

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad**

Before Shri Rama Kanta Panda, Accountant Member

AND

Shri Laliet Kumar, Judicial Member

ITA No.1975/Hyd/2018		
Assessment Year: 2015-16		
Ceramin India Private Limited 8-2-624, Sri Durga Towers 6 th Floor, Road No.10 Banjara Hills Hyderabad-500 034 PAN : AADCR0974Q	Vs.	DCIT, Circle-1(2) Hyderabad
(Appellant)		(Respondent)
Assessee by:		Shri Aashik Shah, CA
Revenue by:		Shri Kumar Aditya, Sr.AR
Date of hearing:		20.10.2022
Date of pronouncement:		26.10.2022

ORDER

Per Shri Rama Kanta Panda, A.M.

This appeal filed by the assessee is directed against the order dated 16.07.2018 of Learned Commissioner of Income Tax (Appeals)-1, Hyderabad relating to AY 2015-16.

2. Facts of the case, in brief, are that the assessee is a company engaged in the business of trading in minerals & processing related to ceramics. It filed its return of income on 28.11.2015 declaring total income at Rs.1,44,86,260 under normal provisions and book profit of Rs.1,42,80,309/- under the provisions of section 115JB. The case was selected for scrutiny under CASS and statutory notices u/s. 143(2) & 142(1) were issued and served on the assessee to which the AR of the assessee appeared before the AO from time to time and filed the requisite details.

3. The AO observed from the profit and loss account that the assessee company had claimed an expenditure of Rs. 36,46,500/- towards 'bad debts written off' under the head 'other expenses'. From the ledger extracts and supporting documents of bad debts written off submitted by the assessee, the AO noted that the assessee had given advances to the following three parties:

- i. Mr. Prabir Ghosh-Rs.84,30,000/- out of which Rs.29,30,000/- was written off
- ii.M/s.Neo Mining & Minerals Pvt.Ltd. Rs.3,00,000/- out of which Rs.3,00,000/- was written off and
- iii. M/s. Uni Sai Minerals-Rs.4,16,000/- out of which Rs.4,16,000/- was written off.

The AO noted that out of the three advances, the advance given to Mr. Prbir Ghosh is a capital advance and the remaining two advances pertain to trade advances/material advances. Since the expenditure claimed with respect to bad debts written-off were not offered as income in the previous years, the Assessing Officer asked the assessee to show cause as to why the same should not be disallowed.

3.1 In response, the assessee submitted that the bad debts written off of Rs.36,46,500/- are allowable as they pertain to business activity and in support of its contention, the assessee relied on the following case laws:-

* *CIT vs. Mysore Sugar Co.Ltd.(1962) 46 ITR 649(SC)*

* *Chenab Forest Co vs. CIT(1974) 96 ITR 568(J&K)*

* *Binani Cement vs. CIT(2015) 60 Taxman.com 384(Calcutta)*

4. However, the AO was not satisfied with the arguments advanced by the assessee. He referred to the provisions of section

36(2) and noted that any debt written off to be eligible for deduction should have been part of total income of the year under consideration or of an earlier previous year. However, the assessee does not fulfil the criteria. He noted that out of three advances written off, two debts written off, i.e. M/s. Neo Mining & Minerals Pvt.Ltd & M/s.Uni Sai Minerals relate to advances for purchase of raw materials, i.e. trade advances. However, the bad debt written off in the name of Mr. Prabir Ghosh of Rs.29,30,000/- was not allowable as the advance given is for transfer of lease of china clay mines situated at Jankarpalli village, Rengali Sub-division, Sambalpur District, Orissa with an area of 100 acres, which is capital in nature. Since the capital loss is not an allowable deduction against the business income, the Assessing Officer disallowed bad written off of Rs.29,30,000/- and added to the total income.

5. Before the Id.CIT(A), the assessee made elaborate arguments. It was submitted that the assessee company had written off bad debts amounting to Rs.36, 46, 500/- in the statement of profit & loss under the head "Other Expenses". The aforesaid amount represented advances given to suppliers which were considered as irrecoverable during the year and hence, written off as bad debts in the books of accounts of the assessee. This bad debts written off was claimed as an allowable expense u/s.36(1)(vii) of the Act while filing return of Income for the concerned year. It was submitted that out of the aforesaid advances of Rs.36,46,500/- an amount of Rs,29,30,000/- was pertaining to advances given to Mr. Prabir Ghosh to lease a china clay situated at village Jankarpalli in Sambalpur district, Orissa in the year 2006, An agreement was executed between the assessee and the lessor and advance of Rs.84,30,000/- was paid as consideration in different instalment to the lessor.it was submitted that the assessee was entitled to extract clay from mine from the date advance was paid

to the lessor, Due to certain unavoidable circumstances, the lease of the china clay mine was subsequently cancelled and the assessee did not receive any rights in china clay mine as envisaged in the Agreement. Since advances were paid to the lessor and the assessee did not have any lease rights on the mine, the assessee filed an Arbitration petition against the lessor under the Arbitration and Conciliation Act. 1996. The Arbitrator awarded a compensation of Rs,55,00,000/- in favour of the assessee. The above compensation was awarded to the assessee after considering deduction towards the cost of China clay extracted and cost of use of plant machinery of the lessor by the assessee at the clay mine amounting to Rs.29,30,000/-. Considering the fact that the above difference between the advances given to Mr. Prabhir Ghosh and the award granted by the Arbitrator represents the cost of materials extracted by the assessee and such materials do not accrue any enduring benefit to the Appellant, the same was charged to the Profit and loss account for the concerned year. It was submitted that in anticipation of getting the china clay mine as per the agreement with Mr. Prabir Ghosh, no cost of purchases were booked by the assessee in its books of accounts. It was argued that when sales were made relating to manufactured goods out of such raw materials, the same had formed part of income of the Appellant. Accordingly, it cannot be said that the assessee has not offered the corresponding income to tax. It was submitted that as per the award of the arbitrator, the aforesaid amount of Rs.29,30,000/- was adjusted for the following reasons:

- Cost of 8000 Metric ton("MT") of china clay lifted at the rate of Rs.300 per MT amounting to Rs.24,00,000/-

- Balance towards wear and tear of machinery used for extraction of clay for the period 2007-2009.

6. It was submitted that during the intervening period from date of agreement till the date of cancellation of agreement, the appellant had used machinery available onsite for extraction of china clay in the mine as per terms of agreement. Hence, the arbitrator has reduced the compensation to the extent of cost of china clay extracted and wear and tear of machinery used in such extraction and awarded the balance compensation. It was submitted that the difference of Rs.29,30,000/- between the advances given to lessor (Rs.84,30,000) and the award granted by the Arbitrator (Rs.55,00,000) represents the cost of materials extracted by the assessee in the said mine using the machinery available on-site. Since the same was not recoverable, it was charged off as an expense in the statement of profit & loss account. Further, as these expenses do not accrue any enduring benefit to the assessee, the same was treated as revenue in nature and hence claimed as deduction while computing the taxable income for AY 2015-16. The assessee submitted following details:

- a. Copy of the annual report along with audited financial statements for the FY 2014-15
- b. Copy of Form 3CD for the AY 2015-16
- c. General agreement dated 18.06.2006 between M/s. RAK Minerals Pvt ltd and Mr. P.K.Ghosh
- d. Award of Arbitrator in the case of M/s.Ceramin India pvt.Ltd. vs. Sri Prabir Ghose dated 18.05.2015

7. However, the Id.CIT(A) was not satisfied with the arguments advanced by the assessee. Not only he sustained the addition made by the AO of Rs.29,30,000/- but also directed the AO to verify the receipt of Rs.55 lakhs in the hands of the assessee company awarded by the Arbitrator Court and bring the same to tax. The relevant observation of the Id.CIT(A) from para 5.6 onwards reads as under:-

“5.6 The submissions of the appellant have been carefully considered. The Assessing Officer has disallowed advances given to Mr. Prabir Ghosh under bad debts for an amount of Rs.29,30,000/- since the debt is capital in nature. Before me, the appellant submitted copy of

- a) The General Agreement dated 18.06.2006 between Mr.Prabir Ghosh and M/s. RAK Minerals(sister company of the appellant)*
- b) copy of Arbitration judgment between M/s.Ceramin India Pvt.Ltd and Mr.Prabir Ghosh dated 18.05.2015*

As per the agreement M/s.RAK Minerals had taken 20 years lease from Mr.Prabir Ghosh for china clay. The arbitration judgment refers that

“In token of part performance of the transaction, substantial amount out of the consideration was paid by the Claimant to the Respondent. The said agreement, according to the claimant, remained unperformed as the Respondent was not willing to perform his part of the contract and adopted dilatory attitude for reason best known to him and subsequently cancelled the Agreement as well other documents on flimsy grounds.”

In pursuant to the agreement, appellant company has paid Rs.85,00,000 and Rs.75,00,000/- for this mine. The total transfer of lease to the appellant company was made at Rs.1.25 crores. Out of which, Rs.75 lakhs were paid and Rs.50 lakhs were pending. The agreement did not work and the appellant company claimed the following reliefs:

- i.”Refund of Rs. 75,00,000/- received by the Respondent;*
- ii. Refund of Rs.7,00,000/- towards purchase of land from different private land owners.*
- iii Refund of Rs.3,00,000/- towards the expenses to be incurred in the matter of transfer of the lease hold rights/ sale*
- iv. Refund of Rs.75,000/- towards expenses incurred for the processing at Collectorate and DDM office at Sambalpur*
- v. Claimant is entitled to interest @12% per annum from the date of respective payment till the date of payment.*
- vi. The claimant also claimed present interest and future interest @12% per annum from the date of filing of the claim along with cost”*

The Arbitration concluded that “On the basis of the analysis made in the preceding paragraphs the irresistible conclusion, that can be drawn, is that the Respondent has received a total amount of Rs.85.75 lakhs on the following heads:

- a) Rs.75,000/-:For meeting incidental and miscellaneous expenses for processing the transfer application*
- b) Rs.2,00,000/-: paid towards raising cost*

c) Rs.76,00,000/-:towards part of the consideration

d) Rs.7,00,000/-: for purchase of adjoining lands

Out of the aforesaid amount, in view of the discussions made earlier the Respondent is not entitled to Rs.7,00,000/- as no cogent evidence has been adduced. On the other hand he would be entitled to Rs.24,00,000/- towards the cost of the china clay extracted and transported and Rs.6,00,000/- towards raising and utilization of some of the machinery or equipment installed by the Respondent. After deducting the said amounts towards set-off or counter claim the Respondent is liable to pay a sum of rs.55,00,000/-(rupees Fifty five lakhs) only to the claimant.

In conclusion of the arbitration, Mr. Prabir Ghosh was directed to pay Rs.55 lakhs to the appellant company in settlement of the closure of the agreement.

5.7 For the relevant FY 2014-15, the appellant had written off bad debts of Rs.36,46,500/-. Out of which, bad debts in the name of Mr.Prabir Ghosh was Rs.29,30,000/-. This bad debts has ben considered as capital in nature, hence disallowed.

5.8 The appellant submitted before me that "it was this reason that compensation which was awarded to the appellant in arbitration was after considering deduction towards the cost of china clay extracted and cost of use of plant and machinery of the lessor by the appellant which amounting to Rs.29,30,000/-. The appellant had paid Mr.Prabir Ghosh an advance of Rs.84,30,000/- as consideration in different instalments for the china clay mine. On cancellation of the agreement an amount of Rs.55,00,000/- was awarded to the appellant in the arbitration. Though the compensation was claimed for Rs.84,30,000/- towards total advance given to the lessor, the arbitrator has deducted Rs.29,30,000/- and awarded balance compensation of Rs.55,00,000/-. As per the award of the arbitrator, the aforesaid amount of Rs.29,30,000/- was adjusted for the following reasons:

*Cost of 8000 Metric Ton ("MT") of china clay lifted at the rate of Rs.300 per MT amounting to Rs.24,00,000/-

*Balance towards wear and tear of machinery used for extraction of clay for the period 2007 to 2009

5.9 the submissions of the appellant is not accepted for the following reasons:

a) **Appellant company is not party to the said agreement:** The question arises as to whether the appellant company did pay advance to Mr.Prabir Ghosh by agreement dated 18.06.2006. The agreement is not between the appellant company and Mr.Prabir Ghosh and the payments have ben paid by M/s.RAK Minerals Private Limited. The subsequent agreement dated 01.06.2009 is also between Mr.Prabir Ghosh and M/s. RAK Minerals Private Limited which has confirmed in cluae(i) page 2 of the agreement that M/s.RAK Minerals Pvt.Ltd. have paid Rs.75 lakhs towards advance money. The balance Rs.50 lakhs has been paid for the expenses. The name of the appellant company does not figure in any of the agreements. Even in the balance sheet, such investment/purchase of mine has not been shown by the appellant company. That is to say, the appellant company has not acquired nor invested in acquisition of the mine. Hence, the question of payment of Rs.83,50,000/- to Mr.Prabir Ghosh by the appellant company, as submitted before me, is incorrect.

b) **Expenses/Payments have been taken into consideration in the Arbitration case.** From the reading of arbitration order, all the expenses incurred by appellant company has been taken into consideration. This also includes amounts spend and amount of clay extracted from the mine. Hence the question of loss does not arise.

c) Receipt of Rs.55 lakhs: the appellant company is awarded Rs.55 lakhs towards compensation/refund for cancellation of agreement. That is to say, Mr.Prabir Ghosh has paid Rs.55 lakhs to the appellant company as compensation after excluding the benefits availed by the appellant company. Hence the receipt of Rs.55 lakhs should be taken as 'return of expenses' i.e. inflow back of income.

d) The amount claimed as bad debts is incurred in relation to purchase of a mine. This is capital investment and hence to be taken as capital expenditure. Hence the same cannot be as deduction.

In view of this, I uphold the addition made by the Assessing Officer. I direct the Assessing Officer to verify the receipt of Rs.55 lakhs in the hands of the appellant company awarded by the Arbitration Court. The compensation received from Mr. Prabir Ghosh has to be brought to tax.

-Ground Dismissed.

8. Aggrieved with such order of the Ld.CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds.

1. On the facts and in the circumstances of the case and in law, the Hon'ble Commissioner of Income Tax (Appeals) ('CIT(A)')/the Learned Deputy Commissioner of Income-tax, Circle 1(2), Hyderabad ('Ld AO') erred in holding the assessment order passed by the Deputy Commissioner of Income Tax ('Learned AO') under Section 143(3) of the Income-tax Act, 1961 ('Act').

2. On the facts and in the circumstances of the case and in law, the Learned AO / CIT(A) has erred in disallowing the claim of bad debts written off amounting to Rs.29,30,000 considering the same as capital in nature.

3. On the facts and in the circumstances of the case and in law, CIT(A) has erred in either stating that the appellant was not a party to contract for lease of china clay mine or that the Appellant has not paid any advance to obtain the lease, ignoring the fact that the appellant was earlier known as RAK Minerals Private Limited.

4. On the facts and in the circumstances of the case and in law, CIT(A) has erred in holding the contention that Appellant has taken expenses pertaining to amount of clay extracted from mine and the wear and tear of equipment used in earlier years and thereby, no loss arises in instant case.

9. The assessee also filed the following additional grounds:

5. *Without prejudice, the claim of advance written off amounting to INR 29,30,000 is allowable as a business loss under section 28 or section 37 of the Act.*

6. *On the facts and in the circumstances of the case and in law, the I.d. CIT(A) has erred in enhancing the income of the Appellant towards the compensation awarded amounting to INR 55,00,000.*

7. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in enhancing the income of the Appellant in violation of principles of equity and natural justice and in violation of statutory procedure laid down in section 251(2) of the Act for enhancement of income of the Appellant.*

8. *On the facts and circumstances of the case and in law, CIT(A) has grossly erred in directing the Ld. AO to tax the amount of INR 55,00,000 received from Mr. Prabir Gosh without appreciating the fact that the said receipt is 'capital' in nature and is not subjected to tax.*

9. *On the facts and circumstances of the case and in law, CIT(A) has grossly erred in directing the Ld. AO to tax the amount of INR 55,00,000 received from Mr. Prabir Gosh without appreciating the fact that the Appellant has not claimed deduction of such amount in any of the previous years. Accordingly, the directions of CIT(A) to tax the said receipt would tantamount to double taxation of the same amount.*

10. Referring to the decision of Hon'ble Supreme Court in the case of NTPC Ltd. reported in 229 ITR 383 and the decision of Jute Corporation of India Ltd. reported in 187 ITR 688, the Id. Counsel for the assessee submitted that the additional grounds are legal in nature and all material facts necessary for adjudication of the additional grounds are available on record and therefore, these grounds should be admitted.

11. The Id. DR on the other hand strongly opposed the admission of the additional grounds.

12. After hearing both the sides and considering the fact that these additional grounds are legal in nature and all material facts

necessary for adjudication of the grounds are already available on record, therefore, the additional grounds are admitted for adjudication.

13. The ld. counsel for the assessee strongly opposed the order of the ld.CIT(A) in sustaining the addition of Rs. 29,30,000/- and directing the AO to tax the amount of Rs. 55 lakhs. So far as the addition of Rs. 29,30,000/- is concerned, he submitted that although, the same may not be allowed as bad debt but the same should be allowed as business loss. Referring to page.45 of the paper book, the ld. counsel for the assessee drew the attention of the Bench to the “other notes forming part of accounts” and submitted that as per clause d (ii) of item no.25, “The company has paid a sum of Rs. 84.30 lakhs as advanced to Mr. Prabir Gosh for acquiring china clay mines during earlier years. The said mine is yet to be transferred in the name of the company. As on date, yet to recover Rs. 55 lakhs from Mr. Prabir Ghosh as per AWARD given by Court”. He submitted when out of the advance of Rs.36,46,500/- an amount of Rs.29,30,000/- was pertaining to advances given to Mr. Prabir Gosh to lease a china clay and when the arbitrator in his Arbitration Award has adjusted the amount of Rs.29,30,000/- towards lifting of china clay and wear and tear of machinery used for extraction of the clay, the same should have been allowed as a business loss. So far as the direction of the ld.CIT(A) to bring to tax the amount of Rs. 55 lakhs is concerned, he submitted that the same is shown in the balance sheet as receivable, therefore, once the amount is received, it cannot be brought to tax and therefore, the order of the ld.CIT(A) without issuing an enhancement notice and directing the AO to bring the same to tax is not in accordance with law.

14. The ld. DR on the other hand heavily relied on the order of the ld.CIT(A). Referring to the order of the ld.CIT(A), he submitted

that he has given valid and justifiable reasons while sustaining the addition made by the AO of Rs.29,30,000/- and further directing the AO to bring to tax the amount of Rs. 55 lakhs in the hands of the assessee company on the basis of the award by the Arbitration Court.

15. We have heard the rival arguments made by both the sides, perused the orders of the ld. AO and ld.CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the AO in the instant case to made addition of Rs.29,30,000/- out of the expenditure claimed at Rs. 36,46,500/- towards bad debt written off under the head other expenses on the ground that assessee does not fulfill the conditions prescribed u/s.36(2) of the I.T.Act. We find the ld.CIT(A) not only upheld the action of the AO, but also directed him to bring to tax the amount of Rs. 55 lakhs awarded by the Arbitration Court, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the ld. counsel for the assessee that although the amount of Rs. 29 lakhs may be disallowed as bad debt but however, the same should have been allowed as business loss. On a pointed query raised by the Bench as to whether the expenditure was incurred during the impugned financial year, the ld.counsel for the assessee submitted that these were incurred in the past years and does not relate to this year. To another query raised by the Bench as to what is the date of the Arbitration Award, the ld.counsel for the assessee submitted that the arbitrator gave his award on 18.05.2016. Thus a perusal of the award given by the arbitrator shows that the arbitrator gave his award on 18.05.2015, which falls under FY 2015-16 i.e relevant to AY 2016-17. We, therefore, do not agree with the argument of the ld. counsel for the assessee that the same should have been allowed as business loss during this year. In our opinion, when the assessee is not entitled to

claim the same as bad debt, the assessee cannot claim the same as business loss as per his sweet will. The law is well settled on this aspect and business loss, if any, can be claimed by the assessee in the year of incurring of the expenditure and not as per his sweet will. In this view of the matter, the order of the Id.CIT(A) sustaining the addition of Rs.29,30,000/- is upheld and the grounds raised by the assessee on this issue are dismissed.

16. So far as the second issue is concerned that is the direction of the Id.CIT(A) to bring to tax the amount of Rs. 55 lakhs to be received by the assessee on the basis of the award by the Arbitration Court is concerned, we find first of all the same is not emanating from the assessment order. Further, the Id. DR could not bring on record any evidence to show that the Id.CIT(A) has given any enhancement notice, which is required as per law to be issued to the assessee before making an enhancement. Thirdly, the amount was already shown by the assessee in the balance sheet as receivable from Mr.Prabir Ghose and therefore, once the arbitrator gives the award for refund of this Rs.55 lakhs, the same cannot be brought to tax in the hands of the assessee. We, therefore, set aside the order of the Id.CIT(A) on this issue and the grounds raised by the assessee on the second issue are allowed.

17. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the Open Court on 26th October, 2022.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (RAMA KANTA PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 26th October, 2022.

Thirumalesh/sps

Copy to:

S.No	Addresses
1	Ceramin India Private Limited 8-2-624, Sri Durga Towers 6 th Floor, Road No.10 Banjara Hills Hyderabad-500 034
2	DCIT, Circle-1(2) Hyderabad
3	CIT(A)-1, Hyderabad
4	Pr.CIT-1, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order