

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**KOLKATA BENCH 'B', KOLKATA**

**(Before Shri P. M. Jagtap, A.M. & Shri S.S. Viswanethra Ravi, J.M.)**

**ITA No. 575/Kol/2014 : Assessment Year: 2010-11**

DCIT, CEN-CIR-XI, Kolkata Aayakar Bhawan Poorva 110, Shanti Pally, 3 <sup>rd</sup> Floor Kolkata	Vs	M/s. Plylam Enterprises Pvt. Ltd. 32, Ezra Street, 9 <sup>th</sup> Floor Kolkata  <b>PAN: AABCP2249L</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

**Revenue by : None**

**Assessee by : Shri Ashok Kumar Tulsyan, FCA**

<b>Date of Hearing : 22.06.2017</b>	<b>Date of Pronouncement : 22.06.2017</b>
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**ORDER**

**Shri P.M.Jagtap, A.M.**

This appeal is preferred by the revenue against the order of Ld. CIT(A), Central Circle XI dated 31.01.2014 whereby he deleted the disallowance of Rs. 54,86,928/- made by the AO on account of assessee's claim for bad debts written off.

2. The assessee in the present case is a company which is engaged in the business of trading of plywood. The return of income for the year under consideration was filed by it on 24.08.2010 declaring a total income of Rs. 20,686/-. In the profit & loss account filed along with the said return, a sum of

Rs. 54,86,928/- was debited by the assessee on account of bad debts written off. During the course of assessment proceeding, the claim of the assessee for deduction on account of bad debts written off was examined by the AO. In this regard, he required the assessee to furnish the details of the concerned 18 debtors treated by it as bad and made enquiry at the addresses given by the assessee of such debtors through DIT (Inv.), Guwahati. The result of the said enquiry created doubts about the identity of the concerned debtors as well as the genuineness of the relevant transactions. When the said results were confronted by the AO to the assessee, the later could not offer any satisfactory explanation. The AO therefore, disallowed the claim of the assessee for deduction on account of bad debts written off in the assessment completed under section 143(3) vide an order dated 28.03.2013.

3. Against the order passed under section 143(3), an appeal was preferred by the assessee before the Ld. CIT(A) challenging the disallowance made by the AO on account of its claim for bad debts written off and after considering the submissions made by the assessee as well as the material available on record, the Ld. CIT(A) deleted the said disallowance for the following reasons given in para No. 5 and 6 of his impugned order:

*5. I have perused the assessment order. I have also considered the submissions of the assessee and the judicial decisions placed on record. I find from the assessment order that the AO has disallowed the claim of bad debt on the ground that the assessee failed to establish the identity of the creditors and the*

*genuineness of the transactions. The finding of the AO is based on the report of the DDIT (Inv) whose Inspector could not locate the creditors at the given addresses. I also find from the assessment order that the assessee had explained at the assessment stage that the claim of bad debt was related to the sales of Rs. 24,87,438/- and Rs. 1,03,875/- made to the 18 sundry creditors in the financial years 2005-06 and 2008-09 and the interest of Rs. 28,95,615/- charged from such creditors in the financial year 2008-09. The assessee also furnished party-wise detail of sales that were made to the 18 sundry creditors in the financial years 2005-06 and 2008-09; and, party-wise detail of interest charged from such creditors in the financial year 2008-09 which has been summarised by the AO in his assessment order as under:*

Sl No	Sundry Debtors	Sales in FY 2005-06	Sales in FY 2008-09	Interest for FY 2008-09	Total written off
1	Achai Jamikhan	172065		214187	386252
2	Anai Wangsa	77519		221107	298626
3	C Chinyak Konyak		103875	69031	172906
4	C P Konyak	1842784		191675	375949
5	C Yonglong Konyak			54415	54415
6	Kamphai Konyak	170633		167087	337720
7	L Chingki Konyak	189885		157493	347378
8	M Chinyak Konyak	168407		149801	318208
9	M Tingmeth Konyak	149594		126333	275927
10	P Chingming Konyak	94605		108507	203112
11	P Khampai Konyak	100168		223678	323846
12	P Lotha	195470		190449	385919
13	P R Chama	213207		203808	417015
14	Pingaie Konyak	195688		180473	376161
15	S I Jamir	193586		208497	402083
16	Tangasu Konyak	201408		208334	409742
17	T Songmai Konyak			9847	9847
18	Yangnai Konyak	180929		210893	391822
	Total	2487438	103875	2895615	5486928

6. The above detail furnished by the assessee in course of the assessment proceedings clearly show that the bad debt of Rs. 54,86,928/- relates to the sales of Rs. 24,87,438/- and Rs. 1,03,875/- made to the sundry creditors in the financial years 2005-06 and 2008-09 and the interest of Rs. 28,95,615/- charged from such creditors in the financial year 2008-09. The AO has not disputed that the sales of Rs. 24,87,438/- and Rs. 1,03,875/- were duly credited by the assessee in its profit and loss account for the relevant assessment years 2006-07 and 2009-10. The AO has also not disputed that the interest of Rs. 28,95,615/- was duly credited by the assessee in its profit and loss account for the relevant assessment year 2009-10. It is thus clear that the bad debt had been taken into account in computing the income of the assessee for the relevant previous year or for an earlier previous year. Also, it is not in dispute that the assessee has written off the bad debt of Rs. 54,86,928/- in its books of account for the assessment year 2010-11. In other words, the bad debt has been written off in the books of account of the previous year 2009-10 and that such bad debt was taken into account in computing the income of the assessee for the previous years 2005-06 and 2008-09. In this factual background, I find merit in the contention of the assessee that the claim of bad debt is allowable as business expenditure. The provisions of section 36(1)(vii) was amended by the Direct Tax Laws (Amendment) Act, 1987 with effect from 01.04.1989 whereby the requirement of establishing the bad debt has been done away with. It is a settled legal position that in order to claim bad debt under section 36(1)(vii), the assessee is required to satisfy two conditions: first, that the bad debt should be written off in the books of account of the relevant previous year; and, secondly, that such bad debt should have been taken into account in computing the income of the assessee for the said previous year or for an earlier previous year. In the present case, both the above conditions are satisfied in as much as the bad debt has been written off in the books of account of the previous year 2009-10 and that such bad debt was taken into account in computing the income of the assessee for the previous years 2005-06 and 2008-09. I therefore agree with the assessee that its claim of bad debt is allowable as business expenditure. The judicial decisions and the CBDT Circular 551 dated 23.01.1990 also support the contentions of the assessee. The AO has disallowed the claim of bad debt for reasons which are not relevant for deciding the allowability of the same. The DDIT (Inv) has simply stated in his report that his Inspector could not locate the creditors due to incomplete address or insufficient personal details which does not imply that the creditors were bogus or that they did not exist when the

*assessee had entered into transactions with them. Once the assessee had duly credited the sales made to the creditors or the interest charged from them in its profit and loss account for the relevant year or years, the claim of bad debt could not be lawfully disallowed by the AO on the ground that such creditors could not be subsequently located by the DDIT (Inv). The Ld AR has placed on record the audited accounts of the assessee for the subsequent assessment year 2011-12 wherein the assessee had made similar claim of bad debt amounting to Rs. 9.76,75,618/- and also the assessment order for such year passed u/s 143(3) by the same AO. I find from such material placed on record that the AO has accepted the claim of bad debt as made by the assessee. In the present appeal, I find that the assessee has clearly fulfilled the two requirements as prescribed under section 36(1)(vii) and 36(2): first that the bad debt should be written off in the books of account of the relevant previous years; and, secondly, that such bad debt should have been taken into account in computing the income of the assessee for the said previous year or for an earlier previous year. And consequently, the claim of bad debt as made by the assessee is allowable as business expenditure. The addition of Rs. 54,86,928/- is deleted. Ground no 1 is allowed."*

