

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ “ए” मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI
BEFORE HON’BLE S/SHRI JOGINDER SINGH (JM), AND RAJESH KUMAR,(AM)

आयकर अपील सं./I.T.A. No.2180/Mum/2011

(निर्धारण वर्ष / Assessment Year :2006-07)

Admire Sign and Display Pvt Ltd., 38, Cadel Road, Mahim (W), Mumbai-400016	बनाम/ Vs.	Income Tax Officer, 6(1)(2), Aayakar Bhavan, M K Road, Mumbai-400020
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./जीआइआर सं./PAN No. :AACCA7481Q

अपीलार्थी ओर से / Appellant by:	Shri M Subramanian
प्रत्यर्थी की ओर से/Respondent by	Shri Kailash Kanojia

सुनवाई की तारीख / Date of Hearing : 21.7.2016

घोषणा की तारीख /Date of Pronouncement : 6.10.2016

आदेश / O R D E R

Per RAJESH KUMAR, Accountant Member:

This is an appeal filed by the assessee and is directed against the order of the Ld. CIT(A), Mumbai dated 28.1.2011 pertaining to A.Y.2006-07.

2. Issue raised in ground no.1 is against the confirmation of disallowance of Rs.5,49,921/- as made by the AO in respect of advances to supplier written off during the year.

3. During the course of assessment proceedings, the AO found that the assessee has written off bad debts to the extent of Rs.6,75,133/- under the

head other expenses. The assessee was required to justify the claim of bad debts vide letter dated 11.12.2008 and also to furnish a copy ledger account of the party. The assessee submitted that he has made payment to the supplier M/S S K Nanda Consultant and Engg Pvt Ltd who was in the business of manufacturing of scroller and used to supply the same to the assessee in ordinary course of business. The assessee used to sell the said scrolls in the open market and was having regular business dealings with the said party. However the vendor absconded without giving full delivery of the scrollers against the advance payment and when the assessee found that the whereabouts of the of the suppliers were not traceable ,the amount given as advance was written off. The AO disallowed the amount of Rs.5,49,921/- on the ground that writing off advance to supplier did not fall within the ambit of section 36(1)(vii) of the Income Tax Act, 1961 (hereinafter referred to as the Act) and accordingly disallowed and added the same to the total income of the assessee. The First Appellate Authority also dismissed the appeal of the assessee by observing and holding as under :

"8. I have gone through the above submissions very carefully and perused the order of the Assessing Officer. During the year under appeal, the appellant had claimed bad debts amounting to Rs.6,75,33/- under the head 'other expenses'. The appellant company had made various payments to vendor i.e S. K Nanda Consultants and Engineering Pvt. Ltd. who was in the business of manufacturing of Scroller. The summary of advances given is as under:

Period Covered	Opening Bal.	Advance Paid	Billings Received/written off (Rs.)	Closing balance
31/10/2002-31/03/2003	NIL	552408	132595	419813
1/04/2003-31/03/2004	419813	310000	179868	549945
1/04/2004-31/03/2005	549945	50000	27772	572173
1/04/2005-31/03/2006	572173	15000	37252 (written off Rs.549921)	NIL

The appellant submitted that the vendor absconded without giving delivery of the products. It was further submitted that the company has released the payment with utter most precaution in piecemeal and was also monitoring the production process. It was also contended that even if the product comes out in the market, it would not be able to compete in the terms of price and workmanship of the imported products. Therefore, the appellant passed the write off entry in the books. The Assessing Officer has disallowed the claim. The Assessing Officer has dealt with the issue in detail on Page 2 to 9 of his order. It may be observed from the dates of payment and amount of payment made that the appellant had given first advance for an amount of Rs.5,52,408/- against which it received machinery for Rs.1,32,595/-. Again in next year, it has made payment of Rs.3,10,000/- as an advance, even then it was having surplus money with the vendor for Rs.4,19,813/- against which the appellant had received machinery for Rs.1,79,868/- and having net advance of Rs.5,49,945/- with the vendor. Again in the next year, it had made payment of Rs.50,000/-, against which it received machinery of Rs.27,772/- only. Thus, the vendor was having balance of Rs.5,72,173/-. In the next year again, the appellant had advanced Rs.15,000/-, against which no machinery has been received. These all transaction shows that the appellant has not at all taken any precaution in advancing the money. This all indicate that all these payments had been made to accommodate each other for the benefit best known to them and to obtain benefit of the provisions of the Act. Moreover, the amount advanced or purchase of machinery can not be termed as debt. The facts narrated by the appellant in the submission are also not supported by any documentary evidences. In such circumstances, I agree with the Assessing Officer that the claim of the appellant is not an allowable claim u/s.36 or even as per provisions of Sec.37 of the Income Tax Act for want of evidences too. Therefore, the disallowance made by the Assessing Officer is confirmed. Accordingly, this ground of appeal is dismissed."

4. We have heard the parties and perused the material placed on record. We have also gone through the orders of authorities below. The Id. AR submitted that the assessee used to buy Scroller from M/S S. K Nanda Consultants and Engineering Pvt. Ltd. which were sold by the assessee company in the open market and thus, the assessee was having regular business dealings with the said party and advances to the said supplier were given in the ordinary course of business against the delivery of scrollers to supplied by the suppliers which was a regular feature of the business of the assessee. However, the said supplier vanished from the market without supplying the scrollers and therefore impugned outstanding unadjusted advances to the tune of Rs.5,49,921/- had to be written off as genuine business loss when there was no scope of either recovery or any adjustment. The Id. counsel submitted that since the advances were given in the ordinary course of business of the assessee and for the purpose of business and therefore was a legitimate business loss which was rightly written off by the assessee. The submissions of the assessee were strongly objected by the Id. DR on the ground that disallowance was rightly made by the AO and upheld by the Id. CIT(A) as the assessee has not fulfilled any condition as laid down under section 36(1)(vii) read with section 36(2) of the Act. From the facts before us we find that the advances are given in the ordinary course of business and when the advances made remained unadjusted due to absconding of suppliers from the open market, the assessee has no other alternative but to write off the said advances as business loss. We are of the

considered view that the same constitutes legitimate business loss incurred by the assessee. During the course of hearing the Id. Counsel submitted that it is business loss and therefore has to be allowed. Accordingly, we set aside the order of Id. CIT(A) and direct the AO to allow the claim of the assessee.

5. The issue raised in ground no.2 is with regard to the disallowance of penalty charged by the customers for manufacturing defects in the materials supplied of Rs.13,782/-. The AO during the course of scrutiny proceedings, found that the assessee has debited a sum of Rs.13,782/- for penalty charges charged by the customers for defective product and added the same to the total income of the assessee. The Id. CIT(A) upheld the action of the AO by confirming the addition as made by the AO.

6. We have considered the submissions of both the parties on the issue. We find that the penalty levied for defective products supplied by the assessee. In our opinion, the penalty charged by the customers is not penalty and it is payment by the assessee for not performing the contract as agreed and the same is not a penalty for infringement of any law. Therefore, such payment cannot be disallowed. It is only levy of penalty charged by the customers in order to compensate the loss suffered by the said customers due to supply of defective material. The penalty charges paid by the assessee are legitimate business loss and is an admissible deduction in our view. We, therefore, set aside the order of Id. CIT(A) on this issue and direct the AO to allow the same.

7. In the result the appeal of the assessee is allowed.

The above order was pronounced in the open court on 6th Oct, 2016.

घोषणा खुले न्यायालय में दिनांक: 10th Oct, 2016 को की गई ।

Sd

sd

(JOGINDER SINGH)
Judicial Member

(RAJESH KUMAR)
Accountant Member

मुंबई Mumbai: 10th Oct, 2016.

व.नि.स./ SRL , Sr. PS

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)- concerned
4. आयकर आयुक्त / CIT concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai concerned
6. गार्ड फाईल / Guard file.

True copy

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai