THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 10.05.2013

+ **ITA 45/2013**

COMMISSIONER OF INCOME-TAX-III ..... Appellant

versus

SAMARA INDIA PVT. LTD. ..... Respondent

Advocates who appeared in this case:
For the Appellant : Mr Sanjeev Rajpal, Advocate.
For the Respondent : Mr S. Krishnan, Advocate

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. This is an appeal preferred by the revenue under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") challenging the order dated 09.07.2012 passed by the Income Tax Appellate Tribunal, Delhi in ITA No.3692/Del/2009 in relation to the assessment year 2004-2005. The controversy in the present matter is limited to an amount of Rs 33,47,489/- which was paid as an advance rent by the assessee and had been written off as not recoverable in the previous year relevant to the assessment year 2004-2005.

2. The assessee is, *inter alia*, engaged in the business of dealing and servicing motor vehicles and had taken certain property on lease from three landowners (hereinafter referred to as "the lessors") for a period of three years renewable for two further periods of 3 years each. The property consisted of a

plot of land whereupon the lessors were required to build a warehouse cum workshop and hand over the same to the assessee. In this regard, the assessee advanced certain sums to the lessors which were liable to be adjusted against monthly rent. The monthly rent for the property in question was agreed at Rs 32,400/- and the assessee was entitled to adjust a sum of Rs 17,400/- per month from the advance paid by the assessee to the lessors. In addition to the advance paid by the assessee to the lessors, the assessee also incurred substantial expenditure on the development and interiors of the property. However, the workshop was demolished by the Delhi Development Authority on 01.06.2000 as the land which was subject matter of the lease agreement, in fact, belonged to the Delhi Development Authority and not the lessors. The assessee, thereafter, filed a suit in this Court being suit titled as ***Samara India Pvt. Ltd v. Union of India & Ors.*****: CS(OS) No.2467/2001**. The said suit is still pending before this Court for recovery of the sums advanced by the assesse to the lessors and the amount expended by the assesse on development and interiors of the property.

3. The assessee has written off a sum of Rs 64,60,707/- as irrecoverable in the previous year relevant to the assessment year 2004-2005. This amount is an aggregate of two components, namely, advance rent of Rs 33,82,289/- paid by the assessee to the lessors and Rs 30,78,418/- spent by the assessee on the property.

4. The assessing officer disallowed the entire amount of Rs 64,60,707/-, written off by the assessee in his profit and loss account, by holding that the amount represented capital expenditure and thus writing off the said amount was not allowable as a deduction from the taxable income of the assessee. Accordingly, the Assessing Officer passed an assessment order dated 30.11.2006 inter-alia disallowing the amount written off by the assesse as irrecoverable and adding a sum of Rs 64,60,707/- to the income of the assessee. It is relevant to state that the genuineness of the expenditure was not doubted by the Assessing

Officer and the Assessing Officer disallowed the amount written off on the ground that the amount incurred by the assesse was on development and improvement of the leasehold property and was of an enduring nature and thus could not be considered as revenue expenditure. The Assessing Officer held that in view of the explanation to Section 32(1) of the Act, capital expenditure incurred by an assessee in respect of a building not owned by him, was required to be treated in the same manner as if the expenditure had been incurred on a building owned by the assessee.

5. The assessee preferred an appeal before the CIT (Appeals) challenging the addition Rs 64,60,707/- on account of advance rent paid to the lessors and the amount expended by the assessee on the workshop which was lost on account of demolition carried out by the DDA. The CIT (Appeals) noted the fact that the assessee had filed a suit inter-alia claiming the said amount from the lessors. The CIT (Appeals) made a distinction between the amount spent by the assessee on carrying out the renovation and betterment of the workshop and the amount paid by the assessee as advance rent. The CIT (Appeals) upheld the decision of the Assessing Officer to disallow the write off of a sum of Rs 30,78,418/- spent by the assessee on the workshop. In respect of the sums advanced by the Assessee to the lessors, the CIT (Appeals) deleted the addition to the extent of Rs 34,800/- and upheld the addition of Rs 33,47,489/- to the income of the assessee. The CIT (Appeals) held that as the property was demolished on 01.06.2000 i.e. after a period of only two months from the commencement of the previous year 2000-2001, an amount of Rs 34,800/- (i.e. Rs. 17,400/- for each month) was liable to be adjusted from the advance rent in terms of the lease agreement entered into between the assessee and the lessors of the property. However, the addition of the balance amount of Rs 33,47,489/- was upheld by CIT (Appeals) not on the ground that the same was a capital expenditure but on basis that the same could

not be allowed as a revenue loss as the assessee had filed a civil suit for recovery of that amount and the same was being pursued. The CIT (Appeals) held that as the assessee was pursuing its remedies before a Court by way of a civil suit for recovery of the amounts advanced to the lessors, it could not be held that the amounts had become bad debts. The relevant portion of the order passed by the CIT (Appeals) is quoted below:-

> "8.5.5. It is noticed that the amount disallowed by the AO as loans and advances was Rs 64,60,707/-, under explanation to section 32(1) of the Act and after disallowing capital loss of Rs 30,78,418/-, balance amount of Rs 33,82,289/- (Rs 64,60,707 - Rs 30,78,418) was towards payment of advance rent by the assessee company to the lessor. The property was demolished on 1st June, 2000 and advance rent @ Rs 17,400/- per month (para 8.5.2.-2) for a period of two months amounting to Rs 34,800/- would be allowed. The balance amount of Rs 3,47,489/- is not being allowed as a revenue loss since the assessee company has filed a Civil Suit in the High Court of Delhi and claimed advance rent of Rs 33,82,289/- from the Defendants 3 to 9 (the lessor). Since this amount is outstanding to the assessee company which is being pursued by them by way of filing a Civil Suit, it cannot be called a bad debt at this stage and allowed as a revenue expenditure. The case laws referred to by the assessee are not applicable to the facts and circumstances of the case. In Lucent Technologies Hindustan Ltd. v. JCIT, 106 TTJ (Bang) 205 the case was of repair/renovation of a cinema hall taken on lease; in the instant case, a plot of land was converted into a warehouse cum workshop which is a capital expenditure. Similarly, Agra Color Lab (P) Ltd v. ITO 86 TTJ (Agra) 836 and Escorts Ltd v. ACIT 102 TTJ (Del) 522 are not applicable as it was expenditure on furnishing, painting etc and not on conversion of plot of land to a warehouse cum workshop.
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> Accordingly, a sum of Rs 33,47,489/- of advance rent and Rs 30,78,418/- of capital expenditure is confirmed, relief allowed is only Rs 34,800/- of advance rent adjusted till the demolition of building."

6. The revenue accepted this order and did not file an appeal before the Income Tax Appellate Tribunal. However, the assessee preferred an appeal from the decision of the CIT (Appeals). The Tribunal upheld the decision of the Assessing Officer and the CIT (Appeals) with regard to the amount of Rs 30,78,418/- spent by the assessee on the workshop as capital expenditure but granted relief to the assessee with regard to the addition made by the Assessing Officer in respect of the advance rent of Rs 33,82,289/- which had been written off by the assessee, in his profit and loss account, as irrecoverable.

7. Following the decision of the Supreme Court in the case of the ***T.R.F Ltd.* v. *CIT***: **323 ITR 397(SC)**, the Tribunal held that pendency of the civil suit was not a bar on writing off the debt if in the opinion of the assessee its probability of recovery was remote. The Tribunal did not accept the view of the CIT (Appeals) that writing off advance rent was not permissible since the assessee was pursuing the suit for recovery of the said amount.

8. We find no infirmity in the view expressed by the Tribunal. It is not disputed that the assessee had paid a sum of Rs 33,82,289/- as advance which was to be adjusted against lease rents. The assessee had been carrying on business even prior to the lease agreement with respect to which advance had been made. The assessee had come to a conclusion that chances of recovery, of the amounts claimed from the lessors, in the near future were remote and had therefore written off the amount of Rs 64,60,707/- as irrecoverable in the previous year relevant to the assessment year 2004-2005. For an assessee to claim deduction in relation to the bad debts it is now no longer necessary for the assessee to establish that the debt had become irrecoverable and it is sufficient if the assessee forms such an opinion and writes off the debt as irrecoverable in its accounts. The decision of the Supreme Court in the case of the ***T.R.F Ltd***. *(supra)* squarely covers the issue. The Supreme Court had examined the import

of the amendment in Section 36(1)(vii) of the Income Tax Act w.e.f. 01.04.1989 and held as under:

> "After the amendment of sec. 36(1)(vii) of the Income Tax Act, 1961, with effect from 1st April, 1989, in order to obtain a deduction in relation to bad debts, it is not necessary for the assessee to establish that the debt, in fact, has become irrecoverable : it is enough if the bad debts is written off as irrecoverable in the accounts of the assessee."

9. Following the aforesaid decision in the case of ***T.R.F Ltd.*** (supra), we find that the appeal does not raise any substantial question of law for our consideration.

10. We accordingly, dismiss the present appeal and leave the parties to bear their own costs.

VIBHU BAKHRU, J

BADAR DURREZ AHMED, J

MAY 10, 2013
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