

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, सी, मुंबई ।**

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**MUMBAI BENCHES "C", MUMBAI**

**श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं**

**श्री राजेन्द्र, लेखा सदस्य, के समक्ष**

**Before Shri Joginder Singh, Judicial Member, and  
Shri Rajendra, Accountant Member**

**ITA NO.2005/Mum/2014**

**Assessment Year: 2006-07**

DCIT(OSD), Range-8(1), Room No.260A, 2 <sup>nd</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020	<b>बनाम/</b> Vs.	M/s Control Print (India) Ltd. C-106, Hind Saurashtra Industrial Estate, M.V. Road, Marol Naka, Andheri (East), Mumbai-400059
(राजस्व /Revenue)		(निर्धारिती /Assessee)
PAN. No.AAACC5378C		

राजस्व की ओर से / Revenue by	Shri V.K. Agarwal-DR
निर्धारिती की ओर से / Assessee by	Shri Shailesh S Shah

सुनवाई की तारीख / <b>Date of Hearing :</b>	<b>17/05/2016</b>
<b>आदेश की तारीख /Date of Order:</b>	<b>17/05/2016</b>

**आदेश / O R D E R**

Per Joginder Singh (Judicial Member)

The Revenue is aggrieved by the impugned order dated 23/12/2013 of the Ld. First Appellate Authority, Mumbai. The only ground raised in the present appeal is with respect to deleting the disallowance of Rs.2,95,74,783/-, by the Ld. Commissioner of Income Tax (Appeal), being loan/advances written off ignoring the fact that the assessee company was not in the business of money lending, hence, write off of loan/advances, is capital loss, without appreciating the fact that the assessee did not satisfy the conditions specified in section 36(1)(vii) r.w.s. 36(2) of the Income Tax Act, 1961 (hereinafter the Act).

2. During hearing, the ld. DR, Shri V.K. Agarwal, advanced arguments, which is identical to the ground raised. On the other hand, Shri Shailesh S. Shah, ld. counsel for the assessee, defended the impugned order.

2.1. We have considered the rival submissions and perused the material available on record. The facts, in brief, are that the assessee declared total income of

Rs.3,69,77,014/-, which were processed u/s 143(1) of the Act. Thereafter, notice u/s 143(2) of the Act was issued, as the case was selected for scrutiny. The Ld. Assessing Officer proceeded to determine the total income of the assessee at Rs.6,86,07,840/-. During assessment proceedings, it was noticed by the Assessing Officer that the assessee has written off bad debt of Rs.17,45,036/- and Rs. 2,95,74,783/-. The assessee was asked to show cause as to why the impugned amount may not be disallowed. The assessee explained that since the principle amount of loan was not recoverable, therefore, the same has been written off in the books. However, the ld. Assessing Officer made the disallowance.

2.2. On appeal, before the Ld. Commissioner of Income Tax (Appeal), the factual matrix along with cases relied upon and also the remand report from the Assessing Officer were considered and finally the addition was deleted.

2.3. The Revenue is aggrieved and is in appeal before this Tribunal. We find that the ld. Assessing Officer disallowed write off for two reasons, firstly that money lending was not the main business activity of the assessee and secondly the

assessee was not having money lending license/permission to carry out the money lending work. It is noted that for Assessment year 2003-04, identical issue arose before the Tribunal in the case of assessee itself (ITA No.1386/Mum/2007), wherein, the issue was decided in the favour of the assessee. The Ld. Commissioner of Income Tax (Appeal) has followed the aforesaid decision of the Tribunal. Keeping in view, the principle of judicial discipline and in the absence of any contrary decision, we find merit in the contention of the ld. counsel for the assessee. The Revenue has not produced any contrary decision in respect to the decision of the Tribunal for Assessment year 2003-04 in the case of assessee. The case of the assessee is squarely covered the decision of the Tribunal in the case of ACIT vs M/s Bank of Baroda for A.Y. 2005-06 (ITA No.2927/Mum/2011 etc.) order dated 25/07/2014. The following cases also supports the case of the assessee.

*i) South Indian Bank v/s CIT, 262 ITR 579 (Kar.);*

*ii) DCIT v/s Catholic Syrian Bank Ltd., 267 ITR 52, ITAT Cochin Special Bench;*

*iii) State Bank of Bikaner & Jaipur v/s DCIT, [2001] 74 ITD 203 (Jaipur Bench);*

*iv) Bank of Baroda v/s JCIT, ITAT "B" Bench, Mumbai, for A.Y. 1996-97, 1997-98 and 2000-01;*

*v) TRF Ltd. v/s CIT, 323 ITR 397 (SC) and Vijaya Bank v/s CIT (SC) 323 ITR 167.*

2.3. Even otherwise, in view of the amendment in the taxation laws with effect from 01<sup>st</sup> April, 1989, the requirement of demonstrating that the debts has become bad has been dispensed with and only requirement remains that it should be "written off" in books of accounts of the assessee, which has been further clarified by CBDT Circular No.551 dated 23/01/1990. Our view find support from the ratio laid down in CIT vs Brilliant Tutorials Pvt. Ltd. 292 ITR 399 (Mad.), CIT vs Morgan Securities and Credits Pvt. ltd. (210 CTR 336)(Del.), DCIT vs Oman International Bank Saog. (313 ITR 128)(Bom.), CIT vs Star Chemicals (Bom.) Pvt. Ltd. 220 CTR 319 (Bom.), CIT vs Global Capital Ltd. 201 taxation 210 (Del.), CIT vs M/s Excel Fashion Pvt. Ltd. (201 taxation 216)(Del), CIT vs Auto meters Ltd. 292 ITR 345 (Del.). So far as, the reliance upon the decision in Kashmir Trading Company vs DCIT and Ahamadabad Electricity Company Ltd. (supra), the decision

from Hon'ble Rajasthan High court and Gujarat High Court are concerned, the Hon'ble Apex Court, later on, in T.R.F. Ltd. vs CIT 323 ITR 397 (SC), considering the provision of section 36(1)(vii), prior to April, 1, 1989 and post amendment held that it is not necessary for the assessee to establish that the debt, in fact, has become irrecoverable. Mere written off in its accounts is enough, thus, following the aforesaid decision from Hon'ble Apex Court, we find no infirmity in the conclusion drawn by the Commissioner of Income Tax (Appeal), thus, the appeal of the Revenue is dismissed.

Finally, the appeal of the Revenue is dismissed.

This order was pronounced in the open court in the presence of Ld. representatives from both sides at the conclusion of the hearing on 17/05/2016.

*Sd/-*

(Rajendra)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 17/05/2016

*Shekhar, P.S./नि.स.*

*Sd/-*

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.

3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
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**