

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

**BEFORE : SHRI A.T. VARKEY, JUDICIAL MEMBER &
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

**ITA No. 5388/M/2009
Asstt. Year : 2004-05**

D.C.I.T. 14(1),
Mumbai.

vs. Bayer Bioscience P. Ltd.,
(Formerly M/s. Proagro
Seed Co. P. Ltd.), Bayer House,
Hiranandani Garden, Powai,
Mumbai.[PAN: AAACP 3459M]

**ITA No. 2685/Del./2009
Asstt. Year : 2004-05**

Bayer Bioscience P. Ltd.,
Bayer House, Central Avenues,
Hiranandani, opp. Galleria shopping
Arcade, Powai, Mumbai.
(Appellant)

vs. D.C.I.T., Circle 14(1),
New Delhi.

(Respondent)

Revenue by : Smt. Anima Barnwal, DR
Respondent by : Sh. Salil Kapoor, Advocate &
Ms. Ananya Kapoor, Advocate

Date of hearing : 01.03.2016
Date of pronouncement : 21.04.2016

ORDER

Per L.P. Sahu, Accountant Member:

These are cross appeals filed by the Revenue and the assessee against the order dated 16.03.2009 of Id. CIT(A)-XVII, New Delhi for the assessment

year 2004-05. The Revenue and the assessee have raised following grounds in their respective appeals:

Grounds raised in Revenue's appeal :

- "1. On the facts and circumstances of the case as well as in law, the Ld. CIT(A) has erred in deleting the addition on account of provision for special discount of Rs.1,13,30,942/- by not appreciating the Assessing Officer's view that the liability was not crystallized during the year.*
- 2. On the facts and circumstances of the case as well as in law, the Ld. CIT(A) has erred in giving relief in respect of bad debts written off to the tune of Rs.19,50,453/- ignoring the fact that the details showing when the amounts were credited as income and other documentary evidences in support of the claim were not produced before the Assessing Officer.*
- 3. On the facts and circumstances of the case as well as in law, the Ld. CIT(A) has erred in allowing depreciation on UPS to the extent of 60% instead of 25% as admissible on peripheral devices."*

Grounds raised in assessee's appeal :

- "1. That on the facts and circumstances the learned Commissioner of Income Tax (Appeals)-XVII (hereinafter referred to as 'Learned CIT(A)') erred in upholding order passed by the Ld. Assessing Officer which was bad in law.*
- 2. The Learned CIT(A) has erred both in facts and law in upholding the disallowance of the provision on sales return created by the appellant during the subject year amounting to Rs.22,73,735/-.*
- 3. Without prejudice to the ground No. 2, the learned CIT(A) has grossly erred both on facts and in law in not adjudicating on ground No. 4 that the provision on sales return of Rs.22,73,735/- should have been allowed as a deduction in the subsequent assessment year i.e. 2005-06.*
- 4. That the learned CIT(A) has grossly erred both on facts and in law in upholding the disallowance of the amount of bad debts/advances written*

off of Rs.690,000 during the subject year, treating the payment as capital in nature.

5. That the learned CIT(A) has grossly erred both on facts & in law in not allowing the appellant's claim of Rs.25,00,000 for payment towards license fees in the assessment year 2004-05 on the ground that said claim is neither raised in original return or revised return. In this regard, the Ld. CIT(A) failed to appreciate that allowance of Rs.25,00,000 was arising out of the assessment order passed by the Leaned Assessing Officer for the assessment year 2005-06".

2. Since both these appeals were heard together and arise out of the same order of the ld. CIT(A), hence, for the sake of convenience and brevity, both the appeals are being decided by this consolidated order. We first take up the appeal of the Revenue.

3. The brief facts relating to first issue raised by the Revenue, i.e., deletion of addition of Rs.1,13,30,942/- on account of provision for special discount, are that the assessee credited provision for special discount in its books of account for the above amount, as the seed companies have to pass on various discounts to distributors, retailers and consumers. The Company has offered discounts to its customers from 2% to 80% depending upon the season, crop pattern and other market dynamics. The Zonal sales team of the assessee declared various discounts to the marketing channel for different crops also. The discounts are based mostly on net sales and actual status of net sales is known only at the end of the season. The assessee provided discounts in its

books at the end of the financial year. The actual quantification of the crop-wise discount was done only post balance sheet, i.e., 31.3.2004, but prior to finalization of accounts. It was due to the fact that discounts were given at the end of the season passed on distributors' performance and entire information was not available as on 31.03.2004. During the assessment proceedings, based on actual data as received post March 31, 2004, subsequent adjustment were made to arrive at the actual special discount granted to the distributors in respect of the sales booked in financial year, the details of which were submitted before the AO (paper book pages 269, 277 to 289). The Assessing Officer disallowed the probable future expenditure on account of discount which is highly uncertain. The AO found that the Revenue expenditure can be allowed only when it is determined or as crystallized during the year. The contention of the assessee that creation of such provision is in common practice in the seed business is not acceptable due to the fact that the assessee itself has never claimed such provision in any earlier year. He accordingly disallowed the future discount and added back the same to the total income.

4. The learned CIT(A) allowed the claim of the assessee, stating that there was certainty that the assessee had to pay the discounts to various parties on the basis of discount schemes on the sales made during the year & it was only the exact calculation part of it, which was finalized before filing of the return.

He also considering the case laws relied upon by the AO as well as the Id. AR, noted that the ratio held by various courts on the issue of claim of provision for various expenditure is that the provision made by the assessee should be ascertainable. The Revenue has challenged the action of the Id. CIT(A) by way of ground No. 1 in its appeal before the Tribunal.

5. The learned Departmental Representative reiterating the contents of the assessment order, relied on the same and the case laws cited by the AO. The Id. AR, on the other hand, submitted that the provisions for special discount cannot be considered as adhoc or uncertain due to the following reasons :

- *Offering special discounts is a normal practice in the seed industry and the same was always provided for by BBSPL in the past. As a measure to align itself with the revenue recognition and accounting policy principles adopted by the Bayer Group, of which the appellant is a part, it has created the provision in the captioned AY.*
- *The appellant follows mercantile system of accounting. As per this system, liabilities attached to the sales, which can be determined with a fair degree of reasonableness are required to be shown in the Profit & Loss Account for that year. Following this principle, the appellant has debited the Profit & Loss Account with the provision for special discount.*
- *The provision for special discount is based on a salient discount policy and on the past practice of providing discounts to the dealers. Provision for discount is not an ad-hoc provision (i.e. not based on uncertain elements like rainfall, crop pattern of farmer's preferences), rather, provisions is based on amounts actually discharged by way of discount to distributors, though subsequently.*

- *In comparison to the 'provision for warranty', which has been consistently held as an allowable expense by many courts, the provision for special discount, as created by the appellant, is based on more realistic grounds as the same is directly related to sales of the appellant and has been discharged in the subsequent year.*
- *Further, this issue has been settled in the assessee's own case in the favour of the assessee by the Hon'ble ITAT, Mumbai for AY 2007-08 vide order dated 08.02.2012 wherein it has been held that the provisions has been made on reasonable basis (refer para 11 of the order).*
- *Further, assessee wishes to place reliance on the following rulings*
 - *Bharat Earth Movers vs. CIT (245 ITR 428) (SC)*
 - *Metal Box Company of India Ltd. vs Their Workmen (73 ITR 53) (SC)*
 - *Calcutta Co. Ltd. vs CIT (37 ITR 1) (SC)*
 - *Rotork Controls India Private Limited vs CIT (314 ITR 62) (SC)*
 - *CIT vs Vintec Corporation Pvt. Ltd. (278 ITR 337) [Delhi HC]*
- *Without prejudice to the above submission, in case your honour considers to not allow the expense for special discount in the relevant year under consideration (i.e. FY 2003-04), we humbly request before your honour to grant deduction of special discount in the subsequent year i.e. financial year 2004-05."*

6. After considering the rival submissions and going through the materials on record and the orders of the authorities below, we find that the Id. CIT(A) has made a reasoned order, which needs no interference. The assessee has submitted the details before the Id. Assessing Officer of discounts given (Paper Book page 277 to 289) before finalization of return of income. The assessee had finalized the accounts for the F.Y. ending 31.03.2004, but the quantification was not ascertained and the provision was made. The liability was certain at the balance sheet date and the assessee has also discharged its

liability before finalization of IT return. It means, it was a foreseen liability of the assessee. The ITAT in the case of the assessee has allowed the similar claim in A.Y. 2007-08 vide order dated 08.02.2012 (ITA No. 7123/Mum./2011). The observations of the Hon'ble ITAT are as under :

"11. Having heard the rival contentions and having perused the material on record, we are inclined to uphold the grievance of the assessee on this issue as well. Once the DRP holds that the provision has been made on a reasonable basis, a finding which cannot be challenged by the Assessing Officer, and is allowable in principle, its quantum cannot be reduced solely on the ground that in the subsequent year the entire payment is not made. So far as the admissibility of deduction for provision is concerned, once the provision is found to be reasonable, its deductibility has nothing to do with events of the subsequent year. An provision made in excess or in short, to bonafide errors- even if any, can result in corresponding adjustment in those years but it cannot affect admissibility of claim in the year in which is made. Learned Departmental Representative has contended that the provision cannot be allowed at all and has pointed out that the provision is not made on reasonable basis, but all these things are irrelevant now because the DRP has given a finding which cannot be challenged by the Assessing Officer. In view of these discussions, as also bearing in mind entirety of the case, we uphold the grievance of the assessee and direct the Assessing Officer to delete the impugned disallowance."

In view of all these facts, we uphold the order of the Id. CIT(A) on this issue and accordingly, ground No. 1 raised by the Revenue is liable to be dismissed.

7. The brief facts relevant to second issue are that during the assessment proceedings, the Assessing Officer found that sum of Rs. 26,40,456/- was debited in the profit and loss account as bad debts/advances written off. The

assessee was asked to justify the claim of bad debts and was further asked as to when such debts were credited to the profit and loss account along with supporting evidences. The assessee company filed the details as under :

<i>Particulars</i>	<i>Rs.</i>	<i>Description/Reasons for written off</i>
<i>A+E Consultants</i>	<i>690,000</i>	<i>Advances given to the A+E Consultants (i.e. Engineers and Architects) for a project to be undertaken by them with respect to construction of green house. As the project was discontinued, the same has been write off.</i>
<i>Balance written off</i>	<i>601,457</i>	<i>Un reconciled balance in bank accounts for amounts deposited by customers but not credited to the bank account (pertaining to customer deposits)</i>
<i>Balance written oil</i>	<i>380,303</i>	<i>Un reconciled balance in bank accounts for amounts deposited customers but not credited to the bank account pertaining to customer deposits including other sundry balances</i>
<i>Other sundry advances written off</i>	<i>309,503</i>	<i>Other Miscellaneous sundry balances written off</i>
<i>Ashok Kumar</i>	<i>10,000</i>	<i>Advance given for trial production which could not be recovered, hence written off.</i>
<i>Sher Pal Singh</i>	<i>38,500</i>	<i>-do-</i>
<i>Satish Kumar.</i>	<i>11,000</i>	<i>-do-</i>
<i>Vijay Pal Singh, Aligarh</i>	<i>8000</i>	<i>-do-</i>
<i>Chander Boss, Gurgaon</i>	<i>11,000</i>	<i>-do-</i>

<i>Bhupindcr Singh, Gurgaon</i>	<i>10,000</i>	<i>-do-</i>
<i>Anil Kumar Katiyar, FRKBD</i>	<i>10,000</i>	<i>-do-</i>
<i>Dev Pal Singh Rana, Agra</i>	<i>8,000</i>	<i>-do-</i>
<i>Mahavir Singh, A, Mandi</i>	<i>8,693</i>	<i>-do-</i>
<i>Ramji Lal Yadav, Morena</i>	<i>65,000</i>	<i>-do-</i>
<i>Ram Nivas Sharma, Morena</i>	<i>332500</i>	<i>-do-</i>
<i>Ram Lakhan Sharma, Morena</i>	<i>10000</i>	<i>-do-</i>
<i>Dewakar Parasher, Gwalior</i>	<i>28,000</i>	<i>-do-</i>
<i>Akshay Kumar, Bhind</i>	<i>10,000</i>	<i>-do-</i>
<i>Jagdish Sharma , Bhind</i>	<i>10,000</i>	<i>-do-</i>
<i>Keshav Sing Rajput, Gwalior</i>	<i>15,000</i>	<i>-do-</i>
<i>Ram Sewak Chouhan, Orena</i>	<i>17,000</i>	<i>-do-</i>
<i>Devilal Verma, Sheopur</i>	<i>12000</i>	<i>-do-</i>

