

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'D' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No. 4234/DEL/2015
[A.Y 2009-10]

M/s Outworks Solutions [P] Ltd
H - 195, Sector 63,
Electricity City Noida

Vs.

The J.C.I.T.
Range - 1
Noida

PAN : AAACO 6064 D

[Appellant]

[Respondent]

Date of Hearing : 11.07.2018

Date of Pronouncement : 12.07.2018

Assessee by : Shri K.V.S.R Krishna, CA

Revenue by : Shri Amit Jain, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the assessee is preferred against the order of the Commissioner of Income Tax [Appeals] - I, Noida dated 29.01.2015 pertaining to A.Y 2009-10.

2. The assessee has raised five substantive grounds of appeal. At the very outset, the ld. AR stated that he is not pressing Ground No. 1,3,4, and 5. These grounds are dismissed as not pressed.

3. The only surviving ground relates to the disallowance of bad debts of Rs. 8,31,852/- u/s 36(1)(vii) r.w.s 36(2) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act'].

4. Briefly stated, the facts of the case are that the assessee is in the business of computer software development export. Return for the year under consideration was selected for scrutiny assessment and accordingly, statutory notices were issued and served upon the assessee. While scrutinising the return of income, the AO noticed that the assessee has claimed bad debts of Rs. 8,31,852/-. The assessee was asked to justify the claim of bad debts with evidence.

5. The assessee filed a reply dated 13.12.2011 explaining the sequence of events which prompted the assessee to write off the said amount. The reply reads as under:

"The company had run their business on the rented property bearing no. C-69, Sec-58, Noida-201307, U.P, India since their incorporation. Such rented property is owned by regency creation Ltd.

The assessee company gave the advance rent for the two months at the rate of Rs.4,27,100/- per month which comes to Rs.8,54,200/-. During the year 2006-07, A major fire break out in the rented premises of the assessee. There is a huge loss to company due to such fire.

After fire, the premises were not in a usable position as the total infrastructure was destroyed and also all the furniture, computer were destroyed. For continuity of the work of the foreign clients and the company, the assessee started the work in the new premises within the period of 4 days. As the company was not utilizing the premises due to the fire and there was a dispute between the landlord and assessee company regarding the payment of rent. There was advance rent given to landlord could not be recovered from the landlord due to the dispute.

As the company has given the two month advance rent to the owner of the premises under the terms of the rental agreement, it was a advance rent which was adjusted against the rental expenses. As the company could not utilize the premises due to the fire and the- assessee company want to recover this amount as a refund of advance rent. For this purpose, Assessee Company sent reminders, letters for recovery of such money to the owner

i.e. regency creations, ltd. since the assessee company could not recover the advance rent from the regency creation Ltd. till date. So the assessee company claim such amount as bad debt in the profit and loss a/c. The assessee's claim of Rs. 8,31,852/- as bad debts is justified and may kindly be allowed."

6. Drawing support from the provisions of section 36(2) of the Act, the AO came to the conclusion that the assessee does not satisfy the mandate provided and, therefore, the claim of the assessee cannot be entertained, Rs. 8,31,852/- was disallowed. The assessee carried the matter before the CIT(A) but without any success.

7. Before us, the ld. AR vehemently stated that the said amount was given as security deposit towards rented premises. It is the say of the ld. AR that since the premises was destroyed in fire and the assessee had to vacate the said premises, he requested the landlord for refund of the security deposit. The request was declined and, therefore, the assessee was left with no choice but to write off the said security deposit and the same should be allowed as legitimate business expenditure u/s 37/28 of the Act.

8. Per contra, the ld. DR supported the findings of the AO.

9. We have given careful consideration to the orders of the authorities below. No doubt, the assessee claimed write off as bad debt but it is equally true that the assessee did explain the sequence of events which prompted it for the said write off. There is no denying that the assessee does not fulfil the conditions mandated in section 36(2) r.w.s 36(1)(vii) of the Act. It is equally true that the loss of security deposit is business loss in the revenue field because the said security deposit was given in the ordinary course of business of the assessee and since the assessee had to shift the business premises on the wake of the fire, the write off became imminent because the landlord declined to refund the security deposit. In our considered opinion, the write off has to be considered in the light of provisions of section 28 r.w.s 37 of the Act. We, accordingly, set aside the findings of the CIT(A) and direct the AO to delete the disallowance of Rs. 8,31,852/-

10. In the result, the appeal of the assessee in ITA No. 4234/DEL/2015 is treated as allowed.

The order is pronounced in the open court on 12.07.2018.

Sd/-

**[KULDIP SINGH]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 12th July, 2018

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	