

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F' NEW DELHI

BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 2898/Del/2014  
AY: 2002-03

DCIT,  
Circle-15(1),  
C.R. Building,  
New Delhi.

vs

Rama Vision Ltd.,  
Rama House 23,  
Najafgarh Road Indl. Area,  
Shivaji Marg, New Delhi-110015  
(PAN: AAACA0221R)

(Appellant)

(Respondent)

Assessee by: None  
Department by: Shri Atiq Ahmad, Sr. DR

Date of hearing: 27.07.2017  
Date of pronouncement: 25.10.2017

ORDER

**PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

This appeal has been preferred by the Department against the order dated 28/02/2014 passed by the Ld. CIT (Appeals) – XVIII, New Delhi wherein the Ld. CIT (Appeals) has deleted the penalty of Rs. 73,92,600/- imposed under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter called “the Act”) for assessment year 2002–03.

2. The brief facts of the case are that the assessee had filed return of income declaring loss of Rs. 99,94,040/- against which assessment under section 143 (3) of the Act was completed at an income of nil

after setting off of brought forward losses of Rs. 3,45,39,589/-. The additions included an amount of Rs. 2,07,07,549/- being disallowance of bad debts for which penalty proceedings under section 271 (1)(c) of the Act were also initiated for making wrong and incorrect claim. The assessee had made a claim of bad debts amounting to Rs. 2,26,88,162/- in the profit and loss account. The AO noticed that out of the opening balances of debtors, part of the payments were received during the year, part amount was claimed as bad debts and the balance amount had been carried forward to subsequent years. The assessee was asked to justify its claim of part amount which was considered as bad debts. It was the assessee's contention before the AO that the assessee company had become sick due to decrease in demand of black-and-white televisions in the market which had adversely affected the sales of the company product i.e. black-and-white picture tubes. It was further submitted before the AO that the assessee company had duly written off these amounts as bad debts and there was no scope for the AO to disbelieve the claim of the assessee unless there was some cogent evidence or material that the amount so claimed as bad debt was actually recovered/received by

the assessee prior to its debit to the profit and loss account. However, as per the AO, the claim of the assessee remained unsubstantiated. The AO proceeded to disallow an amount of Rs. 2,07,07,549/- and added the same to the income of the company. Subsequently, penalty of Rs. 73,92,600/- was imposed under section 271 (1) (c) of the Act on this amount. On appeal by the assessee, the Ld. CIT (Appeals) deleted the penalty and now the Department has approached the ITAT and has challenged the action of the AO in deleting the penalty.

3. None was present for the assessee. It is seen from entries in the order sheet that the case was earlier fixed for hearing for 16<sup>th</sup> January 2017, 5<sup>th</sup> April 2017 and 19<sup>th</sup> of June 2017. The Department was directed to ensure service of notice to the assessee which is on record and, therefore, we proceed to hear the appeal of the Department *ex parte qua* the assessee.

4. The Ld. Departmental Representative read out extensively from the assessment order and submitted that in view of the detailed observations of the AO that the assessee had claimed certain amounts as bad debts from running accounts wherein part payments had been

received during the year and part amounts had been claimed as bad debts and balance amounts had been carried forward to subsequent years, the claim that the amounts written off had become bad debts was unsubstantiated. It was submitted that the assessee's appeal on the quantum addition had been dismissed by the Ld. CIT (Appeals) also and therefore the facts warranted the imposition of penalty under section 271 (1) (c) of the Act.

5. We have heard the Ld. Senior DR and have also perused the records. The facts are undisputed. The penalty has been imposed because as per the AO, the assessee's claim for bad debts was not tenable as it had written off part of the debts brought forward and had carried forward part of the debts to the next year. The AO has also noted that some payments had been received by the assessee from the debtors whose balances were partially written off during the year under consideration. The AO has relied on the judgments of the Hon'ble Apex Court in the case of *Bank of Bihar versus CIT* reported in 45 ITR 427 and *Travancore Tee Estate Company Limited* reported in 233 ITR 2003 for the proposition that whether a debt is bad is a question of fact and there should be some evidence to justify the

conclusion. The AO has noted that the assessee had failed to substantiate that the fact and circumstances which could prove that amounts of Rs. 2,07,07,549/- had become bad was an honest judgment on the part of the assessee at the time when it was written off. The AO has further noted that the assessee had deliberately and willfully made wrong claim of bad debts to reduce its tax liability as the assessee had not been able to give any cogent, bona fide, justifiable, reasonable or logical reason to arrive at the figure of bad debt. The AO has proceeded to impose the impugned penalty for furnishing inaccurate particulars.

5.1 However, it is seen that the AO has not indicated in the penalty order as to how the disallowance made on account of bad debts tantamounted to furnishing of inaccurate particulars. The only ground on which the AO has imposed penalty is that the assessee could not substantiate with cogent evidence that the debts had actually become bad. As per the AO, mere writing off of the debts as bad was not enough for the purpose of section 36 (vii) of the Act. Apparently, the AO has failed to consider the amendment to section 36 in 1989. Now it is well settled that to claim the amount as bad

debts, it must be claimed by the assessee by debiting to the profit and loss account and there is no scope for the AO to disbelieve the claim of the assessee unless it is proved by the AO otherwise with some cogent evidence or material that the amount so claimed as bad debt was actually recovered/received by the company prior to its debit to the profit and loss account.

5.2 The Hon'ble Delhi High Court in the case of CIT *versus* Global Capital Limited reported in 306 ITR 332 has opined that post amendment the assessee is not required to establish that the concerned debt has actually become bad in the relevant year for the purpose of claiming deduction and the only requirement for claiming deduction is that the assessee has to write off the relevant debt in the books treating it as bad. The Hon'ble Apex Court in the case of TRF Ltd *versus* CIT reported in 190 taxman 391 (SC) held as follows:

*“This position in law is well settled. After 01/04/1989, 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.”*

5.3 It is undisputed that the debts had been written off by the assessee. There is only a difference of opinion between the assessee

and the AO as to whether the write off was permissible or not. The assessee has taken a legally acceptable stand and the AO has not brought any adverse evidence on record to establish that the debts had actually not become bad. The AO has only drawn inference from running accounts of the debtors that given the circumstances, the debts could not have become bad. However, this is not permissible under the amended provision of section 36(vii). Moreover, it is not a case of dispute in quantum of disallowance but a dispute relating to the sustenance of penalty. The AO has imposed penalty for furnishing inaccurate particulars. In the instant case, it cannot be said that the assessee had withheld any relevant information regarding bad debts written off from the AO. With regard to the provisions of section 271(1) (c) of the Act pertaining to penalty, the Hon'ble Apex court has laid down that making of a claim by the assessee which is not sustainable will not amount to furnishing inaccurate particulars. In the case of CIT *versus* Reliance Petroproducts (P) Ltd reported in 322 ITR 158 (SC), the Hon'ble Apex Court held as follows –

*“A glance at this provision would suggest that in order to be covered, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his*

*income. The present is not a case of concealment of income. That is not the case of the revenue either. However, the Ld. counsel for the revenue suggested that by making inaccurate claim for the expenditure on interest, the assessee has furnished inaccurate particulars of the income. As per Law Lexicon, the meaning of the word "particular" is a detail or details (in plural sense); the details of a claim, or the separate items of an account. Therefore, the word "particulars" used in the section 271 (1) (c) would embrace the meaning of the details of the claim made. It is an admitted position in the present case that no information given in the return was found to be incorrect or inaccurate. It is not as if any statement made or any detail supplied was found to be factually incorrect. Hence, at least, prima facie, the assessee cannot be held guilty of furnishing inaccurate particulars. The Ld. counsel argued that "submitting an incorrect claim in law for the expenditure on interest would amount to giving inaccurate particulars of such income". We do not think that such can be the interpretation of the concerned words. The words are plain and simple. In order to expose the assessee to the penalty unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By any stretch of imagination, making an incorrect claim in law cannot tantamount to furnishing inaccurate particulars. In CIT versus Atul Mohan Bindal (2009) 9 SCC 589, where this court was considering the same provision, the court observed that the assessing officer has to be satisfied that a person has concealed the particulars of his income or furnished inaccurate particulars of such income. This court referred to another decision of this court in Union of India versus Dharamendra Textile Processors (2008) 13 SCC 369 as also, the decision in Union of India versus Rajasthan Spg. & Wvg. Mills (2009) 13 SCC 448 and reiterated in paragraph 13 that (page 13 of 317 ITR):*

*"13. It goes without saying that for applicability of section 271 (1) (c), conditions stated therein must exist."*

5.4 Thus, in view of the facts of the case and the settled legal position, we find no reason to interfere with the order of the Ld. Commissioner of Income Tax (Appeals) deleting the penalty.

I.T.A. 2898/Del/2014  
Assessment Year 2002-03

6. In the final result the appeal of the Department stands dismissed.

Order pronounced in the Open Court on 25<sup>th</sup> October , 2017.

*Sd/-*

(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

DT. 25<sup>th</sup> October , 2017  
'GS'

*Sd/-*

(SUDHANSHU SRIVASTAVA)  
JUDICIAL MEMBER

Copy forwarded to:-

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By Order

Asstt. Registrar