

*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "A" KOLKATA*

Before **Shri Waseem Ahmed, Accountant Member** and
Shri S.S.Viswanethra Ravi, Judicial Member

ITA No.2293/Kol/2013
Assessment Year:2006-07

Aditya Chharia 98, B.K.Paul, Avenue, Kolkata-700 005 [PAN No.AFNPC5939 E]	बनाम / V/s.	ITO Ward-42(2), 8, Rabindra Sarani, Poddar Court, Kolkata-700 001
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी/By Appellant	Shri Surendra Joshi, FCA
प्रत्यर्थी की ओर से/By Respondent	Shri Sallong Yaden, ACIT-DR
सुनवाई की तारीख/Date of Hearing	20-06-2016
घोषणा की तारीख/Date of Pronouncement	30-06-2017

आदेश /O R D E R

PER Waseem Ahmed, Accountant Member:-

This appeal by the assessee is against the order of Commissioner of Income Tax (Appeals)-XXXVI, Kolkata dated 12.08.2013. Assessment was framed by ITO Ward-54(1), Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 31.12.2009 for assessment year 2007-08.

Shri Surendra Joshi, L'd Authorized Representative appeared on behalf of assessee and Shri Sallong Yaden, L'd Departmental Representative appeared on behalf of Revenue.

2. At the time of hearing ground No.1 raised by assessee in his appeal has not been pressed by the Ld. counsel for the assessee before us. The same is, therefore, dismissed as not pressed.

3. Sole issue raised in ground No.2 in this appeal of assessee is that Ld CIT(A) erred in confirming the action of Assessing Officer by sustaining disallowance of ₹18,42,868/- on account of bad debt written off u/s 36(1)(vii) of the Act.

4. Facts in brief are that assessee is an individual and engaged in construction business. During the year under consideration, assessee has filed its return of income declaring its income at ₹9,67,630/- which was assessed by the Assessing Officer u/s 143(3) r.w.s. 147 of the Act at ₹ 28,10,498/-. The assessee for the year under consideration has claimed bad debt of ₹ 18,42,868/- by way of debiting its profit and loss a/c. However, AO disallowed bad debt written off by assessee on the ground that it is the first assessment year for the business of the assessee and therefore, it is not allowable as deduction u/s. 36(1)(vii) of the Act and added to the total income of assessee.

5. Matter was carried to Ld. CIT(A) who after hearing the contention of assessee has upheld the action of AO.

6. Being aggrieved by the order of Ld CIT(A) assessee came in second appeal before us.

7. Before us Ld. AR filed a paper book which is running pages from 1 to 59 and stated that the assessee for the year under consideration has raised bill of ₹99,94,870/- to M/s Tantia Construction Ltd. and of ₹ 1,18,40,609/- to Simplex Infrastructure Ltd. which was duly offered to tax. In support of its claim, assessee has submitted its sales summary, invoices issued to the aforesaid

parties which are placed on page 39 and 46 to 53 of its paper book. The AR also submitted the copies of TDS certificates from both the aforesaid parties which are placed pages 40 to 45 of the paper book. On the other hand, L'd DR vehemently relied on the orders of Authorities Below.

8. We have heard the rival contentions of both the parties and perused the materials available on record. From the foregoing discussion, we find that lower authorities have disallowed the claim of assessee for ₹18,42,868/ on account of bad debt written off on the ground that it is the first assessment year of assessee and therefore debtors written off are not eligible for deduction. Now the question before us arise so as to whether debts written off in the first assessment year of assessee is ineligible for deduction u/s. 36(1)(vii) of the Act. In this point of view, various courts have decided this issue in favour of assessee and one them is by the Coordinate Bench of Mumbai ITAT in the case of *DCIT v. Rediff.com India Ltd.* the relevant extract of the order reproduced below:-

“A.O disallowed the claim of bad debts on the ground that the transactions pertain to the current year and the same was written off by the assessee in the same year itself. According to the AO the bad debt claimed by the assessee has in fact not yet matured to claim it as bad and irrecoverable. We find the CIT(A) allowed the claim of bad debts on the ground that the assessee fulfilled the conditions of section 36(1)(vii) r.w.s 36(2) of the Act. We find this issue has now been decided in favour of the assessee by the decision of Hon'ble Supreme Court in the case of TRF Ltd. Vs. CIT 323 ITR 397 wherein it has been held that after the amendment of section 36(1)(vii) of the IT Act, 1961 w.e.f. April 1, 1989, in order to obtain a deduction in relation to bad debts, it is not necessary for the assessee to establish that the debt, in fact, has become irrecoverable. Since the assessee has written off the amount of bad debts in the books of account, therefore, in view of the decision cited above, we do not find any infirmity in the order of the CIT(A) in allowing the claim bad debts written off.”

9. We further find that CBDT Circular No.12/2016 dated 30.05.2016 has clarified the admissibility of claim for deduction of bad debt u/s. 36(1)(vii) r.w.s Sec.36(2) of the Act and relevant extract reproduced below for the sake of clarity:-

“4. In view of the above, claim for any debt or part thereof in any previous year, shall be admissible under section 36(1)(vii) of the Act, if it is written off as irrecoverable in

the books of account of the assessee for that previous year and it fulfills the conditions stipulated in sub section (2) of sub-section 36(2) of the Act.

5. Accordingly, no appeals may henceforth be filed on this ground and appeals already filed, if any, on this issue before various Courts/Tribunals may be withdrawn/not pressed upon.”

10. Respectfully, following the order of coordinate Bench of ITAT Mumbai in the case of *Rediff.com India Ltd.* (supra) and Circular issued by CBDT and after considering the facts of the present case, we reverse the orders of authorities below and allow ground raised by assessee. AO is directed accordingly.

11. **In the result, assessee's appeal stands allowed.**

Order pronounced in open court on 30/06/2016

Sd/-

(न्यायिक सदस्य)

(S.S.Viswanethra Ravi)
Judicial Member
*Dkp

दिनांक:- 30/06/2016 कोलकाता / Kolkata

Sd/-

(लेखा सदस्य)

(Waseem Ahmed)
Accountant Member

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-Aditya Chharia, 90 BKPaul Avenue, Kolkata-005
2. प्रत्यर्थी/Respondent-ITO Wd-42(2) 8, Rabindra Sarani, Poddar Court, Kol-01
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता