

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI**

श्री ए. मोहन अलंकामणी , लेखा सदस्य एवं श्री जी. पवन कुमार, न्यायिक सदस्य के समक्ष

**BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND SHRI. G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 3088/Mds/2014

निर्धारण वर्ष /Assessment year : 2010-2011.

M/s. South India Surgicals
Co. Ltd,
New No.117, Old No.65,
Wallajah Road,
Anna Salai,
Chennai 600 002.

Vs. The Assistant Commissioner
of Income Tax,
Company Circle VI(3)
Chennai.

**[PAN AAACS 5091E]
(अपीलार्थी/Appellant)**

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. A.S. Sriraman, Advocate
प्रत्यर्थी की ओर से /Respondent by : Dr. B. Nischal, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 17-05-2016

घोषणा की तारीख /Date of Pronouncement : 01-07-2016

आदेश / ORDER

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

The appeal filed by the assessee is directed against order of the Commissioner of Income-tax (Appeals)-VI, Chennai in ITA No.1381/13-14/A-VI, dated 29.10.2014 for the assessment year 2010-

2011 passed u/s.143(3) and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act').

2. The assessee has raised three substantive grounds (i) Id. Commissioner of Income Tax (Appeals) erred in confirming the addition of claim of Bad debts u/s.36(1)(vii) of the Act Rs.1,84,99,595/- (ii) disallowance of expenditure incurred for getting certification of ISO 9002 Rs.2,07,075/- and (iii) disallowance of expenses on conveyance and travelling by the employees/ directors quantified at 15% Rs.8,71,375/-.

3. The Brief facts of the case are that the assessee company is engaged in the business of dealership and manufacturing of surgical equipments & instruments and filed Return of income on 15.10.2010 with total income of Rs.2,32,80,610/- and the return of income was processed u/s.143(1) of the Act. Subsequently under CASS, the case was selected for scrutiny and notices u/s. 143(2) and 142(1) of the Act are issued alongwith questionnaire. In compliance to notice, the Id. Authorised Representative of assessee appeared and filed details and produced books of account. The Id. Assessing Officer verified details and correctness of expenditure and additions to fixed assets. Further, the Id. Assessing Officer on perusal of books of accounts found that the assessee has claimed branchwise Bad debts written off aggregating to ₹1,84,99,595/- as under:-

Sl.No	Branches	Amount (₹)
1	Ahmedabad	111370.00
2	Bangalore	49702.92
3	Calcutta	3253287.72
4	Chennai	4997827.21
5	Delhi	2273472.16
6	Hyderabad	2283546.45
7	Mumbai	5412806.62
8	Pondicherry	82727.00
9	Trivandrum	34855.00
	Total	18499595.08

The Id. Authorised Representative submitted that more than 95% of Bad debts pertain to Government Medical Colleges, Government Hospitals and Railway Hospitals. The assessee has chosen to written off the amount due from the Government, but nothing was placed on record in the assessment proceedings to justify irrecoverable to debts as time barred and written off in the year. Bad Debts are meant for Debts which are bonafide and to have understood by assessee as Bad. Further, there is no evidence was filed to prove that the debts are Bad neither from the Sundry debtors who could not pay the outstanding amounts due to financial instability or any refusal in making payments and it is difficult to treat the Government being the Debtor as unable to pay and it is a preposterous to consider that the Government was not in a position to discharges the acknowledged Debt. Further, it was surprising that the assessee company continued Business transactions with the Government Hospitals year after year

and supplying surgical instruments. In assessee's own case the jurisdictional High Court considered amendment in Sec. 36(1)(vii) of the Act with effect from 01.04.1989. The assessee has accepted the decision of the High Court in *Surgical Co. Vs. ACIT (2006) 287 ITR 62 (Mad)*. But the assessee further relied on the decision of Apex Court in the case of *TRF Ltd. Vs. CIT (2010) 323 ITR* and the Id. Assessing Officer based on above findings and Apex Court decision of *M/s. TRF Ltd case (supra)* is of the opinion that the case law is inapplicable to Government debts and the assessee company has accepted the judicial decision of *Surgical Co. (supra)* and no appeal was preferred by the assessee in Apex Court. The Id. Assessing Officer further emphasized that the Government debts cannot be written off and disallowed the claim of ₹1,84,99,595/- under provisions of Sec. 36(1)(vii) of the Act with other additions and passed order u/s.143(3) of the Act dated 28.03.2013. Aggrieved by the order, the assessee filed an appeal before Commissioner of Income Tax (Appeals).

4. In the appellate proceedings, the Id. Authorised Representative argued the grounds and explained that the Id. Assessing Officer has not appreciated the facts and erred in disallowing the claim as the assessee is eligible to write off u/s.36(1)(vii) of the Act without considering the facts that the assessee company has supplied Surgical Equipments to Government Medical Hospitals and the

sale amounts were not received and due to non receipt of the said amount, the assessee company has chosen to written off in the Books of Account relying on the decision of Apex Court in the case of M/s. *TRF Limited (supra)* which is sufficient to claim Bad Debts. The findings of the Id. Assessing Officer are distinguishable. The Apex Court has not mentioned specifically about the Government Debts and Id. Authorised Representative explained that the assessee company has written off Debts in the financial accounts due to limitation of time barred. The Id. Commissioner of Income Tax (Appeals) considered the submissions and the findings of the Id. Assessing Officer referred at page 6 to 8 of his order including the factual submissions of the assessee. Further, the Id. Commissioner of Income Tax (Appeals) relied on the evidence produced in hearing proceedings that most of the Debts pertaining to Government Hospitals of earlier years and the assessee company could not produce any documentary evidence in support of the claim that the debts have become Bad, irrespective of Bad debts have written off in the Books of account. Further, there is no evidence filed before the Id. Assessing Officer or in appellate proceedings to prove that Government Hospitals are not capable to make payments to the assessee and correspondence in respect of amount receivable. The assessee company has written off debts relying on the Apex Court decision which are applicable to the

Bonafide claim of Bad debts were as the assessee company unilaterally, without taking any steps for recovery has claimed deduction. The assessee's in own case accepted the decision of the jurisdictional High Court confirming the disallowance of Id. Assessing Officer u/s.36(1)(vii) of the Act. The Id. Commissioner of Income Tax (Appeals) concurred with the findings of the Id. Assessing Officer and confirmed the disallowance. Aggrieved by the order of the Commissioner of Income Tax (Appeals) the assessee filed an appeal before Tribunal.

5. Before us, the Id. Authorised Representative reiterated the submissions made in assessment and appellate proceedings and the Id. Commissioner of Income Tax (Appeals) erred in confirming disallowance of Bad debts and findings of the Id. Commissioner of Income Tax (Appeals) that the ratio laid down is based on the assessee's own case is not acceptable. The Id. Commissioner of Income Tax (Appeals) should have made a distinction with proper reasons and as the claim of the assessee is a within the commercial expediency or alternatively the claim to be allowed as business loss and prayed for allowing the appeal.

6. Contra, the Id. Departmental Representative relied on the findings of the lower authorities order and judicial High Court decision and opposed to the grounds.

7. We heard the rival submissions, perused the material on record and judicial decision cited. The only grievance of the assessee being disallowance of Bad debts. The assessee has written off Bad debts in the Books of account irrespective of the fact that the surgical equipments were supplied to Government Medical College, Hospital and Railway. The assessee applying the provisions of law as debts have become time barred and claimed deduction u/s.36(1)(vii) of the Act. The assessee was not able to explain with any evidence How the Government debts has become bad. Further, the assessee company continued its Business transaction subsequent assessment year by supplying the goods and surgical equipments to the Government Hospital. The assessee could not prove that with any correspondence or evidence of inability or incapacity of the Debtor for payments. The Revenue in the assessment proceedings dealt on the provisions and further found that in assessee's own case 287 ITR 62 (Mad) which confirmed the disallowance of Bad debts by Id. Assessing Officer. Even before us the Id. Authorised Representative could not satisfy with any documentary evidence How the Government debts have become Bad

debts except writing off in the books of accounts and claimed the deduction. We considered the judicial findings of the Apex Court in *TRF Ltd vs. CIT 323 ITR 0397* where it was 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. However, in the present case, the Id. Assessing Officer has not examined whether the debt has, in fact been written off in accounts of the assessee. This exercise has not been undertaken by the Assessing Officer. Hence, the matter is remitted to the Assessing Officer for de novo consideration of the above mentioned aspect only and that too only to the extent of the write off". Further the assessee could not establish in assessment proceedings with complete information of writing off Bad Debts, which Id. Assessing Officer could verify and satisfy with the assessee's action. Therefore considering apparent facts, material on record and judicial decision, we remit the disputed issue to the file of the Id. Assessing Officer to verify whether the debt is written off in the assessee books of account and if it so allow the deduction as claimed by the assessee in accordance with the ratio laid down by the Hon'ble Apex Court in case of TRF Ltd (supra) discussed hereinabove. If such debt is not written off in the books of account pass appropriate

orders as per merit and law after providing opportunity adequate of being heard and ground of the assessee is partly allowed.

8. On the second ground, the assessee has claimed expenditure of ₹2,07,075/- for ISO 9002 certificate as Revenue expenditure whereas the Id. Assessing Officer treated the same as intangible asset and allowed depreciation @25% and disallowed the excess claim.

9. In the appellate proceedings, the Id. Authorised Representative submitted that ISO certificate has for limited life and not one time payment and has to be renewed regularly. The Id. CIT(A) considered the arguments and letter filed by the assessee dated 7.10.2014 explaining that there is no enduring benefit received and ISO certificate issued for a period of three years only and relied on the decision of the Karnataka High Court in the case of *CIT vs. Infosys Technologies Ltd 349 ITR 582*. But the Id. Commissioner of Income Tax (Appeals) concludes that the claim of expenditure is in the nature of intangible assets under provisions of Sec.32(1)(ii) of the Act. Similar to know-how, patents, copyrights and distinguished the judicial decision and confirmed the order of the Id. Assessing Officer. Aggrieved by the order of the Commissioner of Income Tax (Appeals) the assessee filed an appeal before Tribunal

10. Before us, the Id. Authorised Representative argued that the grounds explaining the need of ISO certificate 9002. The Id. Commissioner of Income Tax (Appeals) has erred in distinguishing the judgment and also the fact of limited life and is in the nature of Revenue expenditure allowable u/s.37(1) of the Act and cannot fit into the provisions of intangible asset as the being life in shorter and license, has to be renewed regularly and prayed for allowing the appeal.

11. Contra, the Id. Departmental Representative relied on the order of the lower authorities and opposed to the grounds.

12. We heard the rival submissions, perused the material on record and judicial decision cited. The Id. Authorised Representative contention that ISO 9002 is a quality certification and the performance of the assessee company needs to be obtain certificate for the business of the company. Whereas Id. Departmental Representative argued that it takes the characteristic of intangible assets in the nature of license and eligible for depreciation @25%. We perused the assessment order and Commissioner of Income Tax (Appeals) order, the expenditure of ISO 9002 is a license fee with limited validity of three years and does not have enduring benefit and should be

renewed before the end of valid period. The Id. Authorised Representative relied on the High Court decision but Id. Commissioner of Income Tax (Appeals) has distinguished as not applicable to the assessee's case. We are of the opinion that the expenditure takes the character of Revenue and the reasons being license fees is paid for less than three years and renewed. Certificate reflects the standard and quality control measures of the assessee company and therefore we set aside the order of Commissioner of Income Tax (Appeals) on this ground and direct the Id. Assessing Officer to allow deduction. This ground of the assessee is allowed.

13. In the last ground, the assessee has claimed conveyance and travelling expenditure in the Books of account and the assessee company in the assessment proceedings was asked to produce log book of vehicles. In compliance, the Id. Assessing Officer on verification found that some of the expenditure are incurred for personal usage and therefore disallowed 15% being ₹8,71,375/-. Aggrieved by the order, the assessee filed an appeal before Commissioner of Income Tax (Appeals).

14. In the appellate proceedings, the Id. Commissioner of Income Tax (Appeals) confirmed the order of Assessing Officer.

Aggrieved by the Commissioner of Income Tax (Appeals) order, the assessee filed an appeal before Tribunal.

15. Before us, the Id. Authorised Representative argued that adhoc deduction was made on conveyance and travel expenses without any reasons. The assessee produced logbook maintained for official vehicles and used only for official purpose and the Id. Assessing Officer has verified the log books and not pointed out any specific instance of personal usage and unilaterally disallowed 15% of exemption . The Id. Commissioner of Income Tax (Appeals) also confirmed the findings that the vehicle was used for personal use of employees and prayed for allowing the appeal.

16. Contra, the Id. Departmental Representative relied on the order of the Commissioner of Income Tax (Appeals) and opposed to the grounds.

17. We heard the rival submissions, perused the material on record. The Id. Authorised Representative contention being disallowance of personal expenditure is without any basis, justification and evidence. The assessee company produced log books in the assessment proceedings and the Id. Assessing Officer having verified found that there are some expenses claimed as personal in nature and no proper explanations are produced or controvert in assessment

proceedings except that the assessee was using the vehicle exclusively for official purpose. Even in appellate proceedings, the Id. Authorised Representative could not produce any evidence to prove that expenditure on vehicle was used exclusively wholly for the Business. On perusal of the assessment order, we found the Id. Assessing Officer has only estimated the disallowance without referring to any specific instance. So, we are of the opinion that considering the volume of business, nature of expenses and the claim and the explanation filed in the assessment proceeding, we direct the Id. Assessing Officer to restrict the claim of disallowance @7.5% of expenditure and allow the deduction and the ground of the assessee is partly allowed.

18. In the result, the appeal of the assessee is partly allowed.

Order pronounced on Friday, the 1st day of July, 2016, at Chennai.

Sd/-

(ए. मोहन अलंकामणी)

(A. MOHAN ALANKAMONY)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(जी. पवन कुमार)

(G. PAVAN KUMAR)

न्यायिक सदस्य /JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated: 01.07.2016

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

3. आयकर आयुक्त (अपील)/CIT(A)

5. विभागीय प्रतिनिधि/DR

2. प्रत्यर्थी/Respondent

4. आयकर आयुक्त/CIT

6. गार्ड फाईल/GF