

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH 'I' MUMBAI

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER**

ITA No.5708/Mum/2009
Assessment Year-2004-05

M/s. Tipco Industries Ltd., Rani Sati Marg, Malad (E), Mumbai-400 097 PAN-AACT 1678E	Vs.	The ACIT, Cir 9(3), Mumbai
(Appellant)		(Respondent)

Appellant by: Ms. Aarti Sathe
Respondent by: Shri Sanjiv Dutt

Date of Hearing :31.07.2012
Date of pronouncement: 03.08.2012

ORDER

PER N.K. BILLAIYA (AM):

This appeal by the assessee is directed against the order of Ld. CIT(A)-
Central-I, Mumbai dt. 13.8.2009 pertaining to assessment year 2004-05.
The assessee has raised following effective grounds:

- "1. *On the facts and circumstances of the case as well as in Law, the Ld. CIT(A) has erred in confirming the action of AO in disallowing claim of sundry balances written off, being the irrecoverable receivables, without considering their nature and explanation of the appellant.*
2. *On the facts and circumstances of the case as well as in Law, the Ld. CIT(A) has erred in confirming the action of AO in disallowing a sum of Rs. 2,97,034/- u/s. 361(va) of the I.T. Act, 1961 being the alleged late payment of the employees' contribution of the Provident Fund.*
3. *On the facts and circumstances of the case as well as in Law, the Ld. CIT(A) has erred in confirming the action of*

AO in making an addition of Rs. 2,33,864/- on account of prior period expenses without appreciating the fact and circumstances of the case."

2. Briefly stated the facts of the case are that assessee is engaged in the business of manufacturing of Thermoplastic material and Phenolic Moulding Powers etc. For the year under consideration, return of income was filed on 31.10.2004 declaring total loss at Rs. 3,60,71,000/-. The return was selected for scrutiny assessment accordingly statutory notices u/s. 143(2) and 142(1) were issued and served on the assessee.

3. During the course of the assessment proceedings, the Assessing Officer noticed that the assessee has debited an amount of Rs. 2,03,35,000/- under the head 'administration and selling expenses on account of sundry balances written off (net). The AO sought explanation from the assessee asking it to give the details of the sundry balances written off. The assessee filed the requisite details. On going through the details so furnished, the AO observed that the assessee has claimed advances to suppliers written off amounting to Rs. 2,35,40,186/-. The AO asked the assessee to submit party-wise details with complete address along with the documentary evidences for writing off the same. The AO observed that the assessee has not furnished the complete details asked during the course of the proceedings. The AO proceeded by issuing notice u/s. 133(6) of the Act in respect of following three parties:

Name of the Party	Amount written off
M/s. Hindustan Inks & Resins Mfg Co,	Rs. 81,07,779/-
M/s. Indian Petrochemicals Corpn. Ltd.,	Rs. 86,96,713/-
M/s. Maxima Corporation	Rs. 1,37,982/-

4. However, only M/s. Maxima Corpn., have confirmed the amount of Rs. 1,37,982/-. In respect of other two parties, though the notices were served, but there was no response. The AO asked the assessee to file confirmations

from these two parties. According to the AO, the assessee failed to comply with the requirements. It was the contention of the assessee that these amounts are unrecoverable and have been certified by the management and as these payments are made exclusively for business purpose, the write off of the same should be allowed. The AO was of the opinion that the assessee could not prove the write off by bringing any evidence to show that the alleged advance made by it is part of the business and the advances were made in the ordinary course of the business. According to the AO, the assessee has claimed advances written off amounting to Rs. 2,35,40,186/- as allowable u/s. 36(1)(vii) is not tenable since advances written off cannot be treated at par with bad debts written off as the same are not routed through P&L account and went on to disallow the entire claim of advances written off amounting to Rs. 2,34,02,204/-.

5. Proceeding further from the statement of accounts details filed, the AO found that the contributions for the month of February and March 2004 made to the PF by the employee have been deposited to the Government account beyond the due date specified. The payments are detailed as under:

Month & Year	Employee's contribution	Due date of payment	Date of payment
February, 2004	148,600	15.3.2004	16.3.2004
March, 2004	148,434	15.4.2006	16.4.2004
	297,034		

Accordingly, the AO sought explanation from the assessee. In response to which, the assessee relied on ITAT's decision for A.Y. 2000-01 in assessee's own case. However, the AO rejected the submission of the assessee stating that the decision relied upon by the assessee relates to the payments made to employer's contribution of provident fund whereas in the instant case, it is delayed payment of employee's contribution to Provident fund which has been deposited by the assessee after the due date of payments as per the PF Act and went on to add Rs. 2,97,034/- to the returned income.

6. During the course of the proceedings, the AO further observed that as per Annexure 10A to the Audit report, the assessee has debited prior period expenses amounting to Rs. 2,33,864/-. As these expenses pertain to earlier year, the AO sought explanation from the assessee as to why these expenses should not be disallowed. As no explanation/submission came from the side of the assessee, the AO presumed that the assessee does not have any explanation to offer for the same. The AO concluded that the prior period expenses could not be allowed to be set off against the income of the previous year relevant to assessment year under consideration and accordingly disallowed the sum of Rs. 2,33,864/- and added to the returned income.

