

**IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI
BEFORE SHRI JASON P. BOAZ, AM AND SHRI SANDEEP GOSAIN, JM**

आयकर अपील सं./ I.T.A. No. 1130/Mum/2013

(निर्धारण वर्ष / Assessment Year: 2009-10)

M/s. UBM India Private Limited, Times Square, B Wing, 5 th Floor, Andheri Kurla Road, Andheri (East), Mumbai-400 072.	बनाम/ Vs.	The Assistant Commissioner of Income Tax-8(3), Room No.217, Aayakar Bhavan, M K Road, Mumbai-400 020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.		AAACU 8181D
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri K. Shivaram
प्रत्यर्थी की ओर से/Respondent by	:	Shri Anil Kumar Das

सुनवाई की तारीख / Date of Hearing	:	27/04/2016
घोषणा की तारीख / Date of Pronouncement	:	25/05/16

आदेश / ORDER

Per Sandeep Gosain, Judicial Member:

The Present Appeal has been filed by the assessee against the order of Commissioner of Income Tax (Appeals)- 18, dated 03.12.2012 for AY 2009-10 in Appeal No.CIT(A)-18AC/IT-8(3)/IT-88/11-12 on the grounds of appeal mentioned herein below.

1. “Ground No.1

The learned Commissioner of Income Tax, Appeals - 18, Mumbai has erred in law and on facts and in circumstances of the case in confirming the disallowance on account of provision for contingent liability amounting to Rs.3,75,00,000 to the total income and assessing the total taxable loss at Rs.3,50,07,815/- as against the returned loss of Rs.7,25,07,815/-.

2. Ground No.2

Without prejudice to Ground No.1, the Appellant prays that in case, if the entire amount of Rs.3,75,00,000 is disallowed during the Assessment Year 2008-09, then the same should be allowed on payment basis in the year of actual payment.”

2. The brief facts of the case are that the return of income was e-filed on 25.09.2009 declaring loss of Rs.7,25,07,815/-. The return of income was processed u/s 143(1) of the Income Tax Act,1961 and subsequently the case was selected for scrutiny though CASS. After serving statutory notices and calling for the reply from the assessee the order of assessment u/s 143(3) of the Income Tax Act,1961 was passed by AO thereby making disallowances.

3. Aggrieved by the order of the AO, assessee filed an appeal before the CIT(A). The CIT(A) after considering the facts and circumstances of the case partly allowed the appeal filed by the assessee vide its order dated 03.12.2012.

3.1 Aggrieved by the order of CIT(A), the assessee preferred the present appeal before us on the grounds mentioned herein above.

Ground No. 1

4.1 This ground relates to confirmation of disallowance by CIT(A) on account of provision for contingent liability amounting to Rs.3,75,00,000/-. The Id. AR representing the assessee submitted that the assessee is engaged in the business of trade exhibitions across pharmaceuticals, food ingredients, hospitality, security, jewellery, technology sectors, online technology and print brands, health care communications and new distribution. During the financial year 2008-09, assessee has incurred loss on account of cancellation of its two major events viz. CPhi India 2008 and P-MEC India 2008 due to terror attack in Mumbai on 26 November 2008. The terrorist attack caused havoc resulting in complete disruption of life and business. Considering the prevailing abnormal situation, it was decided to cancel two major events of UBM India viz. CPhl India 2008 and P-MEC India 2008,

which were scheduled to be held from 28 to 30 November 2008 and 27 to 30 November 2008 respectively. Lastly, it was argued that the appeal of the assessee may be accepted.

3.4 On the other hand, Id. DR relied upon the orders passed by the Revenue Authorities.

4. We have heard the counsels for both the parties and we have also perused the material on record as well as the orders passed by the revenue authorities. Before we decide the merits of the case, it is necessary to evaluate the orders of the CIT(A) wherein the said ground was dealt with by the CIT(A) and the same is reproduced as under:

“I have considered the submissions of the appellant, order of the AO and facts of the case carefully. It is noticed that the assessee has received insurance claim of Rs.7.31 crores in respect of losses incurred due to cancellation of exhibitions. The assessee has debited an amount of Rs.3,75,00,000/- on account of contingent liability as clearly mentioned by the Auditors in the notes to the accounts. The AO has asked the assessee to explain why the contingent liability of RS.3.75 crores may not be disallowed. The AR of the appellant has submitted its reply, after considering the same the AO has made a disallowance of Rs.3.75 crores by holding that contingent liability is not allowable deduction. On the other hand the AR of the appellant has submitted that during the year under consideration the company has incurred loss on account of cancellation of its two major events viz., CPhi India 2008 and P-MEC India 2008 due to terrorist attack in Mumbai on 26th November, 2008. These events were scheduled to be held from 28 to 30 November, 2008 and 27 to 30 November,2008 respectively. The company has paid a sum of Rs.4.37 crores to Bombay Exhibition Centre being site rent for the said events. Due to cancellation of these events the appellant has made request to Bombay Exhibition Centre to waive the site rent. The Bombay Exhibition Centre

has agreed for such waiver subject to its explicit condition that no insurance claim may be received by the Company. However, the Company had received insurance claim of Rs.7.31 crores in respect of losses incurred due to cancellation of the two events to the extent of 86% of the total cost. The Bombay Exhibition Centre did not refund the aforesaid site rent but agreed to treat the same as advance site rent towards future exhibition for a period of 5 years. Therefore, the company has treated the aforesaid site rent paid as prepaid expenses and the same has not been claimed as expenditure in the year under consideration. Since the assessee has already received insurance claim therefore the condition on which Bombay Exhibition Centre had agreed to waive the above amount was no longer satisfied to the extent of 86% of the aforesaid site rent. Thus the loss of RS.3.75 crores (being 86% of 4.37 crores) on account of the site rent has been recognized. The provision for contingency appearing in the financial statement pertains to loss on this account. The AR has also argued that if this amount of Rs.3.75 crore is not considered as expenditure in the year under consideration it would not be admissible in any subsequent year as it would be pertaining to earlier years.

6.1 From the perusal .of the appellant and order of the AO it is crystal clear that as per the note of the auditors the amount of RS.3.75 cores in the provision of contingent liability. It is also undisputed that the provision of contingent liability are not allowable deduction as per the provision of the I.T. Act. As per the provisions of section 37(1) the expenditure relating to the year under consideration which is wholly and exclusively used for the business purposes is allowable deduction. The expenditure relating to earlier years and in the nature of contingent liability is not allowable deduction. The AR of the appellant has submitted that due to terrorist attack in Mumbai on 26th November, 2008 the two events were cancelled and it has received the claim from the insurance Company amounting to Rs.7.31 crores. Further it was submitted that it has requested the Bombay Exhibition Centre to refund the said rent already paid for the booking of these events. Further the Bombay Exhibition Centre did not refund the amount but waived the site rent with a condition that the assessee will not claim from the insurance company and the amount paid for site rent will be adjusted for a period of 5 years. Since the assessee has received insurance claim therefore the condition of agreement with the Bombay Exhibition Centre has not been fulfilled. The assessee company has received insurance claim to the extent of 86% of the total cost. Therefore, the assessee has claimed Rs.3.75 crores as loss being 86% of Rs.4.37 crores paid to the Bombay Exhibition Centre. Actually the payment made to Bombay Exhibition Centre is not the loss to that company because the Bombay Exhibition Centre has admitted to adjust this amount for a period of 5 years in future. Therefore, the claim of appellant that it has incurred loss of RS.3.75 crores being 86% of Rs.4.37 crores paid to Bombay Exhibition Centre is not genuine. Moreover, the assessee and its auditors have admitted this fact that the amount of RS.3.75 crores is a contingent liability. Therefore, it is not allowable in the year under consideration. To strengthen this view reliance is

placed on the decision of the Hon'ble Supreme Court in the case of Shree Sajjan Mills Ltd vs. CIT 156 ITR 585 where it is held that-

"Contingent liabilities do not constitute expenditure and cannot be the subject matter of deduction even under the mercantile system of accounting. Expenditure which is deductible for income-tax purposes is towards a liability actually existing at the time but setting apart money which might become expenditure on the happening of an event is not expenditure.

In view of these facts and circumstances the amount of RS.3.75 crores is held as contingent liability. Therefore, disallowance is confirmed and ground of appeal is dismissed."

4.1 Id. AR also relied upon the judgment rendered by Hon'ble Delhi High Court in the case of 'Bhai Sunder Dass and Sons Co. P. Ltd. vs. CIT' and also relied upon the Supreme Court judgment in the case of 'Bharat Earth Movers vs. CIT'. We have heard the counsels of both parties and have also analysed the orders passed by CIT(A). CIT(A) has rightly considered that as per the note of the Auditors, the amount of Rs.3.75 crores is contingent in nature which is not allowable as per the provisions of the I.T. Act. As per the provision of section 37(1), the expenditure relating to the year under consideration which is wholly and exclusively used for the business purposes is allowable deduction. We have also considered the documents contained in the paper book more particularly our attention was drawn at page no. 64 to 66 of the paper book and even as per the said documents/letters, it has been admitted by Bombay Exhibition Centre that the compensation of Rs.4,37,43,360/- paid towards CPHI/ICSE/ PMEC 2008 will be waived and adjusted over a period of five years i.e. amount of Rs.87,48,672/- will

be deducted per year from the amounts payable by UBM to BEC against the exhibitions held by UBM at BEC from 2009 until 2013. Although our attention was drawn at point no.2 (ii) of letter dated 04.02.2009 wherein it is mentioned that UBM will give BEC a written confirmation that they have not been compensated by insurance part or full of the amount of Rs.4,37,43,360/-. In this context, we are of the considered view that mere seeking a confirmation from assessee that they have not been compensated by insurance part or in full of any amount is out of the purview of the main terms and conditions of the contract.

In this case original terms and conditions entered into between UBM and BEC initially at the time of entering into a contract has not been placed on record and therefore mentioning any such condition in a subsequent letter dated 04.02.2009 at page no. 64 of paper book without referring to any of the pre condition of any agreement did not make any sense and is thus not legally sustainable.

Ld. CIT(A) has rightly relied upon the dictom of Hon'ble Supreme court in case of Shree Sajjan Mills Ltd vs. CIT 156 ITR 385 and rightly held that the contingent liability amounting to Rs.3,75,00,000/- cannot be considered for deduction from the insurance claim. Therefore, the ld. CIT(A) has rightly held that the amount of Rs. 37.50 million being Rs.3,75,00,000/- is brought to tax in the

assessee's hands out of insurance claim received by the assessee after taking into consideration all the aspects and explanations in this regard.

Therefore this ground is dismissed.

Ground No.2

The said ground has been raised by assessee without prejudice to the ground no.1 wherein the assessee has submitted that if the entire amount of Rs.3,75,00,000/- is disallowed during the assessment year 2008-09, then the same should be allowed on payment basis in the year of annual payment. In order to support his contentions through documents, Id. AR has drawn our attention to an application filed by assessee on 23.02.2015 for filing additional evidence and to admit the documentary evidence being relevant ITR acknowledgement, Computation of Income of AY 2013-14, Relevant Extract of financial year 2012-13, working of final amount payable to NESCO and correspondence relating to admissibility of claim along with debit note.

We have perused the contents of the application as well as documents in this respect, we have also heard the counsels for both the parties on admitting additional evidence. We are of the considered view that the documents referred by way of additional evidence are being produced for the first time and the same are having direct bearing on the issues involved in the present case. The said

documents are relevant in deciding the present issue therefore taking into consideration, the principles of natural justice, equity and fair play we admit the documents by way of additional evidences. Since these documents have been placed on record for the first time therefore, we remand this issue back to the file of AO with a direction to verify the documents which are filed by assessee by way of additional evidences and decide this issue afresh after verification and considering the documents and providing opportunity of hearing to the assessee, therefore, this issue is allowed for statistical purposes.

6. In the result, the assessee's appeal is partly allowed for the statistical purposes.

Order pronounced in the open court on 25th May, 2016

Sd/-
(Jason P Boaz)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 25.05.2016

Sd/-
(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

Ps. Ashwini

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai