off in the appellant's books has been offered as income in the subsidiary's hands, as a result of which accumulated losses of the subsidiary have been wiped off resulting in a positive networth. As a result of this, disallowance of the write off in the appellant's hands would amount to the double addition.

Therefore, based on the above analysis, it is held that write off of advances given to the subsidiaries by the appellant is allowable expenditure u/s 37(1) of the IT Act.

8.28 Therefore, the AO is directed to allow the same. The ground of appeal no. 6 filed by the appellant is allowed.

12. The ld. AO aggrieved with the above order is in appeal before us. Ground No.1 is general in nature. As per ground no.2, the AO contends that the advance given to the subsidiary having not become bad as subsidiary was mainly repaying and the outstanding was reducing year on year. As per ground 3, the allowance u/s. 37 is

challenged while stating that these are capital advances and therefore given on account of transfer of land and licences to subsidiary by the assessee. Ground 4 challenges the allowance u/s 37 for the reason that advances were written off in the books of account, such condition applies only to section 36. Ground 5 challenges that merely because subsidiary has offered the amount as income, that amount written off and claimed by the assessee, could not be a ground to allow the claim in the hands of assessee.

13. The ld. CIT(DR) vehemently supported the order of the ld. AO and submitted a brief synopsis dated 04.12.2024 as under:-

GOA No. 1-6 (APPEAL BY REVENUE) - GOA OF REVENUE BE UPHELD AND ORDER OF Ld.CIT(A) MAY PLEASE BE SET-ASIDE FOR THE FOLLOWING REASONS :

I. WRONG APPRECIATION OF FACTS BY Ld. CIT(A) (Kindly Refer PARA 8.13(1), PARA 8.17 & PARA 8.19 of order of Ld. CIT(A)) -

(a) Appellant is into construction business and subsidiary (ARHPL) is into hospitality business.(Kindly Refer PARA 1, PARA 6, PARA 6.1 & PARA 6.2 of order of A.O)

(b) Advances "ARE NOT RELATED TO BUSINESS ACTIVITY OF APPELLANT"

(c) No accounting principle permits write-off merely because net worth of borrower has become negative.(Kindly Refer PAGE 7 of order of A.O)

(d) Subsidiary (ARHPL) was showing cash profits.(Kindly Refer PAGE 7 of order of A.O)

(e) Repayments were made by subsidiary AS THERE WAS CONSTANT REDUCTION IN OUTSTANDING BALANCES. (Kindly Refer PARA 6.6 on PAGES 10,11 & 12 of order of A.O)

(f) No evidence filed before AO/CIT(A) FOR BASIS OF WRITE-OFF of Rs.468.81 crores .(Kindly Refer PARA 6.8 ON PAGE 12 & 13 of order of A.O)

II. GLARING OMISSION BY Ld. CIT(A) OF CRUCIAL EVIDENCE BROUGHT ON RECORD BY A.O – NO COMMENTS MADE BY Ld. CIT(A)

(a) The appellant had received an amount of Rs. 469.78 crores for additional saleable area sanctioned during the current A.Y. 2020-21 under the share sale agreement dated 05.04.2017. As this amount was required to be offered to tax, the appellant wrote off the advance of Rs.468.80 crores given to the subsidiary to avoid payment of taxes. The Ld.CIT(A) has not examined this issue as there is no mention of this crucial evidence brought on record by A.O.

(b) Therefore, the order of Ld.CIT(A) suffers from failure to examine all details brought on record by the A.O in the assessment order dtd. 20.09.2022.

III. DECISION OF Ld.CIT(A) IN PARA 8.26 IS IN CONTRAVENTION TO THE PRINCIPLE LAID DOWN BY HON'BLE SUPREME COURT

(a) The conclusion made by Ld.CIT(A) in PARA 8.26 on the basis of which the addition made by the A.O was deleted is that the income equivalent to the write-off in the appellant's book has been offered as

income in subsidiary's hand and the disallowance made in the appellant's hands would amount to double addition is against the decision rendered by Hon'ble Supreme Court in the following case, **which are applicable to the case of appellant too**, where in it is held that-

i. **loan liability is on CAPITAL ACCOUNT and is not in the nature of income.**

ii. **It is "NOT A TRADING LIABLITY".**

iii. **There as no allowance or deduction claimed by the assessee in any assessment for any year in respect of loss, expenditure or trading liability.**

iv. **Therefore, the justification rendered by Ld. CIT(A) is not in accordance of the 2018 decision of Hon'ble Supreme Court, which already became law of the land when Ld.CIT(A) rendered his decision in 2024**

"CIT Vs Mahindra and Mahindra Ltd. [2018] 93 taxmann.com 32 (SC)" (PARA 15.16 & 17)

(b) Therefore the conclusion made by Ld.CIT(A) in PARA 8.is erroneous and accordingly the order of Ld.CIT(A) deserves to be set-aside on this account too.

IV. Accordingly, as the order of Ld.CIT(A) suffers from wrong appreciation of facts, non-consideration of important evidences brought on record by A.O and wrong application of law, **it is prayed that the order of Ld.CIT(A) be set-aside and order of A.O be UPHELD.**

14. In her written submissions, the ld. CIT(DR) relied upon the decision of Hon'ble Supreme Court, specifically on para 15 to 17 of the decision in the case of CIT v. Mahindra & Mahindra Ltd., 404 ITR 1 (SC). Mainly the contention is that there is a difference between trading liability and other liabilities and same corollary to be drawn for loan given on a capital account and on a trading account. Thus, the claim of the ld. CIT(DR) is that the ld. CIT(A) deleted the disallowance by wrong appreciation of facts and glaring omission of the ld. CIT(A) in ignoring the crucial evidence brought on record by the ld. AO for the reason that assessee was to pay tax on income and therefore to reduce that particular income, this amount is written off and shown as allowable claim so as to reduce payment of taxes. Therefore she supported the order of the ld. AO and submitted that the disallowance deleted by the ld. CIT(Appeals) is incorrect.

15. The ld. AR assailing the order of the ld. AO and supporting the appellate order of the ld. CIT(A) filed a paperbook containing 753 pages along with written synopsis and event chart. The ld. AR also referred to several judicial precedents in caselaw paperbook compilation of 574 pages. First referring to list of dates & events

chart, the ld. AR submitted that on 1.4.1989 the assessee firm was converted from proprietary concern to partnership form. On 26.8.1996 assessee acquired various land parcels to construct an infrastructure hotel project. Subsequently various approvals were also obtained by the assessee for setting up the hotel. It also entered into agreements with another company for management and setting of hotel project. On 11.11.2009, assessee transferred hospitality business to AHPRL. In 2010 Consortium of Banks lent Rs.395 crores to AHPRL. The assessee also contributed Rs.150 crores towards share capital and also advances given to that company of Rs.468.80 crores. The partners of the assessee firm written off the above amount on 16.3.2020 by passing the resolution and therefore on the above events, the amount was written off by the assessee. The ld. AR referred to the written submissions containing 66 pages to support his contention.

16. The ld. AR firstly submitted that ground nos. 3 & 5 should not be admitted for the reason that by raising these grounds, the appellant is trying to improve the case of the ld. AO which is not permitted. He submitted that grounds 3 & 5 are referring to capital advance and allowing the claim of assessee for the reason that amount is offered by the subsidiary as income in its hands. It was the claim of the ld. AR that the AO disallowed the claim u/s. 37 for the reasons mentioned in page 13 of the assessment order and those reasons are not discussed at all which are raised in ground nos. 3 & 5. He submits that there is an attempt by the AO to improve upon the case of the AO. He referred to the decision of M/s. Balaji Trust in ITA No.5139/Mum/2017 dated

25.11.2021 to support his case. Thus he submits that grounds of appeal nos. 3 & 5 should be dismissed as not maintainable.

17. With respect to other grounds, he submits that the claim of assessee is allowable u/s. 37(1). He submits that the business of the assessee is conducted by a subsidiary company by advancing funds to that company. It represents extension of assessee's business and therefore business of the assessee and business of the subsidiary has a close nexus and proximity. He further submits that business of the assessee and subsidiary had the commercial sense of continuous cash flow, appreciation in asset value and diversification of business. He submits that despite having several advantages it resulted into continuous losses resulting in erosion of net wealth of the subsidiary company. The assessee continued to lend the fund to the subsidiary and also stood as guarantor for the bank funds and loans to the subsidiary. He referred to the annual accounts of the subsidiary to show that as on 1.4.2019 the negative net worth of subsidiary company was Rs.375.67 crores and therefore a sum of Rs.468.80 crores being portion of the existing advances was written off, thus has made the negative net worth of the subsidiary into a positive net worth of Rs.52.91 crores. Had this not been done, the subsidiary could be taken to liquidation by the lender, also would have resulted in to the invocation of the guarantee of the assessee. He submitted that assessee has established the write off of the advances given to the subsidiary was in the normal course of business, out of commercial expediency and was incurred wholly and exclusively for the purpose

of the business and therefore the claim of the assessee is allowable u/s. 37(1) of the Act.

18. He also submitted that the allegation of the AO that write off of the advances to subsidiary was made with an intention to avoid payment of taxes by the assessee on account of gain is unfounded. He tabulated the total Profit & Loss account for the last 10 years and submitted that there is no unexpected income or charge earned by the assessee. He submitted that income derived from transaction of share purchase agreement dated 5.4.2017 was already offered by the assessee as income in FY 2018-19 and 2019-20 and therefore did not have any impact in AY 2020-21 at all.

19. He further submitted that if the above business of hospitality was carried out by the assessee in its own name and not through the wholly owned Special Purpose Vehicle of the subsidiary company, such loss would have been recorded in the books of assessee and could be allowable for set off against other income. Therefore write off of the advances is a revenue neutral transaction which the ld. AO failed to appreciate.

20. He submitted that the decision relied upon by the ld. AO in the case of Hyderabad Bench of the Tribunal is on different facts and he tabulated 10 reasons to submit that the decision in that case was on different facts and therefore does not apply.

21. The ld. AR specifically referred to the decision of the Hon'ble Rajasthan High Court in the case of Vaibhav Global Ltd., 138 taxmann.com 506, wherein on identical facts and circumstances, deduction was allowed. He further submitted that the revenue's SLP against that decision has been dismissed by the Hon'ble Supreme Court. He further referred to the decision of Binani Cements Ltd. of Hon'ble Calcutta High Court reported in 60 taxmann.com 384 and Industrial Development Corporation of Orissa Ltd. (14 taxmann.com 298) (Ori). He further relied on several other judicial precedents.

22. In the end, he submitted that the issue is also covered by the decision of Hon'ble Karnataka High Court in the case of Ace Designers Ltd., 120 taxmann.com 321 wherein relying upon the decision of Hon'ble Bombay High Court in the case of Colgate Palmolive Ltd. 59 taxmann.com 139 write off of the investments in subsidiary was allowed as business losses.

23. Accordingly he submitted that there is no infirmity in the order of the ld. CIT(Appeals) in allowing the claim of assessee u/s. 37(1) of the Act. Thus he submitted that appeal of the revenue deserves to be dismissed on this ground.

24. The ld. CIT DR in rejoinder reiterated and relied upon her written submission and reasons given by the ld. AO in assessment order.

25. We have carefully considered the rival contentions and perused the orders of the lower authorities with respect to claim of allowability of

amount written off by assessee in part with respect to advances given to Adarsh Realty and Hospitality private Limited of Rs 468 Crores.

26. Briefly stated the facts of the case shows that assessee is a partnership, carrying on the business of property development, builders, contractors and subcontractors for construction, designing and in the commission thereof, business of property development members contractors for construction designing investment in special purpose vehicle private limited companies etc. Assessee is into the business of property development creating infrastructure, and furtherance of business to create hotels, restaurants; technology parks, commercial office places, residential infrastructure and other property development. The assessee has invested in special purpose vehicle for extension of its business to carry out the creation of infrastructure facilities and creating branded hotels, restaurants, commercial properties etc. Assessee is stated to have invested into such special purpose vehicles based on the commercial expediency to further business objectives related to the business operations of the firm. The firm also over and above investing in equity capital of the special purpose vehicles, extended loans and advances to support the business of SPvs.

27. Assessee has one such special purpose vehicle namely Adarsh reality and Hospitalities Limited with a share capital of ₹ 15 crores and a loan of ₹ 746.15 crores. This company has created infrastructure hotels and tied up with the brand of hotels to enhance its business. As

on 31st of March 2020, the assessee holds 99.826 percentage in the equity share capital of Adarsh reality and hotels private limited represented by it managing partner. This company was in fact established on 26th day of August 1996.

28. Further the assessee during financial year 2002 – 03 to 2005 – 06 to construct and infrastructure project for Hotel acquired various land parcels . Subsequently, the assessee also obtained various approvals from the competent authorities for setting up of a five-star category hotel. For this, assessee entered into a memorandum of understanding and agreement with a Hong Kong-based company to set up and manage the Hotel project in 2005. Somewhere in 2009 the assessee transferred the hospitality business to the Adarsh reality and hotels private limited along with land and all such licenses and approval. Consortium bank funding of app. Rs 395 crores were also obtained. In addition to external funding, the assessee also advanced substantial amounts in the form of loans and advances from time to time.

29. As the hotel projects could not breakeven, up to financial year 2019 – 20 it incurred consistent losses. As on 31st of March 2019 the cumulative loss resulted in the negative net worth of the company of ₹ 375 crores eroding the capital base of that company. Thus, in view of the negative net worth of Rs 375 crores and further financial loan of the banks to the tune of ₹ 385 crores resulted in default for payment of instalments of bank loan.

30. As even the bank loans could not be repaid in time, in view of sluggish business, the assessee has written off the loans and advances to the tune of ₹ 460.80 crores given to that company as not recoverable business advance. This was claimed by the assessee as an expenditure/ loss eligible for the deduction. This is to the extent of 60% of such advances and investment in that company.

31. Meanwhile as the borrower company has a running account with the assessee, it paid cost recharge expenses and certain expenses to the assessee, which are part of income of the assessee in respective financial years. Assessee also paid directly to the vendors and service providers of hotels, and same was recovered by assessee from borrower way of debit note which was credited in the running account of the debtor and credited as the income of the assessee company. Therefore, the assessee did receive certain sums from the borrower company which were offered as income of the assessee. This fact has not been disputed by the revenue.

32. During assessment proceedings, the assessee submitted the various details and asked the learned assessing officer to grant it as a deduction under section 37 (1) of the act or as bad debt. The learned AO disallowed the claim of the assessee as business loss holding that (i) whether the loss has been incurred during the year or not is not shown, (ii) borrower has started having cash profit, (iii) borrower has started even repayment over a period of 4 years, (iv) there is no

valid basis for such write off. Thus, the claim of the assessee was denied.

33. The learned assessing officer further held that because of some income arising from the assessee during the year which would have entailed payment of taxes, the assessee has written off this amount to avoid such payment of taxes.

34. Aggrieved with the above order the assessee preferred an appeal before the learned CIT – A allowed the claim of the assessee.

35. The learned departmental representative categorically challenges the appellate order stating that the learned CIT – A has recorded incorrect facts that assessee is in construction business and hospitality business therefore the advances are related to the business activity of the assessee. According to the revenue the advances given by the assessee company are not related to or have any nexus with the business activity of the assessee and therefore such advances written off could not be considered eligible for deduction. However, we find that the Adarsh reality and hotels private limited was incorporated as 100% owned private limited company of the assessee on 26/8/ 1996. Prior to that in 2002 – 2004 and 2005 the assessee has acquired various land parcels to construct infrastructure hotel. The assessee also obtained various approvals from the competent authorities for setting up the new infrastructure hotel. A memorandum of understanding was also entered into by the assessee for setting up and management of the hotel. Subsequently on 11/11/2009, the assessee transferred the

hospitality business to that company along with land and all licenses and approval. This clearly shows that the assessee was having the hospitality business which was subsequently transferred to the borrower company. Further advances given by the assessee to that company along with the share capital and clearly related to the business activity of the assessee. Therefore, there is no infirmity in the order of the learned and CIT – A holding that advances given by the assessee to the above company has nexus with the business of the assessee.

36. The second objection of the revenue was that though the net worth of the borrower has become negative but that does not permit allowance of write-off of such advances. It is true that merely because the borrower has negative net worth, if the advances are written off, those should not be allowed to the assessee as deduction. Similarly, when the borrower starts showing cash profits it is not always true that the allowances for losses or bad debt are not allowable to the assessee. Subsequent repayment of the party cannot also be a deciding factor for claim of losses or bad debts. If the assessee does not have any chance of recovery of the loans or advances given by the assessee company to the borrower, the assessee is entitled to write off such advances and claim either as bad debts or as a business loss provided it satisfies the condition laid down in the Income tax Act.

37. Further the learned assessing officer was of the view that assessee has received an amount of ₹ 469.78 crores as additional income during the

assessment year 2020 – 21 and therefore as this amount is chargeable to tax, assessee was required to pay income tax, to avoid payment of such income tax, assessee has written of the above amount of loans and advances to the subsidiary company and claimed it as an allowable loss or expenditure. In response to this the assessee has clearly stated that that receipt from the sale of shares is not in the nature of any unexpected win as for earlier years also the assessee has received ₹ 320 crores, and these advances could have been written off in that year also. It was also stated that the income is arising to the assessee in view of share purchase agreement dated 5/4/2017. Income arising from the above share purchase agreement was partly offered to taxation in assessment year 2019 – 20 and party was to be offered in this assessment year. Therefore, it is not correct that the write-off of the losses on claim of the assessee is to avoid payment of taxes.

38. We further note that the learned and CIT DR has stated that that such loan liability is on capital account and not a trading liability. To Support this contention, the learned CIT DR relied upon the decision of the honourable Supreme court in case of Mahindra and Mahindra Limited (2018) 93 taxmann.com 32 citing paragraph number 15 – 17 of that decision. We have carefully considered and found that the above decision was squarely on the issue of taxability of income on account of waiver of loan and is in an altogether different context and does not deal with issue of allowance of business losses or bad debt. Further the fact shows that income arising on sale of shares of SPVS, is always offered by the assessee as business income and not

capital gains. Therefore this argument of the ld. DR does not hold any water.

39. No further infirmities could be pointed out by the ld. CIT DR in the appellate order passed by the ld. CIT (A) in her written submission.

40. Now further examining the order of the ld. CIT (A) , we find that while allowing the claim of the assessee, he has held that the loss arising to the assessee on account of write-off of the above advances is emanating from the business of the assessee for the reason that the assessee has transferred hotel business after purchasing the land and licenses/ approvals, entering into management agreement with an Hong Kong-based company, incorporated a subsidiary, introducing capital contribution and loan in that SPV. Therefore, the loans and advances and investment of the assessee is for the purposes of the business of the assessee.

41. With respect to whether loss incurred by the assessee is incurred by the assessee during the assessment year, the learned CIT – A in paragraph number 8.23 has categorically recorded the fact about slowdown in the tourism industry due to pandemic globally , reaching the conclusion by the assessee on 16 March 2020 that the amount of advances given to the company should be written off by a resolution of the partners passed during this year. Therefore the incident of incurring of the loss resulting into write-off happened during this assessment year.

42. Honourable Karnataka High Court had an occasion to consider identical issue in case of case of Ace Designers Ltd vs Additional Commissioner Of Income Tax [2020] 120 taxmann.com 321 (Karnataka) where a company engaged in the business of manufacturing and export of computerised numerically controlled machine claimed write-off of the investment in subsidiary company was allowed following decision of honourable Bombay High Court in case of Colgate-Palmolive India Ltd 59 taxmann.com 139 holding that where the assessee makes an investment in its hundred percent subsidiary for business purposes, loss on sale of investment has to be treated as business loss of the assessee. The facts of the present case are also pari materia same as assessee has by writing of the investment in subsidiary has claimed such write off as business loss.

43. Further in case of the decision of the honourable Rajasthan High Court in case of Principal Commissioner Of Income Tax versus Vaibhav Global Limited [151 taxmann.com 114] [Rajasthan] where the issue arose that when the loss arises on account of permanent diminution in value of the investment made in subsidiary company in order to expand business being driven by the business expediency is allowable as a revenue expenditure under section 37 (1) of the act or not. The honourable High Court held it to be allowable under section 37 (1) of the act as a business loss. In the present case also the writing of the amount given by the assessee to the subsidiary company written off in books of accounts of the assessee company would also be

entitled on the same corollary as allowable deduction under section 37 (1) of the Act.

44. Even the alternative claim allowable as bad debts, Honourable Supreme Court in case of Khyati Realtors private limited in civil appeal 672 of 2020 paragraph number 22 has categorically held that even if the claim for deduction under section 36 is not allowable, the alternative claim under section 37 can also be entertained. Thus, the claim of the assessee either as bad debt or as a business loss can be allowed.

45. Further the claim of the assessee can also be allowed as a deduction as bad debt because of the reason that assessee has offered part of the amount as income which is demonstrated by submitting the Ledger account of the borrower company at page number 400 – 409 of the paper book part of the submission before the assessing officer dated 20 July 2022. Therefore, the claim of the assessee can also fall as eligible for deduction under the provisions of section 36 (1) (vii) of the act as 'part of that debt' that has already been offered by the assessee as income from subsidiary. This satisfies the provisions of subsection (2) of that section.

46. Honourable Bombay High Court in case of CIT V Pudumjee Pulp & Paper Mills Ltd. 2015] 63 taxmann.com 283 (Bombay) has held that:-

> **"12.** So far as first part of Section 36(2)(i) of the Act is concerned, *i.e.* (a) above, we find that the Respondent-Assessee had during the earlier Assessment Years offered to tax an amount of Rs. 42.65 lakh received as interest on the deposit made with M/s. GSB Capital Market Ltd. The Appellant (sic.) had since Assessment Year 1998-99 claimed an amount of Rs. 49.82 lakhs as doubtful debts from M/s. GSB Capital Market Ltd. This consisted of the aggregate of principal and interest payable by M/s. GSB Capital Market Ltd. It was in the subject Assessment Year that a settlement was arrived at between the parties and the Respondent-Assessee received Rs.15 lakhs from M/s. GSB Capital Market Ltd. and the balance amount of Rs. 34.82 lakhs being non-recoverable was being claimed as bad debts by writing off the same in its books of account. It would thus be noticed the amount of Rs. 34.82 lakhs which constitutes partly the principal amount of the inter-corporate deposits and partly the interest which is unpaid on the principal debt. The Assessing Officer's contention that amount of Rs. 34.82 lakhs was not offered to tax earlier and, therefore, deduction under Section 36(2)(i) of the Act is not available, is no longer *re-integra*. This very issue came up for consideration before this Court

in *Shreyas S. Morakhia* (*supra*) wherein the assessee was a stock broker and engaged in the business of sale and purchase of shares. The brokerage payable by the client was offered for tax. Subsequently, it was found that the principal amount which was to be received from its clients would not be received. The assessee sought to claim as bad debts not only the brokerage amounts not received but the aggregate of principal and brokerage amounts not received in respect of the shares transacted. This Court held that the debt comprises not only the brokerage which was offered to tax but also principal value of shares which was not received. Therefore, even if a part of debt is offered to tax, Section 36(2)(i) of the Act, stands satisfied. The test under the first part of Section 36(2)(i) of the Act is that where the debt or a part thereof has been taken into account for computing the profits for earlier Assessment Year, it would satisfy a claim to deduction under Section 36(1)(vii) read with Section 36(2)(i) of the Act. In fact, the Revenue also does not dispute the above provisions as no submission in that regard were made during the course of hearing before us."

47. Thus, the claim of the assessee to write off the amount advances of Rs 468 Crores to the subsidiary company is allowable under section 37 (1) of the act as well as under section 36 (1) (vii) of the Act.

48. Though ld. AR has relied up on the several judicial precedents, which we have considered while deciding the issue but same are not separately dealt with each of them as only the principle governing the allowability of claim of the loss is required to be decided, which was well enshrined in the decision of the honorable jurisdictional high court, which we have followed.

49. We have also noted the objection of the assessee with respect to the admissibility of ground number 3 and 5 of the revenue stating that those are not the issues on which the learned this allows the claim of the assessee and therefore the revenue is now raising a new ground and thus improving the case of the assessing officer. However, as we have already decided the issue on the merits of the case allowing in favour of the assessee, the objection of the assessee becomes merely academic.

50. Thus we do not find any infirmity in the order of the learned CIT – A allowing the appeal of the assessee by deleting the disallowance made by the learned assessing officer being amount written off by the assessee of advances given to its subsidiary company of Rs 468,80,84,462/- as business loss incurred by the assessee during the year, which is not a capital loss and also is a loss arising out of the business of the assessee.

51. In the result appeal of the learned assessing officer is dismissed on its merit and appeal of the assessee is also dismissed as withdrawn.

Pronounced in the open court on this 29th day of April, 2025.

Sd/-	Sd/-
(SOUNDARARAJAN K) JUDICIAL MEMBER	(PRASHANT MAHARISHI) VICE PRESIDENT

Bangalore,
Dated, 29th April, 2025.
/*Desai S Murthy /*

Copy to:
1. Assessee 2. Revenue 3. Pr. CIT 4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.