

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
' C' BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A.No.168/Mds/2016
निर्धारण वर्ष /Assessment year : 2011-2012

Shri. R. Eswaran (HUF)
No.2/1004, Kurumankuttai
Thottam,
Palavanajipalayam Road,
Veerapandi Post,
Tirupur 641 605.

Vs. The Deputy Commissioner of
Income Tax,
Circle I,
Tirupur.

[PAN AACHR0736G]

आयकर अपील सं./I.T.A. No. 421/Mds/2016
निर्धारण वर्ष /Assessment year : 2011-2012

The Deputy Commissioner
of Income Tax,
Circle 2,
Tirupur

Vs. Shri. R. Eswaran (HUF)
No.2/1004, Kurumankuttai
Thottam,
Palavanajipalayam Road,
Veerapandi Post,
Tirupur 641 605.

(अपीलार्थी/Appellant)

**[PAN AACHR0736G]
(प्रत्यर्थी/Respondent)**

Assessee by
Department by

: Shri. T. Banusekar, C.A.
: Shri. A.V. Sreekanth, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 05-10-2016
घोषणा की तारीख /Date of Pronouncement : 21-10-2016

आदेश / ORDER**PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER**

These are appeals filed by the assessee and Revenue respectively directed against the order dated 27.11.2015 of Commissioner of Income Tax (Appeals)-3, Coimbatore.

2. The appeal of the Revenue has been filed with a delay of five days and condonation petition has been filed. Reasons shown for the delay are justified. Delay is condoned. Appeal is admitted.

3. The Revenue through its nine grounds assails allowance of claim of Bad debts by Id. Commissioner of Income Tax (Appeals) to the extent of ₹70,09,095/-. As against this, assessee is in appeal against the sustenance of disallowance to the extent of ₹1,29,55,546/-.

4. Facts apropos are that the assessee engaged in the business of finance and real estate had filed a return disclosing an income of ₹3,05,81,530/- which was later revised to ₹7,56,81,530/-. There was survey in the business premises of the assessee on 21.7.2011. It seems during the course of survey, the assessee agreed for an additional income of ₹9,99,50,051/- against amounts introduced in its cash book, for which no source were there. However, when return of income was filed, against the above offered income,

assessee has claimed bad debts of ₹3,40,12,641/-. The Id. Assessing Officer was of the opinion that claim of bad debts could not be allowed since assessee had treated all the loans as on 31.03.2011 as Bad debts and closed the loan party accounts. Further, as per the Id. Assessing Officer, as on the date of survey, the books of accounts of the assessee did not show any debt write off except for a sum of ₹1,18,08,000/-. The Id. Assessing Officer also noted that apart for this amount assessee was also eligible to claim Bad debts in relation to debt shown against three parties since they had confirmed their inability to pay the back amounts taken from the assessee. These three parties and respective debts were as under:-

<i>A.K.G Anbu</i>	:	₹5,25,000/-
<i>B.N. Murali</i>	:	₹10,00,000/-
<i>C.B. Mohan Prakash</i>	:	₹7,15,000/-

		₹22,40,000/-

But for these as per Id. Assessing Officer balance of the claim of bad debts was not allowable. Id. Assessing Officer held that the write off effected by the assessee in its books of account after date of survey were not bonafide but were artificial. Further, according to Id. Assessing Officer, assessee also could not prove that bad debts had become bad. So, out of claim of the bad debt claim of ₹3,40,12,641/-

a sum of ₹1,40,48,000/- was allowed, and balance of ₹1,99,64,641/- was disallowed and added to the income of the assessee.

5. Aggrieved, assessee moved in appeal before Id. Commissioner of Income Tax (Appeals). Argument of the assessee was that the accounts of the financial year 31.03.2011 was not closed as on date of survey viz 21.07.2011. As per assessee, need to write off the accounts which turned bad, would not arise until the preparation of the accounts for filing the return of income. As per the assessee, the parties were untraceable and there was no scope for recovery. Assessee also submitted that subsequent to amendment u/s.36(1)(vii) by Finance Act, 1987, it was not required to show that debts had become bad. As per assessee it was only required to effect a write off in the books of accounts, and this was duly done by it. It also relied on para 6.6 of CBDT circular No.44 dated 23.01.1990. Reliance was also placed on the judgment of Apex Court in the case of *TRF Ltd. vs. CIT 323 ITR 397*. Id. Commissioner of Income Tax (Appeals) after going through the submissions of the Id. Authorised Representative held that the law laid down by Apex Court in TRF Ltd (supra) could only be applied in normal circumstances and not where the claim itself was a perverse one. However, according to him, ₹54,00,000/- relating to Shri. K.L. Palanisamy and sums of ₹3,30,830/- and ₹3,59,160/- due

from Shri. A.T. Narayanamoorthy, were allowable as bad debts. In the former case, as per the Id. Commissioner of Income Tax (Appeals) the concerned person had expired and in latter case concerned person had expressed his inability to repay. In so far as loans less of amounts than ₹2 lakhs in each case, aggregating to ₹9,19,105/- is concerned, Id. Commissioner of Income Tax (Appeals) was of the opinion that the write off effected by the assessee after date of survey was sufficient. Thus, he allowed a further sum of ₹70,09,095/-. In other words he sustained a disallowance of ₹1,29,55,546/-.

6. Now before us, Id. Departmental Representative submitted that only genuine write off which was effected by the assessee in its books was ₹1,18,08,000/- relating to Shri. B. Rathinasamy. As per Id. Departmental Representative all other write off were not genuine since the intention of such write off was only to bring down the additional income of ₹ 9,99,50,051/- offered by the assessee during the course of survey. According to him, Id. Commissioner of Income Tax (Appeals) fell in error in accepting the claim of the assessee so far as it related to bad debts claim totaling to ₹ 70,09,095/-. As for the disallowance which were sustained, Id. Departmental Representative supported the order of the Id. Commissioner of Income Tax (Appeals).

7. Per contra and in support of its own appeal, Id. Authorised Representative once again placed reliance on the judgment of Apex Court in the case of *TRF Ltd (supra)*. According to him, write off of bad debts could be effected only at the time of finalization of accounts when the assessee assessed the nature of debts and the chances of recovery. According to him, just because the books did not show the write off of debts at the time of survey could not be a reason to disallow a genuine the claim. Therefore according to him, Id. Commissioner of Income Tax (Appeals) fell in error in not allowing the claim of bad debts in full.

8. We have considered the rival contentions and perused the orders of the authorities below. It is not disputed that there was a survey in the premises of the assessee on 21.7.2011. The relevant previous year for the impugned assessment year for the year ending 31.03.2011. It is also not disputed that books of accounts were available at the time of survey. Claim of the assessee is that write off of bad debts were done by it only at the time of finalization of its accounts. It is not disputed by the assessee that during the course of survey, it had offered an additional income of ₹ 9,99,50,051/-. What we find is that on date of survey, the books of accounts were examined by survey officials. There was atleast one entry of bad debt

write off in such books. Assessee itself had pointed out that books which were impounded during the survey reflected write off of bad debt of ₹1,18,08,000/-. The date of the entry in the books was 31.03.2011. Thus the books of account found during the course of survey did not have in it any other bad debt write off. It may be true that by virtue of judgment of Apex Court in the case of *TRF Ltd (supra)*, subsequent to amendment to Sec. 36(1)(vii) through Finance Act, 1987, it is not a necessary for an assessee to establish that a debt had become bad. What is necessary is that there should be a write off of bad debts as irrecoverable. In the books of accounts maintained by the assessee and found on the date of survey viz 21.07.2011, there was no entry for bad debts write off, other than one relating to B. Rathinasamy for a sum of ₹1,18,08,000/-. Contention of the assessee that it had effected the write off balance of the debts at the time of finalization of accounts, when it found that debts were uncollectable, cannot in our opinion be accepted as a genuine write off. If assessee had indeed effected write off of bad debt, it would have been reflected in the books found by survey officials on 21.07.2011, since the accounts for the relevant previous year closed long back on 31.03.2011. Thus, in our opinion there was no actual write off by the assessee in the books, but for the sum of ₹1,18,08,800/-. Law laid down by Hon'ble Apex Court in the case of

TRF Ltd (supra) cannot be extended to a case where the write off attempted by an assessee is farcical. We, therefore of the opinion that Id. Commissioner of Income Tax (Appeals) fell in error in allowing the claim of the assessee to the extent of ₹70,09,095/-. In our opinion, Id. Assessing Officer was justified in making disallowance of ₹1,99,64,641/- against the claim of bad debts. We therefore, have no hesitation in setting aside the order of the Id. Commissioner of Income Tax (Appeals) and reinstating the disallowance made by Id. Assessing Officer.

9. In the result, the appeal of the Revenue is allowed whereas that of the assessee is dismissed.

Order pronounced on Friday, the 21st day of October, 2016, at Chennai.

Sd/-

(एन.आर.एस. गणेशन))

(N.R.S. GANESAN)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 21st October, 2016

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |