

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA Nos.274/RPR/2023
निर्धारण वर्ष / Assessment Years : 2015-16

Biltech Engineers Private Limited
4th Floor Surya Treasure Island Mall,
Junwani Road, Smriti Nagar, Bhilai (C.G.)
PAN : AACCB2418A

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax-1(1),
Bhilai (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B. Doshi, C.A.
Revenue by : Shri Satya Prakash Sharma, Sr.DR

सुनवाई की तारीख / Date of Hearing : 06.09.2023

घोषणा की तारीख / Date of Pronouncement : 29.11.2023

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee company is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), dated 19.06.2023, which in turn arises from the order passed by the A.O. u/s.143(3) of the Income-tax Act, 1961 (for short 'Act'), dated 31.12.2016 for A.Y. 2015-16. The assessee company has assailed the impugned order on the following grounds of appeal before us:

“1. Ld. CIT(A) erred in confirming the disallowance of Rs. 27,67,124/- made by AO on account of advance/balance written off claimed by the appellant as deduction. The disallowance made by AO and confirmed by Ld. CIT(A) is arbitrary, illegal and not justified.

2. The appellant reserves the right to add, amend or alter any of the ground/s of appeal.”

2. Controversy involved in the present appeal lies in a narrow compass, i.e., sustainability of the disallowance of an amount of Rs.27.67 lacs (approx.) that was advanced by the assessee company towards the purchase of property, i.e., stock-in-trade but was written off on becoming irrecoverable.

3. Shorn of unnecessary details, the assessee, a real estate developer had advanced an amount of Rs.39 lacs to Ashutosh Gupta, S/o. Dr. G.C. Gupta, resident of Gudiyari, Raipur, a commission agent, for the purchase of land at Village: Baldakacher, District: Baloda Bazar. Although the assessee company, thereafter, had purchased land and executed a registered deed for a value of Rs.11,32,876/-

(out of Rs.39 lacs) but the balance of land could not be transferred in its name due to the sudden demise of Shri Ashutosh Gupta in an accident. As the legal heir of Shri Ashutosh Gupta (supra) declined to refund the balance amount of Rs.27.67 lacs (supra) to the assessee company, the latter filed a police complaint for recovery of the said amount, Page 60-61 of APB.

4. As the aforementioned amount of Rs.27.67 lacs (supra) had become irrecoverable, the assessee company had written off the same and claimed it as a deduction in its profit and loss account for the year under consideration. However, the A.O. held a conviction that as the assessee had not earlier offered the aforementioned amount as its income, the pre-condition for claiming the same as a bad debt was not satisfied. Accordingly, the A.O. disallowed the assessee's claim for a deduction of Rs.26.67 lacs (supra).

5. Aggrieved, the assessee carried the matter before the CIT(Appeals) but without success. The observations of the CIT(Appeals) based on which he had approved the aforesaid disallowance of Rs.26.67 lacs (supra) made by the A.O are culled out as under:

“11. Regarding disallowance of Rs.27,67,124/-, the appellant has stated that the amount was given as an advance to Shri Ashutosh Gupta for purchase of land and out of total payment by the appellant company of Rs.39,00,000/- only four land parts valued at Rs.11,32,876/- could be registered and due to sudden demise of Shri Ashutosh Gupta, the balance amount was written off as allowable u/s 28(i). In this regard, the appellant submitted a single letter written to Police Station at Raipur as a complaint against Shri Ashutosh Gupta and then had written off the balance in company's books of account. The appellant has relied upon judicial decisions. The AO was reasonable in allowing bad debts of Rs.3,03,458/- u/s 36(1)(vii) as the same was offered as

income in earlier years but the balance amount of Rs.27,67,124/- was not offered as income and has not given any convincing justification and further efforts for recovery including status and fate of FIR to the AO. Further, the same cannot be considered as allowable expenditure u/s 37. Reliance is placed on rationale held in the cases of:-

1. PCIT vs. Khyati Realtors Pvt. Ltd. 141 taxmann.com 461 (2022) (SC) — where the appellant failed to prove that amount paid to developer as advance for booking commercial space was in the ordinary course of business — section 36(1)(vii) r.w.s. 28(i).

2. Elite International Pvt. Ltd. vs. ACIT 83 taxmann.com 213 (Mum-ITAT) (2017) — Assessee could not produce any evidence to show that supplier refused to pay outstanding amount or denied their liability in any manner, assessee's claim could not be allowed. 3. South India Surgical Company Ltd. vs. ACIT 153 taxman 491 (Madras) (2006).

In view of above, the claim is held to be rightly disallowed and hence, the disallowance of Rs.27,67,124/- is sustained and the ground of appeal No. 2 is dismissed.”

6. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

7. We have heard the Id. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his contentions.

8. As is discernible from the record, the assessee company had, on 06.05.2014, executed a Memorandum of Understanding (MOU) with Shri Ashutosh Gupta, as per which it had agreed to purchase 64 acres of land for agricultural purposes or plantation of trees at Village: Baldakachar, Tehsil: Kasdol, Dist. Baloda Bazar at an average rate of Rs.2 lacs per acre, Pages 14-17 of APB. In lieu thereof, the assessee

company had advanced an amount of Rs.39 lacs to Shri Ashutosh Gupta in three tranches, viz. (i) 04.06.2014: Rs. 7 lacs; (ii) 11.07.2014: Rs. 20 lacs; and (iii) 19.07.2014: Rs.12 lacs. Against the aforementioned advance, four registered sale deeds of agricultural land for an aggregate value of Rs.11,32,876/- were executed in favor of the assessee company on 15.07.2014., Page 62 of APB. As Shri Ashutosh Gupta (supra) had expired, the assessee company requested his legal heir for a refund of the balance amount of Rs.27,67,124/- (supra). The aforesaid factual position that the assessee had approached the legal heir for a refund of the balance amount of Rs.27.67 lacs (supra) can safely be gathered from the letter dated 11.09.2014 that the assessee company wrote to the legal heir of Shri Ashutosh Gupta (since deceased), Page 58-59 of APB. As the legal heir of Shri Ashutosh Gupta (supra) refused to refund the balance outstanding amount of Rs.27.67 lacs (supra), the assessee company filed complaints with the police authorities, Pages 60 & 61 of APB.

9. Considering the fact that the amount of Rs.27.67 lacs (supra) had become irrecoverable, the assessee company wrote off the said amount as irrecoverable in its profit and loss account and, thus, claimed the same as a deduction while computing its income.

10. We have given thoughtful consideration to the issue in hand, i.e., as to whether or not the assessee's claim for deduction of the amount of advance given to Shri Ashutosh Gupta (supra) for purchase of land, i.e., stock-in-trade, on having

been rendered as irrecoverable was rightly claimed as a business loss. Admittedly, it is a matter of fact borne from the record that the assessee company had written off the aforesaid amount as irrecoverable in its books of account. Although we concur with the A.O that the aforesaid amount of Rs.27.67 lacs which had become irrecoverable was not allowable as a bad debt for the reason that the said amount was at no stage on an earlier occasion offered by the assessee as its income, at the same time, we cannot remain oblivious of the fact that the same being in the nature of a loss incidental to the carrying of its business, thus, was allowable as a deduction for arriving at its true income. Considering the fact that the assessee had suffered the loss of the amount that was advanced by him to Shri Ashutosh Gupta (supra), a commission agent, for the purchase of certain agricultural land as stock-in-trade of its business, we find substance in the claim of the Ld. AR that the said amount, having been rendered as irrecoverable, was rightly claimed by the assessee as a deduction in its profit & loss account. Our aforesaid view is fortified by the judgment of the **Hon'ble Supreme Court** in the case of **CIT Vs. Mysore Sugar Co. Ltd. (1962) 46 ITR 649 (SC)**. In the said case before the Hon'ble Apex Court, the assessee, which was engaged in manufacturing sugar, had, inter alia, advanced money to the sugarcane growers, which, thereafter, was to be adjusted against the price of sugarcane that was to be supplied by them to the assessee company. However, due to crop failure, as the advance given by the assessee company to the aforementioned company was rendered irrecoverable, the assessee had claimed the same as a loss while computing its business income. The Hon'ble Apex Court

deliberating on the allowability of the assessee's claim for deduction of the irrecoverable advances that were given in the normal course of its business, which, though was disallowed by the A.O, had observed, that as the same was a revenue loss for the assessee, therefore, it was rightly claimed as a deduction. For the sake of clarity, the relevant observations of the Hon'ble Supreme Court are culled out as under:

"6. To find out whether an expenditure is on the capital account or on revenue, one must consider the expenditure in relation to the business. Since all payments reduce capital in the ultimate analysis, one is apt to consider a loss as amounting to a loss of capital. But this is not true of all losses, because losses in the running of the business cannot be said to be of capital. The Questions to consider in this connection are: for that was the money laid out? Was it to acquire an asset of an enduring nature for the benefit of the business, or was it an outgoing in the doing of the business? If money be lost in the first circumstance, it is a loss of capital, but if lost in the second circumstance, it is a revenue loss. In the first, it bears the character of an investment, but in the second, to use a commonly understood phrase, it bears the character of current expenses.

This distinction is admirably brought out in some English cases, which were cited at the Bar. We shall refer 'Only to three of them. In English Crown Spelter Co. Ltd v. Baker (1908) 5 Tax Cases 324, the English Crown Spelter Co. carried on the business of zinc smelting for which it required large quantities of 'blende'. To get supplies of blende, a new Company called the) Welsh Crown Spelter 'Company was formed, which received-assistance from the English Company in the shape of advances on loan. Later, the English Company was required to write off pound 38,000 odd. The question arose whether the advance could be said to an investment of capital, because if they were, the English Company would have no right to deduct the amount. If on the other hand, it was money employed for the business it could be deducted... Bray, J. who considered these questions, observed:

"If this were an ordinary business transaction of a contrary by which the Welsh Company were to deliver certain trend, it may be at prices to be settled hereafter, and that this was really nothing more than an advance on account of the price of that blend, there "would be a great deal to be said in favour of the Appellants It is impossible to look upon this as an ordinary business transaction of an advance against goods to be delivered I can come to no other conclusion but that this was an investment of capital in the Welsh Company and was not an ordinary trade transaction of an advance against goods....."

The second case, Charles Marsdon & Sons. [Ltd v. The Commissioners of Inland Revenue](#) (1), is under the Excess Profits Duty in England, and the question arose in the following circumstances: an English Company carried on the business of paper-making. To arrange for supplies of wood pulp, it entered into an agreement with a

Canadian Company for supply of 3000 tons per year between 1917-1927. The English Company made an advance of E. 30,000 against future deliveries to be recouped at the rate of E. 1 per ton delivered. The Canadian Company was to pay interest in the meantime. Later, the importation of wood pulp was stopped, and the Canadian Company (appropriately called the Ha Ha Company) neither delivered the pulp nor returned the money. Bowlatt, J. held this to be a capital expenditure not admissible as a deduction. He was of opinion that the payment was not an advance payment for goods, observing that no one pays for goods ten years in advance, and that it was a venture to establish a source and money was adventured as capital.

The last case, to which we need refer to illustrate the distinction made in such cases is Reid's Brewery Co. Ltd v. Nale (2). The Brewery Company there carried on, in addition to the business of a brewery, a business of bankers and money lenders making loans and advances to their customers. This helped the customers in pushing sales of the product of the Brewery Company. Certain sums had to be written off, and the amount was held to be deductible. Pollock, B, said:

"of course, if it be capital invested, then it comes within the express provision of the [Income Tax Act](#), that no deduction is to be made on that account"-

but held that:

"no person who is 'acquainted with the habits of business, loan doubt that this is not Capital invested. What it is, is this. It is capital used by the Appellants but used only in the sense that all money which is laid out by persons who are traders, whether it be in the purchase of goods be they traders along, whether it be in the purchase of raw material be they manufacturers.- or in the case of money lenders, be they pawnbrokers or money lenders, whether it be money lent in the course of their trade, it is used and it comes out of capital, but it is not an investment in the ordinary sense of the word."

It was thus held to be a use of money in the course of the Company's business, and not an investment of capital at all.

7. These cases illustrate the distinction between an expenditure by way of investment and an expenditure in the course of business, which we have described as current expenditure. The first may truly be regarded as on the capital side but not the second. Applying this test to this simple case, it is quite obvious which it is. The amount was an advanced against price of one crop. The Oppigedars were to get the assistance not as an investment by the assessee company in its agriculture, but only as an advance payment of price. The amount, so far as the assessee Company was concerned., represented the current expenditure towards the purchase of sugarcane, and it makes no difference that the sugarcane thus purchased was grown by the Oppigedars with the seedlings, fertiliser and money taken on account from the assessee Company. In so far as the assessee Company was concerned, it was doing no more than making a forward arrangement for the next year's crop and paying an amount in advance out of the price, so that the growing of the crop may not suffer due to want of funds in the hands of the growers. There was hardly any, element of investment which contemplates more than payment of advance price. The resulting loss to the assessee Company was just as much a loss on the revenue side as would have been, if it had paid for the ready crop which was not delivered.

8. In our judgment, the decision of the High Court is right. The appeal fails, and is dismissed with costs.”

11. As in the present case before us, it is an admitted fact that the amount of Rs.27.67 lacs (supra) advanced by the assessee company to Shri Ashutosh Gupta (supra) in its normal course of business as a real estate developer, i.e., for purchase of stock-in-trade, i.e., agricultural lands at Village: Baldakachar, Tehsil: Kasdol, Dist. Baloda Bazar had thereafter become irrecoverable; therefore, the same, in our considered view, as per the principle laid down in the aforesaid judgment of the **Hon'ble Supreme Court** in the case of **CIT Vs. Mysore Sugar Co. Ltd. (supra)** was rightly claimed by the assessee company as a business loss that was deductible while computing its income for the year under consideration.

12. We, thus, not being able to persuade ourselves to subscribe to the view taken by the lower authorities who had declined the assessee's claim for the deduction, set aside the order of the CIT(Appeals) and vacate the disallowance of Rs.27.67 lacs (supra) made by the A.O.

13. In the result, the appeal of the assessee is allowed in terms of our aforesaid observations.

Order pronounced in open court on 29th day of November, 2023.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 29th November, 2023

****SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Commissioner of Income Tax (Appeals), Raipur (C.G.)
4. The Pr. CIT-1, Raipur (C.G.)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.