

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER  
&  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 3883/Del/2012  
(Assessment Year : 2007-08)**

ACIT Circle II, B Block, CGO Complex, NH-IV, Faridabad.	vs	K.K. Kohli & Brothers P. Ltd. (Now SRS I Tech P. Ltd.) E-18, Nehru Ground, IInd Floor, NIT, Faridabad. (PAN:AAACK7408H)
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**CO No. 427/Del/2012  
(In ITA No. 3883/Del/2012)  
(Assessment Year : 2007-08)**

K.K. Kohli & Brothers P. Ltd. (Now SRS I Tech P. Ltd.) E-18, NehruGround, IInd Floor, NIT, Faridabad. AAACK7408H	vs	ACIT Circle II, B Block, CGO Complex, NH-IV, Faridabad.
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<b>Assessee by</b>	<b>Sh. Sudhir Sehgal, CA</b>
<b>Revenue by</b>	<b>Ms. Seema Raj, CIT (DR)</b>

<b>Date of Hearing</b>	<b>09.01.2017</b>
<b>Date of Pronouncement</b>	

**ORDER**

**PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER:**

The appeal has been preferred by the Revenue against the order of the CIT (A), Faridabad dated 26.04.2012 and pertains to Assessment Year 2007-08. The C.O. has been filed by the assessee.

2. The assessee company is engaged in the business of processing of fabrics through a processing house at Faridabad and trading of fabrics. Brief facts of the case are that the return of income was filed at an income of Rs. 3,42,590/-. The case was selected for scrutiny and the statutory notice u/s 143(2) of the Income Tax Act, 1961 (the 'Act') was issued. During the year under consideration, the assessee had sold 62% of its land after demolishing the building and had declared long term capital gains on the sale of land and short term capital gain on sale of building, land and machinery and furniture etc. The Assessing Officer has noted that the assessee did not produce the books of accounts despite several opportunities being given. The Assessing Officer proceeded to invoke the provisions of section 144 of the Act and passed a best judgment assessment. The assessee had declared gross loss at 31.71% on sales of Rs. 14.14 crores as against the gross profit of 7.68% disclosed on the sales of Rs. 21.54 crores in the preceding year. It was the assessee's contention before the AO that the loss had occurred on account of closure of business and sale of old stock. However, the Assessing Officer estimated the loss at 20% and made an addition of Rs. 1,56,86,871/-. The Assessing Officer also

disallowed the assessee's claim of bad debts of Rs. 1,43,72,485/- on the ground that the assessee had failed to discharge the onus to prove that the debts had actually become bad. The Assessing Officer also disallowed claim of short term capital loss on the sale of plant and machinery on the grounds that the block of plant and machinery did not cease to exist. Further, the Assessing Officer allowed depreciation @15% instead of 80% as was admissible in accordance with the rules although the assessee had contended before the AO that it had inadvertently claimed depreciation on boiler @50% although the depreciation on boiler was admissible at 80%. The Assessing Officer also made disallowance of Rs. 53,860/- u/s 43B of the Act and a further disallowance of Rs. 2,71,431/- u/s 40(a)(ia) of the Act. The assessment was completed at an income of Rs. 4,42,81,091/-.

2.1 Aggrieved, the assessee preferred an appeal before the Ld. First Appellate Authority challenging the action of the Assessing Officer in framing the assessment u/s 144 of the Act and making an addition of Rs. 1,56,86,871/- on account of gross loss. The assessee also challenged the other additions and disallowances.

2.2 Ld. CIT (A) confirmed the addition on account of gross profit by restricting it to the extent of Rs. 30 lakh. The Ld. CIT(A) also restricted the addition on account of disallowance of bad debts to Rs. 18,18,058/-. Further, the Ld. CIT (A) allowed the assessee's claim of depreciation on boiler @80% instead of 50% as claimed in the return of income. The Ld. CIT (A) also deleted the addition of Rs. 53,860/- made u/s 43B of the Act and also the disallowance of Rs. 2,71,431/- u./s 40(a)(ia) of the Act. Ld. CIT(A) also allowed the assessee's ground challenging the disallowance of short term capital loss of Rs. 1,48,776,639/- .

2.3 Aggrieved the department has filed the following grounds of appeal:-

*"1. On the facts and in the circumstances of the case, the Ld. CIT (A) has erred on facts and in law in deleting the addition of Rs. 1,26,86,871/- made by the Assessing Officer on account of fall in GP rate as the assessee had intentionally not produced the bills and vouchers with books of account in order to verify book results.*

*2. On the facts and in the circumstances of the case, the Ld. CIT (A) has erred on facts and in law in deleting the disallowance of Rs. 1,25,54,427/- made by the AO on account of bad debts written off as the assessee has failed to discharge the onus to prove that the debts had actually become bad.*

3. *On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in facts and in law in allowing the depreciation of Rs. 72,69,675/- @ 80% instead of Rs. 22,71,774/- allowed by the AO as the assessee itself had claimed depreciation at different rate in the past and also failed to substantiate its claim by not supplying the necessary evidences that the machinery fulfill all the conditions laid down in Rule 5 item 8(ix) of the depreciation schedule.*

4. *On the facts and in the circumstances of the case, the Ld. CIT (A) has erred on facts and in law in deleting the disallowance of Rs. 1,48,76,639/- made by the AO on account of short term capital loss claimed on block of assets (having 15% rate of depreciation) which did not cease to exist.*

5. *That the appellant craves for the permission to add, delete or amend the grounds of appeal before or at the time of hearing of appeal.”*

2.4 The grounds taken in C.O. by the assessee are as under:-

*“1. That the Worthy Commissioner of Income Tax (Appeals), Faridabad has erred in confirming the addition of Rs. 30 lacs as per finding given at page 20 of the order of CIT (A).*

*2. That the Worthy Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs. 18,18,058/- on account of bad debts as per Para 6.2 of the order.*

*3. That the respondent craves leave to add or amend any round of cross objections before the appeal is finally heard or disposed of.”*

3. Learned CIT DR submitted that the books of accounts were not produced before the Assessing Officer and the same was evident from the copy of order sheet placed on record. She refuted the assessee's claim that books had been produced before the Assessing Officer and submitted that the copy of letter mentioning that books had been produced was written by hand and the veracity of the same was not verifiable. It was submitted that only some records were produced for the purpose of fringe benefit tax assessment and, therefore, the Assessing Officer was very much justified in invoking the provisions of section 144 and making a best judgment assessment. She further submitted that while restricting the addition on account of gross loss, the Ld. CIT (A) had estimated the addition at Rs. 30 lakh without providing any basis for such valuation. She also submitted that the assessee could not justify the reason for fall in the ratio of gross profit.

3.1 On the issue of allowing relief to the assessee on account of bad debts, reliance was placed by the Ld. CIT DR on the order of the Assessing Officer.

3.2 On the issue of depreciation having been allowed @80% on boilers, it was submitted that the same had been allowed based on

the revised tax audit report although there was no provision in the Income Tax Act to permit filing of a revised tax audit report. It was submitted that the assessee should have revised the return and then only the benefit of increased depreciation would have been permissible. It was also submitted that the Ld. CIT (A) had allowed additional evidence to be filed before him and no remand report was called for from the Assessing Officer in this regard.

3.3 It was further submitted that as far as the issue of short term capital loss on sale of plant and machinery was concerned, the block of assets had not ceased to exist and as such, the same was not allowable.

4. In response, the Ld. AR submitted that the books of accounts were duly audited by the statutory auditors which included vouching of purchases, sales and expenses. It was further submitted that the Assessing Officer had called for various information and details in relation to the accounts on various dates which were duly furnished and were also test checked by the Assessing Officer. It was further submitted that the details of opening and closing stocks along with qualitative details were given in the tax audit report along with relevant evidences of valuation of

stock and no specific defects were found by the Assessing Officer in such details. Our attention was drawn to page 3 of the assessment order wherein the Assessing Officer has observed that from the details and expenditure filed and record produced from time to time, the following discrepancies were found during the course of assessment proceedings. Ld. AR also submitted that an affidavit by Mr. Jatinder Bahl, Accountant was also on record which states that he had produced the books of accounts for the year under consideration before the Assessing Officer and that the Assessing Officer had perused the books. He also drew our attention to copies of replies dated 26.10.09, 6.11.09, 25.11.09, 11.12.09 and 21.12.09 which were filed before the Assessing Officer during the course of assessment proceedings. It was submitted that in the light of these details filed, it was very much evident that the Assessing Officer had duly examined the books of accounts and consequently, the framing of assessment u/s 144 of the Act was bad in law. Ld. AR further submitted that the fall in the gross profit ratio was due to the discontinuation of manufacturing activity and continuation of only trading activities w.e.f. June 2006. It was submitted that this fact remained undisputed. It was also submitted that the remaining

stock after the cessation of manufacturing activities had to be cleared and this stock majorly included rejected fabric, sales returns etc. which fetched a lesser price in the market. Hence, there was a fall in the valuation of closing stock and a corresponding fall in the GP ratio. Ld. AR also relied on a plethora of judgments to support his contention that the Assessing Officer could not frame assessment u/s 144 of the Act without having rejected the books of accounts u/s 145(3) of the Act and as such, no addition could have been made on account of variance in the GP ratio without the rejection of books of accounts. Ld. AR also drew our attention to the various papers filed before the Ld. CIT (A) in support of the assessee having discontinued manufacturing activities which included details of power and fuel expenses, copy of letter submitted to the Regional Director of ESI, Faridabad stating the discontinuation of manufacturing activities, copies of letters submitted to Regional PF Commissioner and Joint Commissioner, Municipal Corporation, Faridabad stating discontinuation of manufacturing activity.

4.1 On the issue of bad debts, the ld. AR placed reliance on CBDT Circular 12/2016 dated 30.5.2016 which provides that claim for any debt or part thereof in any previous year shall be admissible u/s

36(i)(vii) of the Act if it is written off as irrecoverable in the books of accounts of the assessee for that previous year. He submitted that the impugned amounts were duly written off in the books of accounts of the assessee company and, therefore, the same were allowable as bad debts.

4.2 On the issue of enhanced rate of depreciation as well as short term capital loss on machinery sold, it was submitted that the rate was admissible in terms of the depreciation rates provided in the Income Tax Rules and for this purpose, it was not necessary to call for a remand report from the Assessing Officer. It was further submitted that the Ld. CIT(A) has himself given a categorical finding that the plant and machinery was sold during the year and that the block had ceased to exist and as such the assessee's claim for short term capital loss was also allowable.

4.3 On the grounds taken in the C.O., Ld. AR submitted that the Ld. CIT (A) had erred in confirming the addition of Rs. 30 lakh on account of GP as the Ld. CIT (A) had confirmed the addition on the basis that the closing stock should have been valued at 14.08 per metre instead of Rs. 9.40 per metre whereas the assessee had valued the stock of 305287 metre at Rs. 14.08 per metre and

252684 metres at Rs. 9.40 per metre. It was submitted that the Ld. CIT (A) had made an addition of Rs. 5 per metre on the entire stock of 557971 metre which was erroneous.

4.4 On the second ground taken by the assessee in the C.O. regarding sustenance of Rs. 18,18,058/- on account of bad debts, it was submitted that this comprised of interest receivable which had been booked by the assessee as its income in the previous year which was evidenced from page 162 of the paper book. It was submitted that this amount also adhered to the conditions laid down in section 36(2) of the Act that (i) the same has been booked by the assessee as its income and that (ii) the same had been entered in the books of accounts. It was submitted that since the income had been booked which had become irrecoverable, the claim of bad debt should be allowed, else the same would amount to double taxation.

5. The ld. CIT DR relied on the findings of the Ld. CIT (A) in the case of assessee's C.O. and submitted that these findings be upheld.

6. We have heard the rival submissions and carefully perused the relevant material placed on record. As far as the department's ground challenging the deletion of addition of Rs. 1,26,86,871/- made on account of fall in GP rate and the related ground of

invoking the provisions of section 144 are concerned, it is seen that the Ld. CIT(A) has given a categorical finding that the action of the Assessing Officer in invoking the provisions of section 144 was not justified when the books of accounts were produced and compliances were made during the course of assessment proceedings. Ld. CIT (A) has held that even when the Assessing Officer had chosen to proceed on passing a best judgment assessment order, the addition was required to be made on the basis of material available on record. The Ld. CIT (A) has also noted that the Assessing Officer had not cited any reason for not accepting the gross loss @31.71%, as declared by the assessee, but adopting the rate of 20% instead. He has also noted that during the course of assessment proceedings, the assessee was specifically asked about the valuation of closing stock. The Ld. CIT (A) has further observed that on the basis of the sales bills filed, the average sale price of fabric worked out to Rs. 14 per metre whereas the average rate of fabric for which no sale bills had been filed worked out to Rs. 9.20 per metre. Ld. CIT (A) has further observed that the items in closing stock inventory were mentioned as "cotton fabrics" without any mention of specific quality or brand identification and as such, the

valuation of stock was not amenable for verification. Thereafter, the Ld. CIT (A) proceeded to estimate the difference in valuation at Rs. 5 per metre and restricted the estimation of under-valuation of closing stock to Rs. 30 lakh. A perusal of the assessment order also shows that although the Assessing Officer has proceeded on best judgment assessment u/s 144 of the Act on the ground that books of accounts were not produced, the Ld. CIT (A) has given a finding that in view of the books of accounts having been produced, the Assessing Officer was not justified in invoking the provisions of section 144 of the Act. However, the Ld. CIT (A) has not specifically addressed the issue of rejection of books of accounts. A perusal of the assessment order also shows that although the Assessing Officer has not accepted the GP loss rate at 31.71%, he has not given any reasoning for adopting the loss rate at 20%. The entire case of the Assessing Officer seems to be based on the allegation that books of accounts were not produced before him. Ld. AR has filed copy of the entire order sheet and has submitted that the order sheet does not mention that the books of accounts were not produced. It has been submitted by the Ld. AR that in view of not mentioning the specific non-production of books of accounts, it goes out in assessee's favour to prove that the

books of accounts were duly produced. The Ld. AR has also contended that the details of valuation of closing stock were filed which had not been contradicted by the Assessing Officer.

6.1 On due consideration of the entire factual matrix on this issue, we do feel that irrespective of the fact as to whether the books of accounts were duly produced or not produced before the Assessing Officer, the fact remains that the valuation of closing stock has been made without categorising it in terms of specific quality or brand. The Ld. CIT (A) has also noted that although manufacture, purchases and sales details were filed before the Assessing Officer in respect of trading of fabric, the assessee had not filed quantitative details and as such, the stock of trading goods, included in the closing stock was not ascertainable. The Ld. CIT (A) has also noted that the assessee had not been able to establish that the valuation of stock as on 31.03.2007 was based on sale rate prevailing on that day. Ld. CIT (A) has also noted that the average rate of fabric was Rs. 52.51 per metre at a stock of 623830 metres on 31.03.2006 whereas the average rate of valuation as on 31.03.2007 worked out to Rs. 11.96 per metre on a stock of 557971 metres and thus, there was a drastic fall in the rate of valuation even when the major

portion of the stock was out of opening stock. Given the circumstances, we feel that the Ld. CIT (A) had no option but to make a reasonable estimate, specially when individual details in terms of quality as well as quantity were not available. During the course of hearing before us, the department could not suggest any other alternate method of valuation which could have reasonably been adopted by the Ld. CIT (A) except arguing that there was no basis for such estimation.

6.2 In ground no. 1 of the C.O., assessee has challenged the sustenance of addition of Rs. 30 lakh and the Ld. AR has submitted that the closing stock of the assessee included two types of stock i.e. i) which had been sold up to the date of signing of audit report measuring 305287 metres and; ii) which was still unsold measuring 252864 metres. It has been contended by the Ld. AR that the Ld. CIT (A) applied the differential rate in valuation @Rs. 5/- per metre on the entire stock instead of the stock remaining unsold i.e. 2526784 metres. This contention of the assessee appears logical to us and we are of the considered opinion that the assessee should be allowed benefit of the same. Therefore, while rejecting the department's grounds, we partly allow ground no. 1 of the assessee's

C.O. by restricting the addition to Rs. 15,26,435/- (305287 mtrs. x Rs. 5/-). Thus, ground no. 1 of the department's appeal stands dismissed whereas ground no. 1 of the assessee's C.O. stands allowed.

6.3 Coming to ground no. 2 of the department's appeal and ground no. 2 of the assessee's C.O., the Hon'ble Apex Court in the case of TRF Limited vs CIT reported in 322 ITR 3497 (S.C.) has held that after 1<sup>st</sup> April, 1989 it is not necessary for the assessee to establish that the debt incurred has become irrecoverable and that it is enough if the bad debt has been written off as irrecoverable in the books of accounts of the assessee. CBDT Circular no. 12/2016 dated 30<sup>th</sup> May 2016 also supports the case of the assessee. Therefore, we find no reason to interfere in the finding of the Ld. CIT (A) in deleting the disallowance of Rs. 1,25,54,427/- made on account of bad debts written off.

6.4 As far as the assessee's C.O. challenging the sustenance of Rs.18,18,058/- on account of interest receivable is concerned, we find that the amounts have been shown as interest income receivable during earlier assessment years and as such, the assessee has already paid tax on the same. Therefore, for the

purposes of section 36(2), the conditions laid down therein have duly been met by the assessee. Therefore, there is no reason as to why these amounts should not be allowed as bad debt. We accordingly set aside the order of the Ld. CIT(A) on this issue and direct the Assessing Officer to delete this addition of Rs. 18,18,058/- also. In the result, ground no.2 of the department's appeal is dismissed and whereas ground no. 2 in assessee's C.O. is allowed.

6.5 As far as ground no. 3 of the department's appeal is concerned, it is seen that boiler falls under item no. 8(ix) under the head 'energy saving devices' in the chart prescribing the rates of depreciation under the Income Tax Rules. Devices under this head are eligible for depreciation @80% under the head 'plant & machinery'. Therefore, although the assessee had not claimed depreciation at the correct rate initially, the action of the Ld. CIT (A) in allowing depreciation to the assessee at the correct rate cannot be faulted with. The auditor has certified that the Boiler comprised of Fluidized Bed Combustion Boiler with steam turbine purchased from M/s Industrial Boilers Ltd., New Delhi who had confirmed the supply to the assessee by giving the invoice nos. dated 7.4.2004, 24.09.2004 and 29.03.2005. The Ld. CIT (A) has noted that it is an

admitted fact that as per Certificate dated 8.12.2009 issued by supplier of the boiler and submitted before the Assessing Officer along with letter filed on 22.12.2009, the assessee had purchased Fluidized Bed Combustion Boiler which is specifically covered under item (ix) – Energy Saving Devices of the depreciation schedule under the heading (A)(a) as Ignifluid/Fluidised Bed Boilers eligible for depreciation @80%. In the proceedings before us, the department could not negate the fact that the boilers were in fact eligible for depreciation @80% and the only cause of grievance was that the assessee did not file a revised return. Considering the overall factual matrix, we are of the considered opinion that the Ld. CIT (A) has not committed any error in allowing depreciation at the correct rate even though the assessee had claimed depreciation at a lesser rate in the return filed. Therefore, we find no reason to interfere on this issue and we dismiss ground no. 3 of the department's appeal.

6.6 As far as ground no.4 of the department's appeal challenging the deletion of disallowance of Rs. 1,48,76,639/- on account of short term capital loss is concerned, it is seen that the Ld. CIT(A) has discussed the issue in Para 6.6 of the impugned order and the same is being reproduced below for ready reference:-

“6.6. Ground No. 8 of appeal relates to disallowance of short term capital loss of Rs. 1,48,76,639/- on sale of plant and machinery. The appellant has claimed short term capital loss of Rs.67,43,584/- and Rs.8,75,249/- on sale of building and furniture, respectively, which is not in dispute. On the blocks of Computer, Boiler and Motor cars, the appellant has claimed depreciation as these blocks did not cease to exist despite smaller sales in the block of motor car and computer. The remaining plant and machinery have been sold for a consideration of Rs. 1,49,70,400/- against the aggregate opening WDV of Rs. 3,05,68,863/- (i.e. Rs.2,79,96,488/- plus Rs.1,57,791/- plus Rs. 14,14,585/-). The AO has held that the block of plant and machinery did not cease to exist on the ground that the boiler and motor cars fell in the same block of plant and machinery eligible for 15% depreciation. The entire sale consideration of Rs. 1,49,70,400/- has, therefore, been allocated against the WDV of Rs.2,79,96,488/-, Rs. 11,57,791/- and Rs.14,14,585/-, proportionately. The short term capital loss of Rs.7,21,825/- has, however, been allowed against the WDV of Rs. 14,14,585/- as the machineries in this block were eligible for 50% rate of depreciation, being machineries purchased under TUFF scheme. As a result, the short term capital loss of Rs. 1,48,76,639/- has been disallowed out of total loss of Rs. 1,55,98,464/- on sale of machineries with consequential allowance of further depreciation of Rs.13,22,785/-. The appellant has contended that u/s 2(11) of the Act read with relevant entry in Heading III, depreciation on Car was admissible @ 20% and on Machinery @ 25% upto A.Y. 2006-07 and the blocks of assets of motor car and machinery were separate. However, the rate of depreciation on machinery was reduced from 25% to 15% and on car from 20% to 15% from A.Y.2007-08. Therefore, even the rate of depreciation for Plant and Machinery and Car was 15%, the block of assets as per depreciation chart were separate. As per the decision in para 6.3 above, I have already allowed depreciation on boiler @80% and the motor cars fall under different block of assets, although rate of depreciation is 15% as applicable to machinery and plant other than those covered by sub items

*(2), (3) and 8 below the table and sub item (2) being motor cars, other than those used in business of running them on hire. Consequently, the disallowance of short term capital loss of Rs. 1,48,76,639/- made by the AO is deleted as the block of plant and machineries other than motor car, computer and boiler ceased to exist. The AO is directed to withdraw depreciation of Rs. 13,22,785/- allowed in the order. Ground No. 8 of appeal is allowed.*

6.7 In view of the categorical finding by the Ld. CIT (A), which could not be negated before us, we find no reason to interfere on this issue and we uphold the same. We accordingly reject ground no. 4 of the department's appeal.

13. In the final result, the appeal of the department stands dismissed whereas the C.O. of the assessee stands allowed.

Order pronounced in the open court on 05.04.2017

Sd/-  
**(N.K. SAINI)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

Dated: 05.04.2017  
'GS'

Copy forwarded to:  
1. Appellant  
2. Respondent  
3. CIT  
4. CIT(Appeals)  
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI

ITA 3883/D/12 & CO 427/D/12  
Assessment Year 2007-08