

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ITA No.614 of 2009 (O&M)
Date of decision: 17.9.2015**

Commissioner of Income Tax, Faridabad

.....Appellant.

M/s Nuchem Limited

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr. Tejinder K.Joshi, Advocate for the appellant-revenue.

Mr. P.C.Goyal, Advocate for the assessee-respondent.

Ajay Kumar Mittal,J.

1. This appeal has been preferred by the appellant-revenue under section 260A of the Income Tax Act, 1961 (in short, "the Act) against the order dated 27.3.2009, Annexure IV passed by the Income Tax Appellate Tribunal, Delhi Bench 'I' New Delhi (in short, "the Tribunal") in ITA No.2659/Del./2005 for the assessment year 1996-97, claiming following substantial question of law:-

“Whether, on the facts and in the circumstances of the case, the learned ITAT was right in law in deleting the addition of ₹ 2,18,213/- made by the Assessing Officer and confirmed by the learned CIT(A) disregarding the fact that there was no purchase from the said party during the year under assessment, the amount was simply an advance and not a debt?

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The assessee company

filed its return on 30.11.1996 declaring a loss of ₹ 30,31,03,210/- which was revised to ₹ 22,17,81,730/- vide revised return filed on 3.3.1998. The assessment under section 143(3) of the Act was completed on 30.3.1999 by making an addition of ₹ 1,15,15,905/- and loss of ₹ 89,80,454/- was allowed to be carried forward. The Assessing officer made a disallowance of ₹ 36,40,481/- on account of bad debts on the ground that the assessee had failed to give any plausible explanation vide order dated 30.3.1999, Annexure I. The assessee did not produce evidence of the debt becoming bad in the case of all the parties. On appeal by the assessee, the CIT(A) vide order dated 21.3.2005, Annexure II deleted the addition of ₹ 34,22,268/- and confirmed the addition of ₹ 2,18,213/- in respect of M/s Chemicals of India while observing that it was not a debt recoverable but was infact an advance made to the party for the purchase of material. The assessee filed appeal ITA No.2659/Del/205 before the Tribunal. The Tribunal reversed the order of the CIT(A) on this issue vide order dated 27.3.2009, Annexure IV. Hence the instant appeal by the revenue.

3. We have heard learned counsel for the parties.

4. The CIT(A) confirmed the addition of ₹ Rs.2,18,213/- made by the Assessing Officer in respect of M/s Chemicals of India observing that it was not a debt recoverable but was in fact an advance made to the party for the purchase of material. The Tribunal held that the amount of ₹ 2,18,213/- was the advance made to M/s Chemicals of India for the purchase of material. The material was not received by the assessee. The expenditure was in the course of the business of the assessee. Therefore, the Assessing officer was directed to allow the said amount as a business expenditure.

5. While reversing the findings recorded by the CIT(A), Tribunal recorded thus:-

“39. In regard to the issue of the disallowance out of amounts written off which is ground no.3 in ITA No.2659 for the AY 1996-97, it was submitted that the amount of ₹ 2,18,213/- was an advance made for the purchase from M/s Chemicals of India. It was his submission that the amount had become bad and the same had been written off. In reply, learned DR submitted that the amount was not a bad debt, but was infact the advance made for the purchase of the material. It was his submission that the same was rightly upheld by the CIT(A).

40. We have considered the rival submissions. It is undisputed that the amount of ₹ 2,18,213/- was the advance made to M/s Chemicals of India of the purchase of material. It is also undisputed that the material was not received by the assessee. It is also not disputed that this expenditure was in the course of the business of the assessee. This being so, we are of the view that this expenditure can be claimed as a business expenditure itself. In the circumstances, the finding of the CIT(A) on this issue stands reversed and the AO is directed to allow the said amount as a business expenditure.”

6. The Tribunal had held the amount of ₹ 2,18,213/- as business expenditure as the same was in the course of the business of the assessee. Learned counsel for the appellant was unable to show any illegality or perversity in the findings recorded by the Tribunal warranting interference by this Court. Thus, the question of law as claimed by the revenue is answered accordingly. Consequently, the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

(Ramendra Jain)
Judge

September 17, 2015
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