

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "A" KOLKATA**

Before **Shri N.V.Vasudevan, Judicial Member** and
Shri Waseem Ahmed, Accountant Member

ITA No.651/Kol/2014
Assessment Year :2008-09

DCIT, Circle-2, Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-700 069	V/s.	M/s Navyug Enterprises Pvt. Ltd., 226/1, A.J.C. Bose Road, Kolkata-700 020 [PAN No.AAACN 8833 D]
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Sallong Yaden, Addl. CIT-SR-DR
प्रत्यर्थी की ओर से/By Respondent	Shri Ravi Tulsiyan, FCA
सुनवाई की तारीख/Date of Hearing	17-01-2017
घोषणा की तारीख/Date of Pronouncement	08-02-2017

आदेश / O R D E R

PER Waseem Ahmed, Accountant Member:-

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-XX, Kolkata dated 02.01.2014. Assessment was framed by ACIT, Range-2, Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 27.12.2010 for assessment year 2008-09. The ground raised by the Revenue per its appeal is as under:-

"1. That on the facts and circumstances of the case, the Ld. CIT(A) is not justified in deleting disallowances of Rs.49,51,430/- and Rs.13,61,849/- (wrongly written Rs.13,48,719/-) on written-off of advance on account of Railway indent booking and advance for Railway freight for transportation of goods respectively while there is no provision for allowing write-off of advances made previously."

Shri Sallong Yaden, Ld. Senior Departmental Representative represented on behalf of Revenue and Shri Ravi Tulsian, Ld. Authorized Representative appeared on behalf of assessee.

2. Only issue raised by Revenue in this appeal is that Ld. CIT(A) erred in deleting the addition made by Assessing Officer for ₹49,51,430/- and ₹13,61,849/- on account of advances given to the railways for booking.

3. Facts in brief are that assessee in the present case is a Private Limited Company and engaged in export business. The assessee, in the year under consideration has filed its return declaring total income of ₹1,40,35,050/- comprising of business income, house property income and other source of income. Subsequently the case was selected scrutiny under CASS module and accordingly notice u/s. 143(2) was issued upon the assessee. The assessment was framed u/s. 143(3) of the Act at a total income of ₹2,17,05,050/- after making certain additions / disallowances.

4. The assessee, in the year under consideration has written off the advance given to the railways for indent bookings and railway freight for ₹49,51,430/- and ₹13,61,849/- respectively. On question by AO for the aforesaid written off amount, assessee replied that both advances were made for the transportation of goods but goods were not transported through railway, therefore, the advances became irrecoverable and accordingly the same was forfeited by railways. Further, assessee submitted that advances were given in the course of trading activities and therefore eligible for deduction. However, AO disregarded the plea of assessee by observing that there is no provision for allowing deduction of the advance written off u/s 36(1)(vii) of the Act. It was also observed by AO that advances were given by assessee in earlier years and these are also not eligible for deduction u/s 37(1) of the Act. The aforesaid amount was disallowed and added back to the total income of assessee.

5. Aggrieved, assessee preferred an appeal before Ld. CIT(A), whereas assessee submitted that advances were given to railways in ordinary course of business. The aforesaid amount represented the loss incidental to the

business of assessee. Therefore, same is allowable as deduction u/s. 37(1) of the Act. After considering the submission of assessee, Ld. CIT(A) deleted the addition made by AO by observing as under:-

*“... .. a payment of Rs.49,51,430/- and Rs.13,48,719/- was made to the Railways on account of Railway Indent Bookings for the purpose of carrying of goods. The deposits were adjustable against subsequent bills raise by the Railways on account of Transportation of goods through the rakes, however, due to failure to make the transportation of goods, the amount of Rs.49,51,430/- was forfeited by the Railways during the year. Further, the amount of Rs.13,48,719/- was also could not be adjusted against actual transportation the appellant treated it as non recoverable and accordingly written off both the amounts in the books of account. I find from the fact that the deposits/advances was made towards transport expenses to be made as per Railway Indent Booking System. The deposits were made during the A.Y 2006-07 and 2005-06 respectively for the purpose of expenses to be incurred in the year in which transportation of goods take place. During the year under consideration, the amount of Rs.49,51,430/- was forfeited by the Railways and Rs.13,48,719.- was written off due to non adjustment against actual transportation. I find merit in the argument of the appellant that the amounts incidental to the business f the appellant are allowable expenditure u/s. 28 of the IT Act. It was the consistent business practice of the appellant to make deposits with the railways for future transportation of goods. The claim of expenditure was being made in the year of actual transportation of goods but due to non adjustment of the amount against actual transportation, the same became non recoverable during the year and thereby, written off in the books of account. In view of the facts and circumstances of the case and case laws cited in **para 3-1** by the appellant, the AO is directed to delete the addition of Rs.49,51,430/- and Rs.13,48,719/- respectively.”*

Aggrieved by this, Revenue has come up in appeal before us.

6. Before us both parties relied on the order of Authorities Below as favorable to them

7. We have heard rival contentions of both the parties and perused the materials available on record. The issue in the present case relates to disallowance made by Assessing Officer on account of advances written off. As per the AO these advance were never taken in the income of earlier years and therefore same cannot be treated as bad debts. The AO was also of the view that the deduction is also not available u/s. 37(1) of the Act as these advances pertain to earlier years. However, Ld. CIT(A) granted relief to assessee by observing that advances represented the loss to assessee incidental to its business income. Now, issue before us arises whether the

loss is allowable deduction in the above facts and circumstances of the case. It is settled law that losses which are not capital in nature are allowable for deduction if they are connected to the business activity of assessee. There is no provision under the Act for the non-deduction of such losses incurred by assessee. In holding so, we find guidance & support from the judgment of Hon'ble Bombay High Court in the case of *CIT Vs. P.V.Gore and Co.* (1983) 143 ITR 922 (Bom) where the Hon'ble Court held that *"if there is a direct and proximate nexus between the business operation and the loss or where the loss is incidental to the business operation of the assessee, the loss is allowable as a business loss"*. Accordingly respectfully following the precedent as above we hold that there is no infirmity in the order of the Ld. CIT(A). Accordingly, we uphold the same. This ground of Revenue's appeal is dismissed.

8. In the result, Revenue's appeal stands dismissed.

Order pronounced in the open court 08/02/2017

Sd/-
(न्यायिक सदस्य)
(N.V.Vasudevan)
(Judicial Member)
Kolkata,

Sd/-
(लेखा सदस्य)
(Waseem Ahmed)
(Accountant Member)

*Dkp, Sr.P.S

दिनांक:- 08/02/2017 कोलकाता ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-DCIT, Circle-2, Aayakar Bhawan, P-7, Chowringhee Sqr, Kol-69
2. प्रत्यर्थी/Respondent-M/s Navyug Enterprises Pvt. Ltd., 226/1, A.J.C. Bose Road, Kol-20
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,
उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।