

आयकर अपीलिय अधिकरण, मुंबई “ई” खंडपीठ
Income-tax Appellate Tribunal -“E”Bench Mumbai
सर्वश्री राजेन्द्र,लेखा सदस्य एवं सी. एन. प्रसाद,न्यायिक सदस्य
Before S/Shri Rajendra,Accountant Member and C.N. Prasad,Judicial Member
आयकर अपील सं./ITA/4377/Mum/2012,निर्धारण वर्ष /Assessment Years: 2005-06

ITO-3(3)(3) Room No.672, 6 th Floor, Aayakar Bhavan, M.K. Road Mumbai-400 020.	Vs.	Snow Valley Costruction Material Pvt. Ltd., 45-A, Mittal Tower A-Wing, Nariman Point Mumbai-21. PAN:AAHCS 6139 G
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by:Shri Sathya Moorthy-DR

Assessee by: Shri S.C. Tiwari and Ms. Rituja Pawar

सुनवाई की तारीख / **Date of Hearing: 20.07.2016**

घोषणा की तारीख / **Date of Pronouncement: 19.10.2016**

आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश

Order u/s.254(1)of the Income-tax Act,1961(Act)

लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-

Challenging the order dated 07/02/201 of the CIT (A) – seven, Mumbai the Assessing Officer (AO) has filed the present appeal. Assessee – company, engaged in the business of manufacturing of construction chemicals, filed its return of income on 31/10/2005, declaring total income at loss of Rs. 9.74 lakhs. A notice under section 148 was issued on 04/01/2007 by recording the following reasons:

“it was noticed from the profit and loss account that selling and distribution expenses of Rs. 40, 32,110/-included Rs. 40,00,000/-as Bad Debts. The sundry debtors shown in earlier years (31/3/2004) was Rs. 19, 79, 670/-only enduring previous year it was Rs. 21, 92, 875/-(31/3/2005). Therefore, I have reason to believe that the bad debts of Rs. 40, 00, 000/-premature and required to be disallowed.”

2.During the assessment proceedings, the assessee filed explanation with regard to write-off of bad debts amounting to Rs.40 lakhs. After considering the same, the AO held that the truthfulness of the transaction of bad debts was doubtful, that the transaction did not appear to be bona fide. Finally, he made a disallowance of Rs. 40,00,000/-.

3.Aggrrieved by the order of the AO, the assessee preferred an appeal before the First Appellate Authority (FAA). Before him, it was argued that the reasons regarded by the AO did not refer to any material in his possession that could indicate that assessee’s claim of bad debt was not allowable, that he had merely referred the sundry debtors as on 31/03/2004 and as on 31/03/2005, that he has not alleged that taxable income had escaped, that he had

wrongly invoked the provisions of section 147 of the Act. The assessee relied upon several case laws.

4. After considering the submission of the assessee and the assessment order, the FAA held that there was no basis to hold that income of the assessee had escaped assessment, that the return was accompanied by tax audit report and P&L account as well as the balance sheet, that as per schedule 7 the assessee had made a claim of bad debts, that all the facts to the bad debts were available on the file of the assessee, that the AO had not brought any new information to suggest that assessee's income had escaped assessment, that there was no justification for reopening the assessment. He referred to the case of TRF Ltd. (230 CTR 14) and Kelvinator of India Ltd. (322 ITR 561) and allowed the appeal filed by the assessee.

5. During the course of hearing before us, the Departmental Representative (DR) supported the order of the AO and referred to the case of Rajesh Jhaveri. The Authorised Representative (AR) argued that reasons recorded by the AO are not valid, that bad debts had to be allowed. He referred to the cases of Hindustan Lever Ltd. (268 ITR 332) and Indivest Pte. Ltd. (350 ITR 120).

6. We have heard the rival submissions and perused the material before us. We find that the return of income, filed by the assessee, was processed under section 143 (1) of the Act, that the notice under section 148 was issued within the period of four years, that the AO had provided the reasons recorded by him to the assessee, that as per the reasons the assessee had written off bad debts of Rs.40 lakhs during the year under consideration, that while completing the reopened assessment the AO had held that truthfulness of the bad debts were doubtful. In our opinion, for writing off the bad debts the assessee is required to write them off in the books of accounts. Once it is done, the AO is not supposed to doubt the genuineness of the transaction. In the matter of TRF Ltd. (supra), the Hon'ble Apex Court has held that once the assessee writes off the bad debts in its books of accounts, same has to be allowed. Thus, on merits the addition made by the AO is not sustainable. Besides, in the reasons recorded, as pointed out by the FAA, fact of escapement of income is not alleged and all the facts about the loan were available on file. In short there was no tangible material that could have triggered the re-opening. As we do not find any legal or factual infirmity in the order of the FAA, so, confirming the same we decide the effective ground of appeal against the AO.

As a result, appeal filed by the AO stands dismissed.

फलतः निर्धारिती अधिकारी द्वारा दाखिल की गई अपील नामंजूर की जाती है.

Order pronounced in the open court on 19th October, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक 19 अक्टूबर, 2016 को की गई।

Sd/-

(सी. एन. प्रसाद / **C.N. Prasad**)

न्यायिक सदस्य / **JUDICIAL MEMBER**

मुंबई Mumbai; दिनांक Dated : 19.10.2016.

Jv.Sr.PS.

Sd/

(राजेन्द्र / **Rajendra**)

लेखा सदस्य / **ACCOUNTANT MEMBER**

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

1.Appellant /अपीलार्थी

2. Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त

5.DR "E " Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अ.न्याया.मुंबई

6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**

उप/सहायक पंजीकार **Dy./Asst. Registrar**

आयकर अपीलीय अधिकरण, मुंबई /**ITAT, Mumbai.**