4. Aggrieved by the order of the Ld. CIT(A), the revenue has preferred this appeal before the Tribunal on the following grounds:

*i. That the fact and in the circumstances of the case, the Ld. CIT(Appeals) has erred in law as well as in fact in admitting additional evidence in violation of provisions of Rule 46A of the I.T. Rule, 196.*

*ii. That on the facts and in the circumstances of the case, the order of the Ld. CIT(Appeals) be vacated and the order of the Assessing Officer be restored.*

*iii. That the appellant craves leave to add, alter/or amend any of the grounds of appeal during the course of hearing.*

5. At the time of hearing fixed today, the Ld. DR has sought adjournment. However, keeping in view that the solitary issue involved in this appeal of the revenue is squarely covered by the decision of the Hon'ble Supreme Court in the case of TRF

Ltd. vs CIT (Civil Appeal No. 5392 of 2003), the request of the Ld. DR for adjournment is rejected and this appeal of the revenue is being disposed after hearing of the arguments of the learned counsel for the assessee and perusing the relevant material on record.

6. It is observed that the claim of the assessee for bad debts written off was disallowed by the AO mainly on the ground that there was failure on the part of the assessee to establish the genuineness of the concerned debtors as well as the fact that the said debts had actually become bad during the year under consideration. As held by the Hon'ble Supreme in the case of Court TRF Ltd. (supra), the legal position relating to the allowability of bad debts written off has changed after the amendment made by the Direct Taxes laws (Amendment) Act, 1987 in section 36(1)(vii) with effect from 01.04.1989 and it is no more necessary for the assessee to establish that the debt, in fact, has become irrecoverable. As further held by the Hon'ble Supreme Court, it is enough if the bad debt is written off as irrecoverable in the accounts of the assessee. As per the amended provisions of section 36(1)(vii), the claim of the assessee for bad debt written off is also subject to the provisions of sub-section (2) which provides that no such deduction shall be allowed unless such debt or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debts or part thereof is written or of an earlier previous year. There are thus two conditions that are

to be satisfied by the assessee in order to claim deduction on account of bad debts written off with effect from 01.04.1989 and since both these conditions were duly satisfied by the assessee in the present case as specifically found by the Ld. CIT, we find no infirmity in his impugned order allowing the claim of the assessee for bad debts written off. Moreover, the limited issue as specifically raised by the revenue in the grounds raised in the present appeal is that the Ld. CIT(A) has admitted an additional evidence to allow the relief to the assessee in violation of provisions of Rule 46A of the Income Tax Rules, 1962. However, as pointed out by the learned counsel for the assessee no additional evidence at all was filed by the assessee in support of its case during the course of appellate proceedings before the Ld. CIT(A) and this position is clearly evident from the impugned order of the Ld. CIT(A) in as much as there is no discussion or even reference to any additional evidence filed by the assessee. We, therefore, find no merit in this appeal of the revenue and dismiss the appeal.

**7. In the result, the appeal of the revenue is dismissed.**

Order Pronounced in the Open Court on 22<sup>nd</sup> June, 2017

Sd/-  
(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

Sd/-  
(P.M.Jagtap)  
ACCOUNTANT MEMBER

**Dated: 22/06/2017**

**Copy of order forwarded to:**

- 1 M/s. Plylam Enterprises Pvt. Ltd. 32, Ezra Street, 9<sup>th</sup> Floor, Kolkata - 700001
- 2 DCIT, CEN-CIR-XI, Aayakar Bhawan Poorva, 110, Shanti Pally, 3<sup>rd</sup> Floor, Kolkata - 700107
- 3 The CIT(A),
- 4 The CIT
- 5 DR

True Copy,

By order,

Sr. P.S. / H.O.O.  
ITAT, Kolkata