आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'ई' मुंबई ।

IN THE INCOME TAX APPELLATE TRIBUNAL " E" BENCH, MUMBAI

सर्वश्री नरेन्द्र कुमार बिल्लैय्या, लेखा सदस्य एवं, संजय गर्ग,, न्यायिक सदस्य के समक्ष

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER AND

SHRI SANJAY GARG, JUICIAL MEMBER

आयकर अपील सं./I.T.A. No.6803/Mum/2011

(**निर्धारण वर्ष** / Assessment Year :2005-06

The ITO 8(3)-2, Aayakar Bhavan, Mumbai-400 020	बनाम/ Vs.	M/s. SM Energy Teknik & Electronics Ltd., SM House, 11,Sahakar Road, Vile Parle(E), Mumbai-400 057
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACS 7372L		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

अपीलार्थी ओर से/ **Appellant by:**	Shri Pasnkaj Kumar
प्रत्यर्थी की ओर से/**Respondent by:**	None

सुनवाई की तारीख / **Date of Hearing :04.08.2014**

घोषणा की तारीख /**Date of Pronouncement :08.08.2014**

आदेश / O R D E R

PER N.K. BILLAIYA, AM:

This appeal by the Revenue is preferred against the order of the Ld. CIT(A)-18, Mumbai dt. 26.7.2011 pertaining to A.Y. 2005-06.

2. None appeared on behalf of the assessee although on the previous date of hearing on 21.1.2014, the Ld. Counsel for the assessee had taken

the adjournment and was well within the knowledge of the date of hearing.

3. The grievance of the Revenue is two-fold. (i) The Ld. CIT(A) erred in deleting the disallowance made on account of foreign travel expenses amounting to Rs. 4,69,452/- and (ii) the Ld. CIT(A) erred in deleting the addition on account of bad debt of Rs. 27.95 lakhs.

4. During the course of the assessment proceedings, the Assessing Officer noticed that the assessee has debited foreign travelling expenses to its profit and loss account amounting to Rs. 13,24,537/- out of which Rs. 3,21,457/- was expended towards the cost of tickets. The assessee was asked to furnish the complete details alongwith documentary evidences for the claim of Rs. 10,03,080/-. The assessee filed details vide letter dt. 15.11.2007. The AO found that there was no detail in respect of the expenses of Rs. 4,69,452/-, the same was disallowed.

5. The Ld. CIT(A) has considered this grievance at para 3.1 of his order and at para 3.2 deleted the additions made by the AO accepting the contention of the assessee that all the details are available on record.

6. The Ld. Departmental Representative relied upon the findings of the AO.

7. We have carefully perused the orders of the lower authorities. The Ld. CIT(A) has himself mentioned in his order that the AO in his remand report dt. 14.3.2011 has stated that the assessee could not reconcile the difference whereas the Ld. CIT(A) while deleting the additions at para-3.2. of his order has observed that *"I have considered the submissions of*

the appellant and remand report of the AO and I agree with the contention of the appellant that all the details are available on record – hence this disallowance is deleted". Once the AO has mentioned in his remand report that the assessee has failed to furnish details, then the Ld. CIT(A) should have brought those details on record before deleting the additions made by the AO. This has made the order of the Ld. CIT(A) erroneous as no such details have been brought on record, we set aside the findings of the Ld. CIT(A) and restore that of the AO. Ground No. 1 is accordingly allowed.

8. While scrutinizing the return, the AO found that the assessee has written off bad debts of Rs. 11.27 lakhs and doubtful advances of Rs. 16.68 lakhs. The assessee was asked to furnish the complete details, justification and allowability of the claims of bad debt and doubtful advances written off. The assessee furnished a list containing 16 names except for that the assessee did not file any details in respect of its cliam. The AO proceeded by making an addition of Rs. 27.95 lakhs.

9. The Ld. CIT(A) has considered this grievance at para-6 of his order and at para-6.3 considering the decision of the Hon'ble Supreme Court in the case of TRF Ltd 323 ITR 397 deleted the addition of Rs. 27.95 lakhs.

10. The Ld. Departmental Representative strongly supported the findings of the AO.

11. We have carefully perused the orders of the authorities below. When the Ld. CIT(A) called for the remand report from the AO, the AO in his remand report has stated that the assessee could not explain whether the respective incomes had been offered to tax in earlier years.

The Ld. CIT(A) has followed the ratio laid down by the Hon'ble Supreme Court in the case of TRF Ltd (supra) and other decision of the Hon'ble Bombay High Court but has grossly failed in considering the observations made by the AO. No doubt, the assessee need not have to establish the reasons for writing off the amount as bad debt but onus is upon the assessee to fulfill the conditions laid down u/s. 36(2)(i) of the Act. We, therefore, restore this issue to the file of the AO. The assessee is directed to fulfill the conditions to Sec. 36(2)(i) of the Act in support of its claim of write off of bad debts and advances. This ground of the Revenue is allowed for statistical purpose.

12. In the result, the appeal filed by the Revenue is partly allowed for statistical purpose.

Order pronounced in the open court on 8th August, 2014

आदेश की धोषणा खुले न्यायालय में दिनांकः 8.8.2014 को की गई ।

Sd/-	Sd/-
(SANJAY GARG)	(N.K. BILLAIYA)
न्यायिक सदस्य / JUDICIAL MEMBER	लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 8th August, 2014

व.नि.स./ *RJ* , Sr. PS

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार

(Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**