7. The assessee carried the matter before the Ld. CIT(A). Arguing for the disallowance of bad debts, the assessee took alternative plea that these expenses should be allowed u/s. 37(1) of the I.T. Act, if not allowed as bad debt u/s. 36(1)(vii) of the Act. However, the Ld. CIT(A) observed that the assessee has neither submitted any evidence nor filed any details about the same. As no evidence has been filed, the Ld. CIT(A) rejected the alternative plea of the assessee. The Ld. CIT(A) has already confirmed the findings of the AO so far as applicability of provisions of Section 36(1)(vii) are concerned.

8. Aggrieved by the decision of Ld. CIT(A), assessee is in appeal before us. The Ld. Counsel appearing for the assessee vehemently argued that all these advances were given during the course of the business and therefore the write off should be allowed. The Ld. Counsel further argued that the company became a BIFR company in 2002 and therefore continuation of the restructuring process started by the company since previous year under the restructuring scheme as sanctioned by the consortium of bank, the company has scrutinized its debtors/creditors loans and advances. Accordingly, the amounts outstanding for more than three years which are considered by the management either as not recoverable or not payable have been written off within the year. The Ld. Counsel further argued that the detailed chart has

been filed before the lower authorities giving complete details of the debit balances written off during the year. The Ld. Counsel also pointed out that these debit balances are either advances given for the purchase of raw materials or advances given to employees who have left the employment of the appellant. The Ld. Counsel relied upon the decision of the Mumbai Tribunal in ITA No. 3971/M/09 in the case of DCIT Circle 3(1) Vs M/s. Edelweiss Capital Ltd., Mumbai and claimed that the balances so written off should be allowed as business loss in terms of Sec. 28 of the Act.

9. Per contra, the Ld. Departmental Representative strongly supported the findings of lower authorities and referred to the judgement of the Ahmedabad Tribunal in the case of ITO Vs Ashok Kumar Lalit Kumar 53 ITD 326 and argued that in that case the matter has been restored back to AO for deciding the question of allowability of the amount written off as trading loss u/s. 28(i) and/or section 37(1) of the Act. The Ld. DR further pointed out that the assessee has not furnished any evidence in relation to the write off of amount during the course of the assessment proceedings or during the course of the First appellate proceedings. The assessee has given only the names of the parties without substantiating its claim that the advances were given during the course of its business.

10. We have heard the rival contention and perused the orders of lower authorities. So far as the claim of the assessee u/s 36(1)(vii) of the Act is concerned, it is not tenable in the light of Sec. 36(2) of the Act. However, the alternative claim of the assessee that it should be allowed as business loss u/s 28 or u/s. 37(1) of the Act cannot be brushed aside lightly. But the initial onus is upon the assessee to establish that the claim of loss due to write off o advances is in the ordinary course of business , therefore , In our humble opinion, this issue deserves further verification at the lower stage. We therefore restore this issue back to the file of AO. The assessee is directed to bring cogent material on record to establish that the advances were given in the ordinary course of business, clearly identifying the nature of such advances and the purpose for which they are given, to establish it as a

business loss allowable u/s 28{i} / 37 [1] of the Income Tax Act . The AO is directed to verify the claim of the assessee after giving reasonable opportunity of being heard to the assessee. This ground of the assessee is allowed for statistical purposes.

11. Ground No. 2 relates to disallowance of sum of Rs. 2,97,034/- being alleged late payment of employee's contribution to the Provident fund. The facts giving rise to this dispute has been discussed at para-5 herein above.

12. The Ld. Counsel for the assessee drew our attention to the decision of the Tribunal in ITA No. 6847/Mum/2008 in the case of Pik Pen Pvt. Ltd. Vs ITO, a similar issue had come up before the Bench wherein the Bench has followed the decision of the Hon'ble Supreme Court in the case of CIT Vs Alom Extrusion Ltd. 319 ITR 306. The Ld. DR supported the findings of lower authorities.

13. We have considered the submissions and perused the orders of lower authorities and also the decision of the Tribunal referred to by the Ld. Counsel. We find force in the contention of the Ld. Counsel. The facts in issue are identical with the facts in issue of the case referred to by the Counsel. Respectfully following the decision of the Tribunal, the claim of Rs. 2,97,034/- is allowed as deduction. The finding of the Ld. CIT(A) are reversed. Ground No. 2 is allowed.

14. Ground No. 3 relates to disallowance of prior period expenses amounting to Rs. 2,33,864/-. The Ld. Counsel for the assessee submitted that expenses of petty nature have been written off during the year, details of which have been furnished during the course of assessment proceedings. The Ld. DR strongly supported the orders of lower authorities.

15. We have considered the rival submissions and perused the orders of lower authorities. It is settled that the deductions can be permitted in respect of only those expenses which are incurred in the relevant accounting year for the purpose of computing yearly profits and gains. We find that the claim of

the assessee of expenses pertaining to prior period cannot be accepted as nothing has been brought on record to substantiate its claim neither before the lower authorities nor before us. Ground No. 3 is accordingly dismissed.

16. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on this 3rd day of August, 2012

Sd/-

(VIJAY PAL RAO)
Judicial Member

Sd/-

(N.K. BILLAIYA)
Accountant Member

Mumbai, Dated 3rd August, 2012

Rj

Copy to :

- 1. The Appellant*
- 2. The Respondent*
- 3. The CIT-concerned*
- 4. The CIT(A)-concerned*
- 5. The DR 'I' Bench*

True Copy

By Order

Asstt. Registrar, I.T.A.T, Mumbai