



ITA Nos.86 & 975/Mum/2015
Sanfield India Limited
Assessment Year-2011-12

आयकर अपीलीय अधिकरण “ई” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI

जोगिन्दर सिंह, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE SHRI JOGINDER SINGH, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./I.T.A. No.86/Mum/2015
(निर्धारण वर्ष / Assessment Year: 2011-12)

Sanfield India Limited 501, EVA Andheri CHS Plot No.10, V.P.Road Opp. S.V.Road, Near Shriram School Andheri(W), Mumbai-400 058	बनाम/ Vs.	Deputy Commissioner of Income Tax Circle-8(3) Room No.204, Aaykar Bhavan M.K.Road, Mumbai -400 020
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAACS-5832-P		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

&

आयकर अपील सं./I.T.A. No.975/Mum/2015
(निर्धारण वर्ष / Assessment Year: 2011-12)

Assistant Commissioner of Income Tax-11(1)(2) Room No.204, Aaykar Bhavan M.K.Road, Mumbai -400 020	बनाम/ Vs.	Sanfield India Limited 501, EVA Andheri CHS Plot No.10, V.P.Road Opp. S.V. Road, Near Shriram School Andheri(W), Mumbai-400 058
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAACS-5832-P		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Kapil K. Jain, Ld.AR
Revenue by	:	M.V.Rajguru, Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	10/05/2018
घोषणा की तारीख / Date of Pronouncement	:	16/05/2018



आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. These are cross appeals for Assessment Year [AY] 2011-12 which contest the order of the Ld. Commissioner of Income-Tax (Appeals)-18 [CIT(A)], Mumbai, *Appeal No.CIT(A)-18/IT-305/DC-8(3)/2013-14* dated 12/11/2014 on various grounds. The assessment for impugned AY was framed by *Ld. Deputy Commissioner of Income Tax -8(3), Mumbai [AO] u/s 143(3) of the Income Tax Act, 1961* on 21/01/2014 wherein the income of the assessee has been assessed at Rs.748.25 Lacs after certain adjustments / disallowances as against returned income of Rs.661.03 Lacs *e-filed* by the assessee on 30/09/2011. The effective grounds raised in assessee's appeal reads as hereunder: -

1. *On the facts and circumstances of the case the Learned Commissioner of Income-Tax (Appeals) is not justified in confirming the disallowance of a sum of Rs.3,72,142/- on account of mismatch of contractual receipts declared in Profit & Loss account vis-à-vis receipt appearing in 26 AS database, without appreciating the fact that the learned AO has made the addition without making an independent enquiry nor appreciating the submissions made by the Appellant during the course of assessment proceedings.*
2. *On the facts and circumstances of the case and Learned Commissioner of Income-Tax (Appeals) is not justified in confirming the disallowance of a sum of Rs.3,53,578/- which has been written off during the year and charged to profit & loss account as Bad debts by the Appellant Company. The learned AO and learned Commissioner of Income-Tax (Appeals) failed to appreciate the explanation and evidence filed during the course of assessment and appeal proceedings.*
3. *On the facts and circumstances of the case the Learned Commissioner of Income-Tax (Appeals) is not justified in confirming the disallowance of job charge expenses aggregating to a sum of Rs.6,36,643 under Section 40(a)(ia) of the Act.*

The effective grounds raise in revenue's appeal reads as hereunder: -

1. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of bad debts written off presuming that the amounts which were written off would have been included in the income of the assessee in earlier years.?*



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2. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of bad debt without appreciating that it has never been proved either during the assessment proceedings nor during the remand proceedings and therefore could not have been allowed to be written off.?"*
3. *Whether on the facts and in the circumstances of the case and in law, was the Ld. CIT(A) justified in deleting the addition of Rs. 20,00,000/- made on account of bad debts written off in the case of Century 21 Malls Ltd. without appreciating that only copy of ledger account of the parties were submitted during the appellate proceedings and no corroborating evidence in the nature of corresponding invoices, bills wise details of transaction, price difference and liquid damage to ascertain the correctness of the claim was submitted.?"*
4. *Whether on the facts and in the circumstances of the case and in law, was the Ld. CIT(A) justified in deleting the addition made on account of writing off of bad debts aggregating to Rs.53,59,736/- holding that these amounts were duly declared in the ledger account of the appellant company in earlier years, ignoring the fact that explanation with regard to the nature of opening balance as to whether the same represented sales booked in earlier years or some other transactions and details of invoices raised for the respective dates were not furnished either during the assessment proceedings or during the remand proceedings.?"*

2.1 Briefly stated, the assessee being *resident corporate assessee* engaged in *manufacturing of bearings / joints and trading of engineering & civil products* reflected turnover of Rs.58.02 crores in the impugned AY. The assessee has been saddled with following additions in quantum assessment, which are the subject matter of this appeal: -

No.	Nature of Addition	Amount (Rs.)
1.	<i>Mismatch in Form 26AS</i>	<i>3,72,142/-</i>
2.	<i>Disallowance of Bad Debts</i>	<i>77,13,314/-</i>
3.	<i>Disallowance u/s 40(a)(ia)</i>	<i>6,36,643/-</i>
	Total	87,22,099/-

2.2 Aggrieved, the assessee contested the same with partial success before Ld. first appellate authority vide impugned order dated 12/11/2014 where partial relief has been granted to the assessee to the extent of Rs.73.59 Lacs against disallowance of bad debts. The adjudication was done after due consideration of *remand report*



furnished by Ld. AO during appellate proceedings. Aggrieved, the assessee as well as the revenue is in further appeal before us.

3. The Ld. Authorized Representative for Assessee [AR], drawing our attention to the documents placed in the *paper-book*, assailed the additions as sustained by Ld. CIT(A) whereas Ld. DR, while contesting the arguments of Ld. AR, submitted that Ld. CIT(A) erred in providing relief to the assessee.

4. We have carefully heard the rival contentions and perused relevant material on record. We find the issues to be factual one and proceed to decide the same in the succeeding paragraphs. First we take up the grounds raised in assessee's appeal.

5.1 The addition on account of mismatch in *Form 26AS* amounting to Rs.3,72,142/- has been made for want of reconciliation between receipts as reflected in *Form 26AS* vis-à-vis professional receipts reflected by the assessee in the financial statements. As evident from *para-3* of the quantum assessment order, this addition has arisen on account of different between amount reflected by two entities namely *Century 21 Malls Private Limited & Real Time Properties Limited*. As evident from the ledger account of *Century 21 Malls Private Limited* as placed on record, it is observed that this entity is deducting *Tax at Source [TDS]* @2% from actual payment being made to the assessee from time to time and reflecting the same amount while filing its TDS return, which in turn, is being populated in *Form 26AS*. As against this, the assessee has accounted his turnover on accrual basis on the basis of invoices raised during the impugned AY, following mandatory mercantile system of accounting. The difference in accounting treatment, as aforesaid, has



given rise to the impugned difference. The perusal of summary of transactions undertaken by the assessee with this party, reveal that the assessee has invoiced gross amount of Rs.162.92 Lacs from AY 2010-11 to AY 2012-13 and accounted the same in those years in his books of accounts. Therefore, there being no leakage of revenue, the addition of Rs.92,142/- made against this party could not be sustained and therefore, the same stand deleted. So far as the balance addition of Rs.2.80 Lacs against *Real Time Properties Ltd.* is concerned, we find that the assessee has, all throughout, denied having undertaken any transaction with the aforesaid party. Nothing adverse is available on record. *Prima facie*, the arguments of Ld. AR carry strength. Therefore, on factual matrix, the matter stand remitted back to the file of Ld. AO to reconsider the same in the light of latest *Form 26AS* and also by calling necessary confirmation from the said party, if required. It is clarified that there being no adverse material on record, addition could not be made merely on the basis of *Form 26AS* since the entries reflected therein are not within the control of the assessee. Needless to add that if the said addition is deleted subsequently, the credit of corresponding *TDS* of Rs.5,600/- would not be available to the assessee. Ground Number 1 stands partly allowed.

5.2 Ground Number 2 is related with *Bad debts* claim of the assessee for Rs.3,53,578/- with respect to three parties as listed on *para-4.3* of the quantum assessment order. Upon perusal of material on record, it is found that the said amounts are actually not bad debts but *sales return / sales reversal / deduction / liquidated damages*. In that eventuality, the claim u/s 36(1)(vii) is not admissible. However, the claim of the assessee



u/s 37(1), if substantiated, would certainly be available to the assessee. Therefore, the matter stand remitted back to the file of Ld. AO to reconsider the claim of the assessee after appreciating the ledger accounts of the respective parties and after considering the available corroborative evidences in this regard. The assessee is directed to substantiate the same with requisite documentary evidences. Ground Number 2 stand allowed for statistical purposes.

5.3 The last ground is related with disallowance u/s 40(a)(ia) for Rs.6,36,643/- on account of non-deduction of tax at source against job work charges paid to seven parties as listed on *para 5.1* of the quantum assessment order. The prime argument of the Ld. AR is that lower authorities has erred in making the said disallowance since TDS was duly deducted against the aforesaid payment which is evidenced by the copies of respective TDS certificates in *Form 16A* as placed on record. Upon perusal of the same, we concur with the stand of Ld. AR in this regard since applicable TDS has already been deducted by the assessee against these payments and therefore, the addition was not justified. Hence, the same is deleted. Accordingly, Ground Number 3 stands allowed. The assessee's appeal stands partly allowed.

Revenue's Appeal ITA No.975/M/2015

6.1 The revenue is aggrieved by deletion of *disallowance of bad debts* aggregating to Rs.73.59 Lacs with respect to two parties. The Ld. CIT(A) has deleted the same by observing as under: -

2.3.1 From the perusal of the report of the A.O., the submissions made by the appellant and facts of the case, it is observed that regarding the bad debt claimed of Rs.20 Lakhs in respect of Century 21 Malls Ltd, the appellant has regular business



transactions with this party even during the year under consideration. The opening and closing balances have been shown in the ledger accounts which are also admitted by the A.O. As per the conditions of claim of bad debt as per Section 36(1)(vii) r.w.s. 36(2), the pre-condition of claim of bad debt claimed should have been written off in the books of account of the appellant. Secondly, it should have been shown as income in the earlier years. While applying these conditions in this case, it is an admitted fact that the appellant has written off Rs.20 Lakhs in its books of accounts. Secondly, the A.O. has also admitted that the appellant company has regular transactions with M/s. Century 21 Malls Ltd. And the amount represents the sales made in the last years. So, the next test it should have been shown as income in the earlier years is also qualified. The objection of the A.O. that bill-wise details was not submitted is not sustainable when the ledger accounts were submitted before the A.O. in which it has clearly written the date, amount of invoice number of each transaction. Keeping in view these facts and circumstances, it is held that the claim of bad debt of Rs.20 Lakhs, the appellant has written off this amount in the books of account and secondly it is representing the sales of earlier years which were offered to tax. Therefore, the conditions of Section 36(1)(vii) r.w.s. 36(2) are fulfilled. Hence, the disallowance made by the A.O. is deleted.

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2.3.3 Regarding the disallowance of Rs.53,59,736/-, the A.O. has observed that the amounts claimed as written off by the appellant were not offered to tax in earlier years because these amounts were not appearing in the list of sundry debtors as on 01-04-2010. To overrule the objection of the A.O., the AR of the appellant has submitted that the opening balances of debtors as on 01-04-2010 were given only in respect of the parties who had closing balance as on 31-03-2011. From the perusal of the copy of ledger accounts submitted before me as well as before the A.O., it is observed that the contention of the appellant is correct that these amounts are duly declared in the ledger accounts but only the names of the parties were shown in the opening balances as on 01-04-2010, who had closing balance as on 31-03-2011 but it does not mean that the entries were not reflected in the books of account of the appellant. Since these entries were relating to the sales transactions of the appellant company with the other parties, therefore, it was declared as income in the earlier years. Secondly, the condition that these amount were written off in the books of account was also fulfilled. Therefore, the objection of the A.O. that these amounts were appearing as on 01-04-2010 is not sustainable. In totality of the facts and circumstances, it is held that these amounts are duly declared in the ledger accounts of the appellant company in the earlier years and had duly written off in the books of accounts, hence fulfilled the conditions of Section 36(1)(vii) r.w.s. 36(2) of the Act. Thu, the disallowances made by the A.O. is not sustainable, hence deleted. Ground of appeal is Partly Allowed.

6.2 The Ld. DR has contended that Ld. CIT(A) erred in providing relief to the assessee since the claim thereof could not be substantiated by



the assessee with documentary evidences. On the other hand, Ld. AR relied on the order of Ld. CIT(A) and drew our attention to the supporting documents as placed in the *paper-book*.

6.3 After considering the same, we find that the assessee has written-off an amount of Rs.20 Lacs against *Century 21 Malls Pvt. Ltd.*, the ledger extract of which has been placed on record. The perusal of the same reveal that the assessee has invoiced the said entity for aggregate amount of Rs.162.92 Lacs, the majority of which has taken place during AYs 2010-11 & 2011-12. The assessee has outstanding balance against the said party amounting to Rs.29.86 Lacs as on 31/03/2013 and the same is after writing-off of the impugned *bad debts* of Rs.20 Lacs, which *prima facie* reveals that the assessee was facing difficulty in realizing the debts from the said entity. Further, the assessee has written-off an amount of Rs.20 Lacs on 09/02/2011 in his books of accounts. Therefore, the conditions as envisaged by Section 36(1)(vii) read with Section 36(2) have duly been fulfilled by the assessee and nothing more was required to be done in this regard. Our view is fortified by the decision of Hon'ble Apex Court rendered in *TRF Limited Vs. CIT [323 ITR 397]* wherein the Hon'ble Court has held as under: -

2. In these appeals, we are concerned with assessment year 1990-91 and assessment year 1993-94. Prior to 1-4-1989, every assessee had to establish, as a matter of fact, that the debt advanced by the assessee had, in fact, become irrecoverable. That position got altered by deletion of the word "established", which earlier existed in section 36(1)(vii) of the Income-tax Act, 1961 ('Act').

3. For the sake of clarity, we reproduce herein below provisions of section 36(1)(vii) of the Act, both prior to 1-4-1989 and post-1-4-1989 :

"Pre-1-4-1989

36. Other deductions.—(1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28—

*(i) to (vi)***

**

**



(vii) subject to the provisions of sub-section (2), the amount of any debt, or part thereof, which is established to have become a bad debt in the previous year.

Post-1st April, 1989:

36. Other deductions.—(1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28—

*(i) to (vi)***

(vii) subject to the provisions of sub-section (2), the amount of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year."

4. *This position in law is well-settled. After 1-4-1989, 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. However, in the present case, the Assessing Officer has not examined whether the debt has, in fact, been written off in accounts of the assessee. When bad debt occurs, the bad debt account is debited and the customer's account is credited, thus, closing the account of the customer. In the case of companies, the provision is deducted from sundry debtors. As stated above, the Assessing Officer has not examined whether, in fact, the bad debt or part thereof is written off in the accounts of the assessee. This exercise has not been undertaken by the Assessing Officer. Hence, the matter is remitted to the Assessing Officer for de novo consideration of the above-mentioned aspect only and that too only to the extent of the write off.*

Similar is the position with respect to *bad debt* claim of Rs.53.59 Lacs against twelve parties as claimed by the assessee. The perusal of respective ledger extracts, as placed on record, reveal that these parties constitute *Sundry Debtors* for the assessee and the assessee has written-off bad debts against the same. The Ld. CIT(A) has clinched the factual matrix in the right perspective and observed that the conditions of Section 36(1)(vii) *read with* Section 36(2) were duly fulfilled. Therefore, upon careful consideration, we find no infirmity in the order or conclusion of Ld. first appellate authority in this regard and therefore, confirm the same. The Grounds raised in revenue's appeal stands dismissed.



Conclusion

7. The assessee's appeal ITA No.86/Mum/2015 stand partly allowed in terms of our above order whereas revenue's appeal ITA No.975/Mum/2015 stand dismissed.

Order pronounced in the open court on 16th May, 2018.

Sd/-
(Joginder Singh)
न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 16.05.2018.
Sr.PS:- Thirumalesh

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai