आयकर अपीलीय अधिकरण, "एच" खंडपीठ मुंबई

INCOME TAX APPELLATE TRIBUNAL,MUMBAI - 'H' BENCH.

सर्वश्री डी.मन्नमोहन,उपाध्यक्ष / एवं श्री राजेन्द्र,लेखा सदस्य

Before S/Sh. D.Manmohan, Vice-President & Rajendra,Accountant Member

आयकर अपील सं./ITA No.8424/Mum/2010,निर्धारण वर्ष/Assessment Year-2006-07

M/s Haffkine Bio Pharmaceutical Corp.Ltd,Acharya Donde Marg, Parel,Mumbai-400012	Vs.	Assistant Commissioner of Income Tax, 6(3), Mumbai.
PAN: AAACH0965N		

(अपीलार्थी /Appellant) (प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Appellant by : Mayur Makadia

प्रत्यर्थी की ओर से/**Respondent by : A.K.Kardam**

सुनवाई की तारीख / Date of Hearing :04-06-2013

घोषणा की तारीख / Date of Pronouncement :12-06-2013

आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश

Order u/s.254(1)of the Income-tax Act,1961(Act)

Per Rajendra, A.M.

Challenging the order dt.11-08-2010 of the CIT(A)-12, Mumbai,Assessee has raised following Grounds of Appeal:

"1. On the facts and circumstances of the case and in law the ld. CIT(A) erred in law in upholding the disallowance of (Rs.9,68,813/- being liquidated damages charged by Government of India on account of delay in supply of vaccines, on the ground that the said amount is paid as penalty and therefore no covered u/s 37;
2. On the facts and circumstances of the case and in law the ld. CIT(A) erred in law in upholding the disallowance of the following amounts written off as irrecoverable u/s 37:
a) Rs.2,01,470/- being unmoved staff advances since 1999-2000.
b) Rs.2,21,443/- being advances to various government departments for undertaking civil maintenances job.
c) Rs.1,37,949/- being sundry unreconciled balances lying in various accounts.
*3. **Without prejudice to the above**, the ld. CIT(A) should have appreciated that since the non recoverable balances were in regular course of business the same were allo9wable as a business*

loss u/s 28 or u/s 37.

4. The appellant reserves its right to add, amend alter or delete any of the grounds of appeal".

2.Assessee-company,a public sector undertaking, engaged in the business of manufacturing of vaccines and life saving drugs filed its return of income on 25.11.2006 declaring total income of Rs.79.24 lakhs. Assessment was finalised by the Assessing Officer(AO) on 28.11.2008 determining the total income of the assessee at Rs.NIL,after bringing brought forward losses of the AY. 2004-05.During the assessment proceedings, AO found that the assessee had debited an amount of Rs.19.37 lakhs as sundry balances written off.He directed the assessee to submit the details of the same and also asked to show cause as to why the same should not be disallowed. After considering the submissions of the assessee, he held that the explanation offered by the assessee for writing off sundry balances was not in conformity with the conditions prescribed by law, that assessee did not file the details of nature of debt and the year in which the same had been written off, that to claim bad debts burden was on the assessee that the debts has become bad.Finally,he disallowed Rs.19.37 Lakhs written off by the assessee under the head 'Sundry Balances.' **2.1.**Assessee preferred an appeal before the First Appellate Authority (FAA). Before FAA, break up of Rs.19.37 Lakhs was given by the assessee which is reproduced here :

Name of the Party	*Amount*	*Reasons for write off*
Government of India	*9,68,813*	*Liquidate damages deducted by the Government of India*
Advance given to staff	*2,36,455*	*EMDs not recovered from the respective parties*
Advances given for civil department for sundry maintenance works	*2,62,463*	*Expenses remained to be booked*
Various sundry debtors	*36,670*	*Unmoved balances for several year*
Excise duty not recovered	*49,960*	*Unmoved balances for several year*
Advance payments for purchases	*41,049*	*Sundry advances remaining unmoved for more than 10 years*
Other sundry balances/deposits written off	*1,37,949*	*Un-reconciled/unmoved balances*
Total	*19,37,829*	

2.2. About the first item of Rs.9,68,813/-,it was submitted that the assessee-company had paid liquidation damages charged to Government of India for violation of contract regarding issue of delay in the delivery of vaccines. The FAA held that from the statement of the assessee it was not clear that the amount in question related to penalty imposed by the Government of India on the appellant in respect of breach of contract regarding the clause concerning time bound delivery, that under no stretch of imagination one could say that was a bad debt, that penalty was imposed for non fulfilling the contract, that the amount was not covered u/s 36(1)(vii)of the Act, that the submissions of the assessee to treat the same as business loss u/s 37.of the Act was not acceptable. The FAA declined to interfere with the order of the AO and upheld the addition made by him.

2.3. Before us, Authorised Representative(AR)that the assessee had entered into an agreement with Government of India, that as per the agreement it had to supply medicines on specific dates, that on a few occasions it failed to supply goods in time, that because of the said delay

Government of India withheld the some portion of the payment due to the assessee-company, that money not received by the assessee was claimed as bad debts written off, that it should be allowed either as business expenditure or as business loss. He referred to pages 11-19 and 36-39 of the paper-book. He relied upon the cases of Sardar Prit Singh delivered by the Hon'ble High Court of Patna(160ITR493)and Reliable Water Supply Services of India (Pvt.)Ltd. (124ITR199-Hon'ble Allahabad High Court).Departmental Representative(DR)supported the order of the FAA and submitted that payment in question was penalty, that same was not allowable as per the provisions of the section 37 of the Act.

2.4. We have heard the rival submissions and perused the material before us. We find that there was an agreement between the assessee and Govt.of India for supply of medicines. As per the terms and conditions of the agreement assessee had to supply medicines in stipulated time frame and in case of failure to adhere to time schedule assessee had to pay liquidated damages to the buyer.As per the special conditions to the contract *if the supplier failed to deliver any or all goods within time periods specified in the contract the purchaser would ………deduct from the contract price as agreed liquidated damages and not by way of penalty, a sum equivalent to …..* (Clause 16).From the above clause it is clear that Rs.9.68 lakhs deducted by Govt.of India as liquidated damage cannot be treated as breach/infringement of law or amount paid as penalty. Provisions of section 37 prohibits allowance of penalty payments only. In the case under consideration assessee had written off liquidated damage as per the terms and conditions of the agreement.In our opinion payment of liquidated damage has to be allowed. We find that Hon'ble Patna High Court in the case of Sardar Prit Singh(supra) has held that damages for delay in supply and for supply of articles of inferior quality was not a penalty for infraction of law hence same was deductible and business expenditure. Similarly, in the case of Reliable Water Supply Services of India (Pvt.)Ltd.(supra) Hon'ble Allahabad High Court has held that amounts paid to Government as penalty and damages for delay in execution of contracts was a deductible item.Respecfully following the above two decisions we reverse the order of the FAA. Ground no.1 is decided in favour of the assessee .

3.Next ground of appeal is about disallowance upheld by the FAA under the head unmoved staff advances, advances to various government departments and sundry un-reconciled balances. First of these three items is Rs.2.01 lakhs. Before us, AR did not press the said ground of appeal. Part a of the ground of appeal no.2 is dismissed as not pressed.

3.1. Part b of the ground are about advances given to various government departments, including the PWD departments.FAA has given a categorical finding of fact that no details of departments except for of the PWD Department were furnished before him. In these circumstances he held that in view of lack of proof that as to when and to whom these advances were given same could not be allowed u/s.37 or 36(1)(vii)of the Act. Before us AR submitted that matter might be decided on merits. DR supported the order of the FAA.After hearing the rival submissions we are of the opinion that order of the FAA does not suffer from any infirmity. In absence of details of expenditure claimed by the assessee he has rightly disallowed the claim of the assessee. Part b of Ground no.2 is decided against the assessee .

3.2. Part c of ground no.2 pertains to un-reconciled balances of Rs.1.37 lakhs.During the course of hearing before us, AR did not press the said ground. Therefore, part c of the ground of appeal no.2 is dismissed as not pressed. Ground no. 2 is decided against the assessee .

As a result appeal filed by the assessee stands partly allowed.
परिणामतःनिर्धारिती की आँशिक रूप से मंज़ूर की जाती है.

Order pronounced in the open court on June,2013
आदेश की घोषणा खुले न्यायालय में दिनांक जून,2013 को की गई ।

Sd/-	**Sd/-**
(डी.मन्नमोहन/ D.Manmohan)	**(राजेन्द्र/Rajendra)**
उपाध्यक्ष /Vice-President	**लेखा सदस्य /Accountant Member**

मुंबई/Mumbai,दिनांक/Date: 12th June, .2013

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

1. Assessee /अपीलार्थी
2. Respondent /प्रत्यर्थी
3. The concerned CIT (A) /संबद्ध अपीलीय आयकर आयुक्त
4. The concerned CIT /संबद्ध आयकर आयुक्त
5. DR “B” Bench, ITAT, Mumbai /विभागीय प्रतिनिधि बी खंडपीठ,आ.अ.न्याया.मुंबई
6. Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**

उप/सहायक पंजीकार **Dy./Asst. Registrar**

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