IN THE INCOME TAX APPELLATE TRIBUNAL
"D" Bench, Mumbai

Before Shri D. Manmohan, Vice President
and Shri Sanjay Arora, Accountant Member

ITA No. 7571/Mum/2011
(Assessment Year: 2008-09)

M/s. Direct Information P. Ltd. 404, Rotunda, B.S. Marg Mumbai 400023	Vs.	Income Tax Officer 9(1)(3) Mumbai

PAN - AABCD0497L

Appellant **Respondent**

Appellant by: None
Respondent by: Shri Love Kumar

Date of Hearing: 16.06.2015
Date of Pronouncement: 16.06.2015

O R D E R

Per D. Manmohan, V.P.

This appeal by the assessee is directed against the order passed by CIT(A)-19, Mumbai and it pertains to A.Y. 2008-09.

2. Notice sent to the assessee at the address given in Form No. 36 was returned unserved with the postal remarks "UNCLAIMED". We have, therefore, no other alternative except to dispose of the appeal exparte, qua assessee. We have heard the learned D.R. and carefully perused the record.

3. Assessee has written off a sum of ₹10,00,000/- as business loss. The said sum was paid to M/s. S.S. Traders on 15.09.2005 as an advance towards acquiring office premises on leave and licence/lease basis. M/s. S.S. Traders failed to return the said advance amount and hence it was debited to sundry balances written off account. The AO observed that as per the provisions of section 36(1)(vii) of the I.T. Act the primary condition is that a bad debt presupposes the existence of a debt and relationship of a debtor and creditor, which is absent in the instant case because it was not an advance made for the purpose of business or profession and it was not

taken into account in computing the total income of the assessee of any of the previous years.

4. Aggrieved, assessee contended before the CIT(A) that if it is not allowable as bad debt the same should have been considered as business loss under section 37(1) of the Act. It may be noticed that this plea was rejected by the CIT(A) also.

5. The learned CIT(A) observed that the debt written off is not a trading debt and hence there is no question of claiming it as bad debt in the first place. He further observed that the sum of ₹10,00,000/- was advanced to M/s. S.S. Traders for acquiring office premises and the assessee could not establish the purpose and thus doubted the genuineness of the claim, hence the order of the AO was affirmed by the learned CIT(A).

6. Even before us no material was placed by the assessee to show that it can be considered under section 36(1)(vii) of the Act. Even otherwise the alternate plea of the assessee deserves to be rejected in as much as assessee has not proved genuineness of the transaction, apart from the fact that the advance, if considered as having been given for the purpose of taking a property on leave and licence basis, it would amount to money advanced for acquiring profit making apparatus, in which event it cannot be treated as revenue loss and thus in the light of the decision of the Apex Court in the case of Hasimara Industries Ltd. vs. CIT 230 ITR 927 it cannot be allowed as deduction even under section 37(1) of the Act. Under these circumstances we do not find any infirmity in the order passed by the CIT(A).

7. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 16th June, 2015.

Sd/-	Sd/-
(Sanjay Arora)	**(D. Manmohan)**
Accountant Member	**Vice President**

Mumbai, Dated: 16th June, 2015

<u>Copy to:</u>

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) – 19, Mumbai*
4. *The CIT– V, Mumbai City*
5. *The DR, "D" Bench, ITAT, Mumbai*

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

n.p.