IN THE INCME TAX APPELLATE TRIBUNAL, "C" BENCH, KOLKATA

Before : **Shri M. Balaganesh, Accountant Member, and**
Shri S.S. Viswanethra Ravi, Judicial Member

I.T.A No. 1185/Kol/2012 A.Y. 2008-09

I.T.O Ward 1(1), Kolkata Vs. M/s. Shree Gouri Shankar Jute Mills Ltd
PAN: AABCG1157E

(Appellant) (Respondent)

For the Appellant/department: Shri Pinaki Mukherjee, JCIT, ld.DR
For the Respondent/assessee : Shri Subash Agarwal, Advocate, ld.AR

Date of Hearing: 01-10-2015
Date of Pronouncement: 8-10-2015

ORDER

SHRI M.BALAGANESH, AM

This appeal of the revenue arises out of the order of the Learned CIT(A) in Appeal No. 375/CIT/(A)-I/Wd-1(1)/10-11 dated 01-05-2012 for the Asst Year 2008-09 passed against the order of assessment framed by the Learned AO u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act').

2. Shri.Pinaki Mukherjee, JCIT, the Learned DR argued on behalf of the revenue and Shri. Subhash Agarwal, Advocate, the Learned AR argued on behalf of the assessee.

3. The first issue to be decided in this appeal is as to whether the Learned CIT(A) is justified in deleting the addition made in the sum of Rs. 1,13,48,556/- towards miscellaneous expenses written off in the facts and circumstances of the case.

4. The brief facts of this issue is that the assessee is engaged in the business of manufacture of Jute and in the course of its business had paid advance for purchase of jute to Shri.R.K.Jalan in the early 1990s amounting to Rs. 70,02,013/-. The said party Shri.R.K.Jalan did not supply the Jute to the assessee and accordingly the same was converted into loan transaction by the assessee commencing from Asst Year 1991-92 onwards and interest was charged thereon. The assessee had duly offered the interest income derived thereon from Asst Years 1991-92 to 1997-98 amounting to Rs. 66,46,543/- in total under the head "income from business" and the same was accepted by the revenue in section 143(3) proceedings. During the period from Asst Years 1991-92 to 1995-96, the assessee was also in receipt of certain principal dues from the said party Shri.R.K.Jalan to the extent of Rs. 23,00,000/- and the balance of advance receivable from Shri.R.K.Jalan was Rs. 47,02,013/- from Asst Year 1995-96 onwards. The assessee stopped charging interest on the aforesaid advance from Asst Year 1998-99 onwards as it found that the recovery of principal amount of advance itself is doubtful of recovery.

4.1. On knowing the information about the death of the concerned party Shri.R.K.Jalan, the assessee thought it fit during the Asst Year 2008-09 to write off the entire trade advance of Rs. 1,13,48,556/- represented by principal portion thereon amounting to Rs. 47,02,013 and interest receivable thereon amounting to Rs. 66,46,543/-. This was duly written off by debiting Miscellaneous expenses written off by corresponding credit to the party account (Shri.R.K.Jalan) by the assessee in Asst Year 2008-09 and deduction was claimed accordingly in the return of income as bad debts. The Learned AO disallowed the same on the ground that the provisions of section 36(2) were not satisfied by the assessee and moreover, it is not an allowable expenditure under section 37 of the Act since giving such advance is not the business of the assessee. The Learned AO also gave a finding in the assessment order vide para 2.4 page 3 that the interest income offered on such advance in the earlier assessment years were not offered as business income of the assessee. On first appeal, the

Learned CITA deleted the addition by accepting to the contentions of the assessee. Aggrieved, the revenue is in appeal before us on the following grounds:-

> *1. Ld. CIT(A)-1 Kolkata has erred in deleting the additions on account of Misc expenses written of amounting to Rs.1,13,48,556/- in spite of the fact that said expenses is not related to assessee's business of manufacturing of jute products.*
> *2. Ld. CIT(A)-1, Kolkata has erred in accepting that advance given to Mr. R.K Jalan was for purchase of jute in spite of the facts that assessee could not produce any evidence to substantiate its claim.*
> *3. Ld. CIT(A)-1, Kolkata has erred in observing that interest accrued on loan given to R.K. Jalan was shown as business income whereas records shows it has been assessed as income from other source.*
> *4. Ld. CIT(A)-1, Kolkata has erred in accepting the fresh ground, in violation of Rule 46A without calling for remand report, that payment made to R.K Jalan was a trade advance whereas at assessment stage it was shown as loan.*

4.2. The Learned DR argued that the assessee had not offered the income towards the principal portion and hence what is allowable as bad debt could only be that which is offered to tax as income in the earlier years in terms of section 36(2) of the Act. He further argued that the assessee is not engaged in the books of money lending. In response to this, the Learned AR argued that the basic finding of the Learned AO that the interest income on the trade advances made to Shri.R.K.Jalan was offered to tax in earlier years as income from other sources, is factually incorrect. He placed on record various scrutiny assessment orders for the earlier assessment years wherein the subject mentioned interest income has been accepted as business income by the Learned AO in section 143(3) proceedings and hence ground no. 3 raised by the revenue deserves to be dismissed. He further argued that the said advance was paid for purchase of jute to Shri.R.K.Jalan which has to be construed only as a trade advance. He argued that no fresh evidences were filed before the Learned CITA in this regard and hence ground no. 4 raised by the assessee is factually incorrect and deserves to be dismissed. On merits, the Learned AR argued that the assessee treated the advance only as a trade

advance and since no supplies of Jute were made by Shri.R.K.Jalan, the assessee sought to charge interest on the said advance and had accordingly offered interest income upto Asst Year 1997-98 under the head "income from business". He further argued that in any case , the entire dues representing principal and interest thereon were duly written off as irrecoverable and the concerned party Shri.R.K.Jalan had also died and hence the write off made in Asst Year 2008-09 and accordingly prayed that the same shall be duly allowed as a deduction.

4.3. We have heard the rival submissions and perused the materials available on record. We find that the nature and character of advance paid to Shri.R.K.Jalan had not changed. As could be evident from the paper book filed by the Learned AR before us, it is not in dispute that the advance was made for purchase of Jute during the course of business of the assessee. Since the supplies could not materialize, the assessee to protect its money started charging interest and was able to recover a sum of Rs. 23 lacs towards principal portion. The interest income on such advances from Asst Years 1991-92 to 1997-98 have been duly offered to tax by the assessee as business income and assessed as such . Hence it will be factually incorrect to say that the nature of advance was not established by the assessee before the lower authorities. The scrutiny assessment orders of earlier years itself would stand testimony to the contentions of the assessee. Even otherwise, we find that since the trade advance was made during the course of its business by the assessee, any loss on account of recoverability would automatically fall under the category of trade debt and hence is allowable as business loss. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of *CIT vs Mysore Sugar Co. Ltd reported in (1962) 46 ITR 649 (SC)* . The facts before the Hon'ble Apex Court and decision rendered thereon is given below:-

> *Facts: "The assessee was a sugar company. The assessee purchased sugarcane from the sugarcane growers and crushed them in its factory to prepare sugar. As a part of its business operations. It entered into agreements with the sugarcane growers, and advanced them sugarcane seedlings, fertilizers and also cash. The sugarcane growers entered into a*

written agreement by which they agreed to sell sugarcane exclusively to the assessee at current market rates and to have the advances adjusted towards the price of sugarcane, agreeing to pay interest in the meantime. For this purpose, an account of each sugarcane growers was opened by the assessee-company. A crop of sugarcane took about 18 months to mature, and these agreements took place at the harvest season each year, in preparation for the next crop.

In the year 1948-49, due to drought, the assessee company could not work its sugar mills and the sugarcane growers could not grow or deliver the sugarcane. The advances made in 1948-49 thus remained unrecovered, because they could only be recovered by the supply of sugarcane to the assessee-company. The Mysore Government realising the hardship appointed a Committee to investigate the matter and to make a report and recommendations. The Committee recommended that the assessee-company should ex gratia forgo some of its dues, and in the year of account ending 30-6-1952, the company waived its rights in respect of Rs.2,87,422. The company claimed this as a deduction under section 10(2)(xv) of 1922 Act. The ITO declined to make the deduction, because, in his opinion, this was neither a trade debt nor even a bad debt but an ex gratia payment almost like a gift. An appeal to the AAC also failed. The Appellate Tribunal upheld the disallowance. On reference the High Court held that the expenditure was not in the nature of a capital expenditure, and was deductible as a revenue expenditure.

Held: 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 opt to consider a loss as amounting to a loss of business. 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 what purpose 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 circumstances, 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.

In instant case the amount was an advance 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 made no difference that the sugarcane thus purchased was grown by the Oppigedars with the seedlings, fertilizer 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 might not suffer due to want of funds in the hands of the growers. There was hardly any element of investment which contemplated 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.

Hence, the decision of the High Court was right.

The appeal was dismissed".

4.4. We find that the assessee had duly offered the interest income on advance receivable from Shri.R.K.Jalan as business income in the earlier years and the same has been accepted as such by the revenue and hence the ground no. 3 raised by the revenue is dismissed. Similarly we also hold that no additional evidences were filed by the assessee before the Learned CITA with regard to this issue as the fact of trade advance paid to Shri.R.K.Jalan stands clearly established in the earlier years scrutiny orders placed on record by the Learned AO. Hence the ground no.4 raised by the revenue that there is violation of Rule 46A of Income Tax Rules by the Learned CITA is dismissed.

4.5. It is not in dispute that the assessee had indeed written off the balance principal portion of Rs. 47,02,013/- and interest receivable portion of Rs. 66,46,543/- in its books by treating the same as irrecoverable and due to the death of the concerned party. It is also not in dispute that the corresponding credit is given to the concerned party account in the books of accounts. We are in agreement with the arguments of the Learned AR that even otherwise the entire write off if not allowable in terms of section 36(1)(vii) read with section 36(2) of the Act is allowable as deduction as a regular trading loss u/s 28 of the Act. Reliance in this regard is placed on 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), wherein the question raised before the Hon'ble Bombay High Court and the decision rendered thereon is reproduced below:-

'Questions:

Whether if an amount is held to be not deductible as a bad debt in view of non-compliance of the condition precedent as provided under section 36(2), could the same be considered as an allowable business loss?

Whether, therefore, the amount of Rs.44.98 lakhs could be considered as an allowable business loss?

Held:

Section 28 imposes a charge on the profits or gains of business or profession. The expression 'Profits and gains of business or profession' is to be understood in its ordinary commercial meaning and the same does not mean total receipts. What has to brought to tax is the net amount earned by carrying on a profession or a business which necessarily requires deducting expenses and losses incurred in carrying on business or profession. The Supreme Court in the case of Badridas Daga *v.* CIT *[1958]* 34 ITR 10 *has held that in assessing the amount of profits and gains liable to tax, one must necessarily have regard to the accepted commercial practice that deduction of such expenses and losses is to be allowed, if it arises in carrying on business and is incidental to it. [Para 10]*

• *On the basis of the aforesaid decision, it can be concluded that even if the deduction is not allowable as bad debts, the Tribunal ought to have considered the assessee's claim for deduction as business loss. This is particularly so, as there is no bar in claiming a loss as a business loss, if the same is incidental to carrying on of a business. The fact that condition of bad debts were not satisfied by the assessee would not prevent him from claiming deduction as a business loss incurred in the course of carrying on business as share broker. [Para 11]*

• *In fact, the Bombay High Court in the case of* CIT *v.* R.B. Rungta & Co. *[1963]* 50 ITR 233 *upheld the finding of the Tribunal that the loss could be allowed on general principles governing computation of profits under section 10 of the Indian Income-tax Act, 1922, which is similar/identical to section 28 of the 1961 Act. The revenue in that case urged that the assessee having claimed deduction as a bad debt the benefit of the general principle of law that all expenditure incurred in carrying on the business must be deducted to arrive at a profit cannot be extended. This submission was negatived by the Court and it was held that even where the debt is not held to be allowable as bad debts yet the same would be allowable as a deduction as a revenue loss in computing profits of the business under section 10(1) of the Indian Income-tax Act, 1922. [Para 12]*

• *Therefore, the amount of Rs. 44.98 lakhs, which was held to be not deductible as bad debts in view of the provisions of section 36(2), could be considered as an allowable business loss. [Para 13]*

Respectfully following the aforesaid judicial precedents and in view of the facts and circumstances, we find no infirmity in the order of the Learned CITA in this regard. Accordingly, the grounds raised by the revenue in this regard are dismissed.

5. The next issue to be decided in this appeal is as to whether the Interest payable by the assessee to ICICI Bank Ltd and whether ICICI Bank would fall under the category of a Scheduled Bank so as to fall within the ambit of section 43B of the Act.

5.1. We have heard the rival submissions on this issue and we deem it fit and appropriate to set aside this issue to the file of the Learned AO with a specific direction to give a finding as to whether ICICI Bank Ltd was a scheduled Bank during the relevant assessment year under appeal and if so, the provisions of section 43B of the Act would automatically apply to the assessee. Accordingly the ground no. 5 & 6 raised by the revenue are allowed for statistical purposes.

6. In the result, the appeal of the revenue is partly allowed.

THIS ORDER IS PRONOUNCED IN OPEN COURT ON 8/10/2015

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

Date 8 /10 /2015

Copy of the order forwarded to:

1.. The Appellant : I T O Ward 1(1)), 7th Fl.P-7 Chowringhee Sq, Kol-69.

2 The Respondent- M/s.Shree Gouri Shankar Jute Mills ltd Apsara Apartment 67 Park St, Kol-16

3 The CIT,

The CIT(A)

4..

5. DR, Kolkata Bench

6. Guard file.

True Copy, By order, Asstt Registrar

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