<i>Patel Andaji Hariji, Gujarat</i>	<i>7500</i>	<i>-do-</i>
<i>Goswaimi Jaswant Puri, Gujrat</i>	<i>7,500</i>	<i>-do-</i>
<i>Parsana Jashanbhai Ambabhai</i>	<i>7,500</i>	<i>-do-</i>
<i>Choudhary Jeevanbahi, Gujrat</i>	<i>7,500</i>	<i>-do-</i>
<i>Mganbhai Manobhai Patel, Gujrat</i>	<i>7,000</i>	<i>-do-</i>
<i>Others</i>	<i>1,291,263</i>	<i>-do-</i>
<i>TOTAL</i>	<i>2,640,456</i>	

The Assessing Officer disallowed the claim stating that the assessee could not furnish the details as to when it was credited into the profit and loss account. The Id. CIT(A) has deleted the addition to the extent of Rs.19,50,453/- towards bad debts and upheld Rs.6,90,000/- stating that it was a capital expenditure. He also relied on the case law cited by the assessee in the case of M/s. Morgan Securities Pvt. Ltd. and M/s. Auto Motors Ltd of the jurisdictional High Court.

8. The learned DR relied on the order of the Assessing Officer. The Id. AR of the assessee, on the other hand, submitted the requisite details before the AO

(PB 180 & 208). He submitted that as per the assessee's business activities, he has given advances to the farmers for trial production of Rs.6,59,193/-. However, the farmers could not supply the seeds against advance despite all possible efforts nor the said advances could be recovered. A sum of Rs.6,01,457/- is related towards un-reconciled balance in the bank accounts for the amounts deposited by the customers, but not credited to the bank account (pertaining to customer deposit). The sum of Rs.3,80,303/- is related to un-reconciled balance in the bank accounts for amounts deposited by the customers, but no credit to the bank account (pertaining to customers deposits including other sundry balances). The above amounts have been written off due to it being directly related to the business loss. Rs.3,09,503/- is related towards other Misc. sundry balance written off. He stated that bad debts/advances were on account of non-recoverability of debtors in the ordinary course of business. The appellant is nowhere bound by legislature to establish that the debts have actually become bad. A mere write off of debts in the books of accounts is sufficient to claim the same as bad. The ld. AR relied on the Circular No. 551 dated 23.01.1990 of CBDT.

9. Having considered the rival submissions and perused the material on record, we find that the advances were given to the farmers before start of the farming season for buying back trial seeds produced by them in their farm

lands. On perusal of the records and submissions of the assessee, the same seeds were not suitable for sale in the market and hence, were not procured from the farmers. Therefore, the assessee has written off to the advance in the ordinary course of business, relating to such non-saleable seeds at the end of the year. Therefore, it fit to be allowed as business expenditure of Rs.6,59,193/-. However, as far as the remaining amounts of Rs.6,01,457/-, Rs.3,80,303/- and Rs.3,09,503/- are concerned, it is evident from record that the AO has given sufficient opportunities to the assessee to furnish basic details as to in which year, the entries were passed to substantiate the claim. The books of account of the assessee are audited by the Chartered Accountant. Therefore, the assessee could substantiate its claim before the AO, but he failed to do so. Therefore, in our considered opinion, the AO has rightly disallowed these amounts out of the claim of assessee and the findings of the Id. CIT(A) in this regard are liable to be reversed. Accordingly, this ground of Revenue deserves to be partly allowed.

10. Coming to the last issue involved in Revenue's appeal, the brief facts are that the assessee claimed depreciation on UPS at the rate of 60% considering the same as computer peripherals. The AO observed that the UPS is not integral to computers and is capable of being used independently, cannot be allowed to fetch depreciation as computer peripherals and therefore, applying

the depreciation @ 25% as applicable to plant and machinery, the total claim of depreciation of Rs.3,39,701/- on UPS was reduced by Rs.1,41,542/-. As such, total depreciation was allowed at Rs.2,97,13,838/- as against Rs.2,99,11,997/- claimed by assessee. The Id. CIT(A) deleted the addition.

11. Having considered the submissions of both the parties, we find that in view of several judicial pronouncements relied upon by the assessee, the Id. CIT(A) has rightly allowed the claim of the assessee in this regard. Hon'ble Delhi High Court in the case of CIT vs. Orient Ceramics and Inds. Ltd. (ITA No. 65 & 66 of 2011) has held as under :

"13. The third issue pertaining to depreciation on UPS arises only in the Assessment Year 2005-06. The assessee had claimed depreciation on UPS @ 60% whereas the AO had allowed it @ 25% and on this basis, disallowance of 1,470 was made. The issue now stands covered by the judgment of this Court in the case of Commissioner of Income Tax vs. BSES Yamuna Powers Ltd. (in ITA No. 1267 decided on 31.08.2010) wherein it was held that the depreciation @ 60% on such items shall be allowed.

12. Similar view has been taken in several other decisions, relied upon by the assessee. In view of this, we find no justification to interfere with the order of the Id. CIT(A) on this count. Accordingly, this ground of Revenue stands dismissed. In the result, the appeal of the Revenue is partly allowed.

13. Now adverting to the appeal of the assessee, the brief facts pertaining to first issue regarding provision for sale return of Rs.22,73,735/-, are that during the year under appeal, the assessee claimed a sum of Rs.22,73,735/- as provision for sales return. On being asked to explain the same, the assessee explained that the provision for discount and sales return was accounted for as a provision for expenses. These expenses were actually incurred during the previous year and accounted for on the basis of actual bills/details received after the balance sheet date and before closing and finalization of accounts. The Assessing Officer did not accept the contention of the assessee and made disallowance stating that the provision for sales return cannot be treated as expense in the first place and even if it is so considered, the same cannot be pertaining to the year in question as the sales return in the relevant year's sale are totally uncertain in view of the market dynamics etc. This is the provision for uncertain obligation and to that extent it is contingent. Even otherwise also, in accrual system of accounting an expenditure is allowable only when it is incurred for it has been crystallized. In the past, such provision was never created by the assessee. The Id. CIT(A) upheld the order of the AO.

14. The learned AR of the assessee submitted that the provision for sale return was accounted for as a provision for expenses and these expenses were actually incurred during the year. This provision for sales return is not merely

a adhoc provision and was determined/accounted for on the basis of actual bills/details received after the balance sheet date, but before closing/finalization of accounts. It was credited on the basis of information received in subsequent year with respect to sales made during the subject year. However, the actual quantification was done after the balance sheet date. Actual information was not available on the balance sheet date, i.e., 31.03.2004. During the assessment proceedings, party-wise details were produced before the Assessing Officer (PB 272, 303). The seed business is a seasonal business and the success of this business in a particular season, depends on monsoon/crop patterns/commercial crops and so on. Anticipating that the season would be good in all respects, seed companies sell the seeds to the distributors for onward sale to the farmers. In case of any contingency, the unsold stock would be returned back to the company by channel. This is an accepted practice in the seed industry. As per Accounting Standard 9, Revenue Recognition, issued by The Institute of Chartered Accountants of India, recognition of revenue in such circumstances depends on the substance of the agreement. For example, in the case of retail sales offering a guarantee of "money back if not completely satisfied" it may be appropriate to recognize the sale as well as to make a suitable provision for sales return, based on previous experience. Further, the appellant follows mercantile system of accounting. Accordingly, the appellant is required to

account for expenses on an accrual basis i.e. as and when the expenses have been incurred. In compliance with the above mentioned Accounting Standard and Accounting principle, the appellant has created a provision for sales return. The appellant has made such provision as a certain percentage of the sales, based on the past year sales return of various crops, strength of its product portfolio and market dynamics and not merely on adhoc basis. The same is reviewed during the season and updated as and when required. At the end of the season, when the accounting for actual sales return is made, the surplus sales return, if any, is reversed. Further, this issue has been settled in the assessee's own case in the favour of the assessee by the Hon'ble ITAT, Mumbai for AY 2007-08 vide order dated 08.02.2012 wherein it has been held that the provisions for sales returns is allowed.

15. The learned DR, on the other hand, relied on the orders of the authorities below.

16. After considering the rival submissions and perusing the entire material on record before us, we find that the issue under consideration is covered by the decision of ITAT, Mumbai Bench in the case of assessee in ITA No. 7123/M/2011 for the assessment year 2007-08 dated 08.02.2012 wherein the co-ordinate Bench has observed as under :

"16. Section 145 of the Income Tax Act, as it stands now, inter alia lays down that business income has to be computed "in accordance with the cash or mercantile system of accounting as regularly employed by the assessee". The only rider to this statutory requirement regarding method of accounting is that "the Central Government may notify, in the official gazette from time to time, accounting standards" and the applicable accounting standards will have to be followed by the assessee in the method of accounting followed. One of these mandatory accounting standard, notified vide notification no. 9949 dated 25th January 1996, inter alia provides that "provisions should be made for all known liabilities and losses even though the amount cannot be determined with certainty and represents only a best estimate in the light of available information". This approach requires all anticipated losses to be taken into account in computation of income taxable under the head 'profits and gains from business and profession'. Unlike in the pre amended section, as it stood before 1.4.1997, which provided that "in any case where the accounts are correct and complete to the satisfaction of the Assessing Officer but the method employed is such that, in the opinion of the Assessing Officer, the income cannot properly be deduced therefrom, then the computation shall be made upon such basis and in such manner as the Assessing Officer may determine", there is no enabling provision now which permits the Assessing Officer to tinker with the profits computed in accordance with the method of accounting so employed under section 145 and as long as the mandatory accounting standards are duly followed. It is not even Assessing Officer's case that the mandatory accounting standards have not been followed. This analysis of Section 145, read with applicable accounting standards, apart, even on first principles, deduction in respect of anticipated losses, as a measure of prudent accounting principles, cannot be declined. It is only elementary that the accountancy principle of conservatism, which has been duly recognized by the Courts, mandates that anticipated losses are to be provided for in the computation of income but it does not permit anticipated profits to be taken into account till the profits actually arise. Even an anticipated loss, even if it may not have crystallized in the relevant previous year, is to be allowed as a deduction in the computation of business profits. There is no dispute that sales have been returned in the subsequent year and this fact is known before the date of finalization of accounts. Therefore, there is no point in first taking into account income on sales, which never reached finality, and then accounting for loss on sales return in the subsequent year i.e. in which sales return did take place. In our considered view, the approach of the assessee is in consonance with the well settled accountancy principles and the Assessing Officer was not justified in rejecting the same. The disallowance for provision for sales return is, accordingly, deleted."

Respectfully following the above order, we find that the Id. Authorities below have wrongly disallowed the claim of provision for sale returns made by the assessee. Accordingly, this ground of appeal is allowed.

17. The facts relating to the issue of Rs.6,90,000/- claimed by the assessee as bad debt/advance, are that the advances for the above amount was given to the A+E Consultants (Engineers and Architects) for a project to be undertaken by them with respect to construction of green house. The project was discontinued and the amount paid to the architects could not be recovered which was claimed as bad debts/advance. The AO disallowed the same stating that it is an expenditure of capital nature and it could not be allowed as debts/advances written off. The Id. CIT(A) upheld the order of the AO stating that the same was capital in nature on account of the projects to be undertaken.

18. The learned AR of the assessee argued that it is well settled principle that the list of allowances enumerated in section 30 to 37 is not exhaustive and an item of loss or expenditure incidental to business may be deducted in computing 'profits and gains' even if it does not fall within any of the these sections. This is so because the tax is on 'profits and gains' and computed on

ordinary commercial principles. This was established by Privi Council case CIT vs. Chitnavis (59 IA 290/6 ITC 453) where a bad debt was held to be an admissible deduction though there was no special allowance for bad debts in 1922 Act as it then stood. Lord Russell delivering the judgment of the Board said :

"Although the Act nowhere in terms authorises the deduction of bad debts of a business, such a deduction is necessarily allowable. 'What are chargeable to income- tax in respect of a business are the profits and gains of a year; and in assessing the amount of the profits and gains of a year account must necessarily be taken of all losses incurred, otherwise you would not arrive at the true profits and gains. "

It was submitted that in Badridas Daga vs CIT (34 ITR 10) and Calcutta Co Ltd vs. CIT (37 ITR 1) the Supreme Court quoted the observations of Lord Russell and held that an item of loss or expenditure not falling within any of the express deductions may be allowed if it is deductible on ordinary principles of commercial accounting. The business losses, though they fall outside the purview of section 30 to 37 are allowable on ordinary commercial principles of computing profits, provided (i) the losses are of a non-capital nature and. (ii) they are not merely connected with the trade but are incidental to the trade itself. These principles were affirmed by the Supreme Court in Badridas Daga vs CIT (34 ITR 10), CIT vs Nainital Bank Ltd. (55 ITR 707) and Ramchandar Shivnarayan Vs CIT (111 ITR 263). As regards the deductibility of irrecoverable advances as business loss under section 28, the Id. AR relied

on the following judicial precedents to support that advances which have become irrecoverable, given in the course of carrying on business are an allowable deduction as a business loss while computing the profits of the business:

- (i). CIT vs. Mysore Sugar Co. Ltd (46 ITR 649)(SC)
- (ii). ACIT vs. Shantilal Balabhai (74 TTJ 506)(ITAT Ahd.)
- (iii). Gujrat Fluoro Chemicals Ltd. vs. JCIT (76 TTJ 313)(ITAT Ahd.)
- (iv). CIT vs. Deccan Sugars & Abkhari & Co. Ltd. (157 ITR 467 (Mad.)
- (v). CIT vs. Baldeoram Heharilal (99 ITR 108 (Cal.).

19. The learned DR, on the other hand, relied on the orders of the authorities below.

20. After hearing the submissions of both the sides and perusing the material on record, we find that the advance was given to A+E Consultants for setting up a construction of green house. This project was not materialized and the advance given to the architects for setting up of the project, could not be recovered. In view of this, the assessee has written off the same in the books of account as bad debts/advances written off in the ordinary course of business. In presence of these facts this expenditure was allowable as business expenditure and cannot be treated as capital expenditure as observed by the Id. CIT(A). The claim of the assessee is also found supported by the decision of Hon'ble Rajasthan High Court in the case of CIT vs. Anjani

Kumar Co. Ltd. (2003) 259 ITR 114 (Raj.) wherein the Hon'ble Court has held as under :

"The admitted facts are that the advance was paid for acquiring the agricultural land to setup a factory, but when the agricultural land was not acquired, no capital asset came into existence, therefore, there is no question of allowing depreciation on such asset. If any asset is acquired and if it is a benefit of enduring nature, then of course the assessee cannot get the deduction of amount for acquisition of land as revenue expenditure. When land was not acquired, no capital asset has been acquired, therefore, the payment of Rs.52,489 is to be allowed as business loss.

We agree with the view taken by the Tribunal. No interference is called for."

In view of this, we find no justification to support the order of the Id. CIT(A) on this issue. Accordingly, this ground of assessee's appeal stands allowed.

21. Coming to the last issue relating to expenditure towards payment of Rs.25 lacs as license fees to Mahyco Monsanto Biotech (India) Ltd. as per agreement dated 09.03.2004, the record reveals that neither the assessee claimed this expenditure in return of income nor any revised return claiming this expenditure was filed nor the Assessing Officer made any discussion in the assessment order for the year under appeal on this count. This claim was, however, made before the Id. CIT(A) by the assessee stating that during the assessment proceedings for the assessment year 2005-06, out of total claim of license fee paid, Rs.25,00,000/- was disallowed by the AO vide order dated

28.12.2007 on the ground that the said amount was paid in A.Y. 2004-05 and hence, not allowable in A.Y. 2005-06. It was stated that once the said claim, being relatable to A.Y. 2004-05, was found not allowable in the A.Y. 2005-06, it has to be allowed in the year under appeal to which it relates. The Id. CIT(A) did not accept the claim of the assessee stating that such claim can be allowed either by way of return or revised return which the assessee failed to do.

22. In the brief synopsis of the case filed on 25.02.2016, the Id. AR of the assessee submitted that the AO while concluding the assessment proceedings for AY 2005-06, disallowed expenditure of Rs.25,00,000/- which was considered as advance during AY 2004-05, due to the fact that it did not pertain to A.Y. 2005-06. It is also submitted that the addition made by the AO during A.Y. 2005-06 was deleted by the CIT(A) in appeal for A.Y. 2005-06, and against this order of CIT(A), Revenue has filed an appeal with ITAT.

23. Having considered the submissions of both the parties, we find that once the addition made by AO of Rs.25 lacs under reference, stands deleted by the Id. CIT(A) in appeal for A.Y. 2005-06, as submitted by assessee itself, the ground of assessee praying for accepting the same claim in the present appeal becomes infructuous. Accordingly ground No. 5 raised by the assessee, is

dismissed as such. As a result, the appeal of the assessee is partly allowed.

24. In the result, both the cross appeals filed by the Revenue and the assessee are partly allowed.

Order pronounced in the open court on 21.04.2016.

Sd/-

(A.T. VARKEY)
Judicial Member

Sd/-

(L.P. SAHU)
Accountant Member

Dated :

*aks/-

Copy of order forwarded to:

(1) *The appellant*

(3) *Commissioner*

(5) *Departmental Representative*

(2) *The respondent*

(4) *CIT(A)*

(6) *Guard File*

By order

*Assistant. Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi*