

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : D : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.771/Del/2014
Assessment Year: 2008-09

Lucky Exports,
UG-28, Som Dutt Chambers-II,
9, Bhikaji Cama Place,
New Delhi.

Vs DCIT,
Circle-24(1),
New Delhi.

PAN: AAAFL1147P

(Appellant)

(Respondent)

Assessee by	:	Shri Naveen N.D. Gupta, CA
Revenue by	:	Shri Saras Kumar, Sr. DR
Date of Hearing	:	20.08.2020
Date of Pronouncement	:	28.09.2020

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 21.11.2013 of the CIT(A)-28, New Delhi relating to assessment year 2008-09.

2. Facts of the case, in brief, are that the assessee is a partnership firm and is engaged in the business as merchant exporter. It filed its return of income on 27th September, 2008 declaring the total income at Rs.2,96,21,168/-. During the course of assessment proceedings, the AO observed from the Profit & Loss Account that

the assessee has claimed a sum of Rs.1,61,35,879/- under the head -write off/bad debt.ø He, therefore, asked the assessee to explain and justify the advances /bad debt written off in respect of 22 parties. He asked the assessee to file partywise explanation and justification of bad debt/advances written off and to produce the copy of account and names of such parties for the last three years. He also asked the assessee to file:

- (a) copy of bank statement when payment of advances written off were made;
- (b) Complete name, address, PAN and contact details of the parties including current address, if any; and
- (c) Copy of correspondence made in connection with recovery of loan/advances written off.

3. After considering the details and explanation given by the assessee and observing that the assessee could not give justification for the write off and that the genuineness of the transaction and nature of advance is not clear, the AO disallowed an amount of Rs.1,45,21,079/- in respect of the following parties:-

a.	M/s Mahima Trading & Investment Pvt. Ltd.	Rs.15,66,848
b.	M/s Adani Exports Ltd.	Rs.2,50,961
c.	Shri. Rajeev Chopra	Rs.4,12,786
d.	M/s Ankita Imports & Exports	Rs.10,00,000
e.	Mr. Surjeet Singh	Rs.3,20,000
f.	Mr. Deepak Bharadwaj	Rs.14,75,992
g.	Mr. S.S.Jain	Rs.2,50,000
h.	Mr. Mayank Jian	Rs.2,50,000
i.	M/s Choudhary Consultants	Rs.5,00,000

j.	Shri Satya Karan Punia	Rs.25,03,750
k.	Shri. Bharat Bhushan	Rs.8,43,750
l.	M/s Elite Manufacturing Pvt. Ltd	Rs.1,59,000
m.	M/s Unique Associates	Rs.2,50,000
n.	M/s Shivam International	Rs.24,82,000
o.	M/s Shivalik Builders	Rs.14,75,992
p.	M/s Shivalik Promoters Builders Pvt Ltd	Rs.7,00,000
q.	M/s Golf Management Groups	Rs.80,000
	Total	----- Rs.1,45,21,079

4. In appeal, the ld.CIT(A) sustained the addition made by the AO. However, he directed the AO to delete the addition of Rs.4,65,962/- being excess disallowed by the AO in respect of Shri Deepak Bharadwaj (excess disallowed Rs.4,75,994), Shri Bharat Bhushan, Rs.30 (less disallowed); and M/s Elite Manufacturing Pvt. Ltd. ó Rs.10,000/- (less disallowed).

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

õ1. That Ld. Commissioner of Income Tax (Appeals) has acted arbitrarily and on presumptions basis, contrary to principles of natural justice and provision of law as such the action and findings based thereon stands vitiated and order is bad in law.

2. On the facts and circumstances of the case Ld. Commissioner of Income Tax (Appeal) is not justified in confirming addition of Rs.1,45,21,079/- by disallowing the claim of the appellant towards amount written off/ bad debts made by Ld AO, which is based on surmises and conjectures and contrary to the facts and provisions of law and hence the addition so made by Ld. A.O. needs to be deleted. The details of the claims disallowed for Rs.1,45,21,079/- is as under :

a.	M/s Mahima Trading & Investment Pvt. Ltd.	Rs.15,66,848
b.	M/s Adani Exports Ltd.	Rs.2,50,961

c.	Shri. Rajeev Chopra	Rs.4,12,786
d.	M/s Ankita Imports & Exports	Rs.10,00,000
e.	Mr. Surjeet Singh	Rs.3,20,000
f.	Mr. Deepak Bharadwaj	Rs.14,75,992
g.	Mr. S.SJain	Rs.2,50,000
h.	Mr. Mayank Jian	Rs.2,50,000
i.	M/s Choudhary Consultants	Rs.5,00,000
j.	Shri Satya Karan Punia	Rs.25,03,750
k.	Shri. Bharat Bhushan	Rs.8,43,750
l.	M/s Elite Manufacturing Pvt. Ltd	Rs.1,59,000
m.	M/s Unique Associates	Rs.2,50,000
n.	M/s Shivam International	Rs.24,82,000
o.	M/s Shivalik Builders	Rs.14,75,992
p.	M/s Shivalik Promoters Builders Pvt Ltd	Rs.7,00,000
q.	M/s Golf Management Groups	Rs.80,000
		Rs.1,45,21,079

3. That the Ld CIT(A) is not justified in confirming the disallowance made by Ld AO in respect of amount written off of Rs.1,45,21,079/- and not allowing the same as business expenditure U/s 37(1) of the Income Tax Act 1961 being trade advance by stating that "As the expenses do not relate to the year in question they cannot be allowed U/s 37" which is based on surmises and conjectures, contrary to facts borne on record and provisions of law, as such the disallowances so made needs to be deleted.

4. That appellant craves right to amend, add, delete or withdraw any of the ground of appeal either before or at the time of hearing of this appeal.

6. The ld. Counsel for the assessee, at the outset, submitted that although the assessee has challenged the order of the CIT(A) in confirming the addition/disallowance made by the AO OF Rs.1,45,21,079, however, the same should be read as Rs.1,40,55,117/- since he has already given a relief of Rs.4,65,962/- being excess disallowed by the AO. The ld. Counsel filed the following chart giving partywise explanation regarding the amount of advances which were written off during the year:-

M/S LUCKY EXPORTS INC.

A.Y 2008-09

DETAILS OF ADVANCES WRITTEN OFF AS TRADE ADVANCE

Note (1) : Page 37 & 48 (CIT(A) Order) CIT(A) disallowed treating claim as Bad Debts of Trading Debt ; whereas Assessee has claimed Trading Loss allowable U/s 28(1)/37(1).

S.No	Name of the Party	Amount of Advance in Rs.)	F. Y in Which Given	Particulars of Advance & Write off	Basis of Disallowance by AO	Basis of Confirmation by CIT(A)	Arguments
1	Mahima Trading & Investment Limited	15,66,848	97-98, 98-99	Assessee was exporting toothpaste & purchasing toothpaste from Mahima. In Export Contracts time is the essence of supplies as if supply is not received in time danger of cancellation of LC or loss of export order. Subsequently, no further export order & Mahima failed to refund balance outstanding.	Genuineness of Transaction and Nature of Advance Not Clear	Based on AO	<ol style="list-style-type: none"> 1. Arm's Length Party. 2. Payment by Account Payee Cheque. 3. Assessment U/s 143(3) Party & Transaction found genuine. 4. Balance consistently appearing in Audited Balance Sheet as Advances. 5. Balance found genuine as Advances by Assessing Officer consistently U/s 143(3). 6. Copy of Purchase bills along with Export Invoices with Bill of Lading & Custom Exchange. 7. No evidence that amount paid by Cheque received back as in cash. <p><u>8. Assessee claimed write off as Trading Loss U/s 28(1)/37(1) & CIT(A) disallowed claim U/s 36(1)(vii) as Bad Debts (Page 37 CIT(A) Order).</u></p>
2	Deepak Bharadwaj	10,00,000	1993-94	Advance given for procurement of Export Supplies. In Export Contracts time is the essence of supplies as if supply is not received in time danger of cancellation of LC or loss of export order. But no supply received and party not refunded the advance	Genuineness of Transaction and Nature of Advance Not Clear	Appellant not able to prove that it is debt and trade debt.	<ol style="list-style-type: none"> 1. Arm's Length Party. 2. Payment by Account Payee Cheque. 3. Assessment U/s 143(3) Party & Transaction found genuine. 4. Balance consistently appearing in Audited Balance Sheet as Advances. 5. Balance found genuine as Advances by Assessing Officer consistently U/s 143(3). 6. No evidence that amount paid by Cheque received back as in cash. <p><u>7. Assessee claimed write off as Trading Loss U/s 28(1)/37(1) & CIT(A) disallowed claim U/s 36(1)(vii) as Bad Debts (Page 37 CIT(A) Order).</u></p>

3	Unique Associates	2,50,000	2001-02	Advance for Providing Services to Arrange Duty Drawback & DEPB License as per Agreement.	Business Nexus of payment not proved.	Since payment towards consultancy charges, thus it ws not a trade debt.	<ol style="list-style-type: none"> 1. Arm's Length Party. 2. Payment by Account Payee Cheque. 3. Assessment U/s 143(3) Party & Transaction found genuine. 4. Balance consistently appearing in Audited Balance Sheet as Advances. 5. Balance found genuine as Advances by Assessing Officer consistently U/s 143(3). 6. Copy of Agreement with service provider (Clause 4, Page 128 provides for advance). 7. No evidence that amount paid by Cheque received back as in cash. <u>8. Assessee claimed write off as Trading Loss U/s 28(1)/37(1) & CIT(A) disallowed claim U/s 36(1)(vii) as Bad Debts (Page 37 CIT(A) Order).</u>
4	Adani Exports Limited	2,50,961	1998-99, 2002-03	Advance given for procurement of Export Supplies of Rice. In Export Contracts time is the essence of supplies as if supply is not received in time, danger of cancellation of LC or loss of export order. But no supply received and party not refunded the advance	Genuine-ness of Transaction and Efforts to recover the amount not proved.	Based on AO	<ol style="list-style-type: none"> 1. Arm's Length Party. 2. Payment by Account Payee Cheque. 3. Assessment U/s 143(3) Party & Transaction found genuine. 4. Balance consistently appearing in Audited Balance Sheet as Advances. 5. Balance found genuine as Advances by Assessing Officer consistently U/s 143(3). 6. Copy of Purchase bills along with Export Invoices with Bill of Lading & Custom Exchange. 7. No evidence that amount paid by Cheque received back as in cash. <u>8. Assessee claimed write off as Trading Loss U/s 28(1)/37(1) & CIT(A) disallowed claim U/s 36(1)(vii) as Bad Debts (Page 37 CIT(A) Order).</u>
5	S.S jain (Krishna Finance Co.)	2,50,000	1993-94	Advance given for procurement of Export Supplies. In Export Contracts time is the essence of supplies as if supply is not received in time danger of cancellation of LC or loss of export order. But no supply received and party not refunded the advance	Genuine-ness of Parties, Transaction and Payments not proved.	Appellant not able to prove that it is debt and trade debt.	<ol style="list-style-type: none"> 1. Arm's Length Party. 2. Payment by Account Payee Cheque. 3. Assessment U/s 143(3) Party & Transaction found genuine. 4. Balance consistently appearing in Audited Balance Sheet as Advances. 5. Balance found genuine as Advances by Assessing Officer consistently U/s 143(3). 6. No evidence that amount paid by Cheque received back as in cash. <u>7. Assessee claimed write off as Trading Loss U/s 28(1)/37(1) & CIT(A) disallowed claim U/s 36(1)(vii) as Bad Debts (Page 37 CIT(A) Order).</u>

6	Mayank Jain (Krishna Finance Co.)	2,50,000	1993-94	Advance given for procurement of Export Supplies. In Export Contracts time is the essence of supplies as if supply is not received in time danger of cancellation of LC or loss of export order. But no supply received and party not refunded the advance	Genuineness of Parties, Transaction and Payments not proved.	Appellant not able to prove that it is debt and trade debt.	<ol style="list-style-type: none"> 1. Arm's Length Party. 2. Payment by Account Payee Cheque. 3. Assessment U/s 143(3) Party & Transaction found genuine. 4. Balance consistently appearing in Audited Balance Sheet as Advances. 5. Balance found genuine as Advances by Assessing Officer consistently U/s 143(3). 6. No evidence that amount paid by Cheque received back as in cash. <p><u>7. Assessee claimed write off as Trading Loss U/s 28(1)/37(1) & CIT(A) disallowed claim U/s 36(1)(vii) as Bad Debts (Page 37 CIT(A) Order).</u></p>
7	Satya Karam Punia	25,03,750	2001-02	Advance given for procurement of Export Supplies of Medicine. In Export Contracts time is the essence of supplies as if supply is not received in time, danger of cancellation of LC or loss of export order. But no supply received and party not refunded the advance	No documentary evidence for Identity & Business relation.	Appellant not able to prove that it is debt and trade debt.	<ol style="list-style-type: none"> 1. Arm's Length Party. 2. Payment by Account Payee Cheque. 3. Assessment U/s 143(3) Party & Transaction found genuine. 4. Balance consistently appearing in Audited Balance Sheet as Advances. 5. Balance found genuine as Advances by Assessing Officer consistently U/s 143(3). 6. No evidence that amount paid by Cheque received back as in cash. <p><u>7. Assessee claimed write off as Trading Loss U/s 28(1)/37(1) & CIT(A) disallowed claim U/s 36(1)(vii) as Bad Debts (Page 37 CIT(A) Order).</u></p>
8	Ankita Imports & Exports	10,00,000	1992-93	Advance given for procurement of Export Supplies. In Export Contracts time is the essence of supplies as if supply is not received in time danger of cancellation of LC or loss of export order. But no supply received and party not refunded the advance.	Genuineness of Parties, Transaction and Payments not proved.	Appellant not able to prove that it is debt and trade debt.	<ol style="list-style-type: none"> 1. Arm's Length Party. 2. Payment by Account Payee Cheque. 3. Assessment U/s 143(3) Party & Transaction found genuine. 4. Balance consistently appearing in Audited Balance Sheet as Advances. 5. Balance found genuine as Advances by Assessing Officer consistently U/s 143(3). 6. No evidence that amount paid by Cheque received back as in cash. <p><u>7. Assessee claimed write off as Trading Loss U/s 28(1)/37(1) & CIT(A) disallowed claim U/s 36(1)(vii) as Bad Debts (Page 37 CIT(A) Order).</u></p>

9	Bharat Bhushan	8,43,780	2004-05, 2006-07	Advance given for procurement of Export Order for Medicine to Russia . In Export Contracts time is the essence of supplies as if supply is not received in time danger of cancellation of LC or loss of export order. But no supply received and party not refunded the advance.	Address Proof and Business nexus of payment not proved.	Appellant not able to prove that it is debt and trade debt.	<ol style="list-style-type: none"> 1. Arm's Length Party. 2. Payment by Account Payee Cheque. 3. Assessment U/s 143(3) Party & Transaction found genuine. 4. Balance consistently appearing in Audited Balance Sheet as Advances. 5. Balance found genuine as Advances by Assessing Officer consistently U/s 143(3). 6. Copy of Agreement with service provider. 7. No evidence that amount paid by Cheque received back as in cash. 8. Page 18, Para 3.8 of AO Order , Assessee could not furnish address whereas Page 3 Para 2 vide reply dated 03.12.2010 Assessee provided address of Bharat Bhushan.
10	Ranjeev Chopra	4,12,786	2003-04, 2004-05	Advance for Working Jointly for Shipping Business at Iraq.	Expenditure being Capital in Nature cannot be written off as Revenue Expenditure	Based on AO	<ol style="list-style-type: none"> 1. Arm's Length Party. 2. Payment by Account Payee Cheque. 3. Assessment U/s 143(3) Party & Transaction found genuine. 4. Balance consistently appearing in Audited Balance Sheet as Advances. 5. Balance found genuine as Advances by Assessing Officer consistently U/s 143(3). 6. Copy of Agreement with service provider. 7. No evidence that amount paid by Cheque received back as in cash. 8. No benefit of enduring nature resulted to assessee. 9. Loss was incidental to business of assessee.
11	Choudhary Consultan-ts	5,00,000	1999-00	Advance for Providing Services to Arrange Duty Drawback & DEPB License as per Agreement.	Business Nexus of payment not proved.	Since payment towards consultancy charges, thus it was not a trade debt.	<ol style="list-style-type: none"> 1. Arm's Length Party. 2. Payment by Account Payee Cheque. 3. Assessment U/s 143(3) Party & Transaction found genuine. 4. Balance consistently appearing in Audited Balance Sheet as Advances. 5. Balance found genuine as Advances by Assessing Officer consistently U/s 143(3). 6. Copy of Agreement with service provider. 7. No evidence that amount paid by Cheque received back as in cash. 8. Assessee claimed write off as Trading Loss U/s 28(1)/37(1) & CIT(A) disallowed claim U/s 36(1)(vii) as Bad Debts (Page 37 CIT(A) Order).

12	Surjeet Singh	3,20,000	1992-93	Advance given for procurement of Export Supplies. In Export Contracts time is the essence of supplies as if supply is not received in time danger of cancellation of LC or loss of export order. But no supply received and party not refunded the advance	Genuineness of Transaction and Nature of Advance Not Clear	Genuineness of Transaction and Nature of Advance Not Proved and cannot be allowed as Bad Debt.	<ol style="list-style-type: none"> 1. Arm's Length Party. 2. Payment by Account Payee Cheque. 3. Assessment U/s 143(3) Party & Transaction found genuine. 4. Balance consistently appearing in Audited Balance Sheet as Advances. 5. Balance found genuine as Advances by Assessing Officer consistently U/s 143(3). 6. No evidence that amount paid by Cheque received back as in cash. 7. <u>Assessee claimed write off as Trading Loss U/s 28(1)/37(1) & CIT(A) disallowed claim U/s 36(1)(vii) as Bad Debts (Page 37 CIT(A) Order.</u>
13	Shivam International	24,82,000	2000-01	Advance given for Procurement of Medical Equipments for Exports. In Export Contracts time is the essence of supplies as if supply is not received in time danger of cancellation of LC or loss of export order. But no supply received and party not refunded the advance.	Genuineness of Transaction and Nature of Advance Not Clear	Genuineness of Transaction and Nature of Advance Not Proved and appellant not able to prove as Debt & Trade Debt.	<ol style="list-style-type: none"> 1. Arm's Length Party. 2. Payment by Account Payee Cheque. 3. Assessment U/s 143(3) Party & Transaction found genuine. 4. Balance consistently appearing in Audited Balance Sheet as Advances. 5. Balance found genuine as Advances by Assessing Officer consistently U/s 143(3). 6. No evidence that amount paid by Cheque received back as in cash. 7. <u>Assessee claimed write off as Trading Loss U/s 28(1)/37(1) & CIT(A) disallowed claim U/s 36(1)(vii) as Bad Debts (Page 37 CIT(A) Order.</u>
14	Shivalik Builders	14,75,992	1995-96, 96-97, 97-98, 98-99, 99-00	Advance for Construction of Guest House for Stay of Foreign Buyers on Land not owned by firm but by the partners	Expenditure being Capital in Nature cannot be written off as Revenue Expenditure.	Expense in not trading liability as such expense is capital in nature.	<ol style="list-style-type: none"> 1. Arm's Length Party. 2. Payment by Account Payee Cheque. 3. Assessment U/s 143(3) Party & Transaction found genuine. 4. Balance consistently appearing in Audited Balance Sheet as Advances. 5. Balance found genuine as Advances by Assessing Officer consistently U/s 143(3). 6. Copy of Invoices. 7. No evidence that amount paid by Cheque received back as in cash. 8. <u>Assessee claimed write off as Trading Loss U/s 28(1)/37(1) & CIT(A) disallowed claim U/s 36(1)(vii) as Bad Debts (Page 37 CIT(A) Order.</u> 9. <u>No benefit of enduring nature resulted to assessee.</u> 10. <u>Loss was incidental to business of assessee.</u>

15	Golf Management Group	80,000	1997-98	Advance for Construction of Guest House for Stay of Foreign Buyers on Land not owned by firm but by the partners	Expenditure being Capital in Nature cannot be written off as Revenue Expenditure.	Expense in not trading liability as such expense is capital in nature.	<ol style="list-style-type: none"> 1. Arm's Length Party. 2. Payment by Account Payee Cheque. 3. Assessment U/s 143(3) Party & Transaction found genuine. 4. Balance consistently appearing in Audited Balance Sheet as Advances. 5. Balance found genuine as Advances by Assessing Officer consistently U/s 143(3). 6. No evidence that amount paid by Cheque received back as in cash. 7. Assessee claimed write off as Trading Loss U/s 28(1)/37(1) & CIT(A) disallowed claim U/s 36(1)(vii) as Bad Debts (Page 37 CIT(A) Order). 8. No benefit of enduring nature resulted to assessee. 9. Loss was incidental to business of assessee.
16	Shivalik Promoters & Builders Pvt Ltd	7,00,000	1999-00	Advance for Construction of Guest House for Stay of Foreign Buyers on Land not owned by firm but by the partners	Expenditure being Capital in Nature cannot be written off as Revenue Expenditure.	Expense in not trading liability as such expense is capital in nature.	<ol style="list-style-type: none"> 1. Arm's Length Party. 2. Payment by Account Payee Cheque. 3. Assessment U/s 143(3) Party & Transaction found genuine. 4. Balance consistently appearing in Audited Balance Sheet as Advances. 5. Balance found genuine as Advances by Assessing Officer consistently U/s 143(3). 6. Copy of Invoices. 7. No evidence that amount paid by Cheque received back as in cash. 8. Assessee claimed write off as Trading Loss U/s 28(1)/37(1) & CIT(A) disallowed claim U/s 36(1)(vii) as Bad Debts (Page 37 CIT(A) Order). 9. No benefit of enduring nature resulted to assessee. 10. Loss was incidental to business of assessee.
17	Elite Manufacturing (P) Ltd	1,69,000	2002-03, 2003-04	Advance given for procurement of Export Supplies. In Export Contracts time is the essence of supplies as if supply is not received in time danger of cancellation of LC or loss of export order. But no supply received and party not refunded the advance	Genuineness of Transaction and Nature of Advance Not Clear	Appellant not able to prove that it is debt and trade debt.	<ol style="list-style-type: none"> 1. Arm's Length Party. 2. Payment by Account Payee Cheque. 3. Assessment U/s 143(3) Party & Transaction found genuine. 4. Balance consistently appearing in Audited Balance Sheet as Advances. 5. Balance found genuine as Advances by Assessing Officer consistently U/s 143(3). 6. No evidence that amount paid by Cheque received back as in cash. 7. Assessee claimed write off as Trading Loss U/s 28(1)/37(1) & CIT(A) disallowed claim U/s 36(1)(vii) as Bad Debts (Page 37 CIT(A) Order).
GRAND TOTAL		140,55,117					

7. He submitted that all those advances were shown in the balance sheet of the assessee company in the past years and the assessments have been completed u/s 143(3). The AO, after verification of the books of account has accepted such advances. Therefore, when these advances were written off during the impugned assessment year by passing a resolution by the partners, copy of which is placed at page 101 and 102 of the paper book, the AO should not have been disallowed the same and the Id.CIT(A) should not have confirmed the action of the AO.

7.1. Referring to the order of the AO as well as the Id.CIT(A), the Id. Counsel submitted that both the lower authorities have disallowed the claim of the assessee on the ground that the same was claimed as bad debt whereas the claim of the assessee was always of write off of a trade loss u/s 28(1)/37(1). Referring to the decision of the Honøble Supreme Court in the case of Radhasoami Satsang, 193 ITR 321 (SC), he submitted that the Honøble Supreme Court in the said decision has held that where a fundamental aspect permeating through the different assessment years has been found as a fact, one way or the other and the parties have allowed that position to be sustained by not challenging the order, it would not at all be appropriate to allow the position to be changed in a subsequent year.

8. Referring to the decision of the Honøble Delhi High Court in the case of ACIT vs. Jay Engineering Works Ltd., 113 ITR 389, he submitted that the Honøble Delhi High Court in the said decision has held that income-tax authorities could rely on the report of the auditors if detailed information of the claims were not available.

He submitted that the AO rejected the claim of the assessee on the ground that the genuineness of the transaction and nature of advances is not clear. However, the AO never bothered to go through the past assessment records of the assessee wherein those advances were continuously shown in the audited balance sheet which were filed along with the return of income and were accepted by the AO in the assessment framed u/s 143(3) for most of the years. Therefore, under these circumstances, the lower authorities are not justified in disallowing the claim of trading loss u/s 28(1)/37 of the IT Act. On account of non-availability of details.

9. Referring to the decision of the Honøble Delhi High Court in the case of Neo Poly Pack (P) Ltd., 112 taxman 363 (Del), he submitted that the Honøble Delhi High Court in the said decision has held that where an issue has been considered and decided consistently in a number of earlier assessment years in a particular manner, for the sake of consistency, the same view should continue to prevail in subsequent years unless there is some material change in facts.

9.1 Referring to the decision of the Honøble Delhi High Court in the case of EKL Appliances Ltd. (2012) 20 taxmann.com 509, he submitted that the Honøble Delhi High Court has upheld the decision of the Tribunal and dismissed the appeal filed by the Revenue where the Tribunal has upheld the order of the CIT(A) in allowing the claim of business loss. In that case, the assessee had made an entry of Rs.66,86,974/- in its books of account towards doubtful debts/advances. The AO held that the claim of the assessee could not be allowed as no details regarding these

expenses had been filed, i.e., whether these were actually trade debts incurred in the course of business and what steps were taken to recover the amount and why these had been written off. He accordingly added the amount of Rs.66,86,974/-. The CIT(A), on the basis of the remand report and on the basis of the fact stated by the assessee that they had given advances of Rs.66,68,000/- to :-Dø for supply of packaging material and there were other small amounts/petty balances payable by other third parties deleted the addition of Rs.66,68,000/-. On appeal by the Revenue, the Tribunal dismissed the appeal. On further appeal by the Revenue, the Honøble High Court dismissed the appeal filed by the Revenue holding that the claim of the assessee was to be allowed u/s 37(1) r.w. section 28(1) instead of section 36(1)(vii).

9.2 Referring to the decision of the Honøble Delhi High Court in the case of Mohan Meakin Ltd. (2011) 11 taxmann.com 141, he submitted that the Honøble High Court in the said decision has held that non-recovery of trade advances amounted to business loss and were to be allowed as deduction u/s 28(1) and 37(1).

10. Referring to the decision of the co-ordinate Bench of the Tribunal in the case of Minda (HUF) Ltd. (2006) 101 ITD 191, he submitted that in that case, the assessee, during the course of its business gave advances to vendors for supply of raw materials, etc., which became irrecoverable due to either material was not supplied or defective material was supplied. The assessee wrote off the said amount as advance irrecoverable and claimed deduction thereof. The Tribunal allowed the claim of the assessee as deduction allowable as trade loss u/s 37(1).

10.1 Relying on various other decisions, the Id. Counsel submitted that when certain advances become irrecoverable and the assessee writes off the same, the claim of the assessee as business loss has been allowed. For the above proposition, he relied on the decision of the Mumbai Bench of the Tribunal in Jackie Shroff (2019) 101 taxmann.com 455, the decision of the Ahmedabad Bench of the Tribunal in the case of Kalpataru Power Transmission Ltd. (2017) 82 taxmann.com 340, the decision of the Rajkot Bench of the Tribunal in the case of Hiravati Marine Products (P) Ltd. (2019) 104 taxmann.com 271 the decision of the Honøble Supreme Court in the case of Dr. T.A. Qureshi, vide Civil Appeal No.5635 of 2006, order dated 06.12.2006 and various other decisions.

10.2 The Id. Counsel for the assessee, relying on the following decisions submitted that when advances given for acquisition of capital asset were written off, the same were allowed as business loss. For the above proposition, he relied on the decision of the Honøble Rajasthan High Court in the case of Anjani Kumar Co. Ltd. (2003) 259 ITR 114, the decision of the Delhi Bench of the Tribunal in the case of Swastik Pipes Ltd. (2018) 66 ITR (T) 1 and various other decisions. He accordingly submitted that the claim of the assessee towards business loss on account of advances written during the year has to be allowed as business loss and the order of the CIT(A) be set aside.

11. The Id. DR, on the other hand, heavily relied on the order of the CIT(A). He submitted that the Id.CIT(A) has given justifiable reasons as to why the same

should not be allowed as bad debt since the assessee did not fulfill the conditions laid down in the provisions of section 36(1)(vii). Further, he has also held that since the expenses do not relate to the year in question, these cannot be allowed u/s 37 of the IT Act. He accordingly submitted that the order of the CIT(A) being in accordance with the law, should be upheld and the grounds raised by the assessee should be dismissed.

12. We have considered the rival arguments made by both the sides, perused the orders of the AO and the 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, disallowed an amount of Rs.1,45,21,079/- out of the claim of Rs.1,61,37,879/- under the head -write off/bad debt.ø While doing so, the AO held that the assessee could not explain the genuineness of the transaction and the nature of advances is not clear. Further, the assessee had not filed any document proving that efforts were made to recover the amount in case of certain parties. We find, the ld.CIT(A) upheld the action of the AO in disallowing the claim of the assessee. However, he gave relief of Rs.4,65,962/- being excess disallowed by the AO in case of three parties due to some computational error. It is the submission of the ld. Counsel that all those advances were consistently shown in the balance sheets of the assessee company in the past years and the assessments have been completed u/s 143(3) of the Act after due verification by the AO. The AO had accepted such advances shown in the balance sheet after due verification of full details filed during the course of assessment proceedings and no adverse view was taken. Since it was

felt that those advances were not recoverable, the assessee passed a resolution for writing off of those advances and, therefore, the same should be allowed as business loss. It is also his submission that the lower authorities have basically disallowed the claim of the assessee treating the same as bad debt written off whereas the claim of the assessee before the AO as well as the CIT(A) was always of writing off of the same as business loss u/s 28/37(1).

13. We find sufficient force in the arguments advanced by the assessee. A perusal of the assessment order as well as the order of the CIT(A) shows that the claim of the assessee was basically rejected on the ground that the assessee has claimed the same as bad debt. A perusal of pages 48 and 49 of the order of the CIT(A) shows the manner in which he has decided the appeal against the assessee rejecting the claim:-

öIn view of the above, as the appellant has been unable to show that entries which have been made as to whether the same they are genuine entries or imaginary and fanciful entries. Entries which had been made as bad debt as to whether there was some material in support of the same, giving some semblance of genuineness and truthfulness to the same in the direction of forming opinion, the said debt was arising out of trading activity, there was relationship of debtor or creditor, same were irrecoverable debts, they were trade debts and were genuine. The cases relied upon by the appellant are those wherein the existence of the trade debts was not in doubt and thus cannot be accepted? Therefore, the claim of the appellant cannot be considered and is thus dismissed. Further as the expenses do not relate to the year in Question they cannot be allowed under section 37. The ground is therefore dismissed.ö

14. A perusal of the assessment order as well as the order of the CIT(A) and the various submissions filed before them categorically show that the assessee was all along been claiming the deduction as business loss/trading loss and not claimed the

same as bad debt written off. So far as the allegation of the AO that the genuineness of the transaction and nature of advances are not clear is concerned, we find from the various pages of the paper book that such balances were consistently appearing in the audited balance sheet as advances and such balances were found genuine as advances by the AO consistently in the orders passed u/s 143(3) of the Act. Further, the assessee, during the course of original assessment proceedings in those years had filed the relevant details which were accepted after due verification and no adverse view has been taken. We find, the Honøble Delhi High Court in the case of ACIT vs. Jay Engineering Works Ltd. (supra) has held that income-tax authorities could rely on the report of the auditors if detailed information of the claims were not available. Since, in the instant case, the assessments in the past were completed u/s 143(3) and such advances were being shown in the balance sheet, therefore, the AO should not have doubted the genuineness of the advances which were given in the past and consistently appearing in the audited balance sheets.

15. We find merit in the argument of the Id. Counsel that there is no evidence on record that the amounts paid by the assessee through banking channels had, at any point of time, come back to the assessee. Under these circumstances, when the assessee consciously decided to write off such advances as irrecoverable by passing a resolution for writing off such advances, the same, in our opinion, has to be allowed as business loss u/s 28/37(1) of the IT Act.

16. We find, the Honøble Delhi High Court in the case of CIT vs. New Delhi Hospitals Ltd., vide ITA 1258/2010, has allowed the claim of bad debt of Rs.44,28,000/- as business loss which was held by the AO as capital loss. We find, the following substantial question of law was admitted before the Honøble High Court:-

"Whether in the facts and circumstances of the present case, the ITAT is justified to hold the assessee's claim of deduction as bad debt of Rs.44,28,000/- being allowable as business loss instead of holding by Assessing Officer as capital loss?"

17. In that case, the respondent-assessee is a company and the assessment year in question is 2004-05. In the said year, the assessee had declared income of Rs.2,62,34,270/- in the return filed on 12th September, 2004. In the assessment order dated 29th August, 2006, the Assessing Officer disallowed bad debt of Rs.44,28,000/- on the ground that provisions of Section 36(1)(vii) read with Section 36(2) of the Act were not satisfied as the amount had not been taken into account in computing income of the earlier years. It was noted that this amount was paid to M/s Gulmohar Estate Limited for purchase of property/plots at Gurgaon but this amount was neither refunded nor the property/plot was sold. The CIT(A) confirmed the addition. The Tribunal allowed the aforesaid loss u/s 37 of the Act. On further appeal by the Revenue, the Honøble High Court dismissed the appeal of the Revenue and upheld the order of the Tribunal allowing the claim as business loss by observing as under:-

ō18. The assessee company was the promoter and developer of New Delhi House and Mercantile House at New Delhi. The assessee is also the promoter

and developer of Heritage City at Gurgaon, in respect of which the profit has been shown under the head "business or profession". During the year 1990-91, the assessee company entered into an agreement with M/s. Gulmohar Estate Ltd for the purchase of three properties at Garden Estate, Gurgaon for the total consideration of Rs.44,28,000/- as per the agreement dated 27.07.1990. The assessee made the total payment to M/s Gulmohar Estate Ltd. in the year 1990-91. In spite of making full payment, no physical possession was handed over by the purchaser to the assessee. Since no physical possession was received by the assessee, the property proposed to be purchased by the assessee were not shown as stock in trade in the books of assessee as per the normal accounting practice. The assessee had debited the amount of Rs.44,28,000/- in the books of accounts and shown under the head "loans and advances". Thereafter, in the year 2003-04, M/s. Gulmohar Estate Ltd. locked their offices and it was found that the property purchased by the assessee were fraudulently sold to some other people also. District town and Country Planner, Haryana gave a public notice canceling the licence of Garden Estate of M/s. Gulmohar Estate Ltd.

The assessee, therefore, taken a decision to write off the entire amount as business loss. It is also an admitted position that the possession of the flats agreed to be purchased by the assessee was not given to the assessee and, thus, the transfer of flats within the meaning of Income Tax Act was not completed. Therefore, it is a case where amount was paid in advance for purchase of property. The assessee is in the line of business or real estate as discussed above. It can, therefore, be reasonably be presumed or a reasonable inference can be drawn that the assessee intended to purchase the property in the course of original business carried on by it or at best it can be said that the assessee purchased the property for residences of its employees including directors. Even if it is presumed that the assessee intended to purchase the three flats of use of its employees and directors, the amount so advanced to M/s. Gulmohar Estate Pvt. Ltd would be considered to be made as incidental to the business carried on by the assessee."

5. Learned counsel for the Revenue has submitted that in the end of paragraph 18 the tribunal has drawn an assumption without any basis that the intended purchase was in the course of business or at best the purchase was for a residence of its employees, including directors. We are not impressed by the aforesaid contention. The tribunal has referred to the nature of activities undertaken by the respondent-assessee, i.e., the assessee was a real estate company and was a contractor. The tribunal referred to the Memorandum of Association and mentioned other transactions of sale/purchase in which the assessee had treated immovable properties as stock in trade.

The history for the business transactions undertaken by the assessee have been kept in mind. No doubt, the assessee also had rental income but this factum alone does not show and establish that the properties, which were being purchased from M/s Gulmohar Estate Limited, were to be treated as investment

and not for the purpose of stock in trade. The tribunal thereafter in paragraphs 19 and 20 has observed as under:-

"19. The Id. CIT(A) has rejected the assessee's claim of business loss merely by observing as under:-

"6.3 It may also be mentioned here that the appellant has not claimed such written off as business loss either in the return of income filed or during the course of assessment proceedings or appellate proceedings before me that the advance was made for the purchase of stock in trade or the amount was advanced in the ordinary course of business. It is also observed from the Assessment Order that appellant has made investment in properties and has shown long term capital gain on sale of such property. In view of these facts, appellant's claim that he amount written off may be treated as business loss is also rejected."

From the said observation of the Id.CIT(A), we find that the Id. CIT(A) was of the view the assessee failed to produce any evidence that the advance was made for the purpose of stock in trade or the amount was advanced in the ordinary course of business, which in our considered opinion, is not correct in the light of the submissions of the assessee made before the Id. CIT(A), which has been reproduced by the Id. CIT(A) in his order at para 5 of his order. In the aforesaid submission made before the Id. CIT(A), the assessee categorically stated that the assessee was a construction and real estate company promoted by Shri Ram Prasad Ji in 1968, and the assessee is promoter and developer of New Delhi House and Mercantile house at New Delhi and Heritage City at Gurgaon. The details about the agreement made during 1990-91 were also given to the Id. CIT(A). The Id. CIT(A) has not stated anything adverse to the assessee's contention to the fact that the assessee is promoter and developer of New Delhi House and Mercantile House of New Delhi and Heritage City at Gurgaon. The assessee also explained before the Id. CIT(A) that since the possession of the proposed property was not given to the assessee, the property could not be shown under the head "stock in trade" but the amount advanced had to be shown under the head "loans and advances".

20. One more reason given by the A.O. as well as by the Id. CIT(A) to reject the assessee's claim that from the assessment order, it was observed that the assessee made investment in property and has shown long term capital gain on such property.

However, the answer to question whether any property purchased by the assessee, who is also in the business of construction and sale of flats/properties/housing complex, is on investment account or on

trading account is to determined in the light of the intention of the assessee to be decided upon on facts and surrounding circumstances relating to the given property in question No uniform or abstract test can be applied to all the transactions carried on by any assessee. It depends on facts and circumstances of any given transaction. We, therefore, have to decide the controversy in the light of the facts relating to the property in question and the intention of the assessee with regard to that property. In the light of the facts relating to the transaction in question, we have already observed above that the transaction to purchase property from M/s. Gulmohar Estate Ltd. was related or incidental to the assessee's business. After taking into account the intention of the assessee, it is well settled that it is the intention of the assessee which would matter in deciding as to whether the property purchased were intended for carrying on business or to hold it as an investment coupled with the line of the business carried on by the assessee. In the present case, after considering the totality of the facts and circumstances of the case, we find that the assessee's intention to purchase three flats in housing complex by making total payment in advance was to do business of real estate or otherwise transaction was undertaken for the purpose of business ordinarily carried on by the assessee."

6. The aforesaid reasoning given by the tribunal is factual in nature. It cannot be said that the findings recorded by the tribunal are unreasonable or perverse.

7. In view of the aforesaid factual findings recorded by the tribunal, the answer to the question has to be in affirmative, i.e. in favour of the assessee and against the Revenue.ö

18. We find, the Honøble Rajasthan High Court in the case of CIT vs. Anjani Kumar Co. Ltd. (supra) has allowed the claim of write off of advances as business loss by observing as under:-

öDuring the assessment year 1979-80, the Assessing Officer noticed that a sum of Rs. 52,489 was written off on account of advance made to the agriculturist for purchase of. agricultural land. The intention of the assessee, of course, was to acquire the land to set up a boiler factory, but ultimately that did not materialise. The agriculturist refused to refund the amount. The assessee filed a civil suit in the court, where the assessee lost its claim. Then the assessee had written off that amount in the books of account and claimed deduction on the incurred amount as revenue loss. The Assessing Officer rejected his claim. According to the Assessing Officer when the amount was advanced for acquiring the capital asset, the written off amount cannot be allowed as deduction in the income of the assessee.

3. In appeal before the Commissioner of Income-tax (Appeals), the Commissioner of Income-tax (Appeals) also confirmed the view taken by the Income-tax Officer.

4. In appeal before the Tribunal, the Tribunal allowed the claim of the assessee. In para. 6 of its order, the Tribunal observed as under :

"After carefully considering all the facts and circumstances of the case, we are inclined to uphold the assessee's contention. So far as the identity of the business is concerned, it is not the nature of the item manufactured but the test for the identity of the business is that there should be a single trading and profit and loss account and the transaction as well as the business should have been done by a common organisation. In these circumstances, the assessee would be entitled to the unabsorbed loss in the shape of shares against the income. This was so held by the Supreme Court in *Standard Refinery and Distilley Ltd. v. CIT* [1971] 79 ITR 589 and again in *Produce Exchange Corporation Ltd. v. CIT* [1970] 77 ITR 739 (SC). So far as the authorities relied upon by the Revenue are concerned, in all these cases, the criteria adopted by the court was that since the expenditure incurred brought into existence a benefit of enduring nature, it can be treated as capital nature, meaning thereby that depreciation can be claimed upon the total expenditure for setting up the new project. But, in the present case, the new project has never matured. The expenditure incurred by the assessee has, therefore, to be written off. The efforts to make a new project by the same management in relation to the same business would certainly come within the test of identity laid down by the Supreme Court in the two authorities cited aforesaid and since no benefit of enduring nature resulted to the assessee, the expenditure in question cannot be treated to be of capital nature."

The admitted facts are that the advance was paid for acquiring the agricultural land to set up a factory, but when the agricultural land was not acquired, no capital asset came into existence, therefore, there is no question of allowing depreciation on such asset. If any asset is acquired and if it is a benefit of enduring nature, then, of course, the assessee cannot get deduction of the amount for acquisition of land as revenue expenditure. When land was not acquired, no capital asset has been acquired and therefore, the payment of Rs. 52,489 is to be allowed as a business loss.

5. We agree with the view taken by the Tribunal. No interference is called for.

6. In the result, we answer the question in the affirmative, i.e., in favour of the assessee and against the Revenue.ö

19. In the case of *EKL Appliances Ltd.* (supra) the assessee had made an entry of Rs. 66,86,974 in its books of account towards doubtful debts/advances -

Assessing Officer held that claim of assessee could not be allowed as no details regarding these expenses had been filed, i.e., whether these were actually trade debts incurred in course of business, and what steps were taken to recover amount and why these had been written off - Hence amount of Rs. 66,86,974 was disallowed and added to income of assessee - On appeal, Commissioner (Appeals) had asked for a remand report in view of facts stated by assessee that they had given advance of Rs. 66,68,000 to -Dø for supply of packaging material and there were other small amounts/petty balances payable by other third parties Commissioner (Appeals) after examining facts and material brought on record deleted addition of Rs.66,68,000. He, however, confirmed balance addition of Rs. 18,974 for lack of evidence. Tribunal dismissed appeal of revenue against said deletion. It was held that looking to factual background of case though lower authorities rightly allowed claim of assessee but said claim was to be allowed under section 37(1) read with section 28(i) instead of section 36(1)(vii).

20. In the case of Mohan Meakin Ltd. (supra), decided by the Honøble Delhi High Court, the assessee established an export division for export of various items including leather products - After exploring markets abroad, they established business contacts with a Commercial Corporation of USA - They obtained huge orders from them and had exported goods of aggregate value of Rs. 63.15 lakhs to said corporation - To maintain their commitment for supply of hand-made leather shoes, they entered into an agreement with a boot house (sole proprietorship firm of 'B') for carrying out necessary manufacturing of handmade leather shoes - As

quantity and value involved in transaction was substantial and to ensure regular supplies, assessee had to advance from time to time different amounts to boot house to enable them to keep their supplies in time - Since assessee could not realise Rs. 25.32 lakhs from said corporation, it had to suspend supplies to them and ultimately had to suspend order placed by them on boot house - In view of this development boot house showed its inability to refund advances and pleaded that they had in turn given substantial advances to workers engaged by them - In meantime, 'B' died and, therefore, assessee could not take any action against deceased 'B' or his legal heirs In view of fact that they would have made counter claims on account of firm orders placed having been cancelled - Assessee, therefore, wrote off advance given to boot house as bad debts having become irrecoverable -Assessing Officer, however, rejected assessee's claim - Whether, despite all efforts assessee was unable to recover debt it rightly wrote off same as bad debts and its decision not to take matter to court apprehending counter claim was well reasoned - Held, yes - Whether, therefore, assessee's claim of bad debt was to be allowed - Held, yes. Section 28(i) read with section 37(1) of the Income-tax Act, 1961 - Business loss/deduction - Allowable as - Assessment year 1986-87 - Whether in view of facts stated under heading 'Bad debts' non-recovery of trade advances amounted to business loss and were to be allowed as deduction under section 28(i) and section 37(1) - Held, yes

21. In the case of Minda (HUF) Ltd. (supra) the coordinate Bench of the Tribunal noted that during course of its business, assessee gave advances to vendors for supply of raw materials, etc. Said advances became irrecoverable due to either

material was not supplied or defective material was supplied. Assessee wrote off said amount as advance irrecoverable and claimed deduction thereof. It was held that assessee's claim of deduction was allowable as trading loss under section 37(1).

22. We find, the Mumbai Bench of the Tribunal in the case of Jackie Shroff (supra) while deciding the allowability of business loss noted that the assessee was a professional actor. Assessee advanced certain amount of sum to a production house, run by his wife, ÷ASø in order to produce films in which assessee acted as hero so as to boost his career. Film produced by ÷ASø was not successful at box office and she suffered huge losses and could not repay money advanced to her by assessee. Assessee claimed advances given to his wife as business loss and suo-moto written off money given as bad advances. Assessing Officer rejected claim of assessee holding that assessee was only a professional actor and he was not in business of giving loans or advances and, further, money advanced by assessee to his wife was exclusively personal in nature. Commissioner (Appeals) held that monies advanced by assessee were in nature of business advances. However, he sustained disallowance only for reason that assessee had suo moto written off advances and such suo moto write off was not allowable as deduction under section 36(l)(vii)/37(1). It was noted that impugned moneys were advanced by assessee so as to boost his career, thus, moneys were advanced as a measure of commercial expediency. It was held that advances given by assessee was to be allowed as deduction either under section 37(1) or under section 28(i) as business loss and

deduction could not be denied merely because assessee had suo moto written off advances.

23. We find, the Ahmedabad Bench of the Tribunal in the case of Kalpataru Power Transmission Ltd. (supra) has held that irrecoverable advances given to job work contractors for supply of material and labour in regular course of business would be a business loss and, therefore, amount written off would be allowable as business expenditure.

24. We find, the Rajkot Bench of the Tribunal in the case of Hiravati Marine Products (P) Ltd. (supra) while deciding an identical issue noted that the assessee company was engaged in the business of processing and exports of marine products, claimed deduction of certain amount which represented advances written off. In view of fact that advances given by assessee were duly disclosed in financial statements and, moreover, it was also undisputed that there was downfall in business of fishermen to whom advances were made due to cyclone and earthquake, assessee's claim for deduction was held to be allowed.

25. In the case of Dr. T.A. Qureshi, vide Civil Appeal No.5635 of 2006, order dated 6th December, 2006, the Honøble Apex Court held that the Explanation to section 37 has really nothing to do with the instant case as it was not a case of a business expenditure, but of business loss. Business losses are allowable on ordinary commercial principles in computing profits. Once it was found that the heroin seized formed part of the stock-in-trade of the assessee, it followed that the

seizure and confiscation of such stock-in-trade had to be allowed as a business loss.

Loss of stock-in-trade has to be considered as a trading loss. [Para 17j]

26. The Delhi Bench of the Tribunal in the case of Swastik Pipes Ltd. (supra) while deciding the identical issue had noted that the assessee paid advance to one, SG for acquisition of a capital asset. SG did not carry out his obligation. Thus, assessee written off amount paid to SG as bad debt. Assessing Officer disallowed same. Commissioner (Appeals) noted that amount did not qualify as bad debt because it was an advance paid for acquisition of capital asset. However, amount was a loss to assessee and would be an allowable expenditure under section 37(1). The Tribunal held that since it was clear that loss was incidental to business of assessee which were written off in books of account as irrecoverable, it was correctly allowed as business loss by Commissioner (Appeals).

27. We find that the decision of Hon'ble Bombay High Court in the case of Harshad J. Choksi vs CIT reported in (2012) 25 taxmann.com 567 (Bom) also supports the view of the assessee. The question raised before the Hon'ble Bombay High Court and the decision rendered thereon is reproduced below:-

"Questions:

ÉWhether if an amount is held to be not deductible as a bad debt in view of non-compliance of the condition precedent as provided under section 36(2), could the same be considered as an allowable business loss?

ÉWhether, therefore, the amount of Rs. 44.98 lakhs could be considered as an allowable business loss?

Held: ÉSection 28 imposes a charge on the profits or gains of business or profession. The expression 'Profits and gains of business or profession' is to be

understood in its ordinary commercial meaning and the same does not mean total receipts. What has to be brought to tax is the net amount earned by carrying on a profession or a business which necessarily requires deducting expenses and losses incurred in carrying on business or profession. The Supreme Court in the case of *Badridas Daga v. CIT* [1958] 34 ITR 10 has held that in assessing the amount of profits and gains liable to tax, one must necessarily have regard to the accepted commercial practice that deduction of such expenses and losses is to be allowed, if it arises in carrying on business and is incidental to it. [Para 10]

On the basis of the aforesaid decision, it can be concluded that even if the deduction is not allowable as bad debts, the Tribunal ought to have considered the assessee's claim for deduction as business loss. This is particularly so, as there is no bar in claiming a loss as a business loss, if the same is incidental to carrying on of a business. The fact that condition of bad debts were not satisfied by the assessee would not prevent him from claiming deduction as a business loss incurred in the course of carrying on business as share broker. [Para 11]

In fact, the Bombay High Court in the case of *CIT v. R.B. Rungta & Co.* [1963] 50 ITR 233 upheld the finding of the Tribunal that the loss could be allowed on general principles governing computation of profits under section 10 of the Indian Income-tax Act, 1922, which is similar/identical to section 28 of the 1961 Act. The revenue in that case urged that the assessee having claimed deduction as a bad debt the benefit of the general principle of law that all expenditure incurred in carrying on the business must be deducted to arrive at a profit cannot be extended. This submission was negated by the Court and it was held that even where the debt is not held to be allowable as bad debts yet the same would be allowable as a deduction as a revenue loss in computing profits of the business under section 10(1) of the Indian Income-tax Act, 1922. [Para 12]

Therefore, the amount of Rs. 44.98 lakhs, which was held to be not deductible as bad debts in view of the provisions of section 36(2), could be considered as an allowable business loss. [Para 13]

28. In view of the above discussion and relying on the decisions cited (supra), we are of the considered opinion that the claim of the assessee has to be allowed as business loss u/s 28/37(1) of the IT Act. We, therefore, set aside the order of the CIT(A) and the grounds raised by the assessee are allowed.

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

The decision was pronounced in the open court on 28.09.2020.

Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 28th September, 2020

dk

Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi