IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH: KOLKATA

[Before Shri M. Balaganesh, AM & Shri S.S.Viswanethra Ravi, JM]

I.T.A No.1651/Kol/2016
Assessment Year: 2010-11

Binod Kumar Goenka (PaN: ACZPG7855L)	Vs.	Assistant Commissioner of Income-tax, Circle-45, Kolkata.
(Appellant)		(Respondent)

Date of hearing: 25.11.2016
Date of pronouncement: 02.12.2016

For the Appellant: Shri A. K. Tibrewal, FCA, Ld. AR
For the Respondent: Shri Sallong Yaden, Addl. CIT

ORDER

Per Shri M. Balaganesh, AM:

This appeal by assessee is arising out of order of CIT(A)-13, Kolkata vide Appeal No. 736/CIT(A)-13/Kol/Cir-45/2014-15 dated 31.05.2016. Assessment was framed by ACIT, Circle-45, Kolkata u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") for Assessment Year 2010-11 vide his order dated 19.03.2013.

2. The first issue to be decided in this appeal is as to whether the ld. CIT(A) is justified in upholding the addition made in the sum of Rs.13,48,178/- on account of alleged difference in opening balance of transactions entered with Ideal Textiles in the facts and circumstances of the case.

3. Brief facts of this issue is that the assessee is an individual following mercantile system of accounting and engaged in the business of manufacturing and dealing of all kinds of yarn and fabrics. The Ld AO categorically stated that the assessee had produced various details, books of account, bank statement, bills, vouchers, explanations, reconciliation statement and other supporting evidence pertaining to the assessment proceedings. The Ld AO issued notice u/s. 133(6) of the Act to various parties like sundry debtors, sundry creditors of the assessee and the replies from most of the parties have been received directly by the Ld AO. One such party, viz., M/s. Ideal Textiles had also submitted the ledger account directly to the Ld AO wherein the Ld AO found that the opening balance in the said party account was stated to be Rs. Nil as against Rs.13,48,178/- shown by the assessee in his books of account. The assessee was asked to reconcile the said difference during the course

of assessment proceedings. The assessee replied that a particular purchase bill amounting to Rs.13,48,178/- was accounted by the assessee on 12.01.2009 which falls in the immediate preceding previous year relevant to AY 2009-10 which has not been considered by the concerned party M/s. Ideal Textiles, which had admittedly led to the difference of the said sum in the opening balance. It was pleaded that the balance shown by the assessee in its books of account is correct. The Ld AO, however, did not pay any heed to the contention of the assessee and proceeded to make addition of Rs.13,48,178/- on the ground that the assessee was not able to reconcile the difference in the opening balance and completed the assessment accordingly. This action of the Ld AO was upheld by the Ld. CIT(A) in first appeal. Aggrieved, the assessee is in appeal before us on the following ground no.1:

> *"1. That the Ld. CIT(A)-13, Kolkata erred in arbitrarily confirming the addition of Rs.13,48,178/- made by the Assessing officer on account of alleged difference in the opening balance of the transactions entered with M/s. Ideal Textiles."*

4. The Ld. AR argued that first of all there cannot be any addition that could be made by the Ld AO on the alleged difference in opening balance in the sum of Rs.13,48,178/- during the year under appeal. The second line of argument was the entire books of account together with the bills and vouchers were produced with proper explanation thereof before the Ld AO which were not rejected by the Ld AO. He also argued that the difference arose due to one purchase bill which has been accounted for by the assessee in AY 2009-10 itself as it was purchased on 12.01.2009, which probably might not have been accounted for by the said party M/s. Ideal Textiles in their books of account. It was also argued that this was specifically brought to the notice of the Ld AO during the course of assessment proceedings. In support of this argument, he also drew the attention to page no. 1 of the assessee's paper book containing the invoice given by M/s. Ideal Textile dated 12.01.2009 to the assessee for supply of 100% natural silk fabrics to the extent of 5185.30 meters valued at Rs.13,48,178/-. He also drew the attention of the bench to the ledger account of the said party M/s. Ideal Textiles with whom the assessee has both purchase as well as sale transaction wherein this bill amount of Rs.13,48,178/- had been duly accounted for by the assessee as purchase on 12.01.2009 itself. His third line of argument was as to how the Ld AO assumed that the balance reflected by the said party M/s. Ideal Textiles is found to be

correct and how the same as disclosed by the assessee was incorrect. The assessee had given proper explanations before the Ld AO with regard to the said difference in opening balance and in such a scenario, the Ld AO ought to have produced the said party M/s. Ideal Textiles as his witness for cross examination by the assessee which could have brought the truth with regard to omission of an entry by the said party on record. He further placed reliance on the decision of Ahmedabad Tribunal in the case of ACIT Vs. Prabhat Oil Mills Ltd. (1995) 52 TTJ 533 (Ahd.) in support of his contentions. In response to this, the ld. DR vehemently relied on the orders of the lower authorities.

5. We have heard rival submissions and gone through facts and circumstances of the case including the paper book filed by the assessee. The facts stated hereinabove remain undisputed and hence the same are not reiterated for the sake of brevity. It is not in dispute before us that the assessee had produced all the details with supporting evidence in the form of bills and vouchers before the Ld AO. It is not in dispute before us that ledger account from Ideal Textiles was obtained by the Ld AO u/s. 133(6) of the Act wherein the Ld AO found that there was a difference in opening balance of Rs.13,48,178/- as compared to that of the assessee. We find that in any case, there cannot be any addition that could be made in the year under appeal towards the difference in opening balance. Hence, the addition deserves to be deleted on that account itself. We also find that the decision relied on by the ld. AR in the case of Prabhat Oil Mills Ltd., supra is very well founded wherein it was held that mere entries in the accounts of a third party was not sufficient to prove that the assessee had indulged in such transaction as there was no guarantee that the entries were genuine. They also placed reliance on the decision of the Hon'ble Bombay High Court in the case of Addl. CIT Vs. Lata Mangeskar reported in (1974) 97 ITR 693 (Bom) in support of their submission. In the facts and circumstances of the case, we find that in any case there cannot be any addition made towards the difference of Rs.13,48,178/- and hence, we have no hesitation to delete the same. Accordingly, we direct the Ld AO to delete the addition. This ground of appeal of assessee is allowed.

6. The second issue to be decided in this appeal is as to whether the ld. CIT(A) is justified in upholding the disallowance of Rs.2,99,975/- written off as irrecoverable by the assessee in respect of unrealized trade advance in the facts and circumstances of the case.

7. Brief facts of the issue is that the assessee had made payment to M/s. Xinyuan Cocoon Silk Group Co. Ltd. towards import of silk yarn and silk fabrics and as per the practice, the assessee was making advance payment to the said party against which supplies were made by the party to the assessee. There was a balance outstanding of Rs.2,99,975/- as on 31.03.2007 from the said party and even after that the assessee was having regular trading transactions by making advance payments in the course of business and obtaining the supplies against such advances up to 30.06.2009. The assessee on 30.06.2009 thought it fit that since no supply of goods was forthcoming for the advance paid in the FY 2006-07 and which was remaining outstanding in the sum of Rs.2,99,975/- and in view of the long standing relationship he had with the concerned supplier and also keeping in mind the future business interest and continued relationship with the said party, thought it fit to write off the said sum of Rs.2,99,975/- as irrecoverable advance and treated the same as loss incidental to the business during the course of its trade. In other words, the assessee wrote off a sum of Rs.2,99,975/- as irrecoverable and credited the concerned party's account in his books of account on 30.06.2009 and claimed the same as deduction towards bad debts. The Ld AO observed that no income in terms of section 36(2) of the Act was offered by the assessee in respect of the subject mentioned transaction and accordingly, assessee is not entitled for deduction u/s. 36(1)(vii) of the Act. This action of the Ld AO was upheld by the Ld. CIT(A) in first appeal. Aggrieved, the assessee is in appeal before us on the following ground nos. 2 and 3:

> *"2. That the Ld. CIT(A)-13, Kolkata erred in arbitrarily confirming the disallowance of Rs.2,99,975/- claimed by the Appellant Assessee as Bad Debts in respect of unrealized advances relating to business transactions.*
>
> *3. That the Ld. CIT(A)-13, Kolkata erred in arbitrarily confirming the disallowance of Rs.2,99,975/- without appreciating tht the same should had been allowed as loss incidental to business under section 28 read with section 37 of the Income Tax Act, 1961."*

8. The Ld. AR argued that the said loss of Rs.2,99,975/- had arose as a loss incidental to the business due to irrecoverable advance paid to a party during the course of business of the assessee. The very fact that the assessee chose to credit the party's account proves that despite the best efforts of the assessee to recover the said sum either in cash or in kind the assessee had treated the same as irrecoverable in his books of account and by writing off the same it becomes loss incidental to the business of the assessee and accordingly, eligible for deduction u/s. 28 of the Act. In support of his contention, he placed reliance on a decision of Coordinate bench of this Tribunal in ITO Vs. Shree Gouri Shankar Jute Mills Ltd. in ITA No. 1185/Kol/2012 dated 08.10.2015. On the other hand, the ld. DR vehemently relied on the orders of the lower authorities.

9. We have heard rival submissions and gone through facts and circumstances of the case including the paper book containing the complete ledger account of M/s. Xinyuan Cocoon Silk Group Co. Ltd. in the books of the assessee for the period 01.04.2006 to 31.03.2010. We find that the advances were made by the assessee during the course of his regular business and admittedly the said payments were made in the nature of trade advances. We find from the ledger account that the said sum of Rs.2,99,975/- was outstanding from 31.03.2007 onwards and the assessee have had continuous business transaction with the said party up to 30.06.2009 upto which point of time this advance of Rs.2,99,975/- could not be recovered either in cash or in kind by the assessee from the said party. The assessee deemed it fit to write off the same as irrecoverable in his books of account by crediting the concerned party's account on 30.06.2009 and claimed the same as loss incidental to business. Admittedly, the assessee in the instant case is not eligible for deduction u/s. 36(1)(vii) of the Act as no income respect of the said transaction has been offered by the assessee u/s. 36(2) of the Act. However, we find that the assessee is entitled for deduction u/s. 28 of the Act as the said loss in respect of unrealized advance is only incidental loss arising out of the business in view of non materialization of the supplies out of such advance paid by the assessee. We find that the reliance placed by the ld. AR on the Coordinate Bench decision in the case of Shree Gouri Shankar Jute Mills Ltd., supra is very well founded which in turn placed reliance on the decision of Hon'ble Supreme Court in CIT Vs. Mysore Sugar Co. Ltd. reported in (1962) 46 ITR 649 (SC) and the decision of

Hon'ble Bombay High Court in the case of Harshad J. Choksi Vs. CIT reported in (2012) 25 Taxmann.com 567 (Bom).

10. Respectfully following the aforesaid decisions and in the facts and circumstances of the case, we hold that the write off of unrealized advance of Rs.2,99,975/- which were given in the normal course of trade by the assessee is allowable as deduction as trading loss u/s. 28 of the Act. Accordingly, the ground no. 2 raised by the assessee is dismissed and ground no. 3 raised by the assessee is allowed.

11. The last issue to be decided in this appeal is as to whether the ld. CIT(A) is justified in upholding the disallowance of pooja expenses in the sum of Rs.12,776/- in the facts and circumstances of the case.

12. Brief facts of this issue are that the Ld AO found that the assessee debited a sum of Rs.12,776/- under the head pooja expenses which were incurred for conducting weekly pooja in office and on various auspicious occasions. The Ld AO disallowed the same in the assessment which was also upheld by the Ld. CIT(A) in first appeal. Aggrieved, the assessee is in appeal before us on the following ground:

> *"4. That the Ld. CIT(A)-13, Kolkata erred in arbitrarily confirming the disallowance of the Puja Expenses of Rs.12,776/- in complete disregard of the facts of the case and in contravention of the Circular No. 13/A/20/68-IT(A-II) dated 3.10.1968 issued by CBDT in this regard."*

13. The Ld. AR placed reliance on the CBDT Circular No. 17(F.No.27(2)-IT/43) dated 06.05.1943 and accordingly prayed that the said sum is allowable as a deduction. In response to this, the Ld. DR vehemently relied on the orders of the lower authorities.

14. We have heard rival submissions and gone through facts and circumstances of the case. We find no reasoning whatsoever has been given by the Ld AO for disallowing the sum of Rs.12,776/- as pooja expenses in the assessment. We also find that the said sum is squarely allowable as deduction in the light of the Circular relied on by the Ld. AR, supra, which reads as under:

"It has been represented to the Board that customary payments in respect of Deepawali (or Dewali) and mahurat (i.e., the auspicious day of starting new accounts) which long usage and custom have made it obligatory for a business to incur, should be allowed as a deduction in computing the income under sections 10 and 12 of the 1922 Act. The Board understand that such expenses are generally of the nature of advertisement with a view to the securing of new business and that though varying according to the nature and extent of the business, the maximum expenditure is about Rs. 200 on Deepawali or muhurat. The Board consider that since these expenses are not of a personal, social or religious nature but are expended wholly and exclusively for the purposes of the business, they should be allowed as business expenditure provided that the expenditure in question does not exceed the maximum amount specified above."

15. Respectfully following the same, we allow ground no. 4 of assessee's appeal.

16. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 02.12.2016

Sd/-	Sd/-
(S.S.Viswanethra Ravi) Judicial Member	(M. Balaganesh) Accountant Member

Dated : 2nd December, 2016

Jd. Sr. P.S

Copy of the order forwarded to:

1. Appellant – Shri Binod Kumar Goenka, C/o V. N. Saraf & Co., P-1, New Howrah Bridge, Approach Road, 2nd floor, Room No. 1A/3, Kolkata-700 001.
2. Respondent – ACIT, Circle-45, Kolkata.
3. CIT(A), Kolkata
4. CIT, Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy, By order,

Asstt. Registrar.