IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI G.D. AGRAWAL, PRESIDENT
AND SHRI MAHAVIR SINGH, JUDICIAL MEMBER

I.T.A. No.91/Nag/2011
Assessment Year : 2005-06

Assistant Commissioner of Income Tax, Circle-7, Nagpur.	Vs.	M/s Ballarpur Industries Limited, First India Place, Tower C, Block-A, Mehrauli Gurgaon Road, Gurgaon, Haryana – 122 002. PAN : AAACB5343E.
(Appellant)		(Respondent)

I.T.A. No.92/Nag/2011
Assessment Year : 2005-06

M/s Ballarpur Industries Limited, First India Place, Tower C, Block-A, Mehrauli Gurgaon Road, Gurgaon, Haryana – 122 002. PAN : AAACB5343E.	Vs.	Joint Commissioner of Income Tax, Range-7, Nagpur.
(Appellant)		(Respondent)

Revenue by : Dr. Milind Bhusari, CIT-DR.
Assessee by : Shri K.P. Dewani, Advocate.

Date of hearing : 05.03.2018
Date of pronouncement : 16.04.2018

O R D E R

PER BENCH:

These cross appeals, by Revenue and assessee, for the assessment year 2005-06 are directed against the order of CIT(A)-II, Nagpur dated 28th February, 2011.

2. The First issue in this appeal of the assessee is against the order of CIT(A) confirming the action of the Assessing Officer in disallowance loss claimed on account of write-off of stores lying in bonded warehouse since 1997 and surrendered the title of such goods by the assessee. For this, the assessee has raised following ground No.1:-

> *"1. That the learned Commissioner of Income Tax-II, Nagpur has erred in not allowing loss of Rs.34 crores on account of writing off of stores lying in bonded ware house since 1997 and surrendered the title of such goods by this appellant."*

3. Brief facts relating to this issue are that the assessee imported items from Finland aggregating to approximately Rs 37 crores in early 1997 and these were lying in the custody of Port Authorities and in bonded warehouse. The cost of import of such materials including duties and insurance is said to be to the tune of Rs.37 crores. The assessee also stated that material worth Rs 6 crores had been cleared and these materials were in the nature of stores and spares. Copies of the invoices, bills of entries, market value of the material and statement showing material cleared from the Port Authorities were furnished during the course of assessment proceedings. The A.O. in the assessment order has held as under:-

> *"The assessee's reply has been considered. The goods had been imported from outside of India i.e. from Finland which was never brought in to the assessee's business premises/factory and utilized for the business of the assessee. In other words, plant and machinery was neither released from the Port Authorities nor installed and used for the business purpose and the materials had been simply dumped in the port and no part of utilized for business activity which had been carried out in the relevant period The*

reasons why such material had been imported and kept ideal without any business consideration has not been spelt out by the assessee company. For bringing new materials being plant and machinery, there must be objective determination. It has never been proved that the act of purchase of material was proper and either revenue nature or capital nature The utility of same had never been brought in business and the assessee has failed to established that it had never been brought in business and the assessee has failed to establish that it was for wholly and exclusively for the purpose of business or profession The assessee has not made payments fully paying custom duty and other duties for release of the material imported and such materials was never been installed or put to use in the assessee business. Therefore, it has failed to satisfy commercial principle and no prudent businessman will act with such halfhearted policy. In absence of any utility for the business, such material cannot be said that it was used for the business purpose and no commercial principle was also fulfilled. In absence of such business connection and fulfil of any conditions, it cannot be said that the write off of said outstanding liabilities which had been incurred for business purpose as claimed by the assessee. Therefore, same is disallowed and claim of Rs. 34 crores is rejected."

Aggrieved, assessee preferred appeal before CIT(A).

4. The CIT(A) also confirmed the order of the AO despite the claim made that an amount of goods of ₹34 crores was lying in the custody of the Port Authorities in bonded ware house and was considered as permanently impaired in terms of Accounting Standard AS-28 as the

market realizable value has been eroded. The CIT(A) observed as under:-

> *"I have carefully considered the facts of the case. It is seen from the copy of the invoices from MIs Valmet Finland produced that the equipment purchased is described as paper making machinery and equipment. As per annexure filed along with the paper book, (pg 5 of the paper book) the total value of such goods was Rs 34. 47 crores and payment has been made on 1319195 and 2113/97 towards this Further while the remittances were made as far back as F.Y1995-96 and F.Y1996-97, it is not clear as to why the goods were retained in the bonded ware house without being cleared. Although the assessee has stated that it was due to financial stringency that the custom duty could not be paid no documentary evidence regarding any such claim of dues for payment of custom duty nor any material to substantiate the claim of financial stringency has been brought on record. Further it is seen from the paper book that vide letter dt.17.07.2001,the assessee had written to the Commissioner of Customs (JNPT) stating that the title of these goods lying in the bonded ware house were relinquished. A basic question therefore arises that when the assessee has decided to relinquish the title of these goods for the F.Yr.2001-02 what is the rationale behind writing off such amounts in the F.Yr.2004-05 and whether the liability can be said to have crystallized during the F.Yr,2004-05 The assessee has not attempted to explain this anomaly. It is also seen that the assessee has only unilaterally intimated the custom authorities relinquishing the title to these*

goods. There is no order regarding this relinquishment by the custom authorities produced either before the AO or in appellate proceedings.

The issue that emerges for consideration is as follows

a) Whether the material concerned was actually spares to be written off as revenue expenditure or was it machinery to be considered as capital asset

b) When the material was imported in early 97 and retained in the bonded ware house what were the circumstances that necessitated a write off in F.Y.2004-05 especially when the title to the goods were relinquished in F.Y 2001-02

The assessee has relied on the provisions of the Accounting Standard AS 28 stating that the goods have been permanently impaired and the market realizable value of such material was completely eroded. However, the following material facts have not been considered by the appellant has not furnished any documentation regarding the fact that the market value of the goods was NIL. In fact, it is claimed by the appellant that the title has been relinquished on 17.07.2001 If this claim is correct, then any corresponding claim of write off would have been engendered in F Yr.2001-02. As per the scope of AS 28 it has been laid down that this statement would apply to assets that are carried at cost and to assets that are carried at revalued amounts in accordance with the other applicable Accounting Standards. In the appellant's case since the goods were relinquished in the FY 2001-02 the assessee is not entitled to carry the value of these goods at cost

in the balance sheet after FY 2001-02. Therefore, the claim of the appellant that write off of impaired asset is in accordance with AS 28, is untenable and incorrect.

3.5 In this context, it is relevant to examine claim of relinquishment of the title over the imported goods by the assessee. The appellant, vide letter dt.17th July, 2001 addressed to the Commissioner of Customs. Mumbai has given intimation regarding "Relinquishing Title' to the goods paper machinery imported, and stated as follows

We had imported the above mentioned machinery and equipment and filed Bill of Entry No.000321 dt.03.0.19971GM1Item No. NS-559173 dt 06 02.1997 for the clearance thereof. Out of the above a part of the consignment was cleared.

In respect of the remaining goods lying in the port, and covered by home consumption Bill of Entry No. 000321 dt.03 07 1997 1GM/Item No NS-559173 dt.06 02 1997. no order for clearance under section 47 of Customs Act. 1962 has been passed.

We hereby relinquish our title to these goods in accordance with Sub-section (2) of section 23 of Custom Act, 1962. The details of these containers covered by the above bill of entry are annexed herewith.

As appellant has claimed that these goods are relinquished u/s 23 of the Customs Act it is worth considering the Provisions of section 23 of the Customs Act which reads as follows

"Remission of duty on lost, destroyed or abandoned goods

1) Without prejudice to the provisions of section 13, where it is shown to the satisfaction of the (Assistant Commissioner of Customs or Deputy Commissioner of Customs) that any imported goods have been lost (otherwise than as a result of pilferage) or destroyed, at any time before clearance for home consumption, the (Assistant Commissioner of Customs or Deputy Commissioner of Customs) shall remit the duty on such goods.

The owner of any imported goods may, at any time before an order for clearance of goods for home consumption under section 47 or air for permitting the deposit of goods in a warehouse tinder section 60 has boon made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon

[Provided that the owner of any such imported goods shell not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force]However, in the assessee's case, since the goods were tying in the warehouse It would appear that the provisions of section 68 of the Customs Act are applicable Provisions of section 68 of the Customs Act reads as follows

"Clearance of warehoused goods for home consumption: The importer of any warehoused goods may clear them for home consumption, if

(a) a bill of entry for home consumption in respect of such goods has been presented in the prescribed form:

(b) the import duty leviable on such goods and all penalties, rent, interest and other charges payable in respect of such goods have been paid; and

(c) an order for clearance of such goods for home consumption has been made by the proper officer.

[Provided that the owner of any warehoused goods may, at any time before an order for clearance of goods for home consumption has been made in respect of such goods, relinquish his title to the goods upon payment of rent. interest other charges and penalties that may be payable in respect of the goods and upon such relinquishment, he shall not be liable to pay duty thereon]

[Provided further that the owner of any such warehouse goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.]

Therefore, it is seen that on initiation of proceedings regarding relinquishment of goods an order is passed by the concerned authorities to levy dues from the concerned party Appellant has not produced any copy of order by the Customs authorities ufs.68 of Customs Act regarding relinquishment of goods worth Rs 34 crores which is necessary to show that there was an actual relinquishment in accordance with the statutory provision of the Customs Act. The claim of

the appellant is unilateral Appellant has not produced any evidence of pending proceedings to recover statutory dues by the customs or port authorities. The entire transaction appears to be a questionable one and the assessee claim is full of inconsistencies and without even a shred of evidence.

To conclude, it is seen that the assessee's claim is not tenable for the following reasons

1) As per the invoice of Valmet Finland the goods are described as paper making machinery Therefore, the claim of the appellant that these are stores and spares is contradictory

2) The goods are stated to be relinquished to the Customs authorities in F.Yr. 2001-02. On relinquishment title in the goods would pass to the Customs authorities and would not remain with the assessee

3.7 The write off in A Yr.2005-06 of goods over which assessee has no title is not in accordance with AS 28 and does not entitle the assessee to a claim u/s37of the I.T. Act. The action of the A.O is upheld This ground is, therefore, dismissed."

Aggrieved, assessee preferred appeal before Tribunal.

5. Before us the learned counsel for the assessee argued that assessee has acquired spare parts & equipment which were lying at the stores to be cleared for home consumption since 1997. He explained that the expenditure incurred was in the course of carrying on business is not in dispute and all along in the past it was shown as business asset/advance and same has been accepted as shown in books. Books of account are never rejected. He stated the facts that turnover of

assessee is Rs.2000 crores and gross value of Plant & Machinery of the assessee in final accounts is ₹ 2634.18 crores. The detail of loss indicates that value of goods is ₹ 28.3885 crores and balance amount is interest, BPT charges and Shipping charges (filed in assessee paper book at page-9 of Vol-1). The aforesaid assets were not cleared as it was not considered prudent on account of business exigency. The undisputed fact on record is that assessee has lost the amount spent towards spares & stores/equipment. In the case of assessee spares/equipment were sought to be acquired for existing business to be run smoothly. Relinquishment of goods was under compulsive situation of financial stringency. It is prudent decision considering business exigency. Claim of loss cannot be denied. Ld Counsel relied on coordinate bench of this Tribunal decision in the case of CIT vs. Idea Celluler Ltd. ITA No 516/mum/2015 order dated 30/09/2016.

6. He further argued that the amount spent has not resulted into benefit of any enduring nature and thus is in the nature of allowable business expenditure. Write off of the Machinery is in the nature of abandoned project. He relied on the following cases:-

CIT vs. Britannia Industries Ltd. (2015) 376 ITR 299(Calcutta)
CIT vs. Anjani Kumar Co. Ltd. (2003) 259 ITR 114 (Raj.)
CIT vs Sales Magnesite (Pvt.) Ltd. (1995) 214 ITR 0001 (Bom.)
Zenith Steel Pipes Ltd. vs. CIT (1990) 186 ITR 0594 (Born.)
ITAT order in the case of M/s Royal Calcutta Turf Club in ITA No 231/Kol/2013
Binani Cement Ltd. vs. CIT (2016) 380 ITR 116 (Cal.)

7. He explained that the ClT(A) has observed that assessee has relinquished the asset in FY 2001-02 & no order u/s 68 of Custom Act is submitted. Facts are that amount is written off in books during the year is not disputed & loss suffered by assessee is also not disputed. He stated that the Books of accounts are not rejected and hence, there is no justification for non-allowance of such deduction. Allowance of loss

in the year of write off cannot be denied. Assessee is corporate entity. There is no variation in the tax rate. In fact income determined u/s 115JB of the Act will remain same. No prejudice came to revenue in this year but it will effect only carried forward loss.

8. On the other hand, the learned CIT DR supported the orders of the lower authorities and argued that the assessee has already relinquished the title over the imported goods in assessment year 2002-03 relevant to FY 2001-02 as is evident from assessee's letter dated 17-07-2001 addressed to the commissioner of Customs, Mumbai giving intimation regarding relinquishing of title to the goods paper machinery imported. The learned CIT DR stated that in lieu of proceedings initiated regarding for relinquishment of goods an order was passed to levy dues from the concerned party but no such order was produced by the assessee of custom authorities under section 68 of the Customs Act. It was argued by the learned CIT DR, the Act of the assessee is unilateral Act. He also stated that the claim of the assessee is not tenable for another reason that as per the invoice of Valmat, Finland the goods are described as paper making machinery whereas the assessee claim the same as stores and spares, which is totally contradictory. In view of these reasons, he argued that the claim of the assessee cannot be allowed.

9. We have heard rival contentions and gone through facts and circumstances of the case. We have gone through facts and noticed that imported materials amounting to Rs. 34crores (Annexure A) as lying under the custody of Port Authorities / Bonded Ware House was considered as permanently impaired in terms of Accounting Standard AS 28, because market/realizable value of all such materials were completely eroded and claim for use those material was surrendered to the Port Authorities. In early97, the assessee imported certain materials mainly from Finland. Cost of import for such materials were to the tune of Rs. 37 crores (approx..) before insurance, custom duty and other cost. The assessee, on account of financial stringency prevailing during

the period, was not in a position to clear all those materials from the Port Authorities. However, charges for port/ware houses etc. were paid on regular basis. However, the appellant company cleared materials worth Rs. 6 crores (approx) before insurance, duty and other charges. These two factors i.e.

(I) use of certain materials after clearance from Port Authorities and

(ii) payment of ware house charges / amply suggest that imported materials were owned by the appellant company though such materials were partly used and partly lying in the bonded ware house of the Port Authorities in place of assessee's own godown.

In short, facts of this case suggest that at a material time, the stores and spares were used and/or ready for use as and when need had arisen.

10. It is fact that the assessee had incurred expenses when materials were imported. Admittedly expenses incurred for such import was for the purpose of business pending capitalization i.e. utilization thereof. Thus, over the years, material so imported irrespective of their cost, was in use in wider sense i.e. a passive use by assessee and in reality, as and when required basis. However, the assessee relinquished the right & title to those goods in accordance with sub-section (2) of section 23 of Custom Act. 1962 considering goods so lying with the Port Authorities had lost its life for use in the assessee's business. Moreover, payments towards insurance, ware house rent and other charges would become uneconomic in true commercials sense. Therefore, it is a business loss which is allowable as per ordinary commercial principle in computing profit. Any reference to book entry divorced from the reality and surrounding circumstances, even if opposed to principle of accountancy, should not be a factor in order to decide the true character of income and or loss. The assessee before lower authorities and before us also filed documents such as, i.e. import invoices details for the goods damaged and for lost its market value, payment details in

respect of import of market value of goods, statement showing materials cleared from, Port Authorities for use in the assessee's business and the materials relinquish thereof, bill of entries for goods cleared and use for the business etc. Stores & spares being essentially a standby item for any paper plant more particularly for a chain of manufacturing/processing of paper units when all such units are running continuously 365 days in a year. Thus, expenditure or the imported item whether used or not was for assessee's existing business. For allowance of a claim for deduction as business loss / expenditure, all that is necessary is that firstly, the money, i.e. capital, must have been utilized, secondly, it must have been expended in relation to business. It is admitted position in law, where there is no specific statutory provision for a deduction in the computation of business profits, it does not mean that the items goes without any deduction at all, but the question has to be resolved on the basis of commercial prudency having regard to the accepted commercial practice and trading principles and can be said in a case to arise out in course of carrying on the business and very much incidental to such business. Impugned loss contains all the indicia of expense. Similarly, any isolate transaction, once in 40 -50 years is not an impediment to it being called as business loss since the expenses were very much incidental to the carrying on of the business. All that is germane is whether the expenses was, or was not, for the purpose of business and its nexus to the business. The expression "for the purpose of business" has been satisfied as explained hereinbefore and therefore the assessee would be entitled to deduction. The tax law requires that the assessee must incur expenditure, loss for business which is carried on in the year of account. The details of loss is enclosed by assessee as under:-

Details of loss

S.No	Description	US $	Rate	Amount (₹)	Amount in Lacs (₹)
1.	Goods	7851680	36.156	283885342	2838.85

	Relinquished				
2.	Interest on custom duty				135.00
3.	BPT charges				354.00
4.	Shipping Charges				25.00
5.	Other Charges				47.16
					3400.02

BPT (Bombay Port Trust Charges) includes warehouse, Demurrages and Ground Rent.

11. In the given facts of the case, we have gone through the decision of Bombay High court in the case of CIT vs. Sales Magnesite (P.) Ltd [1995] 214 ITR 1 (Bom, wherein Hon'ble Bombay High Court has considered the issue of commercial expediency and allowance of loss in the business by observing as under:-

> *"7. We have carefully considered the facts of the case. We have also noted the finding of the Tribunal that the payment made by the assessee to its sole selling agents as compensation for termination of the sole selling agency was a business expenditure which was incurred by the assessee after proper consideration on the facts and circumstances of the case and on the basis of legal opinion of its solicitors. The Tribunal has also recorded a clear finding of fact that the payment was made for commercial expediency. In view of this clear finding that the payment for termination of the sole selling agency was wholly on business considerations, we do not find any cogent reason to hold that the claim of the assessee was not allowable as a business deduction.*
>
> ***8.*** *The principles governing the allowance of deduction in respect of such expenditure are well-settled by now by a catena of decisions of the Supreme Court and the*

various High Courts. Such deductions are ordinarily claimed and allowed under section 37 of the Act which is a residuary section extending the allowance of deduction to items of business expenditure not covered by any of the preceding sections (sections 30 to 36) and section 80VV of the Act. The only conditions are that (i) it is not an expenditure (a) in the nature of capital expenditure or (b) personal expenses of the assessee, and (ii) it is laid out or expended wholly and exclusively for the purposes of the business or profession.

9. *Various tests have been evolved by the Courts from time to time to decide whether an expenditure is incurred for the purposes of business. One of the tests often applied is whether it is incurred by the assessee in his character as a trader. To hold it to be an expenditure allowable as a deduction under section 37, it is not essential that it should be necessary, legally or otherwise, to incur the same or that it should directly and immediately benefit the business of the assessee. Even expenditures incurred voluntarily on the ground of commercial expediency and in order indirectly to facilitate the carrying on of the business would be deductible under this section. The question whether it was necessary for commercial expediency or not, is a question that has to be decided from the point of view of the businessman and not by the subjective standard of reasonableness of the revenue. As observed by the Supreme Court in Bombay Steam Navigation Co. (1953) (P.) Ltd. v. CIT [1964] 56 ITR 52 , the question must be viewed in the larger context of business necessity or*

commercial expediency. No abstract or pedantic view can be taken in the matter.

10. *Applying these tests to the facts of the present case, it is clear that the payment of compensation made by the assessee to its erstwhile sole selling agents for loss of sole selling agency is allowable as a deduction under section 37 in computation of the income of the assessee. This is particularly so in view of the following findings of fact arrived at by the Tribunal which are not subject-matter of challenge in this reference application :*

(i) The factum of payment is proved.

(ii) There is nothing on record to show that payment was illusory or that the assessee's claim was mala fide.

(iii) There is no evidence on record to show that the transaction was a got-up affair to hoodwink the revenue.

(iv) The claim of the sole selling agents is not sham.

(v) The compensation has been given in the light of the opinion of the solicitors who advised the assessee to pay the same.

(vi)The amount paid by way of compensation more or less corresponds to the amount of remuneration that would have been payable for the unexpired period of the agency.

(vii)The payment was for business or commercial expediency.

11. *The learned counsel for the revenue placed reliance upon the provisions of section 294AA(2) in support of his contention that the sole selling agency stood automatically terminated in the absence of the approval of the Central Government. It was urged that there being no legal obligation on the assessee to pay any compensation to the said sole selling agents, the payment made by the assessee by way of compensation for loss of office of sole selling agents cannot be held to be for commercial consideration. We are not impressed by these submissions. So far as the second contention regarding payment for extra-commercial consideration is concerned, we find that it is wholly untenable in view of the clear finding of the Tribunal to the contrary. The Tribunal, on consideration of the totality of the facts and circumstances of the case, has come to a clear finding of fact that the payment was dictated by commercial expediency. This finding of fact having not been challenged on the ground of perversity or the like, it is not open to the revenue at this stage to contend that the payment of compensation by the assessee was not for business consideration but was a payment for extra-commercial consideration.*

On facts also, there does not appear to be anything wrong or unusual in the payment of the sum of Rs. 1,55,855 by way of compensation to the sole selling agents for loss of office which they had been holding for more than three decades and in claiming deduction of the same in computation of its total income. We, therefore, answer the first question also in the affirmative and in favour of the assessee."

12. Similarly, the Hon'ble Bombay High Court in the case of Zenith Steel Pipes Ltd. vs. CIT (1990) 186 ITR 594 (Bom.) and considered the issue of write off of stores & spares imported earlier but lying in the godown of a port authority is a loss incidental to the business. Hon'ble High Court considered this issue as under:-

> *"Evidently, the subject-matter of both the questions is the same. The assessee had imported certain electrical spare parts for being used in the course of its manufacturing business. The said consignment was received at Bombay port but the same was not traceable. The assessee entrusted the work of tracing the consignment to Messrs. Insimax Corporation, Bombay, who were paid their fees of Rs. 3,500. The said consignment was traced but the assessee found that the spare parts imported by it were rusted and it was not worthwhile to clear them after paying duty, wharfage, demurrage, etc. Accordingly, it decided not to take delivery of the goods and wrote off the amount of Rs. 43,168 being the purchase price of the spare parts and Rs. 3,500 being the fees paid to Messrs. Insimax Corporation, the total of which came to Rs. 46,668 as business loss.*
>
> *The Income-tax Officer rejected its claim on the ground that the loss was a loss on account of non-delivery by the assessee and it was not a loss in the normal course of carrying on of its business. The Appellate Assistant Commissioner confirmed the disallowance observing that, without taking actual delivery and putting the spare parts to test, it could not be possible for any one to say that the goods were heavily rusted and extensively deteriorated. On further appeal, the Tribunal also confirmed the disallowance.*

In its view, non-acceptance of the goods by the assessee, in the circumstances, amounted to confiscation of goods and this loss was, therefore, more in the nature of penalty or fine rather than a loss during the normal course of business. The Tribunal observed that the assessee had not even produced the inspection report in order to prove that the goods were really rusted.

Shri Toprani, learned counsel for the assessee, submitted that the departmental authorities as well as the Tribunal had failed to appreciate that the consignment containing spare parts was not traced by port/Customs authorities but was traced by the assessee's agents, Messrs. Insimax Corporation, Bombay, who were paid their fees of Rs. 3,500 for the purpose. When they traced the consignment, they informed the assessee that the spare parts in the consignment were almost junk and that it was not worthwhile to clear them by incurring further expenditure by way of duty, wharfage, demurrage, etc. It was a business decision which their clients took and the departmental authorities had no business to question the same unless there was even a suggestion that the goods were wrongly imported or that the Customs authorities would have otherwise confiscated them. Dr. Balasubramanian relied on the order of the Tribunal.

In our opinion, the submissions on behalf of the assessee are well-founded. It is common ground that the consignment was not being traced for a sufficiently long time and it was traced only as a result of the efforts made by the assessee's agents, Messrs.

Insimax Corporation, Bombay, to whom the assessee had to pay fees of Rs. 3,500. It is not on record as to how much time the agents took to trace the consignment. However, the assessee-company carries on its business and it is for the assessee to decide whether it was in its interest to clear the consignment or not as it would have amounted to waste of good money after bad money. It was a business decision which the departmental authorities could not have questioned without any cogent reasons. In the circumstances, insisting upon the inspection report was absolutely meaningless."

13. Even the Hon'ble Bombay High Court in the case of Lord'S Dairy Farm Ltd. vs. CIT (1955) 27 ITR 700 (Bom.)

"12. The next question that we have to consider is whether the whole of this amount can be permitted as an allowance to the assessee. If we are right in the view that we have taken that what is claimed as a trading loss is not a permissible deduction under section 10 (2) (xv), then the material date obviously is not the date when the embezzlement took place but the material date is when the loss is caused. So long as there is any possibility of the money being recovered from the employee who has embezzled the money, there is no loss to the assessee. It is only when it is clear that the money cannot be recovered that the loss is caused. In this case it is in evidence that the assessee wrote off this amount of Rs. 32,000 in the year of account. The Advocate-General says that there is no finding that this amount, there is prima facie evidence that that amount is irrecoverable. Undoubtedly the department can rebut the prima facie

inference by drawing attention to circumstances or by leading some evidence to suggest that the position taken up by the assessee was not correct. In this case there is no evidence whatsoever on the record except the fact that the assessee wrote off this amount in the year of account. In the absence wrote off this amount in the year of account. In the absence of any evidence we are entitled to presume that the amount became irrecoverable when the assessee wrote it off in its books of account. Therefore, in our opinion, not only is the assessee entitled to claim this amount of Rs. 32,000 as a trading loss but is also entitled to claim this amount in the assessment year, viz., 1947-48.

13. We will, therefore, reframe the question in the following way :

"Whether the assessee was entitled to claim a sum of Rs. 32,000 as a permissible allowance under the circumstances of the case ?"

and answer it in the affirmative. The Commissioner to pay the costs.

14. Reference answered in the affirmative."

14. In view of the above legal authorities and facts of the case as discussed above, we are of the view that write off of stores & spares imported earlier but lying in the godown of a port authority is a loss incidental to the business. We allow the loss accordingly. This issue of assessee's appeal is allowed.

15. The next common issue in these cross-appeals is as regards to the order of CIT(A) in restricting the disallowance of write-off of an amount out of ₹1,47,51,335/- claimed by the assessee at ₹16,20,186/-. The Revenue is against deletion of disallowance of deduction of write-

off of an amount of ₹1,31,34,610/- and assessee is in appeal for confirming the disallowance at ₹16,20,186/-. For this, Revenue has raised the following ground No.1 and assessee has raised following ground No.2 :-

Ground No.1 raised by the Revenue:-

> *"On the facts and in the circumstances of the case, the learned CIT(A) erred in holding that the assessee is entitled to deduction of write off of an amount of Rs.1,31,34,610/-."*

Ground No.2 raised by the assessee:-

> *"That the learned Commissioner of Income-tax (Appeals)-II, Nagpur has erred in not allowing loss suffered by the appellant company for irrecoverable loans and advances Rs.60,20,186/- debited in the profit & loss account under the account head "Bad debts written off"."*

16. Brief facts are that the Assessing Officer during the course of assessment proceedings observed from the profit & loss account that the assessee has claimed bad debt of ₹1,47,51,335/- and debited the same in the profit & loss account. The Assessing Officer required the assessee to explain as to how he is entitled for this write off. The assessee explained that it has claimed bad debt written off amounting to ₹1,47,51,335/- as the assessee has actually written off in the books of account and the same are in relation to trade debtors which has been claimed as bad. The assessee submitted complete details of bad debts party-wise before the Assessing Officer as well as before the learned CIT(A) and now before us in its paper book and the details are as under :-

Customer Name	Amount Rs.	Nature
Jai Dayal Kapoor	85,96,540	Paper Debtors

Perfect Impressions, Faridabad	5,550/-	Paper Debtors
Hira Printing Press, Bombay	1,42,241/-	Paper Debtors
Kapadia Paper Mart	1,49,140/-	Paper Debtors
Rajesh Brothers	91,737/-	Paper Debtors
Sibbal Brothers	1,07,061/-	Paper Debtors
Jai Kushal (P) Limited	24,872/-	Paper Debtors
Navneet Publications	11,170/-	
Muni Cargo	3,461/-	
Bharat Starch Limited	4,00,688/-	
DBH International Limited	1,03,950/-	
Best Bilt Leather Limited	9,72,487/-	
Security Deposit	1,39,600/-	
Shankar Trading Corporation Meerut	20,77,763/-	
Anil Agencies Pvt.Ltd.	7,37,190/-	Paper Debtors
Shyam Traders	10,95,623/-	Paper Debtors
Shobha Cards (P) Ltd.	91,262/-	Paper Debtors
Total	1,47,51,335	

17. According to the Assessing Officer, as per the provisions of Section 36(i)(vii) of the Act, the assessee has to comply with the conditions that it must be a proper debt or part thereof and debt must be bad. Further, it should be revenue in nature and the amount which has been written off as recoverable in the accounts of the assessee for the previous year. Further, the same amount should have been accounted for while computing the income of the assessee for the previous year in which the amount of such debt or part thereof is written off. According to the Assessing Officer, the assessee must prove that the debt has actually become bad. As the assessee failed to prove the same, the Assessing Officer added the bad debts to the returned income of the assessee amounting to ₹1,47,51,335/-. Aggrieved, assessee preferred appeal before the learned CIT(A), who restricted the disallowance at ₹16,20,186/- and deleted the balance by observing in paragraph 4.2 as under :-

> *"4.2 I have considered the facts of the case. It is seen that out of the amount of Rs.1,47,51,335/- an amount of Rs.16,20,186/- pertains to loans and*

advances, the balance amount of Rs.1,31,34,610/- relates to paper debtors. These amounts relate to trade debtors. As per the provisions of section 36(2), to claim an amount as bad debt, the amount is required to be written off as a irrecoverable in the accounts of the previous year and should have been taken into account in computing the income of the assessee of that previous year or in any earlier previous year. It is clarified by the appellant that the amount relating to paper debtors has been included in the computation of income in earlier years. During the year under consideration these amounts have been written off in the books as irrecoverable. Therefore, I am of the considered view that the appellant is entitled to write off an amount of Rs.1,31,34,610/- pertaining to trade debtors. A.O. is directed to allow this amount accordingly. As for the balance of Rs.16,20,186/-, these pertain to loans and advances made by the appellant, and these amounts have not been taken into account for computing the income of the assessee in any previous year. Therefore, the claim to the extent of Rs.16,20,186/- cannot be allowed u/s 36(2) of I.T. Act. This ground is, therefore, partly allowed."

Aggrieved, now both Revenue and assessee, both, are in appeal before the Tribunal.

18. We have heard rival contentions and gone through the facts and circumstances of the case. The facts are admitted and there is no dispute about the same. CIT(A) restricted the disallowance of bad debt at ₹16,20,186/- only on the premise that these pertains to loans and advances and these are not relatable to trade debtors. During the

hearing, learned counsel for the assessee fairly conceded that he is not pressing the issue raised in its appeal as regards the disallowance confirmed by the CIT(A). In respect to trade debtors, CIT(A) has deleted the disallowance only on the premise that write-off of bad debts in the books of account is sufficient for claiming deduction under the amended provisions of Section 36(1)(vii) of the Act and assessee is not further required to prove that the debt has become bad. For this, the assessee before lower authorities and before us relied on the decision of Hon'ble Supreme Court in the case of T.R.F. Ltd. Vs. CIT – (2010) 323 ITR 397 (SC). We find that this issue is squarely covered in favour of the assessee and hence, this issue of Revenue's appeal is dismissed. As regards the assessee's appeal, the assessee has not pressed the issue and hence, the same is also dismissed.

19. The next issue in Revenue's appeal is as regards to the order of CIT(A) in directing the Assessing Officer to consider the claim of the assessee regarding payment made on account of charity and donations amounting to ₹2,15,38,948/-. For this, the Revenue has raised the following ground No.2 :-

> *"2. On the facts and in the circumstances of the case, the learned CIT(A) erred in directing the A.O. to consider claim of the assessee regarding payment on account of charity and donations of Rs.2,15,38,948/- as per directions of the Hon'ble ITAT in ITA No.261/Nag/2007."*

20. At the outset, learned counsel for the assessee stated that CIT(A) has only remanded the matter to the file of the Assessing Officer to follow the directions of the Tribunal, who has restored the matter for assessment year 2004-05 in ITA No.261/Nag/2007. The CIT(A) has reproduced the directions of the Tribunal for assessment year 2004-05. When a query was put to learned CIT DR, he fairly conceded the position.

21. After hearing both the sides and going through the order of CIT(A), it is observed that CIT(A) has directed the Assessing Officer to dispose of the objections of the assessee in respect to this ground following Tribunal's directions for assessment year 2004-05. We do not find any infirmity in the directions of the CIT(A) and the same are confirmed. This issue of Revenue's appeal is dismissed.

22. The next issue in this appeal of Revenue is against the order of learned CIT(A) treating the sales tax incentive availed under package scheme of incentive of Government of Maharashtra as capital receipt not chargeable to tax instead of revenue receipt treated by the Assessing Officer. For this, the Revenue has raised the following ground No.3 :-

> *"3. On the facts and in the circumstances of the case, the learned CIT(A) erred in holding that sales tax incentive availed under the package scheme of incentive of Government of Maharashtra is capital receipt and is not chargeable to tax."*

23. Brief facts are that the assessee claimed the incentive received under Package Scheme of Incentives, 1993 of Government of Maharashtra for setting up of industrial unit. The assessee made this claim on the basis that the incentive scheme as precisely mentioned in the eligibility certificate issued by SICOM for the following items :-

> *A. Scheme of incentive was available for development of least developed areas in Maharashtra.*
>
> *B. Incentive was allowed for investment made by the assessee.*
>
> *C. Incentive was for setting up of industrial undertakings.*

D. Incentive was not related to sales, sales tax liability and discharge of sales tax liability of the business enterprises.

E. Incentive is for development of backward area.

24. It was contended before the Assessing Officer by the assessee that the Government of Maharashtra announced various incentives for industrialization of backward area of Thane-Pune belt. To implement this scheme, the State Industrial &Investment Corporation of Maharashtra was the nodal agency for the purpose of industrial development. This institution was authorized amongst others to issue certificate for eligibility claim of incentive depending upon the nature and location of the eligible unit as per clause 2 and 3.11 of the Scheme. The assessee is continuously claiming this incentive as capital and Assessing Officer in earlier years also treated the same as revenue. Similarly, in this year also, the Assessing Officer treated the claim as revenue in nature. Aggrieved, assessee preferred appeal before the CIT(A). The CIT(A), relying on earlier years and also Tribunal's decision for assessment year 2003-04 and 2008-09, allowed the claim of the assessee by observing in paragraph 9 and 9.1 as under :-

"9.0 Ground No.7 : This ground is against addition on account of sales tax incentive of Rs.35,30,93,136/-. I have considered the submissions made by counsel of the assessee and perused the evidence on record and assessment order. The A.O. has discussed the disallowance at para 15 of the assessment order. The A.O. has made disallowance and has observed that claim is made by assessee as in earlier assessment years. The addition made in the case of assessee in earlier assessment year has been deleted in appellate order for earlier assessment years. In assessment year 2004-05

CIT(A) has considered the issue at para 8 of appellate order and held that sales tax incentives availed under the Package Scheme of Incentives of Govt. of Maharashtra is capital receipts not chargeable to tax at the hands of assessee. The Hon'ble Bombay High Court has held in the case of Reliance Industries Ltd. in Appeal No.1299/2009 vide judgment dated 15.04.2009 that incentive received under the Package Scheme of Incentives of Govt. of Maharashtra is capital receipt and not chargeable to tax.

9.1 Respectfully following the same I hold that sales tax incentives availed under the Package Scheme of Incentives of Govt. of Maharashtra is capital receipt and not chargeable to tax. The ground of appeal of assessee is allowed."

Aggrieved, now Revenue is in second appeal before the Tribunal.

25. After hearing rival contentions and going through the facts and circumstances of the case, we find that this issue is covered by the Tribunal's decision in assessee's own case in ITA No.332/Nag/2014 for assessment year 2008-09 vide order dated 24th November, 2015 wherein further the Tribunal has followed the order of the Coordinate Bench in assessee's own case for assessment year 2006-07 in ITA No.106/Nag/2011, order dated 5th June, 2015. Respectfully following the decision of Coordinate Bench of the Tribunal in earlier years, we confirm the order of CIT(A) and this issue of Revenue's appeal is dismissed.

26. The next issue in this appeal of the Revenue is against the order of CIT(A) in deleting the addition made by the Assessing Officer with respect to contribution to various institutions and clubs. For this, Revenue has raised following ground No.4 :-

"4. On the facts and in the circumstances of the case, the learned CIT(A) erred in deleting the addition of Rs.70,38,703/- as contribution to various institution and clubs etc."

27. After hearing rival contentions and going through the facts and circumstances of the case, we find that learned CIT(A) has deleted the addition by following Tribunal's decision in assessee's own case for assessment year 2004-05 in ITA No.226/Nag/2008 vide order dated 12th August, 2009 by observing in paragraph No.10 as under :-

"10.0Ground No.8 : This addition is against contribution to various institutions and clubs of Rs.7038703/-. I have considered the submissions made by counsel of the assessee and perused the assessment order. The A.O. has discussed the addition at para 16 of the assessment order. The A.O. has made addition as similar additions have been made in the case of assessee in earlier assessment order. The CIT(A) in appellate order for assessment year 2004-05 at para 9 has deleted the addition made in respect to distribution to educational institutions and employee's club located in the vicinity of industrial undertaking of the company. The order passed by A.O. has been upheld by ITAT in the appeal filed by Revenue in ITA No.226/Nag/2008 vide order dated 12th August 2009 at para 45. Respectfully following the said decision the addition made by A.O. at Rs.70,38,703/- is unsustainable and is hereby directed to be deleted. The ground of appeal of assessee is allowed."

Learned CIT DR also conceded the position.

28. We find that this issue is squarely covered by the Tribunal's decision in assessee's own case. Respectfully following the same, we confirm the order of CIT(A) and this issue of Revenue's appeal is dismissed.

29. The next issue in this appeal of the Revenue is against the order of CIT(A) deleting the addition of sales tax incentive availed under Package Scheme of Incentives of Government of Maharashtra as capital receipt by reducing the same for the purpose of computing of book profit u/s 115JB of the Act. For this, Revenue has raised following ground No.5:-

> *"5. On the facts and in the circumstances of the case, the learned CIT(A) erred in holding that sales tax incentive of Rs.35,30,93,136/- is of the nature of capital receipt and the same has to be reduced for the purpose of determining the book profit u/s 115JB of the I.T. Act."*

30. We find that this issue is also covered by the decision of the Tribunal in assessee's own case for assessment year 2004-05 in ITA No.226/Nag/2008, order dated 12th August, 2009. We find that CIT(A), following Tribunal's order, allowed the claim of the assessee by observing in paragraph 15.1 as under :-

> *"15.1 I have considered the submissions made by counsel of the assessee and perused the assessment order. The A.O. has discussed the addition at para 20C of assessment order. The A.O. has held that sales tax incentive availed under the Package Scheme of Incentives of Govt. of Maharashtra is revenue receipt and same cannot be considered for reduction for the purpose of provisions of section 115JB of I.T. Act 1961. Similar issue was considered by Hon'ble CIT(A) in the case of assessee for the*

assessment year 2004-05 at para 16 of the assessment order. The CIT(A) after considering the facts in details has held that sales tax incentives have got to be reduced from net profit as per profit & loss account to determine the book profit u/s 115JB. The appeal filed by revenue in respect to order passed by CIT(A) has been dismissed in ITA No.226/Nag/2008. Respectfully following the order of CIT(A) and ITAT in the case of assessee in earlier assessment year the ground of appeal of assessee is allowed."

31. We find no infirmity in the order of CIT(A) and hence, the same is confirmed. This issue of Revenue's appeal is also dismissed.

32. The next issue in the assessee's appeal is regarding the order of learned CIT(A) confirming the disallowance of expenses on account of adjustment relating to earlier years. For this, assessee has raised ground No.3 :-

"3. That the learned Commissioner of Income-tax (Appeals)-II, Nagpur has erred in disallowing expenses Rs.7,99,267/- debited to in the profit & loss account under the account head "adjustment relating to earlier years"."

33. At the outset, learned counsel for the assessee stated that he has instructions from the assessee not to press this issue and hence, the same is dismissed as not pressed.

34. The next issue in this appeal of the assessee is against the order of CIT(A) confirming the disallowance of payments made to LIC in respect of contribution to superannuation fund for its employees at Unit

Bhigwan, Pune as not recognized as per the provisions of Chapter IV of the Act. For this, assessee has raised following ground No.4:-

> *"4. That the learned Commissioner of Income Tax (Appeals)-II, Nagpur has erred in disallowing payment Rs.20,76,160/- made to the Life Insurance Corporation of India in respect of contribution to Superannuation Fund for its employees employed in one of the establishments situated at Unit Bhigwan, Pune not recognized as per provisions under Chapter IV(Part B) of the IT Act, 1961."*

35. Brief facts are that the Assessing Officer noted from the profit & loss account that the assessee has made payment on account of contribution to another superannuation fund relating to erstwhile amalgamated company Built Graphic Papers Ltd. amalgamated with effect from assessment year 2003-04 is not eligible for deduction u/s 36(1)(iv) of the Act, because this particular fund is not recognized as per Rule 2 Part B of Schedule-6 of the Act. The CIT(A) also confirmed the action of the Assessing Officer. Aggrieved, now the assessee is in appeal before us.

36. At the outset, learned counsel for the assessee stated that this issue covered in assessee's own case for assessment year 2006-07 in ITA No.93/Nag/2011 vide order dated 5th June, 2015 wherein the Tribunal vide Paragraph 15 and 16 has adjudicated this issue, whereby this issue is restored to the Assessing Officer to decide in terms of the directions of the Tribunal. The Tribunal, vide paragraph 15 & 16, has directed as under :-

> *"15. We have heard both the sides at length and perused the material placed before us. At the outset, it is worth to mention that the AO as well as CIT(A) both have not mentioned the nature of the superannuation fund. On one hand, the AO has*

mentioned that the superannuation fund is related to erstwhile Built Graphics Paper Ltd., amalgamated with the assessee company, but, on the other hand, the assessee has submitted before us that the nature of superannuation fund was a contribution to LIC for the welfare of the employees in the form of superannuation fund. Therefore, the correct nature of fund is yet to be ascertained, only then it can be decided that the contribution in question do not fall under the category as prescribed u/s 36(1)(iv) of the I.T. Act and it qualifies under the general provisions of section 37 of I.T. Act. Almost in identical situation, ITAT Nagpur Bench, Nagpur in the case of JCIT vs M/s Vidarbha Distillers (ITA No.600 & 601/Nag/1998) AY 1995-96 and 1996-97 order dated 9th October, 2001) has held that,

"We hold that the CIT(A) was justified in allowing the appeals of the assessee with a direction to the Assessing Officer to allow the deductions subject to verification with regard to the date of payments by the assessee to the LIC."

37. We have also perused the decision of Hon'ble P&H High Court pronounced in the case of CIT vs. Punjab Financial Corporation (295 ITR 510), relied upon by the assessee, but noticed that there was no confusion about the nature of the contribution; stated to be a contribution for the benefit of the employees under Provident Fund Act, 1925. So the Hon'ble High Court has recorded a satisfaction that it was a case of contribution towards Provident Fund Act, 1925 which was not debarred u/s 37 hence, directed to allow the same. On the contrary, we cannot record any such satisfaction in the absence of clarity on the nature of contribution made by the assessee. Rest of the decisions have been perused but do not directly cover the issue in hand,

especially under the circumstances when an important fact is yet to be ascertained. Hence we deem it proper to restore this ground back to the stage of the AO to decide afresh as per law after due verification. Resultantly, this ground of the assessee may be allowed for statistical purposes.

38. Both parties before us agreed that the same directions can be followed by the Assessing Officer. Respectfully following the Tribunal's order, we direct the Assessing Officer to decide in terms of the directions in assessment year 2006-07 by the Tribunal. This issue is set aside to the file of the Assessing Officer and allowed for statistical purposes.

39. **In the result, the appeal of assessee is partly allowed and that of the Revenue is dismissed.**

Decision pronounced in the open Court on 16.04.2018.

Sd/-	Sd/-
(G.D. AGRAWAL)	**(MAHAVIR SINGH)**
PRESIDENT	**JUDICIAL MEMBER**

Dated : 16.04.2018
Khattar/ S. Sarkar, Sr. PS

Copy of the order forwarded to :

1. The Appellant
2. The Respondent
3. Concerned CIT
4. The CIT(A)
5. D.R.

Assistant Registrar