

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'C', New Delhi**

**Before : Shri H.S. Sidhu, Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA No.6010/Del./2015
Assessment Year:2003-04**

M/s. FCL Technologies & Products Limited (now merged with Uflex Ltd.), 305, 3 rd Floor, Bhanot Corner Pamposh Enclave, Greater Kailash-I, New Delhi. (PAN- AAACF0109J) (Appellant)	vs.	DCIT, Central Circle 27, New Delhi. (Respondent)
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Appellant by	Shri M.P. Rastogi, Advocate
Respondent by	Shri Arun Kumar Yadav, Sr. DR

Date of Hearing	04.09.2017
Date of Pronouncement	06.09.2017

ORDER

Per L.P. Sahu, A.M.:

This is an appeal filed by the assessee against the order of the Id. CIT(A)-XIV, New Delhi dated 07.10.2015 for the assessment year 2003-04 on the following ground :

“That on the facts and in the circumstances of the case, the lower authorities erred in disallowing a sum of Rs.45,42,098/- being provision for bad and doubtful debts under section 115JB of the Income-tax Act, 1961.”

2. The brief facts of the case are that the assessee is a public limited company and filed its return of income on 28.11.2003, declaring a loss of Rs.16,70,33,947/-. Simultaneously, he also declared loss of Rs.12,81,86,323/-

u/s. 115JB. The case was selected for scrutiny and statutory notices were issued to the assessee. The assessee filed reply as required by the Assessing Officer. The Assessing Officer observed that the assessee had made provision for doubtful debts of Rs.45.42 lacs as per schedule-8 of the balance sheet and the provision had also been debited into the profit and loss account. The said provisions were reduced from debtors during the financial year and net resulting debtors of Rs.1727.98 lacs is appearing in the balance sheet. The assessee submitted the provisions of Companies Act for preparation and finalization of the balance sheet under Schedule-6 of the Companies Act, 1956 as well as clause (c) of section 115JB of the Act and also relied on some case laws. The AO was not satisfied by the submission of the assessee and disallowed this provision by applying Explanation B to section 115JA(2) of the IT Act. Aggrieved by this addition, the assessee appealed before the Id. CIT(A). The assessee submitted detailed written submission and relied on many case laws before the Id. CIT(A). The Id. CIT(A) after considering the order of the Assessing Officer and the submissions of the assessee dismissed the appeal, stating as under :

"I have considered the submissions of the appellant as well as the findings of the Ld. AO. I found the Ld. AO is justified in not granting the deduction for the provisions for bad and doubtful debts against the book profit u/s 115JB of the Act in view of the explanation 1 Clause(i) of Section 115JB of the Act which is reproduced as under: -

"Explanation [1].- For the purposes of this section, "book profit" means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub-section (2) as increased by -

(a)to(h):-.....

(i). the amount or amounts set aside as provision for diminution in the value of any asset."

The above provisions substituted by the Finance (No.2), Act, 2009-w.e.f. 01.04.2001. Accordingly, the ground of appeal is dismissed."

3. The learned AR reiterated the submissions made before the lower authorities and submitted that if the balance sheet has been prepared in accordance with Companies Act as per Schedule-VI, and therefore, the Assessing Officer has no power to alter the balance sheet. The assessee had made provisions for bad and doubtful debts, which has been reduced from the sundry debtors in the balance sheet. It is diminution of the value of assets of the company. He also relied on the judgment of ITAT, Delhi Bench in ITA No. 4800/Del./2011 for the assessment year 2007-08 in the case of Flex Foods Ltd. vs. DCIT.

4. On the other hand, the ld. DR relied on the orders of the authorities below.

5. After hearing both the sides and perusing the materials available on record, we find that the assessee company is a public limited company and he has prepared the balance sheet as per Companies Act. In the balance sheet schedule-8, the assessee has provided provision for doubtful debts for Rs.45.42 lacs which has been reduced from the debtors. The balance sheet of the company has been approved in the annual general meeting and it has been filed with the Registrar of companies also. This issue involved in assessee's case is squarely covered in favour of the assessee by the decision of coordinate Bench of ITAT, Delhi (supra) wherein, the issue has been decided as under :

"11. We have considered both the parties and have perused the record. As far as Ld. CIT(DR)'s plea that ground (f) raised by the assessee is an additional ground, we do not find any substance in the same because the AO has specifically noted in para 5 of

his order that though in the computation of income under the normal provisions of Act the assessee itself had added the impugned amount in the computation of income but the same had not been added in the computation of book profit u/s 115JB . The assessee's claim was denied by AO by making the addition of Rs. 40,47,232/- to the book profit, as computed by assessee. Therefore, it cannot be said that assessee now is raising some new issues. The claim was rejected by the AO and the asstt. order was also confirmed by the Ld. CIT(A).

12. On merits Ld. Counsel has relied on the decision of Hon'ble Karnataka High Court in the case of CIT vs. Yokogawa India Ltd. (supra). It is true that the ground raised before Hon'ble High Court was with reference to Explanation (c) to section 115JB(2) but when the revenue's plea with reference to clause (c) was not found acceptable to court then revenue also referred to clause (i) to the Explanation which had come into effect from 1.4.2001. The submissions advanced by Ld. Counsel for the Revenue are reproduced hereunder :

"7. The learned counsel for the Revenue submitted that Clause (i) stands added to the said Explanation which has come into effect from 1.4.2001 and therefore as the said amounts are set aside as provision for diminishing in the value of assets by virtue of retrospective operation, the said amounts have to be added only to arrive at the book profit and therefore the order passed by the Tribunal is illegal and requires to be set aside. In that context, he also relied on the judgment of the Apex Court in the case of Vijaya Bank vs CIT (2010) 323 ITR 166 / 190 Taxman 257 and CIT vs. HCL. Comnet Systems & Services Ltd. (2008) 305 ITR 409 / 174 Taxman 118. After referring to items-

(a) to (f) as provided in the Explanation it was held that even doubtful debts can be added back to the net profit if Item (c) stands attracted. Item (c) deals with amounts set aside as provisions made for meeting the liabilities, other than ascertained liabilities. The assessee's case would, therefore, fall within the ambit of Item (c) only if the amount is set aside as provision, the provision is made for meeting a liability and the provision should be for other than ascertained liability, that is, it should be for unascertained liability. In other words, all the ingredients should be satisfied to attract Item (c) of Explanation to Section 115JA. It was further held that there are two types of debt. A debt is payable by the assessee is different from a debt receivable by the assessee. A debt is payable by the assessee where the assessee has to pay the amount to others whereas the debt receivable by the assessee is an amount which the assessee has to receive from others. In the present case the debt under consideration is debt receivable by the assessee. The provision for bad and doubtful debt, therefore, is made to cover up probably the diminution in the value of assets that is debt which is an amount receivable by the assessee. Therefore, such a provision cannot be said to be a provision for liability, because even if a debt is not recoverable no liability could be fastened upon the assessee."

“ After considering the aforementioned arguments Hon’ble High Court in para 8 observed as under :-

“8. In the present case, the debt is an amount receivable by the assessee and not any liability payable by the assessee and, therefore, any provision made towards irrecoverability of the debt cannot be said to be a provision for liability. Therefore, it was held that Item (c) of the Explanation is not attracted to the facts of the case. Item (c) in Section 115JA and 115JB(1) are identical. In order to attract the Explanation the debt which is doubtful or bad should satisfy the requirement contemplated in Item (c) of the Explanation. It is the amount or amounts set aside, as provisions made for meeting the liability other than the ascertained liabilities. In the instant case also the bad and doubtful debt for which a provision is made which is in the nature of diminution in the value of any asset would not fall within item (c) of Explanation (i). It is in that context the appellate Commissioner as well as the Tribunal has granted relief to the assessee. Realising the fatality of the said argument, it is contended now that item (i) cannot amount to satisfaction as provision for diminishing in the value of assets is substituted, in case of the assessee falls under Item (c). In meeting the aforesaid case, the learned counsel for the assessee brought to our notice the judgment of the Apex Court in the case of *Vijaya Bank vs. CIT* (supra) where the Apex Court had an occasion to consider his explanation. It accepted the argument on behalf of the Revenue to the effect that the explanation makes it very clear that there is a dichotomy between actual write off on the one hand and provision for bad and doubtful debt on the other. A mere debit to the profit and loss account would constitute a bad and doubtful debt, but it could not constitute actual write off and that was the very reason why the explanation stood inserted. Prior to the Finance Act, 2001 many assesses used to take the benefit of deduction under section 36(1)(vii) of the 1961 Act by merely debiting the impugned bad debt to the profit and loss account and, therefore, the Parliament stepped in by way of Explanation to say that a mere reduction of profits by debiting the amount to the profit and loss account per se would not constitute actual write off. The Apex Court accepted the said legal position. However it was clarified that besides debiting the profit and loss account and creating a provision for bad and doubtful debt, the assessee correspondingly /simultaneously obliterated the said provision from its accounts by reducing the corresponding amount from loans and advances/debtors on the assets side of the balance sheet and consequentially, at the end of the year, the figure in the loans and advances or the debtors on the assets side of the balance sheet was shown as net of the provision for the impugned bad debt. Then the said amount representing bad debt or doubtful debt cannot be added in order to compute book profit. Therefore, after the Explanation the assessee is now required not only to debit the profit and loss account but simultaneously also reduce the loans and advances or the debtors from the assets side of the balance sheet to the extent of the corresponding amount so that, at the end of the year, the amount of loans and advances/debtors is shown as net of the provisions for the impugned bad debt. Therefore, in the first place if the bad debt or doubtful debt is reduced from the loans and advances or the debtors

from the assets side of the balance sheet the Explanation to Section 115JA or JB is not at all attracted. In that context even if amendment which is made retrospective the benefit given by the Tribunal and the appellate Commissioner to the assessee is in no way affected. In that view of the matter, we do not see any merit in this appeal.”

13. *Therefore, it cannot be said that the judgment rendered by Hon’ble Karnataka High Court was only after consideration of Item (c) of Explanation to section 115JA and not after considering item (i) of Explanation to section 115JB. Hon’ble High Court has held that the Explanation per se to sections 115JA or 115JB(1) is not attracted where the amount has been written off in the books of account as per the decision of Hon’ble Apex Court in the case of Vijaya Bank vs. CIT (supra). It is not disputed that in the present case provision for bad debt has been reduced from sundry debtors from the asset side of the balance sheet and, consequently, the debtors from the asset side on the balance sheet was shown at net of provision for the impugned bad debts. This is in conformity with the decision of Hon’ble Apex Court in the case of Vijaya Bank v. CIT (supra). Therefore, respectfully following the decision of Hon’ble Karnataka High Court ground No. (e) and (f) raised by the assessee are allowed.”*

Respectfully following the above decision of coordinate Bench, the appeal filed by the assessee deserves to be allowed.

6. In the result, the appeal is allowed.

Order pronounced in the open court on 06.09.2017.

Sd/-
(H.S. Sidhu)
Judicial member

Sd/-
(L.P. Sahu)
Accountant Member

Dated: 06.09.2017

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Copy of order forwarded to:

(1) The appellant	(2) The respondent
(3) Commissioner	(4) CIT(A)
(5) Departmental Representative	(6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi