

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'H' : NEW DELHI**

**BEFORE SHRI I.C. SUDHIR, JUDICIAL MEMBER
AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

ITA No. 1322 /Del/2012
Assessment Year: 2003-04

Asstt. Commissioner of Income
Tax, Circle-16(1), New Delhi

Vs.

M/s TBL International Ltd.
B-7, 2nd Floor, Rajouri Garden,
New Delhi
(PAN:AAACT0072C)
(Respondent)

(Appellant)

Assessee by : Sh. Suman Chandra, CA
Department by: Sh. J.P. Chandrekar, Sr. DR

Date of hearing: 22.06.2015
Date of pronouncement: 10.07.2015

ORDER

PER INTURI RAMA RAO, A.M.:

This appeal filed by the Revenue for the assessment year 2003-04 against the order of the CIT(A), dated 19.12.2011 raising the following grounds of appeal:

- i. On the facts and in the circumstances of the case and in law the learned CIT(A) erred in deleting an addition of Rs. 43,44,286/- which was a disallowance of prior period expenses.
- ii. On the facts and in the circumstances of the case and in law the learned CIT(A) erred in directing that carry forward business loss of earlier years amounting to Rs. 57,75,439/- be allowed after giving effect to the order of the CIT(A) for the earlier year.
- iii. On the facts and in the circumstances of the case and in law the learned CIT(A) erred in deleting the addition of Rs. 41,43,845/- while computing book profits u/s 115JB of the IT Act 1961.

iv. The appellant craves leave for reserving the right to amend, modify, alter, add or forego, any ground(s) of appeal at any time before or during the hearing of appeal.

2. Briefly stated facts of the case are that the respondent assessee is a company incorporated under the provisions of Companies Act, 1956. It is engaged in the business of development of computer software for Telecommunication Industry and other consultancy work relating thereto. The original return of income for the assessment year 2003-04 was filed on 25.11.2003 declaring nil income after setting off of business losses of Rs. 57,75,439/- under normal provisions to pay tax and book profit under Section 115JB of the Act. The original assessment was completed under Section 143(3) of the Income-tax Act, 1961 (for short 'the Act') on 23rd February, 2006 and assessed the book profit at Rs. 41,43,845/-. Subsequently, the case was returned by issuing notice under Section 148 of the Act, dated 31st March, 2010 and the reassessment was completed vide order dated 16.11.2010 at a total income of Rs. 57,75,439/- and also assessed book profit under Section 115JB of the Act at Rs. 41,43,845/-. Since the assessed income under normal provisions is higher than the book profits assessed under Section 115JB, the tax was demanded under the normal provisions of the Act. On appeal before the learned CIT(A), though the CIT(A) had not allowed the preliminary ground relating to the challenge of the reassessment proceedings, however, allowed the other grounds of appeal on the merits of the addition. Aggrieved by this order, the Revenue preferred the present appeal.

3. Now we shall deal with the present appeal ground-wise.

4. Ground no. 1 relates to the deletion of addition of Rs. 43,44,286/- under the head 'prior period expenses'. The learned CIT(A) had deleted this addition by holding as under:

öGround No. 2 is in respect of prior period expenses of Rs. 43,44,286/-. The AO treated prepaid expenses as prior period expenses. The appellant stated before me that this amount was a payment made on 19/2001 to Organe Chemutech and Allied Ltd. as advance for marketing fee. This amount was prepaid in 2002-03 and accounted as such. Since the expenditure related to AY 2003-04, this amount was booked as expenditure according to the accrual method of accounting.

It is seen that the expenditure involved is clearly of the nature of prepaid expenses and cannot be treated as prior period expenditure. The treatment followed by the AO is not consistent with accountancy. The Addition on this amount of Rs. 43,44,286/- is deleted. This ground of appeal is ruled in favour of the appellant.ö

4.1 It is submitted before us that the amount was paid in advance in the accounting year 2002-03 relating to AY 2003-04 and since the liability for the expenditure crystallized during the year under consideration, the same was claimed as a deduction. However, in the books of account, it is wrongly classified as prior paid expenses instead of pre paid expenses.

4.2 On consideration of the submission made by the learned Authorized Representative, we are satisfied that the pre paid amount shown in assessment year 2002-03 is reversed during the year under consideration and therefore there is a merit in the submissions made by the learned counsel for the assessee company. Therefore, we do not find any reason to interfere with the order of the CIT(A) on this issue. Accordingly, this ground of appeal filed by the Revenue is dismissed.

5. The ground no. 2 filed by the Revenue relates to the set off business loss of Rs. 57,75,439/- of the earlier years against the current year's income.

5.1 From the perusal of the assessment order, we find that this issue does not arise out of the reassessment order which is under appeal. However, the learned CIT(A) has dealt with this issues as under:

öGround No. 3. Carry forward and set off losses of Rs. 57,75,439/- is taken in this ground of appeal. The appellant has stated that:

öWhile completing assessment U/s 143(3)/148 carry forward losses of Rs. 57,75,439/- has not been allowed to be set off against the current year income of the assessee. For the assessment year 2002-03 assessment was completed U/s 143(3) and income was assessed at Rs. 8,86,880/- against returned loss of Rs. 174,61,280/-, CIT(A) has allowed the appeal and deleted the additions made by the AO. Thereafter, U/s 147 read with Section 143(3) sum of Rs. 23,47,144/- was disallowed and income was assessed at Rs. 1,51,14,136/- (Total Loss) against which assessee went in appeal and addition of Rs. 23,47,144/- was deleted by the CIT(A) vide order dated 26th April, 2010, thereby business loss of Rs. 1,74,61,280/- declared in the Income Tax Return of Assessment year 2002-03 has been restored. (copy of appeal order for the assessment year 2002-03 is enclosed)ö

The set off of losses of earlier years as determined after giving effect to the order of the CIT(A) for the earlier year is a procedural matter and the AO is directed to compute and allow the same as per law.ö

5.2 In our considered opinion, the issue does not arise out of the reassessment order which is under appeal and therefore the learned CIT(A) ought not have given this direction and therefore we reverse the findings of the learned CIT(A) on this issue also. Accordingly, this ground of appeal filed by the Revenue is allowed.

6. The next ground of appeal relates to the addition of provision for book debts of Rs. 41,43,845/- under section 115JB. The Assessing Officer had

made this addition on the ground that the provision was made on account of doubtful advance of capital nature. On appeal before the learned CIT(A), the CIT(A) allowed this ground. This issue is no longer res integra as is covered by the decisions of Honøble Supreme Court in the cases of Apollo Tyres Ltd. vs Commissioner Of Income Tax 255 ITR 273 and 300 ITR 251, Malayala Manorama Co. Ltd. v. CIT. Accordingly, this ground of appeal filed by the Revenue is dismissed.

7. In the result, the appeal is allowed for statistical purposes.

The decision is pronounced in the open court on 10th July, 2015.

Sd/-
(I.C. SUDHIR)
JUDICIAL MEMBER

Dated: 10th July, 2015.

RK/-

Copy forwarded to:

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

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Asst. Registrar, ITAT, New Delhi