

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
AHMEDABAD “A” BENCH, AHMEDABAD**

**[Coram: Pramod Kumar VP and Mahavir Prasad JM]**

ITA No. 345/Ahd/2016  
Assessment Year: 2011-12

**Sagar Drugs & Pharmaceuticals Pvt Ltd** .....**Appellant**  
*“Sagar”, Opp. Kamdhenu Complex,  
Nr. Sahajanand College, Ambawadi,  
Ahmedabad-380 015  
[PAN: AADCS 9311 E]*

**Vs**

**Joint Commissioner of Income Tax** .....**Respondent**  
*Range-8, Ahmedabad*

**Appearances by**

**SN Soparkar**, for the appellant  
**SK Dev**, for the respondent

Date of concluding the hearing : 18.01.2019  
Date of pronouncement : 18.01.2019

**O R D E R**

**Per Pramod Kumar, VP:**

1. By way of this appeal, the assessee appellant has challenged correctness of the order dated 1<sup>st</sup> December 2015 passed by the learned CIT(A)-9, Ahmedabad, in the matter of assessment under section 143(3) of the Income Tax Act, 1961, for the assessment year 2011-12.

2. Grievance of the assessee in substance is that the learned Commissioner (Appeal) erred in confirming the disallowance of Bad Debts written off of Rs.48,00,000/- on the ground that allowability of Bad Debts u/s 36(1)(vii) r.w.s. 36(2) is limited to the head of income from business and profession even though such amount earlier taxed as a capital gain.

3. To adjudicate on this appeal, only a few material facts need to be taken note of. The assessee before us is engaged in the business of manufacturing of dye intermediates and fine chemicals. During the course of the assessment proceedings, the Assessing Officer noted that the assessee has claimed bad debts of Rs.48,00,000/-. It was further found that the bad debts is claimed in respect of claim of certain shares through M/s. Pravin Ratilal Shares & Stock Brokers Pvt Ltd as the

broker had not paid the sale proceeds to the assessee. It is also not in dispute that these shares were held as investments and that the assessee is also engaged in the business of dealing in shares, mutual funds etc. The short explanation given by the assessee, as apparent from the assessment order, was that since the entries on sales were routed through P&L accounts, it has fulfilled the requirements under Section 36(2). Not satisfied with the explanation so given by the assessee at the time of assessment proceedings, the Assessing Officer proceeded to disallow the claim of bad debts of Rs. 48,00,000/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A) but without any success. Before the Id. CIT(A), assessee has pleaded that the assessee had debited the account of Pravin Ratilal Shares & Stock Brokers Ltd by crediting the sale of shares and after deducting the cost of investment in respect of shares sold the profit has been credited to profit and loss account; therefore, the amount of the claim of bad debts has been credited to the profit and loss account of the respective year. This plea as also the arguments were rejected by the CIT(A) and the action of the Assessing Officer was confirmed. While doing so, the CIT(A) has observed as follows:-

*"7.2 I have gone through the submissions made by the appellant and the observation of the A.O. The appellant has written Off an amount of Rs. 48 lacs on account of bad debt from Pravin Ratilal Shares and Stock Brokers Ltd. in the P & L A/c. The A.O. has rightly enquired from the assessee to explain the details relating to the said bad debt with documents reflecting that the same was taken into account while computing the income to that particular year. The A.O. has further gone into details of computation of income from A.Y 1999-2000 till A.Y.2001-02 i.e. the period in which the appellant has claimed to have debited the account of Pravin Ratilal Shares and Stock Brokers Ltd. by crediting the sale of shares. According to the appellant, after deducting the cost of investment in respect of shares sold the profit has been credited to P&L A/c. Therefore, the amount of claim of bad debt has been credited to the P&L A/c of the respective year. The A.O. on analysing the computation of income for A.Y.1999-2000 and 2001-02 has observed that the entire amount credited in the P&L A/c as other income is under sub-head profit on sale of shares. In all the three years the appellant has declared LTCG, STCG and has claimed the same as capital gains. The AO also observed that such amount (claimed as bad debt were never reflected in the business income) and transaction with the share broker were for investment for which income/loss were offered under the head 'capital gain'. The A.O. has concluded that the allowability of bad debt is u/s.36(1)(vii) r.w. sec. 36(2) and is only in respect of income from business and profession. The bad debt of Rs.40 lacs written off by the appellant is in respect of the head income from capital gain. Therefore, sec.36(1)(vii) r.w. sec.36(2) is not applicable in respect of computation of income/loss under the head capital gain.*

*The appellant has also submitted that Rs.48 lac was receivable since many years from the share broker. According to appellant the said amount is*

*receivable in respect of sale of shares in earlier years. In the respective years profit earned from shares had been offered to tax under the head capital gain. The appellant has contested the recovery of Rs. 48 lacs in court for last 9 years and on realizing that the said amount is not recoverable, the same was written off in P&L A/c. According to the appellant, the provision of sec.36(2) is talking about consideration of bad debt written off in computing income of earlier year and there is no mention of head of income in which bad debt written off is to be considered as income.*

*I disagree with the contention of the appellant. The bad debt can be written off only in respect of a debt relating to the computation of income under the head of Income from business and profession. Capital loss is not deductible as business loss. It has been held in the case of Bluechip Business Centre Pvt Ltd vs. ITO (2014) 149 ITD 354 (Mumbai) Tribunal that capital loss cannot be claimed as deductible as business loss. Accordingly, the addition made on disallowance of bad debt written off of &s. 48 lacs is hereby confirmed and the ground of appeal is dismissed.”*

5. The assessee is not satisfied by the stand so taken by the CIT(A) and is in further appeal before us.

6. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

7. The short ground on which Mr. Soparkar, learned Sr. Advocate has justified the plea of the assessee is that the entries on sales were routed through P&L Account. The amount was offered for tax. Mr. Soparkar, however, fairly submits that, in case whatever reasons this is not to be allowed as a bad debt or business loss, it should also be allowed as capital loss. In our humble understanding, the fact of these entries being routed through P&L account does not entitle to be claimed as a bad debts or business loss for the simple reason that irrespective of whether these entries in the revenue field or capital field in terms of requirements of the Companies Act, it is to be routed through P&L account nevertheless.

8. It is only elementary that what can be allowed as bad debts or business loss is only put in the revenue filed in connection with the business operation. We, therefore, see substance in the actions of the authorities below and concur with the views so taken by the authorities below that the loss in question cannot be allowed as a bad debts or business loss. Having said that, however, we see merits in the plea of the learned counsel that once it is not in dispute that loss has indeed incurred even if it is not in the revenue field or bad debts, the same should be considered by the Assessing Officer for being allowed in the capital filed. The Assessing Officer having rejected the case of the assessee for the loss in the revenue field, it is only corollary thereto that as long as it is a genuine loss, as undisputed facts of the present case clearly indicate, the loss is to be treated as loss in the capital field, and

the matter is to be examined further from that angle. However, this aspect of the matter is not at all examined by the Assessing Officer. Therefore, we remit this issue to the Assessing Officer for examination of the alternative claim of the assessee that the loss be allowed as capital loss. To this extend, the plea of the learned Counsel is accepted.

9. In the result, the appeal is allowed for statistical purposes in the terms indicated above. Dictated in the open court today on the 18<sup>th</sup> January, 2019.

Sd/-

**Mahavir Prasad**  
(Judicial Member)

**Ahmedabad, dated the 18<sup>th</sup> day of January, 2019**

Sd/-

**Pramod Kumar**  
(Vice President )

Copies to:           (1)    *The appellant*           (2)    *The respondent*  
                          (3)    *CIT*                               (4)    *CIT(A)*  
                          (5)    *DR*                                 (6)    *Guard File*

*By order*

*True Copy*

*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Ahmedabad benches, Ahmedabad*