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

BEFORE SHRI B.R. BASKARAN, AM AND C.N. PRASAD, JM

ITA No.6484/Mum/2014
(Assessment Year: 2010-11)

Homecare Retail Marts Pvt. Ltd. New Era Mills Compound, Mogul Lane, Matunga (West), Mumbai-400 016.	Vs.	The Asstt. Commissioner of Income Tax-6(3), Aayakar Bhavan, Mumbai-400 020.
PAN: AABCH 5538A		
Appellant	..	**Respondent**

Appellant by		**Shri Sanjay Sawant**
Respondent by		**Shri Satya Pal Kumar**

Date of hearing		**16-05-2016**
Date of pronouncement		**22-06-2016**

O R D E R

***PER C.N.PRASAD, JUDICIAL MEMBER*:**

The present appeal is filed by the Assessee against the order of Commissioner of Income Tax-12, Mumbai dated 22-08-2014 for assessment year 2010-11.

2. The only issue in the appeal of the assessee is that the ld. CIT(A) erred in confirming addition of Rs.43,00,040/- made by the assessing officer considering sundry balances written off as falling outside the purview of section 36(2) r.w.s.36(1)(vii) of the Act and also not allowable u/s 37(1) of the Act.

3. The brief facts are that assessee engaged in the business of Super Market/Hyper Market filed its original return of income on 15.10.2010

declaring loss of Rs.13,87,46,874/- which was revised to Rs.14,20,95,245/- by filing revised return on 24.01.12. The assessment was completed u/s 143(3) on 20.12.2012 determining the loss at Rs.13,77,94,205/- and while completing the assessment the Assessing officer disallowed sundry balances written off of Rs.43,01,040/-. The assessing officer in the assessment proceedings noticed that assessee has debited a sum of Rs.43,01,040/- in P&L A/c on account of sundry balances written off. The AO noticed that this amount represents deposit given to the lessor in respect of Dev Arcade Property at Ahmedabad, which was taken on lease by the assessee for its hyper market business. He noticed that the lessor Devdip Arcade (P) Ltd. has forfeited this deposits from the assesee and was of the view that since security deposit given by the assessee is not revenue expenditure right off of this amount by the assessee is not an allowable expenditure. The assessee contended before the AO that since it could not obtain all the necessary licenses required for running hyper market store in the leasing premises, it had to curtail the area from which the business was to be carried on and ultimately it had to shut the store as per the notice issued by the concerned department to avoid penal action. Assessee contended that the lessor completely ignored its application and various warnings from the fire department which was brought to their notice and with the result assessee had to show that the lessor did not comply with various clauses of the terms and conditions of the lease deed. It was also contended that assessee has terminated the lease and demanded compensation of

Rs.3.56 crores form the lessor. The asessee contended that the deposit written off should be allowed as revenue expenditure. It was further contended that security deposit was adjusted against the outstanding rent and other charges therefore should be allowed. Further the assessing officer disallowed the right off of security deposit holding that deposit was given against lease of property therefore is capital deposit and it cannot be revenue expenditure. The CIT(A) sustain the disallowance holding that it is not allowable u/s 36(1)(vii) as bad debt and further held that since it is not allowable as bad debt the same is also not allowable expenditure u/s 37(1).

4. Ld. Counsel for the assessee submits that the assessee company was incorporated in financial year 2005 - 06. It is engaged in the business of running Super Market / Hyper Market / Retail stores of consumer items such as groceries, clothes, stationery, medicine, plastic items, vegetables, etc. under the brand name "Magnet". The profit margin in retail business is very small. The business requires premises of all sizes. Since purchasing the premises on outright basis would have entailed a huge locking up of capital, the assessee has taken leased premises for business. Such leasing required making payment of deposits to the licensors/owners.

4.1 The assessee had made a huge investments in opening retail outlets at various places such as Kolhapur, Pune, Ahmedabad,

Chandigarh, etc. due to which the assessee was facing financial crunch. Due to global financial crisis and total collapse of several national and international businesses and general economic recession and several other reasons, the assessee was not able to run the business at various places. Therefore, the appellant was forced to close down the outlets where the assessee was not doing good business. Some of the outlets closed its operations and transferred the stock and fixed assets to other outlets. At some of the outlets the assessee collected the refundable deposit. But however the developer at Paladi, Ahmedabad branch did not refund the deposit, in spite of writing various letters to them. After continuous follow up with the developer for refund of the said deposit the assessee decided to invoke Clause No.2 of page 3 of the Lease Deed relating to adjustment of the deposit against outstanding rent, taxes, etc. In this connection, counsel submit, that the A.O. has made addition of Rs.43,01,040/- considering the same as capital in nature which cannot partake the nature of a revenue expenditure.

