

IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH KOLKATA
BEFORE SHRI S.S.VISWANETHRA RAVI, JM & DR. A.L.SAINI, AM

आयकर अपील सं./ITA No.378/Kol/2016

(निर्धारण वर्ष / Assessment Year :2010-2011)

M/s Shreekunj Securities Pvt. Ltd. 6, Turf Road, Kolkata-700025	Vs.	ITO, Ward-3(1), Aayakar Bhawan, 4 th Floor P-7, Chowring Square, Kolkata-700069
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAECs4082M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

राजस्व की ओर से /Revenue by : Anil Kumar Pande, Addl. CIT.DR

निर्धारिती की ओर से /Assessee by : Shri J.N. Gupta,FCA

सुनवाई की तारीख / Date of Hearing : 18/04/2017

घोषणा की तारीख/Date of Pronouncement 21/04/2017

आदेश / O R D E R

Per Dr. Arjun Lal Saini, AM

The captioned appeal filed by the Assessee, pertaining to the assessment year 2010-2011, is directed against the order passed by the Id. Commissioner of Income Tax (Appeals)-1, Kolkata, in appeal No.61/CIT(A)-1/W-3(1)/2013-14/Kol, dated 28.01.2016, which in turn arises out of an order passed by the Assessing Officer u/s.143(3) of the Income Tax Act 1961, (hereinafter referred to as the 'Act'), dated 11.03.2013.

2. Brief facts of the case qua the assessee are that the assessee is a private limited company and has submitted its return of income on 09/10/2010 disclosing total income of Rs.10,575/-. The return of income of the assessee was processed U/s 143(1) of the Act on 27/05/2011. Later on, the assessee's case was selected for scrutiny u/s.143(3) of the

Act and the AO framed assessment making addition at Rs.16,53,171/- on account of bad debts claimed by the assessee. The assessee has written off sundry balances consisting six parties. The Assessing officer observed that nature of these sundry balances written off, as shown in the Balance Sheet was different from the nature of sundry balances as claimed by the assessee in his written submission made during the assessment proceedings and therefore, because of differences in nomenclature, the Assessing Officer disallowed the claim of the assessee for bad debts.

3. Dissatisfied with the order of the Assessing Officer, the assessee filed an appeal before the Id Commissioner of Income Tax (Appeals) who has confirmed the addition made by the Assessing Officer. The Id CIT (A) has just reiterated the stand taken by the Assessing Officer and held that sundry balances written off amounting to Rs. 16,53,171/- is not in the nature of bad debts and the same should not be allowed.

4. Not being satisfied with the order passed by the Id CIT(A), the assessee is in further appeal before us and has taken the following grounds of appeal:

1. That on facts and circumstances of the case , the Id.A.O. erred in not stating why the bad debts written off, were not allowable deductions U/s 36(1) (vii) read with section 36(2) (i), since the debts, which have been written off, represents money lent in the ordinary course of business of banking or money lending which is carried on by the assesses.

2. That on facts and circumstances of the case , the Id.A.O. erred in holding that the debts, written off, did not comply with the condition of allowability U/s 36(2) (i).

3. That on facts and circumstances of the case , The Id A.O. erred in disallowing bad debts amounting to Rs.16,53,171/-.

5. The Id AR for the assessee has submitted before us that neither the Assessing Officer nor the Id CIT(A) understood the nomenclature used by the assessee in the Balance Sheet and in the written submission made before Assessing officer. For instance in case of Leader construction Pvt. Ltd. Rs. 5,34,125/- the nomenclature used in the Balance sheet was "Advances" whereas the written submissions filed by the assessee before AO contains the Nomenclature as "Rent", it is meant as rent receivable. The terminology "Advance" and "Rent receivable", in fact both are assets and shown in the Balance Sheet in asset side. If both become irrecoverable then both may be bad debts. In case of advances of Rs.2,00,000/- standing in the name of Motilal Oswal has also become irrecoverable because of a different reasons. The Id AR for the assessee also submitted that whatever advances shown by the assessee in the Balance Sheet and out of them if any advance becomes irrecoverable because of any circumstances then it is assessee`s prerogative right to write it off.

6. On the other hand, the Id DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is being not repeated for the sake of brevity.

7. Having heard the rival submissions and perused the material available on record, we noticed that assessee have shown in his Balance Sheet, Advances, Loans and Debtors and just because the assessee has used the different nomenclature in the written submissions made before the Assessing Officer do not change the character of these assets. The

advances, Loan given to employees, and debtors are the current assets of the assessee and if these become irrecoverable then assessee may write it off in the books of accounts. We also noted the Hon`ble Supreme Court Ruling in case of bad debts in the landmark judgment of **T.R.F. LTD.(2010) 230 CTR 0014**. This is what the Hon`ble Supreme Court held:

"After 1st April, 1989, it is not necessary for the assessee to establish that the debt, in fact, has become irrecoverable. It is enough if the bad debt is written off as irrecoverable in the accounts of the assessee."

Considering the factual we are of the view that assessee has used different nomenclature in respect of its advances (assets), and the same should not be a ground to disallow the claim of the assessee. Besides, the Hon`ble Supreme court in the case **T.R.F. LTD.(2010) 230 CTR 0014**. (supra) has held that after 1st April, 1989, it is not necessary for the assessee to establish that the debt, in fact, has become irrecoverable. It is enough if the bad debt is written off as irrecoverable in the accounts of the assessee. The assessee has written of advances/debtors and the same do fall within the ambit of Supreme Court ruling explained above. Therefore, the addition made by the Assessing Officer and confirmed by the Id CIT(A) needs to be deleted. Accordingly, we delete the addition of Rs.16,53,171/-

8. In the result, the appeal filed by the assessee, is allowed.

Order pronounced in the open court on this 21/04/2017.

Sd/-
(S.S.VISWANETHRA RAVI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(DR. A.L.SAINI)
लेखा सदस्य / ACCOUNTANT MEMBER

कोलकाता /Kolkata; दिनांक Dated 21/04/2017

प्रकाश मिश्रा/Prakash Mishra,Sr.PS.

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

1. अपीलार्थी / The Appellant- M/s Shreekunj Securities Pvt. Ltd.

2. प्रत्यर्थी / The Respondent.-ITO Wd-3(1), Kolkata
3. आयकर आयुक्त(अपील) / The CIT(A), Kolkata.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY
ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार
(Asstt. Registrar)
आयकर अपीलीय अधिकरण, कोलकाता / ITAT, Kolkata