

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI MAHAVIR PRASAD, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 156/Ahd/2016

(निर्धारण वर्ष / Assessment Year : 2012-13)

Arvind Anticor Ltd. "Arvind" Jasodanagar Char Rasta, N.H. No. 8, Narol, Vatva, Ahmedabad - 382445	बनाम/ Vs.	DCIT Circle 1(1)(1), Ahmedabad.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAB CA6 675 R		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	S. N. Divatia & Mehul, Talera, A.Rs.
प्रत्यर्थी की ओर से / Respondent by :	L. P. Jain, Sr. DR

सुनवाई की तारीख / Date of Hearing	20/02/2019
घोषणा की तारीख /Date of Pronouncement	26/02/2019

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the assessee against the order of the CIT(A)-01, Ahmedabad ('CIT(A)' in short), dated 18.11.2015 arising in the assessment order dated 30.01.2015 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning A.Y. 2012-13.

2. The substantive grounds of appeal raised by the assessee reads as under:-

“1.The Ld. Commissioner of Income-tax (Appeals) erred in law and on facts in dismissing the appeal of the appellant in respect of disallowance of Rs. 8,69,195/- in respect of bad debts though there is no recovery of sales made during the year under consideration to M/s. KEC International Ltd. (Jabalpur) after the entry of bad debt made on 31-03-2012 and onwards up to till date. We rely on the ITAT Ahmedabad in case of Income-tax Officer, Ward 4(3), Ahmedabad vs. Icenet Net ltd. (ITA No. 1575/Ahd/2008 dated 17-08-2010).

2.The Ld. Commissioner of Income-tax (Appeals) has erred in dismissing the appeal of the appellant in respect of addition of Employees PF amount of Rs. 18,940/- and ESI amount Rs. 3564/- totaling to Rs. 22,504/- on the ground that the appellant has failed to credit the above amount within the conformity of provisions of section 36(1)(v)(f) of the Income-tax Act. Your appellant had paid the said amounts before the due date filing the return u/s. 139(1) of the Income –tax Act. Your appellant rely on the following decision in favour of the appellant that ESI/PF if it is paid on or before filing Income Tax Return is allowable.

a) M/s Essae Teraoka Pvt. Ltd. vs Deputy Commissioner of Income Tax [2014 (3) TMI 386 – Kar HC] dated Feb 4, 2014

b) Commissioner of Income Tax versus M/s. State Bank of Bikaner & Jaipur and Jaipur viduyt Vitaran Nigam Ltd. [2014 (5) TMI 222 – Raj HC] dated Jan 6, 2014

c) The Commissioner of Income Tax vs M/s Kichha Sugar Company Ltd. [2013 (6) TMI 98 – Uttarakhand HC] dated May 20, 2013

d) Commissioner of Income Tax, Udaipur vs M/s. Udaipur Dugdha Utpadak Sahakari Sangh Ltd., Udaipur [2014 (8) TMI 677 – Rajasthan HC

Your appellant prays to leave to add, alter and or amend all or any of the grounds of appeal before final hearing of the appeal.”

3. Ground No. 1 concerns disallowance of bad debt claim Rs. 8,69,195/-. When the matter was called for hearing, the Ld. AR for the assessee submitted that the aforesaid amount represents non-recovery of a portion of sales made to M/s KEC International Ltd. (Jabalpur) during the year. The Ld. AR contended that the disallowance has been carried out by the lower authorities mainly on the ground that the bad debt has been claimed from transactions executed in the same year and thus deduction is not available for alleged bad debt under section 36(1)(vii) read with section 36(2) of

the Act. The Ld. AR submitted that such action of the Revenue is not sustainable in law.

4. A perusal of the order of the AO of the CIT(A) as relied upon on behalf of the Revenue gives an impression that the deduction has been denied under 36(1)(vii) mainly on the ground that the transactions giving rise to bad debt pertains to the Financial Year 2011-12 (A.Y. 2012-13) itself and thus premature and secondly the bona fides of debt becoming bad is not brought on record by the assessee. We are not impressed by either of the two grounds broadly summarized above. A bare reading of second proviso to section 36(1)(vii) shows that no such fetters towards allowability of bad debt in the same year of transaction is placed by the statute. On the contrary, the proviso make explicit that once the amount of such debt or a part thereof has been taken into account in computing the income of the assessee of the previous year in which the debt becomes irrevocable or of an earlier previous year, the debt struck off as irrevocable is allowable as deduction. Therefore, the Act does not make any distinction between the bad debt arising in the same financial year or arising from transactions executed in earlier financial years. Thus, we do not find any force on this line of reasoning adopted by the Revenue in this regard. We now turn to the second reasoning of the revenue authorities that it is incumbent upon the assessee to demonstrate that the debt has actually become bad by factual evidences. We do not find merit in this line of argument either having regard to the decision

of the Hon'ble High Court in the case of TRF vs CIT (2010) 323 ITR 397 (SC). Thus, the writing off the bad debt in the books of grounds is sufficient compliance for the purposes of deduction where the transactions giving rise to the debts were duly taken into account for the purposes of determination of taxable income of the assessee. Thus, we find good deal of force in the claim of the assessee. Accordingly, Ground No. 1 concerning bad debt is allowed in favour of the assessee.

5. Ground No. 2 towards concerning deduction under section 36(1)(va) is dismissed as not pressed.

6. In the result, appeal of the assessee is partly allowed.

This Order pronounced in Open Court on 26/02/2019

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Ahmedabad: Dated 26/02/2019

Tanmay

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आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।