

IN THE INCOME TAX APPELLATE TRIBUNAL
 DELHI BENCH "F", NEW DELHI
 BEFORE SHRI U.B.S. BEDI, JUDICIAL MEMBER
 AND
 SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

	I.T.A. No. 147/Del/2010	
	A.Y. : 2003-04	
M/s Pepsico India Holdings Private Limited, LGF-54, World Trade Centre, Barakhamba Road, New Delhi – 110 001 (PAN: AAACP1272G)	VS.	DCIT, Circle-14(1) , New Delhi
(APPELLANT)		(RESPONDENT)

Assessee by : S/Sh. C.S. Aggarwal, Senior Advocate, Vishal Kalra & Ravi Mall, Advocates
 Department by : Sh. Sameer Sharma, C.I.T.(D.R.)

ORDER

PER SHAMIM YAHYA: AM

This appeal by the Assessee is directed against the order of the Ld. Commissioner of Income Tax (Appeals)-XVII, New Delhi dated 30.10.2009 pertaining to assessment year 2003-04.

2. The first issue raised is that Ld. Commissioner of Income Tax (A) erred in holding that the Assessing Officer validly initiated proceedings under section 147 of the Act.

3. Another issue raised is that Ld. Commissioner of Income Tax (A) erred in confirming the disallowance on account of bad debt and advances written off amounting to Rs. 10,118,849/-.

4. Apropos issue of disallowance on account of bad debt and advance written off:-

In this case assessment for the year 2003-04 was completed on 22.3.2006 u/s. 143(3) of the I.T. Act. The case was reopened u/s. 147 read with Section 148 of the Act. During the course of assessment, assessee was inter-alia asked to explain as to why the bad debt and advances written off should not be disallowed being capital in nature. Assessee responded as under:-

"...During the financial year relevant to the subject assessment year the assessee has written off Rs. 10,118,849/- of interest accrued but not due, as the said amount was accrued on loans given to Dhillion Kool Drinks and Beverages Limited and has been waived off on acquisition of Haryana and Himachal Pradesh business of M/s Dhillion Kool Drinks and Beverages Limited. The said interest was offered to tax as income for the financial year relevant to the assessment year 1999-2000.

The remaining amount of Rs. 2,306,379/- written off as bad debts represents an amount recoverable from M/s Quality Beverages Limited on account of export to glass bottles. The amount became disputed as the goods were not as per the specifications of the importer and has therefore been written off as bad in the books of the assessee. The amount of export was taken into account

while computing the taxable income for the assessment year 2002-03.

Section 36(1)(vii) of the Act read with section 36(2) prescribes the fulfillment of following two conditions for writing off an amount as bad debt:

- *The amount has been written off as irrecoverable in the books of accounts of the assessee; and*
- *The debt or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof is written off or of an earlier previous year.*

In the present case, since both the aforesaid conditions are being satisfied the said amount is allowable as an expense in the subject assessment year..."

From above submission made by the assessee, it is clear that as the bad debt and advances written off are of revenue nature and have been taken into account in computing the income of earlier years, no disallowance of the same be made in computing the taxable income of the assessee."

Considering the above, Assessing Officer held that the explanation is not acceptable. He held that the bad debt and advances written off were of capital in nature and hence disallowed and added to the income of the assessee.

5. Upon assessee's appeal Ld. Commissioner of Income Tax (A) deleted the disallowance with regard to amount of Rs. 2,306,379/-.

Ld. Commissioner of Income Tax (A) observed that the amount of Rs. 10,118,849/- represented the interest accrued on loans given to M/s Dhillon Kool Drinks and Beverages Limited. Ld. Commissioner of Income Tax (A) opined that it does not qualify for bad debt u/s. 36(1)(vii). Section 36(1)(vii) provides that the debt must be incidental to the business or profession of the assessee. That the assessee was not doing the business of money lending. That its business was to manufacture and sale of cold drinks. That the loan given to M/s Dhillon Kool Drinks Beverages Limited cannot be said to be incidental to the business of the assessee. That debts not connected with business or profession carried on by the assessee or not arising out of the operation of business or profession carried on by the assessee are not admissible as bad debts even if other condition are satisfied. In this regard, Ld. Commissioner of Income Tax (A) referred to the decision of the Hon'ble Madras High Court in the case of C.I.T. vs. Dhanlakshmi Corporation (1962) 46 ITR 1031 (Mad.) and Hon'ble Apex Court decision in the case of C.I.T. vs. Abdullabhai Abdulkadar (1961) 41 ITR 545 (SC) for the above proposition. Ld. Commissioner of Income Tax (A) concluded as under:-

“The interest accrued on the advances given to M/s Dhillon Kool Drinks was taxable under the head income from other sources. It was not the business of the appellant to advance money to their clients in the ordinary course of business. Therefore, the amount recoverable from M/s Dhillon Kool Drinks does not qualify for the purpose of bad debts as it was not debt in terms of provisions of section 36(1)(vii) of the I.T. Act. Considering the facts of the case and the legal position on the issue, I am of the view that the Assessing Officer

was not justified in making disallowance of Rs. 1,01,18,849/- which represents interest accrued on loans given to M/s Dhillon Kool Drinks and Beverages Limited. I, therefore, uphold order of the Assessing Officer in respect of the addition of Rs. 1,01,18,849/-."

6. Against the above order the assessee is in appeal before us.

7. We have heard the rival contentions in light of the material produced and precedents relied upon. We find that the amount of Rs. 1,01,18,849/- represented interest accrued on loans given to M/s Dhillon Kool Drinks and Beverages Limited. The said amount was waived off on acquisition of Haryana and Himachal Pradesh business of M/s Dhillon Kool Drinks and Beverages Limited. The said interest was offered to tax as income to the financial year relevant to assessment year 1999-2000. Assessing Officer held that the said amount was capital in nature, hence, the same was to be disallowed. Ld. Commissioner of Income Tax (A) on the other hand, held that the impugned amount was not incidental to the business or the profession of the assessee. Hence, the same was not allowable.

8. We can gainfully refer here the provisions of section 36(1)(vii) and 36(2).

8.1 Section 36(1)(vii) provides that in computing the income of the assessee, subject to the provision of sub-section (2), the amount of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year shall be allowed.

8.2 Section 36(2) reads as under:-

(2) In making any deduction for a bad debt or part thereof, the following provisions shall apply—

- [(i) no such deduction shall be allowed unless such debt or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof is written off or of an earlier previous year, or represents money lent in the ordinary course of the business of banking or money-lending which is carried on by the assessee;]*
- (ii) if the amount ultimately recovered on any such debt or part of debt is less than the difference between the debt or part and the amount so deducted, the deficiency shall be deductible in the previous year in which the ultimate recovery is made;*
- (iii) any such debt or part of debt may be deducted if it has already been written off as irrecoverable in the accounts of an earlier previous year [(being a previous year relevant to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year)], but the [Assessing] Officer had not allowed it to be deducted on the ground that it had not been established to have become a bad debt in that year;*
- (iv) where any such debt or part of debt is written off as irrecoverable in the accounts of the previous year [(being a previous year relevant to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year)] and the [Assessing] Officer is satisfied that such debt or part became a bad debt in any earlier previous year not falling beyond a period of four previous years immediately preceding the previous year in which*

such debt or part is written off, the provisions of sub-section (6) of section 155 shall apply;

[(v) where such debt or part of debt relates to advances made by an assessee to which clause (vii) of sub-section (1) applies, no such deduction shall be allowed unless the assessee has debited the amount of such debt or part of debt in that previous year to the provision for bad and doubtful debts account made under that clause.]

9. We find that the important item of consideration in this regard is whether or not the debt or part thereof has been taken into account in computing the income of the assessee. This aspect has been duly complied with in as much as the said interest was offered for taxation as income in the assessment year 1999-2000.

10. Now we have to examine whether the amount written off was incidental / related to the business of the assessee. In this regard, we note that the impugned amount represented interest accrued, but not due on the loan given to M/s Dhillon Kool Drinks and Beverages Limited. As per the Paper Book Page No. 94 submitted by the assessee which is a Report of the Tax Auditors in Form 3-CD, in Item No. 8(a) regarding the nature of business and profession following has been mentioned:-

*“8(a) Nature of business : Manufacture and sale of:
& profession*

- 1. Aerated and non aerated beverage products.*
- 2. Exports of traded and own manufactured products.*

Providing loans to companies involved in the business of

manufacture of soft drink beverage.”

11. From the above, it is clear that providing the loans to company involved in the business and manufacturing of soft drinks beverages was in the nature of the business of the assessee, hence, the same was incidental to the business of the assessee. The said amount of loan was provided to M/s Dhillon Kool Drinks and Beverages Limited. Thus, it cannot be said that the interest on the loan amount provided by the assessee company was not incidental to the business of the assessee.

12. Thus from the above, we find that the assessee has duly complied with the requisite conditions for claiming the amount to be written off. The said interest was offered to tax as income in the financial year relevant to assessment year 1999-2000. It is undisputed that the amount has become bad/irrecoverable. Furthermore, the transaction was in the nature of the business of the assessee i.e. it was incidental to the business of the assessee.

13. Thus, we find that the Assessing Officer has made the disallowance on the premise that the amount involved was capital in nature. From no point of view, this opinion of the Assessing Officer is sustainable. Ld. Commissioner of Income Tax (A) has himself not considered the disallowance from this angle. Hence, the plea of the Assessing Officer has no cogency and is liable to be dismissed.

14. Now the Ld. Commissioner of Income Tax (A) has confirmed the disallowance of the amount on the premise that the said amount is not incidental to the business or profession of the assessee. A reading of the Tax Auditors Report as mentioned above clearly points out that it was in the nature of the business of the assessee to provide the loans to company involved in the business of manufacturing of soft drinks. Hence, the premise taken by the Ld. Commissioner of Income Tax (A) is also not sustainable.

15. We further find that the amount of advance given to M/s Dhillon Kool Drinks and Beverages Limited was advanced in the course of business. It is undisputed that the advances became irrecoverable. In such situation, as per the ratio emanating from the decision of the Hon'ble Jurisdictional High Court in the case of Mohanmeakin Ltd. vs. C.I.T. 348 ITR 109, it is not relevant that the amount was claimed as bad debt. As per the Hon'ble High Court decision the amount was deductible as business loss u/s. 37 of the I.T. Act. In this case it was held that claim for deduction of non-recovery of trade advances was allowable on the facts of the case, merely because the bad debt claim was not made out under one particular provision of the Act, but was so made out under another provision of law, assessee cannot be deprived of the benefit of deduction of bad debts.

16. In the background of the aforesaid discussions and precedents, we set aside the orders of the authorities below and decide the issue in favour of the assessee. Accordingly, we hold that assessee is eligible to claim deduction on account of write off of Rs. 1,01,18,849/-.

17. Another issue raised in this appeal is whether Assessing Officer has validly initiated proceedings u/s. 147 of the Act or not.

18. We find that on the merits of the case herein above, we have already set aside the orders of the authorities below and decided the issue in favour of the assessee. Hence, in our considered opinion, adjudication on the facet of validity of reopening is now of only academic consideration. Hence, we are not addressing the same.

19. In the result, this appeal filed by the Assessee stands allowed.

Order pronounced in the open court on 05/7/2013.

Sd/-

[U.B.S. BEDI]
JUDICIAL MEMBER

Date 05/7/2013

"SRBHATNAGAR"

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|--------------|---------------|--------|------------|
| 1. Appellant | 2. Respondent | 3. CIT | 4. CIT (A) |
| 5. DR, ITAT | | | |

Sd/-

[SHAMIM YAHYA]
ACCOUNTANT MEMBER

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By Order,

Assistant Registrar,
ITAT, Delhi Benches

