

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH : KOLKATA

[Before Hon’ble Shri Aby. T. Varkey, JM & Shri M.Balaganesh, AM]

I.T.A No. 2110/Kol/2016

Assessment Year : 2012-13

Zen Industrial Services Ltd.
[PAN: AAACZ 1829 R]
(Appellant)

-vs-

DCIT, Circle-5(1), Kolkata
(Respondent)

For the Appellant : Shri Sanjoy Bhattacharya, FCA

For the Respondent : Shri Sallong Yaden, Addl. CIT

Date of Hearing : 13.02.2018

Date of Pronouncement : 19.02.2018

ORDER

Per M.Balaganesh, AM

1. . This appeal by the Assessee arises out of the order of the Learned Commissioner of Income Tax(Appeals)-2, Kolkata [in short the Id CIT(A)] in Appeal No.304/CIT(A)-2/15-16 dated 05.09.2016 against the order passed by the DCIT, Circle-5(1), Kolkata [in short the Id AO] under section 143(3) of the Income Tax Act, 1961 (in short “the Act”) dated 20.03.2015 for the Assessment Year 2012-13.

2. The only issue to be decided in this appeal is as to whether the Ld. CIT(A) was justified in upholding the disallowance of write off of outstanding loan and interest aggregating to Rs. 56,94,685/-, in the facts and circumstances of the case. The interconnected issue is as to whether the Ld. CIT(A) was justified in upholding the treatment of interest income earned during the year in the sum of Rs. 9,02,612/- as income from other sources instead of business income in the facts and circumstances of the case.

3. The brief facts of this issue is that the assessee is a limited company having its shares quoted in recognized stock exchange. The Id. AO observed that the assessee is engaged in the business of investment and general merchant and commission agency. The assessee pleaded that it is also engaged in the business of money lending by granting loans to several parties with or without interest, out of own funds as well as borrowed funds. The assessee wrote off of the sum of Rs. 56,94,685/- as bad debt in its profit and loss account comprising of principal portion of Rs. 20 lacs and interest outstanding of Rs. 36,94,685/- and claimed the same as deduction u/s 36(1)(vii) of the Act. Admittedly the assessee had offered the interest income of Rs. 36,94,685/- in respect of loan given to Mr. Umesh Jatia, 4, MIDC, Bosani Industrial Estate, Pune-411026 from 31.03.1999 to 31.03.2011. The loan was given to Mr. Umesh Jatia during the financial year 1998-99 in the sum of Rs. 20 lacs and interest thereon was offered by the assessee under the head income from business commencing from assessment year 1999-2000 till assessment year 2011-12 on accrual basis. This interest income was assessed as such by the Id. AO under the head income from the business for all the years. Out of these years, it is evident from the chart mentioned in page 7 of the paper book that assessment for the assessment year 2007-08 was completed u/s 143(3) of the Act. The Id. AO observed that the assessee is not engaged in the business of money lending and is not a non-banking finance company and accordingly he held that the assessee had not proved the fact that the debt has become bad. He also held that the loan given to Umesh Jatia was not incidental to the business of the assessee and accordingly held that the conditions prescribed in section 36(1)(vii) of the Act were not satisfied by the assessee. The assessee replied that for the financial year 2011-12 relevant to assessment year 2012-13, the assessee had indeed given fresh loans to several parties to the tune of Rs. 1,86,29,850/-. The opening balance of loans receivable by the assessee from 8 parties was Rs. 1,15,10,793/-. The fresh loans given during the year under appeal to three parties were Rs. 1,86,29,850/-. The loans repaid by various parties during the year were Rs. 2,28,18,599/- thereby levying a closing balance of Rs. 7,70,044/-. Apart from this,

the assessee had also given advances to Mr. R.K.Dixit in the ordinary course of business amounting to Rs. 12,65,000/- in the earlier years which was lying as outstanding as on 31.03.2012. The assessee pleaded that it has received interest from most of the parties to whom loans were given at the interest rate of 12%, 13%, 15%, as the case may be, and offered the said interest income under the head income from business consistently in the past and which has been accepted by the Department and assessed as such under the head income from business. The Id. AO however did not accept this contention and proceeded to disallow the entire write off of bad debts of Rs. 56,94,685/- in the assessment. This action of the Id. AO was upheld by the Ld. CIT(A). Aggrieved the assessee is in appeal before us on the following grounds:

- 1. That the learned Commissioner of Income Tax (Appeals) failed to appreciate that the appellant had also been carrying on the business of lending monies on interest and thus he erred in dismissing the appellant's grounds of appeal relating to the deduction allowable for Writing off of bad debts in the form of Outstanding Loan and Interest aggregating to Rs. 56,94,685/-.*
- 2. That without prejudice to the contention raised in Ground No. 1 above, the learned Commissioner of Income Tax(Appeals) was wrong in not directing the Assessing Officer to allow deduction for the Written Off interest of Rs. 36,94,685/- which had earlier been included as income in the hands of the appellant.*
- 3. That the learned Commissioner of Income Tax (Appeals) was wrong in rejecting the appellant's submission that the year's Interest income of Rs. 9,02,612/- should have been assessed as the appellant's business income in stead of including the same under the head 'Income from Other Sources'.*
- 4. That the appellant craves leave to add, alter or withdraw any ground or grounds of appeal before or at the time of Hearing of the Appeal.*

4. We have heard the rival submissions and perused the materials available on record. At the outset, we find that the Id. AO had observed that the assessee is not engaged in

the money lending business. But on perusal of the financial statements of the assessee, it is revealed that the assessee had given substantial part of its funds for the purpose of lending and had actually received interest from most of the parties. From the perusal of the details furnished in page 5 of the paper book, it is seen that the assessee during the year had advanced loans to three parties to the tune of Rs. 1,86,29,850/- and the assessee also received interest thereon. The assessee has been consistently offered interest income on various loans given to various parties under the head income from business. The assessee has been advancing loans to various parties in the regular course of carrying on its business in addition to carrying on investment, general merchant and commission agency business. From the bare perusal of the balance sheet, it is evident that, more funds have been deployed by the assessee for lending activity than the amounts deployed for dealing in shares and other activities. This fact by itself goes to prove that the assessee was indeed engaged in business of money lending. It is not in dispute that the assessee had actually offered the interest income from Mr. Umesh Jatia on accrual basis in the earlier years amounting to Rs. 36,94,685/- commencing from assessment year 1999-2000 to assessment year 2011-12. This interest income apart from interest on loans from other parties were offered to tax by the assessee under the head income from business and assessed as such by the Department. From the perusal of the balance sheet, it is also seen that the assessee had made huge borrowings and it is quite evident that the borrowed funds were also utilized for the purpose of lending. Hence, it could be safely concluded that the assessee had carried out money lending activities out of own funds as well as borrowed funds. Since the interest income has been offered to tax in the earlier years by the assessee under the head income from business, the requirement of provision of section 36(2) has been duly complied with by the assessee and hence the write off of the same is squarely allowable as deduction u/s 36(1)(vii) of the Act as bad debt. We also find that the principal portion of Rs. 20 lacs loan to Mr. Umesh Jatia was given by the assessee company in the normal course of money lending and hence the write off of the same as irrecoverable in the books of

accounts of the assessee would be sufficient compliance of the condition prescribed in section 36(2) of the Act. For the sake of convenience, the provisions of section 36(2) clause (i) is reproduced hereunder:

Section 36- Other deductions

(2) in making any deduction for a bad debt or part thereof, the following provision was applied-

i) 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 debt or part thereof is written off or of an earlier previous year, or represents money lent in the ordinary course of business of banking or money lending which is carried on by the assessee;.....”

For the purpose of section 36(1)(vii), the assessee had duly written off both the principal portion as well as the interest portion as irrecoverable in its books of accounts. Hence, by placing reliance on the decision of Hon’ble Supreme Court in the case of TRF Limited vs. CIT reported in 323 ITR 397 (SC), we hold that the assessee had indeed satisfied the conditions prescribed in Section 36(1)(vii) read with Section 36(2) of the Act. The assessee had even passed Board Resolution wherein it was decided that no part of the said amount of interest receivable or the principal portion of loan could be realized by the assessee company from Mr. Umesh Jatia and accordingly it was resolved to write off the entire balance outstanding in the name of Mr. Umesh Jatia as bad debt in the books of accounts of the assessee company for the year under appeal. After the decision of Hon’ble Supreme Court in the case of TRF Limited (supra) and after the amendment brought with effect from 01.04.1989 in section 36(1)(vii) of the Act, the assessee need not establish that the debt has become bad. We hold that the lending of money to Mr. Umesh Jatia had been done in the ordinary course of business and since substantial part of the funds were deployed for the lending activity, we hold

that the assessee company is engaged in the business of money lending. The Id. DR argued that the assessee company is not a non-banking finance company and lending is not part of its business. He also drew our attention to page 5 of the paper book filed by the assessee wherein in respect of certain parties, the assessee has not charged any interest which is unusual of a money lender. Accordingly, he pleaded that the assessee cannot be construed as a money lender. In this regard, we find that what is to be seen is whether lending activity was carried on by the assessee in the normal course of its business. It is prerogative of the assessee to charge or not to be charge interest on certain loans. Anyway in case if the revenue alleges that the interest from loan given to certain parties were not for the purpose of business of the assessee, then the law provides alternative remedy of proceeding against the assessee u/s 36(1)(iii) of the Act by resorting to disallowance of interest. Admittedly it is not done so in the instant case. This action of the Id. AO itself goes to prove that he accepted the lending activity as part of the business of the assessee, wherein the interest paid has been allowed as business expenditure by the Id. AO.

5. We find that the Id. AO all along had been treating the business income only under the head income from business but strangely for the year under appeal, had classified the same as income from other sources. Since, we have already held that the lending activity has been carried out by the assessee only as part and parcel of its normal course of its business, the interest income offered thereon should be assessed only under the head income from business.

6. In view of the aforesaid fact and findings we hold that the write off of bad debt of Rs. 56,94,685/- would be squarely allowable as deduction u/s 36(1)(vii) read with Section 36(2) of the Act and the Id. AO is directed accordingly to grant the same. We also hold

that the interest income of Rs. 9,02,612/- accrued on loans need to be taxed only under the head income from business and not income from other sources. Accordingly grounds raised by the assessee are allowed.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the Court on 19.02.2018

Sd/-
[A.T. Varkey]
Judicial Member

Sd/-
[M.Balaganesh]
Accountant Member

Dated : 19.02.2018

SB, Sr. PS

Copy of the order forwarded to:

1. Zen Industrial Services Ltd., 3, Netaji Subhas Road, Kolkata-700001.
2. DCIT, Circle-5(1), Kolkata, Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-700069.
3. C.I.T(A)- , Kolkata
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary
Head of Office/D.D.O., ITAT, Kolkata Benches

