IN THE INCOME-TAX APPELLATE TRIBUNAL "C" BENCH MUMBAI

BEFORE SHRI G. S. PANNU, VICE-PRESIDENT AND
SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 190/Mum/2017 (Assessment Year 2012-13)

IDBI Capital Markets & Securities Ltd., 3rd Floor, Mafatlal Center, Nariman Point, Mumbai-400021. **PAN: AAACI1268F**	Vs.	DCIT Range-4(1)(1) Aayakar Bhavan, M.K. Marg, Mumbai-400020.
Appellant		Respondent

Appellant by : Shri Madhur Agarwal (AR)

Respondent by : Sh. H.N. Singh (CIT-DR)
Shri Manish Singh (Sr-DR)

Date of Hearing : 21.06.2019

Date of Pronouncement : 09.08.2019

ORDER UNDER SECTION 254(1)OF INCOME TAX ACT

PER PAWAN SINGH, JUDICIAL MEMBER;

1. This appeal by assessee is directed against the order of ld. Commissioner of Income Tax (Appeals)-9 [the ld. Commissioner (Appeals], Mumbai dated 18.10.2016 for Assessment Year 2012-13. The assessee has raised the following grounds of appeal:

Ground 1- Addition for Suppressed Receipts

1.0. The learned CIT grossly erred in confirming the addition of Rs. 16,09,63,742 without properly understanding the facts of the case, the reasons for which the addition was made by the AO and the submissions made by the assessee.

1.1. The learned CIT (Appeal) has confirmed the addition for the alleged failure of the assessee to explaining the discrepancy without mentioning the discrepancy which needed explanations.

1.2. In case the difference between the gross receipts as per Form 26AS and the receipts in respect of which TDS credit has been claimed in ITR has been considered a discrepancy, the learned CIT(A) has failed to take account of the fact that all the gross receipts reflected in statement 26AS are duly reflected in the accounts on the basis of which the income as per ITR was computed. The amount of TDS credit as per Form 26AS matches with the credit claimed in the revised ITR reference to which the attention of the AO as well as CIT (A) was drawn. The AO having been satisfied allowed credit for total amount of TDS claimed by the assessee in the revised ITR. The learned CIT failed to take note of the fact that the receipts as per ITR stand at much higher figure than the receipts reflected in the statement 26AS.

1.3. The learned CIT failed to appreciate that the difference between the gross receipts and the taxable income does not represent suppressed receipts as total income is computed after deducting from the gross receipts the allowable expenses incidental to business.

1.4. The learned CIT has gone wrong in basing his decision on the alleged absence of a formal prayer for admitting additional evidence. The assessee did not seek to rely on any additional evidence. All the facts relied upon in appeal were before the AO to which the attention of the CIT was also drawn.

1.5. There is no justification for the addition given by the AO in the remand report called for by the learned CIT and submitted by the AO.

Ground No. 2- Disallowance of 25% expenses

2.0. The learned CIT in a very cryptic observation, without averting to the assessee's submissions and commenting on the validity of AO's observations unjustifiably confirmed disallowance of 25% of aggregate expenses under all heads of income.

2.1. The learned CIT failed to appreciate that the disallowance has been made without any basis, purely on surmises and conjectures and without giving a single instance of expenditure unreleted to business. The assessee is a public sector undertaking subject to statutory audits as well as audit by

Comptroller & Auditor General of India and such disallowances have not been made in the past as well as future assessments.

2.2. The learned CIT failed to take into account that the vouchers were duly produced before the AO and no query or objection was ever made by him in respect of any of the item of expenditure.

2.3. The learned CIT is not justified in basing his decision on absence of any formal prayer for admission of any additional evidence as the assessee pleaded the case on the basis of evidence already produced before the AO.

2.4. The learned CIT failed to appreciate that the reliance of the AO on the decision of the Supreme Court in the case of Ramanand Sagar vs. DCIT 256 ITR 134 is wholly misplaced as the assessee discharged its onus by producing the vouchers in respect of which no further question was raised by the AO.

2.5. Without prejudice to the relief claimed as per ground 1, the assessee submits that having computed the income equal to the gross receipts as per statement 26AS, the disallowance made in respect of expenses has no leg to stand.

2.6. The AO did not make any submission in respect of such disallowance in the remand report called for and submitted by the AO.

Ground 3- Disallowance of Computer Maintenance Expenses

3.0. The learned CIT erred in confirming the disallowance made in respect of maintenance expenses of computer software as expenses of capital nature ignoring the legal position that repair and maintenance expenses of a capital assets are expenses incidental to business allowable u/s 37 of the Act.

3.1. The learned CIT was totally unjustified in law in taking the view that capital assets are entitled to depreciation only and no other allowance including allowance for expenditure incurred in keeping the asset in working condition.

3.2. The disallowance being totally against law, deserves to be deleted.

Ground 4 - Disallowance of Bad Debts

4.0. The learned CIT was not justified in confirming the disallowance of Rs. 32,68,120 without considering the assesses submissions, evidence produced

before the AO, the contention made in the remand report and the assesses submissions made in response to the remand report.

4.1. The AO in his remand report mentioned the ingredients of Section 36(2) laying down the conditions for allowance of bad debt without mentioning any condition which is not fulfilled. The fact of its having been written off 1 that it was a business debt, that it was taken into account in the computation of business income of the A.Y 2008-09 were substantiated by submitting copies of account from the audited and published accounts of the company after which no further query was raised neither by the AO nor by the CIT.

4.2. The learned CIT is not correct in observing that the appellant's contentions are not based upon the submissions made before the AO.

4.3. The learned CIT is also not justified in basing his decision on the appellant not making any formal prayer for admission of any additional evidence under Rule 46 of IT Rules, 1962 without going into the evidence submitted before the AO. The appellant did not seek to adduce any additional evidence unless required by him.

Ground No. 5- Disallowance out of Depreciation

5.0. The learned CIT was in error in confirming the rate of 10% depreciation in respect of electronic equipments like air conditioners, refrigerators etc. as against the rate of 15% claimed by the assessee which is the rate prescribed for 'Plant and machinery' under the schedule.

5.1. The learned CIT failed to appreciate that the office equipments like air conditioners etc. fall within the category of 'Plant and Machinery' in respect of which the allowable rate of depreciation is 15%.

5.2. That the disallowance is against the rules and deserves to be deleted.

Ground No.6 - Disallowance of loss on error trade Rs. 100000

6.0. The learned CIT even after having accepted that the loss on error trade is allowable under the law, was in error in confirming the disallowance for alleged want of evidence when the AO had not raised any issue of evidence. The amount is made up of several errors running into the aggregate of Rs. 100000 and was substantiated by producing the copy of account from books which are duly audited and published.

6.1. That the only ground on which AO made the disallowance is by applying the provision of Explanation to Sec 73 which is not applicable in the case and its non- application has not been disputed by the CIT also when he says that the expenditure should have been allowable. Having so held, the disallowance should have been deleted.

6.2. The disallowance on account of error trade has been deleted in appeal in preceding years.

6.3. That the disallowance is not justified and deserves to be deleted.

2. Brief facts of the case are that assessee is a company is wholly owned subsidiary of IDBI Bank Ltd, engaged in integrated financial services provider viz; investment banking, portfolio and file management, corporate advisory, institutional broking and distribution, retail broking and distribution and mutual fund advisory services and distribution. The assessee filed its return of income for Assessment Year 2012-13 on 21st September 2012 declaring total income of Rs. 38 crore approximately. The assessment was completed under section 143(3) on 22nd of January 2015 determining total income at Rs. 58.89 crore by making the following additions/disallowances.

1. Suppression of sale	Rs. 16,09,6 3,742
2. Disallowance out of major expenditure	Rs. 3,60,00,000
3.Disallowance of computer maintenance expenses	Rs. 57,4 9,537
4. Disallowance of bad debts written off	Rs. 32,68,920
5. Disallowance of expenses under section14A	Rs. 1,29,668

6. Disallowance of depreciation	Rs. 6,10,301
7.Disallowance of loss on error of trade	Rs. 1,00,000
Total	Rs. 20,85,22,168

3. Aggrieved by the additions/disallowances the assessee carried the matter in appeal before the ld. Commissioner (Appeals). The ld. Commissioner (Appeals) confirmed the action of Assessing Officer in making various additions/disallowances. Thus, aggrieved further the assessee has filed present appeal before us.

4. We have heard the submission of learned Authorized Representative (AR) of the assessee and learned Departmental Representative (DR) for the revenue and perused the material available on record.

5. Ground No. 1 relates to addition on account of suppressed receipts. The learned AR of the assessee submits that the Assessing Officer made addition on the ground that said amount as allegedly not disclosed by the assessee in return of income for relevant assessment year. The Assessing Officer took his view that income disclosed by the assessee as per return of income was Rs. 38.04 crore; whereas the total receipt as per Form 26AS was Rs. 54.14 crore and the difference of two figure remained unexplained by the assessee. Accordingly the Assessing Officer treated the same as income of assessee. The ld. Commissioner (Appeals) confirmed the action of Assessing Officer on

similar lines. The learned AR submits that the lower authority erred in appreciating that in the return of income "income" is disclosed by assessee i.e. receipts minus expenses and, hence the income disclosed in the ITR cannot be compared with the receipt disclosed in form 26AS. The learned AR of the assessee submits that gross receipt cannot be compared to the income and the orders of lower authorities in comparing to receipts were erroneous. The lower authority not appreciated that total revenue declared by assessee in the profit and loss account for the relevant assessment year was Rs. 94.22 Crores and the said amount is much more the cross receipts the cross disclosed in Form 26-AS of the assessee is only of Rs. 54.14 crore. The receipt is disclosed in case 26 only when, taxes deducted on such receipts by the pair. Therefore, if the assessee has earned some income on which no taxes required to be deducted, the same will not be disclosed in Form 26-AS. Therefore, once receipt disclosed in the profit and loss account, is in excess of receipt disclosed in Form 26-AS, no addition can be made to the income of the assessee on the ground that the receipt in Form 26-AS are unexplained the Assessing Officer erred in not appreciating that the receipts in Form 26-AS is required to be compared to the receipts in the profit and loss account and not the income declared in the income tax return. The learned AR further

submits that it is not the allegation of the lower authorities that any particular receipt in Form 26-AS has not been considered in arriving at the total revenue receipt in the profit and loss account but the addition has been made by merely considering the income of the assessee. Therefore, the learned AR for assessee submits that such addition is clearly bad in law and liable to be deleted.

6. In other alternative submission the learned some AR submits that the allegation of Assessing Officer that TDS disclosed in ITR is only Rs. 3.03 crore, whereas total TDS as per Form 26-AS is Rs. 5.18 crore and hence, there is an undisclosed TDS of Rs. 2.15 Crore is only factually wrong. The learned AR submits that in the original return, the assessee had claimed TDS of Rs. 3.03 crore but, in revised return filed by the assessee on 5th November 2013, TDS claimed by assessee is Rs. 6.53 crore. Therefore, the learned AR of the assessee submits that Assessing Officer erred in not considering the revised return which was filed within prescribed period provided under the Act. The ld. AR submits that the addition of Rs. 16.09 crore made by Assessing Officer is liable to be deleted.

7. On the other hand, the ld. DR for the revenue supported the order of lower authorities. The ld. DR submits that no reconciliation was furnished by assessee.

8. We have heard the submission of ld. Authorized Representative (AR) of the assessee and ld. Departmental Representative (DR) for the revenue and perused the material available on record. We have noted that the Assessing Officer made addition on the ground that said amount is not disclosed by the assessee in return of income for relevant assessment year. The Assessing Officer took his view that income disclosed by the assessee as per return of income was Rs. 38.04 crore; whereas the total receipt as per Form 26AS was Rs. 54.14 crore and the difference of two figure remained unexplained by the assessee. The ld Commissioner (Appeals) confirmed the action of the assessing officer with similar observations. We have noted that the allegation of assessing officer is that TDS disclosed in the return of income is only of Rs. 3.03 crore; whereas as per Form 26 AS is Rs. 5.18 crore. We have noted that in the ordinal return of income the assessee claimed TDS of Rs. 3.03 crore(as per page 74 of paper book) however, in the revised return of income filed by assessee on 5th November 2013, the assessee claimed TDS of Rs. 6.53(as per page 73 of paper book) . This fact clearly shows that the assessing officer has not considered the revised return of income. The revised return of income was filed within prescribed period of limitation under the Act. Considering the fact that the assessing officer has not considered the revised return of income

filed by assessee within time, we restore this ground of appeal to the file of assessing officer to verify the fact and grant relief to the assessee in accordance with law. Needless to order that before passing the order the assessing officer shall grant opportunity of hearing and explaining the facts to the assessee. In the original this ground of appeal is allowed for statistical purpose.

9. Ground No.2 relates to disallowance of 25% of expenses. The ld. AR of the assessee submits that vide a show cause notice dated 7th October 2014, the Assessing Officer asked the assessee for break-up of the expenses incurred by the assessee and copies of sample bills of such expenses. The ld. AR of the assessee submits vide letter dated 12th December 2014 the assessee furnished the required details. (as par pages 62-72 of paper-book). In the said letter, the assessee had given a complete break-up of the expenses as well as included sample bills for such expenses. The ld. AR of the assessee further submits that the Assessing Officer has not found any fault with the details submitted or with any of the invoices / sample bills given to the Assessing Officer. No further quarry was raised by the assessing officer. The Assessing Officer has made general observations that some expenses have been claimed on account of self made vouchers. The ld. AR of the assessee submits that, that, by itself, does not justify any disallowance as small

and petty expenses are incurred in the course of the business, for which no bills are received; for example, taxi fare, etc. and hence, the same are claimed by way of the self-made vouchers. Therefore, the Appellant submits that the disallowance of such expenses was unjustified.

10. The allegation of the Assessing Officer that the assessee has not maintained log books for use of expenses for business as well as for non-business purpose is absurd as the Appellant being a Company; all expenses are made for the purpose of business of the assessee. There is no non-business use of any expense and, therefore, there is no question of maintaining a log book / record for the purpose of use of these expenses. Such log book is typically maintained if a person (individual) is using an asset both for the purpose of business as well as personal activity, then on the basis of such log book, the business expenses can be claimed as deduction. In the present case, there is no question of any of the expenditures being incurred for the purpose of personal expense of the Company. The Assessing Officer has failed to appreciate that there can be no personal expense of the Company being a corporate entity. The ld. AR of the assessee submits that the Assessing Officer did not call for any further vouchers, bills, invoices and had only asked for sample invoices which were submitted by the

Appellant. As the Assessing Officer had not found fault with any of the vouchers which were submitted by the Appellant, the Appellant had clearly established beyond doubt that these expenses were incurred fully and exclusively for the purpose of business and, hence, such addition made by the Assessing Officer was not justified. The ld. AR of the assessee submits that the Assessing Officer was not justified in making ad-hoc addition and hence, the same is liable to be deleted.

11. On the other hand, the ld. DR for the revenue supported the order of lower authorities. The ld. DR further submits that the assessing officer reasonably made a disallowance of expenses which were not supported with the evidence or the evidence which were funds by assessee was self-serving vouchers.

12. We have considered the rival submission of the parties and have gone through the orders of authorities below. We have noted that during the assessment the assessing officer wide question is dated 7th October 2014 as the assessee to furnish party wise breakup of expenses with complete details and name parties, address, amount, TDS deducted along with the nature of expenses, copies of sample basis, explanation with regard to the fact that expenses were incurred for the purpose of business. The assessee wide reply dated 12th December 2014 stated that they have furnished the breakup of all expenses while there reply letter

dated 21st November 2014, wherein the breakup of all expenditure given details of parties, TDS sought vide letter dated 7th October 2014 was also furnished. The assessee also furnished the sample bills in respect of all heads of expenditure. For ranking/stamping the assessee stated that expenses were incurred on account of opening forms, the payment of which is made through banks only. In respect of rate and taxes, out of Rs. 16 lakhs the assessee contended that they have offered Rs. 4 lakhs for the purpose of Wealth tax payable for assessment year 2012-13 as per the return filed. The assessee specifically stated that all expenses were incurred for the purpose of business and no personal expenditure has been debited. The documents and the statement furnished substantiate the nature of expenses. The reply of assessee was not accepted by assessing officer the assessing officer concluded that the reasons furnish by assessee is general and casual nature and not supported by cogent evidence or a strong nexus with the business of the assessee. The assessing officer further concluded that on verification of various details that certain expenses are not supported by proper bills/vouchers and certain expenses are incurred through self made vouchers in case. The assessing officer on his view disallowed 25% of the expenses on ad hoc basis. We have noted that the assessing officer is not a specified any particular

infirmity in any of the evidence furnish by assessee. We have perused the different expenses claimed by assessee, which consist of employees benefit expenses, operating charges, computer maintenance expenses marketing expenses, ranking/stamp expenses, manpower higher charges, electricity charges, rate and taxes, communication expenses, printing and stationery, recruitment & training expenses and miscellaneous expenses. We are further noted that neither the assessing officer nor ld. Commissioner (Appeals) has especially in their order held that any of the expenses were not incurred for the purpose of business. We have further noted that the assessing officer has not called any specific voucher, bills or invoices before discarding the submission of the assessee. The learned Commissioner (Appeals) confirmed the action of assessing officer with similar observation without specifying any reason or deficiency in the evidence furnish by assessee. The assessee is a corporate entity and engaged in the business of integrated financial services which consist of investment banking, portfolio, fund management, corporate advisory, institutional broking and distribution, retail brokering distribution in mutual advisory services and distribution etc. Since, none of the expenses claimed by assessee is disputed by the lower authorities. The lower authorities merely disallowed the expenses on ad-hock basis. Considering the fact

that no deficiencies in the evidence furnish by the assessee was not specified nor any specific reason before making ad hoc disallowance was given by assessing officer therefore, we direct the assessing officer to delete the entire addition. In the result this ground of appeal is allowed.

13. Ground No.3 relates to disallowance of computer maintenance expenses. The ld. AR submits that the Assessing Officer has erred in not appreciating the submission of the assessee, even though the same has been referred to in paragraph 6.1 of the assessment order that the software maintenance expenses debited to the Profit & Loss Account are expenses incurred mainly on the annual maintenance contract, the validity of which is one year. Annual maintenance contract was both for hardware and software. The ld. AR of the assessee submits that the expenditure for annual maintenance contract can be no stretch of imagination be regarded as capital expenditure. Hence, the disallowance made by the Assessing Officer is not justified. The ld. AR of the assessee has further submitted that the software charges have not been debited to the expense account by the Appellant in the profit and loss account and, therefore, the question of disallowing the same does not arise. Without prejudice, and in any case, the issue as to whether expenditure on purchase of software is a revenue or capital

expenditure is concluded by jurisdictional High Court in the case of CIT v. Raychem RPG Ltd. 346 ITR 138 wherein the jurisdictional High Court has held that even if the expenditure is incurred for acquisition of a software, the same is allowable as revenue expenditure. Therefore, the Appellant submits that the lower authority was not justified in disallowing such expenses.

14. On the other hand, the ld. DR for the revenue supported the order of lower authorities. The assessee has not furnished the copy of Annual Maintenance Contract.

15. We have considered the rival submission of both the parties and have perused the material available on record. During the assessment the assessing officer noted that the assessee has claimed software expenses of Rs. 1.43 crore in the profit and loss account. The assessee was issued show cause notice as to why the computer maintenance and software expenses should not be treated as capital in nature. The assessee filed its reply wide reply dated 12th December 2014. In the reply the assessee stated that only system maintenance expenses have been debited to the particular head. The software charges incurred have not been debited to the expenditure account. Regarding the treatment of men tennis expenditure as capital in nature, the assessee stated that the expenditure has been incurred mostly on annual maintenance

contract with the validity of one year of hardware/software. This expenditure also includes computer stationery and consumables. The assessee also furnished the sample bills. The contention of SS was not accepted by assessing officer. The assessing officer disallowed the expenses. However, allowed 60% of depreciation on such maintenance expenses. The learned Commissioner (Appeals) confirmed the action of assessing officer. We have noted that the assessee has specifically stated in his reply dated 12th December 2014 that only system maintenance expenses were debited to the particular head. The assessee has not debited software charges in its profit and loss account. The assessee also stated that most of the expenditure is incurred on annual maintenance contract with a validity of one year only. The Hon'ble jurisdictional High Court in CIT versus Raychem RPG Ltd (supra) held that even the expenditure is incurred for acquisition of software the same is allowable as revenue expenditure. Therefore, considering the decision of Hon'ble Bombay High Court referred, we direct the assessing officer to delete the entire disallowance on account of computer maintenance expenses. In the result this ground of appeal is allowed.

16. Ground No.4 relates to disallowance of bad-debts of Rs. 32.68 lacs. The ld. AR submits that the Assessing Officer disallowed the bad debt

of Rs. 32.68 Lakhs by holding that the allowability of claim of bad debt under Section 36(1)(vii) of the Act is governed by Section 36(2) of the Act. Section 36(2) of the Act provides that unless the debt or part thereof has been included in the computation of income in earlier years, the same cannot be allowed as a bad debt under Section 36(1)(vii) of the Act. The Assessing Officer held that as the details with regard to the same are not available on record, the bad debts claimed by the Appellant cannot be allowed as deduction. The ld. AR before the ld. Commissioner (Appeals) filed complete details of the nature of bad debt, inter alia, stating that the bad debt is on account of receivables from one client "GNRC Ltd." The Appellant had, in fact, initiated proceedings against GNRC Ltd. for the recovery of the amount which was receivable by the assessee and which was offered to tax in earlier years. Pursuant to the settlement with GNRC Ltd., the assessee was able to recover only Rs.20 Lakhs and the balance amount of Rs.32.68 Lakhs was accordingly claimed as bad debt. The assessee had even filed a copy of the consent terms with GNRC Ltd. before the ld. Commissioner (Appeals), ledger accounts of GNRC Ltd. and other details like. Ledger, etc. which are at pages 38-54 of paper-book. The ld. Commissioner (Appeals) even after recording the fact that the amount of Rs.32.68 Lakhs was actually offered as income in Financial

Year 2008-09, confirmed the addition made by the Assessing Officer. The ld. AR for the assessee submits that only reason given by the Assessing Officer for making disallowance was that the assessee has not been able to establish that the bad debt was earlier offered as income in earlier assessment years. The assessee submits that the fact of offering income of earlier years having been established before the ld. Commissioner (Appeals), the condition under Section 36(2) of the Act is fully satisfied and hence, there is no reason for disallowing bad debt under Section 36(1)(vii) of the Act. Therefore, the ld. AR submits that the ld. Commissioner (Appeals) had erred in disallowing the claim of bad debt even though a complete detail with respect to the fulfilment of conditions of section 36(2) of the Act was filed before him.

17. On the other hand, the ld. DR for the revenue supported the order of lower authorities. The ld. DR further submits that the condition of section 36(2) was not fulfilled.

18. We have considered the rival submission of both the parties and have perused the material available on record. During the assessment the assessing officer noted that assessee has claimed by Debs return of Rs. 32.68 lakhs. The said amount stated to be pertaining to the clients on account of span margin, NSE differences, BSE differences and retail debtors. The assessee was issued show cause notice as to why it should

not be disallowed. The assessee filed its return reply while vide reply dated 21st November 2014. In the reply the assessee stated that the assessee books income in respect of investment banking assignment as soon as the milestones are reached as per the mandate. The income is booked by debiting the respective clients. In certain cases, receivable are outstanding and the due became irrecoverable in spite of the repeated effort from their side. It was stated that one of their client did not pay up the dues and the matter finally reached in the Arbitration. During the Arbitration process the amount was settled on certain amount and the balance due to assessee have been written off being irrecoverable. The contention of assessee was not accepted by assessing officer holding that name of the client, nature of transaction, date and total amount of transaction, the basis of bad debt and the copy of Arbitration award if any was not furnished. The assessing officer concluded that reasons stated by assessee is not acceptable on the ground that in absence of details, whether the bed debt written off, which the assessee is claimed as bad debt taken by assessee has been taken into account in computing the income of assessee in earlier years or not. Before ld. Commissioner (Appeals) the assessee furnished details written submission. The ld. Commissioner (Appeals) recorded/extracted the contents of submission of assessee in para 8.2 of

his order. The assessee specifically stated that on similar ground the disallowance of bed debts for A-Y 2010-11 was deleted by ld. Commissioner (Appeals). On the submission of assessee the learned Commissioner (Appeals) called the remand report of assessing officer. The assessing officer filed his remand report dated 8th September 2016 on 21st September 2016. In the remand report the assessing officer repeated his stand, which he had taken during assessment. The assessee also filed its rejoinder the remand report furnished by assessee. In the rejoinder reply the assessee stated that the essential conditions for claiming for allowance of bad debt are duly satisfied. The claim in respect of investment banking operation of the assessee which is part of normal business activities of the assessee. The income was duly accounted in assessment year 2008-09, when a debit entry to the account of the client with the corresponding credit entry in the income account was made. The total credit as per income account was taken into consideration in arriving at the income of that year. The amount has duly been written off as irrecoverable in the accounts of the assessee in the accounting year relevant to the assessment year 2012-13. We have noted that despite recording the reply of assessee the ld. Commissioner (Appeals) confirmed the action of assessing officer. Before us, the learned AR of the assessee vehemently submitted that

before ld. Commissioner (Appeals) the complete details of bad-debts on account of recoveries from the client "GNRC Ltd" were furnished. The ld. AR for assessee also argued that pursuant to the settlement with GNRC Ltd., the assessee was able only to recover Rs. 20 lakhs and the balance amount of Rs. 32.60 lakhs was accordingly claimed as bad-debt. The assessee also furnished the copy of consent terms with the GNRS Ltd before ld. Commissioner (Appeals). The learned AR of the assessee has furnished the copies of those documents as per page No. 38 to 54 of paper book. The perusal of those documentary evidence clearly establish that the assessee was able to recover only Rs. 20 lakhs and accordingly the remaining amount of Rs. 32.68 lakhs was claimed as bad-debts.

19. We have further noted that similar disallowance was made for Assessment Year 2010-11 and on in appeal before the ld. Commissioner (Appeals), the same was deleted. The assessee has specifically stated that income was duly accounted in earlier years. In our considered view, the assessee fulfilled all requisite condition prescribed under section 36(2) of the Act. Moreover, on similar set of fact, the similar disallowance was deleted by ld. Commissioner (Appeals) in appeal for Assessment Year 2010-11. Therefore, in view of above factual discussion, we do not find any justifiable reason for

making disallowance of bad-debts written off, which has been sufficiently justified by assessee. Hence, we direct the Assessing Officer to delete the disallowance of bad-debts. In the result, this ground of appeal is allowed.

20. Ground No. 5 relates to disallowance on depreciation. The ld. AR submits that the Assessing Officer disallowed Rs.6.10 Lakhs as depreciation on the ground that the depreciation on office equipment is allowable at 10%; whereas the assessee has claimed the depreciation at the rate of 15%. The ld. Commissioner (Appeals) has confirmed the action of Assessing Officer. The ld. AR of the assessee further submits that the assessee has pointed out that the depreciation has been claimed on assets like air-conditioners, refrigerators, water heaters, communication equipment etc. which are correctly classified under the head 'plant and machinery' and not 'office equipment' and, therefore, depreciation on the same would be allowable at the rate of 15% which is the rate applicable for plant and machinery. The ld. AR of the assessee further submits that the assets already formed part of 'plant and machinery block' and, therefore, there is no basis for the Assessing Officer to change the same in the relevant year, the assessee submits that once an assets forms part of any block of the asset, the same cannot be interfered with in any subsequent years. Hence, the assessee

submits that the impugned order is bad in law and liable to be quashed and set aside.

21. On the other hand, the ld. DR for the revenue supported the order of lower authorities. The ld. DR further submits that the assessee entitled for depreciation @ 10% only.

22. We have considered the rival submission of both the parties and have perused the material available on record. During the assessment, the Assessing Officer noted that assessee has claimed depreciation of Rs. 1.42 crore, out of which depreciation of Rs. 18.30 lakhs has been claimed @ 15% on the office equipments. The Assessing Officer was of the view that as per new Appendix-I effective from Assessment Year 2006-07, the deprecation is allowable @ 10% only. Accordingly, the Assessing Officer issued a show-cause notice to the assessee. The assessee vide its reply dated 12.12.2014effective from Assessment Year 2006-07, the deprecation is allowable @ 10% only. Accordingly, the Assessing Officer issued a show-cause notice to the assessee. The assessee vide its reply dated 12.12.2014 stated that the office equipment on which depreciation @ 15% is claimed consist of air-conditioners, refrigerators, water heaters, communication equipment etc. The assessee has rightly classified these items under “Plant & Machinery” and eligible for 15% depreciation as per Appendix-1. The

reply of assessee was not accepted by Assessing Officer and accordingly, made a disallowance of Rs. 6.10 lakhs and added the same in the income of assessee. The ld. Commissioner (Appeals) confirmed the action of Assessing Officer with similar observation. We have noted that the Assessing Officer restricted the disallowances to 10% on the air-conditioners, refrigerators, water heaters, communication equipment etc. instead of 15% as claimed by assessee holding that as per Appendix -1 the depreciation is allowable @ 10% only. We have noted that as per the rate of depreciation the 10% rate is applicable in respect of furniture and fittings including electrical fittings which consist of electrical wiring, switches, sockets and other fittings and fans. None of the item on which the assessee claimed is falls in the category-II of Appendix-1. Moreover, we find force in the submission of ld. AR of the assessee that the assessee correctly classified the items as a part of Plant & Machinery block. We are also in full agreement with the submission of ld. AR of the assessee that once the assets form part of block of asset, the same cannot be interfered in any subsequent year. Hence, we direct the Assessing Officer to delete the disallowance. In the result, this ground of appeal is allowed.

23. Ground No. 6 relates to disallowance of Rs. 1 Lakh on account of loss on error trade. The ld. AR of the assessee submits that the Assessing Officer disallowed the said amount on the ground that the assessee is engaged in the business of purchase and sale of shares of other companies and as per Explanation to Section 73 of the Act, the assessee is engaged in the purchase and sale of shares of other companies shall be deemed to be carried on speculation business and hence, Rs. 1 Lakh is treated as speculation loss and cannot be allowed to be set off against regular business Income. The ld. Commissioner (Appeals), after accepting that the judicial pronouncements have held that loss on error trade by a stock-broker is allowed, still confirmed the addition by holding that the assessee has not been able to demonstrate that error has been occurred by the assessee. The ld. AR of the assessee further submits that the Assessing Officer has disallowed the loss on a legal issue by treating the same as being covered under Explanation to Section 73 of the Act. The Assessing Officer has not disputed that the loss was on account of error trade i.e. the mistake committed by the assessee's employees while carrying on the trade on behalf of clients. Therefore, the Commissioner of Income Tax (Appeals), without asking for any information, could not have made the disallowance on the grounds that he details were not submitted. The ld. AR of the assessee

further submits that the ld. Commissioner (Appeals) erred in not appreciating that the error trade of only Rs. 1 Lakh, which is a miniscule percentage of the total receipts for operation of Rs. 74.24 Crores. Accordingly, the ld. AR of the assessee submits that the issue being covered by the decisions of the Tribunal and jurisdictional High Court as has been accepted by the ld. Commissioner (Appeals), addition made by the Assessing Officer should be deleted.

24. On the other hand, the ld. DR for the revenue supported the order of lower authorities. The ld. DR further submits that the assessee failed to demonstrate as to how trade error was occurred.

25. We have considered the rival submission of both the parties and have perused the material available on record. During the assessment, the Assessing Officer noted that the assessee has debited Rs. 1 lakhs from its Profit & Loss Account on account of trading loss. The assessee was issued show-cause notice as to why Explanation to Section 73 should not be invoked. The assessee filed its reply. In the reply, the assessee stated that due to human error, the trade error happens in punching and wrong scrip code, punching of wrong quantity, order punched at a price different from that specified by client and punching of buy order in place of sale order or vice-versa. In all such cases when the counter party i.e. Institution/client reject assessee's execution, the order

devolves on assessee's company. The assessee than square of the position depending on the market, which may result in Profit or Loss. The submission of assessee was not accepted by Assessing Officer. The Assessing Officer concluded that the provision of Explanation to Section 73 are applicable to the assessee-company, which is engaged in the purchase and sale of the share of other companies shall be deemed to be carrying on speculation business. The Assessing Officer thereby disallowed set off of trade loss of Rs. 1 lakhs. The ld. Commissioner (Appeals), confirmed the action of Assessing Officer with similar observation. As a matter of fact, the assessee-company is engaged in the business of financial services, which consist of investment banking, portfolio and fund management, institutional broking and distribution, retail broking etc. The assessee in the show-cause notice issued by Assessing Officer has explained that due to human error in punching the wrong scrip code, or punching of wrong quantity or in punching buy order in place of sale order due to human error the mistake may occur, which may result in income or loss. We have noted that the assessee has sufficiently explained the trade loss. The Assessing Officer instead of considering the loss on account of error trade treated the same as speculative loss. We have further noted that the assessee has shown total receipt from operation of Rs. 74.24 crore and the trade

loss claimed by assessee is miniscule. Considering the fact of the case and the explanation furnished by assessee, we direct the Assessing Officer to delete the disallowance on account of trade error. In the result, this ground of appeal is allowed.

26. In the result, appeal filed by assessee is allowed.

Order pronounced in the open court on 09/08/2019.

Sd/-	**Sd/-**
G.S. PANNU	**PAWAN SINGH**
VICE-PRESIDENT	**JUDICIAL MEMBER**

Mumbai, Date: 09.08.2019
SK

Copy of the Order forwarded to :

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "C" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

Dy./Asst. Registrar
ITAT, Mumbai