

आयकर अपीलीय अधिकरण "SMC" न्यायपीठ मुंबई मे ।

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 5619/Mum/2018

(निर्धारण वर्ष / Assessment Year 2012-13)

Nandadevi Sumermal Jain Shop No. 01, R.S. Nimkar Marg, Near Pratiksha tower, Mumbai-400 008	Vs.	Income Tax Officer, Ward 19(2)(4) Matru Mandir Building, 1 <sup>st</sup> & wnd floor, nana Chowk, Bhatia Hospital Lane, Javji Dadaji marg, Grant Road, West, Kemps Corner, Grant Road, Mumbai Maharashtra- 400007
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. ADYPJ4449D		

अपीलार्थी की ओर से / Appellant by : Shri Bharat Kumar, AR

प्रत्यर्थी की ओर से / Respondent by : Shri SK Bepari, DR

सुनवाई की तारीख / Date of hearing:	22.10.2018
घोषणा की तारीख / Date of pronouncement :	22.10.2018

आदेश / ORDER

महावीर सिंह, न्यायिक सदस्य/  
PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-54, Mumbai [in short CIT(A)], in appeal No. CIT(A)-30/IT-1148/ITO 19(2)(4)/15-16 vide order dated 11.06.2018. The Assessment was framed by the Income Tax Officer,



Ward-19(2)(4) Mumbai (in short 'ITO'/ AO') for the A.Y. 2012-13 vide order dated 09.03.2015 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of assessee is against the order of CIT(A) in not allowing business loss/ bad debts claimed by assessee amounting to ₹ 15,09,083/-. For this assessee has raised the following two effective grounds: -

*"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not adjudicating ground No 2(iii) which was duly taken before him and clearly mentioned in statement of facts at para of SOF about business loss of ₹ 15,09,083/- under section 28 of the Income tax Act, 1961.*

*2. On the facts and circumstances of the case and in law, the Ld. AO and CIT(A) erred in not allowing business loss of ₹ 15,09,083/- under section 28 that the assessee had suffered with regard to the payments made to suppliers for purchases of goods for her regular business."*

3. I have heard the rival contentions and gone through the facts and circumstances of the case. I find from the facts of the case that the assessee has claimed bad debts in respect Amorya International Ltd. amounting to ₹ 8,06,497/- and Jostan Stainless Steel Co. Ltd. amounting to ₹ 7,02,486/-, which were advances given for purchase of iron and steel from these parties by the assessee. The AO has disallowed the claim of bad debt and CIT(A) confirmed the same. The CIT(A) and AO were consistent in observing that these advances were given to the parties mentioned but these amounts were never credited to the profit and loss



account or offered as income in any year. I find that neither the AO nor CIT(A) has doubted the transaction or the sources of the transaction.

4. Before me, the learned Counsel for the assessee explained that these amounts were advanced by assessee for purchase of iron and steel from these two parties who have also confirmed. It is admitted fact that the assessee has made these payments through account payee cheque which is reflected in the copy of accounts of these parties in the books of the assessee which were filed in assessee's paper book consisting of pages 1 to 51 that of Amorya International Ltd. and Jostan Stainless Steel Co. Ltd. The assessee has also filed Performa invoices of the commercial invoices, packing list, cargo transaction, insurance policy, certificate of origin and bill of lading in respect to these parties. The assessee has also filed the receipt of payments advise by these parties and communication with these parties in its paper book. Moreover, the assessee has made write off for this amount in this year in its books of account and that is a fact. I find that this issue is squarely covered by the decision of Hon'ble Supreme Court in the case of TRF Ltd v CIT 323 ITR 397 (SC) wherein Hon'ble Supreme Court has held that post 1st April, 1989 it is not necessary for any assessee to establish that the debt in fact has become bad. It is further held that if the debt has been written off in the books of accounts then it would be enough to allow the deduction. Further, Hon'ble Supreme Court in the case of Vijaya Bank v CIT 323 ITR 166 (SC) wherein Hon'ble Court has held that in order to allow the bad debt which is written off through the provision account, the only conditions that are required to be fulfilled may be stated as under:

*“That the bad debt has to be actually written off through the provision account created earlier and*



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*That the sundry debtors balance at the year-end should be disclosed in the balance sheet as net of provision balance.”*

5. In view of the above, I delete the disallowance of bad debts and allow the claim of the assessee.
6. **In the result, the appeal of assessee is allowed.**

Order pronounced in the open court on 22-10-2018.

आदेश की घोषणा खुले में दिनांक 22-10-2018 को की गई ।

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

Mumbai, Dated: 22-10-2018

*Sudip Sarkar /Sr.PS*

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.  
//True Copy//

BY ORDER,

Assistant Registrar  
**ITAT, MUMBAI**