4.2 To write-off a debt in the books of account, there is a pre-requisite condition that the same amount should have been offered as income in the books of account at some point of time in the past. He also pointed out that the said deposit has not been offered as 'Income' in the past, therefore it cannot be allowed as a revenue expenditure. Further the assessee has submitted a copy of Lease Deed dated 7th June 2008 and explained the various terms of Lease Deed. The sum total of the rent for

basement and ground + three floors came to RS.10,75,260/- per month. As per Clause 6(8) of the Agreement between the lessor and the lessee a lock-in-period of five years is stipulated during which no party to the agreement could rescind the agreement. However, it was further stipulated that in case the lessee wanted to rescind it, it was obliged to pay monthly compensation of Rs.10,89,785/- for the unexpired period as per the terms of lease agreement. As stated earlier, the assessee hardly used the premises for thirteen months for its business. Thus, the remaining period of lock-in-period was forty-seven months. The compensation payable for such unexpired lock-in-period would have come to Rs.5,05,37,220/-. Even otherwise also lease rent were not paid for seven months viz. December 2008 to June 2009 @ RS.1 0,75,260/- total aggregate to Rs.75,26,820/-.

4.3 Counsel submitted that the lessor and assessee therefore made a compromise and drew a deed of cancellation of Lease Deed on 28th day of July 2009. According to the aforesaid cancellation of Lease Deed, the Lease Deed dated 07.06.2008 executed by the assessee and the lessor was terminated and cancelled by the parties w.e.f. 30.06.2009. As per the terms of agreement on page 3, [item No (2)], the parties had agreed that the amount of security deposit paid by the assessee would be adjusted against the outstanding rent, outstanding taxes, charges, electricity bills, telephone bills and other charges/amounts relating to the said property upto 30.06.2009 and that there would be no outstanding amount to be

paid or refunded by either party. A copy of Lease Deed dated 7th June 2008 and Cancellation Deed dated 26th July 2009 will be submitted at the time of hearing. Though the A.O. has mentioned all the facts which has been reproduced by him in para 3 of the assessment order, concluded that no details mentioned in the Cancellation Deed regarding period of rent, amount involved or the details of other charges against which the security deposit is adjusted. The assessee submits that the security deposit has been adjusted against the expenses such as rent, electric bills, telephone bills, etc. which are indeed revenue expenses. Hence, the said addition needs to be deleted.

Since the said advances were given for business purpose towards commercial lease deposit and not to acquire any capital asset and on termination the appellant has rightly claimed as "Business Expenditure" and, therefore, the deletion needs to be deleted.

5. Ld. Departmental Representative vehemently supports the orders of authorities below and disallows the security deposit as not an allowable expenditure.

6. We have heard the rival contentions perused the orders of the authorities below and details furnished by the assessee. The AO while completing the assessment disallowed the write off of security deposit treating it as capital deposit and by observing that it cannot partake the

nature of revenue expenditure. He also observed that this deposit was not offered as income in the books of account and the transaction of passing security deposit is a capital transaction and does not qualify the basic condition that it was credited as income in the past. The AO ignored the contention of the assessee that security deposit was adjusted against the outstanding rent and other charges and therefore should be allowed as revenue expenditure. Ld. CIT(A) sustained the disallowance holding that it is not a write off bad debt, not allowable u/s 36(1)(vii) and also not allowable expenditure u/s 37(1) of the Act. We find that the assessee terminated the lease agreement which was entered into by it with the lessor for the reason that assessee could not continue the business in the said premises as the lessee could not comply with the terms and conditions of the lease agreement and also the assessee could not obtain necessary permissions from various Government authorities. Both lessor and the assessee entered into deed of cancellation of lease deed on 20.07.2009 for termination of the lease deed entered into on 07.06.2008 and agreed to terminate and cancel the lease deed w.e.f.30.06.2009. In the cancellation deed it was specifically agreed that security deposit paid by the assessee to the lessor has been adjusted towards outstanding rent, taxes, charges, electricity bills, telephone bills, and other charges upto 30th June, 2009 and there is no outstanding amount to be paid or refunded. The assessee has also break up of rent outstanding for seven months i.e. from December 2008 to June 2009 at Rs.75,26,820/- which is at page no.2 of the paper book. Ld. Counsel submitted that though the AO

has mentioned that these details are not available that were submitted in the course of assessment proceedings and also in the course of appellate proceeding before CIT(A).

7. Taking the totality of facts and circumstances into account we are of the considered view that the security deposit has to be adjusted against the rent payable by the assessee and this has already been done by entering into cancellation agreement wherein clause 2 of the cancellation deed specifically mentioned about adjustment of security deposit against the rent payable by the assessee. The details filed by the assessee also suggest that the rent payable by the assessee far exceed security deposit and hence no disallowance is required to be made by the AO. Thus, we directed the AO to delete the disallowance.

6. In the result, the appeal of the Assessee is allowed.

Order pronounced in the open court on 22/06/2016.

Sd/-	Sd/-
(B.R. BASKARAN)	**(C.N. PRASAD)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Dated 22/06/2016

Ashwini/PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI