

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'A': NEW DELHI)**

**BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER &
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 1434/Del/2016
(Assessment Year: 2011-12)**

Sh.Praveen Gupta, D-101, First Floor, Tower No.D, Caitriona Residential Apartment Complex, Ambience Island, Gurgaon-122001. PAN-ACJPG4777H	Vs	ACIT, Circle-2, Meerut.
APPELLANT		RESPONDENT
Appellant by		Shri Sunil Kumar, CA
Respondent by		Shri D.S.Rawat, Sr.DR

ORDER

PER ANADEE NATH MISSHRA, AM

[A]. This appeal has been filed by the assessee against the impugned order dated 16.02.2016 passed by Learned Commissioner of Income Tax(Appeals), Meerut [in short "Ld.CIT(A)"] pertaining to 2011-12 assessment year. The assessee has raised following grounds of appeal:-

1. *"That each ground of appeal is with out prejudice to each other.*
2. *That the Ld. CIT was not correct and justified in sustaining the addition of Rs. 50.00,000/- u/s 36 (1) (viii) read with section 37 of the Income Tax Act, 1961 on the basis of facts and circumstances of the case.*

3. *That the Ld. CIT was not correct and justified in sustaining the addition of Rs. 12,22,400/- on account of earth filling expenses on the basis of facts and circumstances of the case.*
4. *That the appellant reserved the right to add amends, alter and/or delete any of the grounds of appeal.*
5. *That on the basis of facts of the case and in view of the circumstances it is prayed that either the additions sustained by the Ld. CIT may please be deleted or the matter may please be restore back to the file of Commissioner of Income Tax (Appeals) in the interest of natural justice.”*

[B]. Assessment order dated 27.03.2014 was passed by the AO u/s 143(3) of the Income Tax Act, 1961 [in short “Act”] wherein the total income was assessed at Rs.3,20,49,170/- as per following computation:-

	“Income as shown in return	:	Rs.13,02,090
Add:	(i) Disallowance out of bad debt	:	Rs.50,00,000
	(ii) Disallowance of advanced received u/s 68	:	Rs.1,34,00,000
	(iii) Disallowance of earth filling	:	Rs.12,72,400
	(iv) Addition to unsecured loan	:	Rs.1,06,41,000
	(v) Disallowance out of vehicle running expenses	:	Rs.45,469
	(vi) Disallowance out of depreciation on car expenses	:	Rs.66,246
	(vii) Disallowance of proportionate interest	:	<u>Rs.3,21,967</u>
	Total income	:	Rs.3,20,49,172
	Rounded off	:	Rs.3,20,49,170

[C]. The assessee filed appeal before the Ld.CIT(A). Vide aforesaid impugned order dated 16.02.2016 of Ld.CIT(A), the assessee was allowed substantial relief. However, Ld.CIT(A) sustained the

aforesaid addition of Rs.50,00,000/- being disallowance out of bad debt written off. Further, Id.CIT(A) sustained the disallowance of Rs.12,22,400/- out of disallowance of Rs.12,72,400/- by the AO on account of disallowance of earth filing expenses. The present appeal before us has been filed by the assessee against the aforesaid disallowances sustained by Ld.CIT(A). In the course of the appeal in the appellate proceedings in Income Tax Appellate Tribunal (in short "ITAT"), the following particulars were filed from the assessee's side:-

1. *Balance Sheet 31.03.2011*
2. *Copy of account Arshad Ahmad*
3. *Copy of Bad Debts account*
4. *Judgement 190 Taxmann 391 (SC)*
5. *Judgement 190 Taxmann 257 (SC)*
6. *Judgement 101 ITD 191 (Delhi)*
7. *Paper cutting dated 04.03.2015*
8. *Remand Report dated 05.10.2015*
9. *Purchase Deed*
10. *Sale Deed*

[C.1]. At the time of hearing before us, Ld.AR of the assessee relied on the aforesaid particulars filed from assessee's side in ITAT. Ld.AR for the assessee drew our particular attention to paper cutting dated 04.03.2015 in support of aforesaid second ground of appeal and contended that the aforesaid loss of Rs.50,00,000/- is allowable u/s 36(1)(viii) of the Act as bad debt written off; and also alternatively u/s 37 of the Act as business loss. Ld.AR for the

assessee placed strong reliance on the case of Minda (HUF) vs JCIT [2006] 101 ITD 191 (Del.).

[C.2]. In support of all the grounds of appeal, Ld.AR for the assessee also placed strong reliance on the submissions made before Ld. CIT(A) in respect of the aforesaid disallowance of Rs.50,00,000/- and Rs.12,22,400/-. The relevant discussion is at the following portion of the aforesaid impugned order dated 16.02.2016 of Ld.CIT(A) reproduced hereunder:-

“GROUND NO. 1 Addition of Rs. 50,00,000.00

“That as already submitted above that the assessee was engaged in the business of trading of immovable properties and this amount was given for the purchase of land of Khasra no. 155 at Begum Pur (Malvinas’ Nagar, Delhi) to Mr. Arshad Ahamad is not denied by the assessing officer and therefore it is established beyond doubt that the amount was advanced only for business purposes and therefore the provisions of section 36 (1) (vii) of the Income Tax Act, is clearly applicable.

That the condition precedent to section 36 (1) (vii) is that the assessee has actually written off the amount as Bad Debts in his books of accounts or not and since the assessee has actually written off the amount in his books of accounts during the year under consideration as bad debt, the amount is allowable u/s 36 (1) (vii) of The I Tax Act, 1961.

That here it is also submitted that Mr. Arshad Ahamad is a cheater and to further prove that the advance was for

purchase of land, we are enclosing herewith copy of News paper dated 04.03.2015.

Now it is a settled law that if the assessee has written off the amount in his books of accounts as bad debt, he is not require to prove further as held by Hon'ble Supreme Court in the case of TRF Ltd. v/s CI reported in 190 Taxmann 391(SC) and in the case of Vijaya Bank Ltd v/s CIT reported in 190 Taxmann 257 (SC).

In view of the brief on the issue as narrated above the addition is baseless, beyond the fact of the issue and therefore not tenable in the eyes of law and therefore your honour is very earnestly requested to please delete the addition.

Supporting documents

- 1. Copy of Audited B/S&P & L A/c of M/s Aviraj Enterprises Page 1-3*
- 2 Copy of account of Arshad Ahmad Page 4*
- 3. Copy of Bad debts a/c Page 5*
- 4. Copy of 190 Taxman 391 (SC) Page 6-7*
- 5. Copy of 190 Taxman 257 (SC) Page 8-12*
- 6. Copy of News Paper cutting Page 12A*

.....

.....

.....

GROUND NO. 3 Addition of Rs. 12,72,400.00 That the assessee has purchased plot no 485/2 situated at Vill. Noor Nagar. Meerut on 15.03.2004 and sold on 31.01.2011.

That the facts are that when the assessee has purchased the plot it was not developed but when the plot was sold during the year it was developed and duly surrounded with boundary walls, which is evident from the purchase and sale deeds.

Supporting documents

- 1. Purchase deed dated 15.03.2004 Page 26-42*
- 2. Sale deed dated 31.01.2011 Page 43-60”*

[C.3]. Ld.CIT(A) also obtained Remand Report of the AO in respect of the aforesaid submissions made by the assessee before Ld.CIT(A). The assessee made further submissions before Ld.CIT(A) on Remand Report of the AO. The relevant discussion is at the following portion of aforesaid impugned order dated 16.02.2016 of Ld.CIT(A) reproduced hereunder:-

“NOW GROUND WISE SUBMISSIONS ON REMAND REPORT ARE AS UNDER:-

“Ground No-1. Addition of Rs.50 lakhs

In this regard the assessing officer has objected that the assessee has not taken any efforts for its recovery.

In this regard we have to submit, firstly that section 36(1)(vii) do not require to demonstrate that the assessee has taken any efforts to recover the amount written off as bad debts. As per

the decisions of Hon'ble Supreme Court reported in 190 taxman 391 (SC) and in the case reported in 190 taxman 257(SC) the only requirement is that the assessee has actually written off the amount as bad debts in his books of accounts, which the assessee has done and to prove it at page-4 of our written submissions we have filed the copy of accounts of Shri Arshad Ahmed and at page-5 copy of bad debts accounts, which proves that the assessee has actually written off the amount as bad debts in his books of accounts and at page 12A which is a newspaper clipping is vital proof that Shri Arshad Ahmed has cheated not only to the assessee but to other peoples of Meerut.

Hence, on the basis of page no-4, 5 and 12A and the decisions cited supra the amount of Rs.50 lakhs actually written off by the assessee as bad debts is an allowable expenditure and may please be allowed.

.....

B. Ground No-3. Addition of Rs.12,72,400

In the remand report the only objection of the assessing officer is that the vouchers are not available/produced, he nowhere doubted the expenditure

In this regard it is submitted that this expenditure relates to earth filling and leveling of the land for which no external vouchers are possible to obtain.

That the total expenditure was incurred on various dates and duly entered in the books of accounts. The assessing officer has not rejected my books of accounts and hence no addition could be made for the entries found entered in regular books of accounts of assessee and in particular when the assessing officer neither in his assessment order nor in his

remand report doubted the expenditure and the books of accounts have been accepted.”

[C.4]. Ld.CIT(A) considered the submissions of the assessee and decided the issues as under:-

4. Decision and Reasons:-

Ground No. 1 disallowance of expenditure of Rs. 50,00,000/-

Assessee company had written off bad debts amounting to Rs.50 lacs during this year and has claimed the amount as allowable under section 36 (1) (vii). During assessment proceedings assessee submitted that Rs. 50 Lacs was advanced to Mr. Arshad Ahemad for purchase of land Kharsa No. 155 situated at VIII Begumpur, New Delhi. Asessee submitted that Arshad Ahmed is a cheater and lodged an FIR on asking for the payment. Assessing officer disallowed the amount claimed by assessee as bad debts.

During appeal proceedings , assessee submitted that as already submitted above that the assessee was engaged in the business of trading of immovable properties and this amount was given for the purchase of land of Khasra no. 155 at Begum Pur (Malvinas' Nagar, Delhi) to Mr. Arshad Ahamad is not denied by the assessing officer and therefore it is established beyond doubt that the amount was advanced only for business purposes and therefore the provisions of section 36 (1) (vii) of the Income Tax Act, is clearly applicable.

That the condition precedent to section 36 (1) (vii) is that the assessee has actually written off the amount as Bad Debts in his books of accounts or not and since the assessee has actually written off the amount in his books of accounts during the year under consideration as bad debt, the amount is allowable u/s 36 (1) (vii) of The I Tax Act, 1961.

That here it is also submitted that Mr. Arshad Ahamad is a cheater and to further prove that the advance was for purchase of land, we are enclosing herewith copy of News paper dated 04.03.2015.

Now it is a settled law that if the assessee has written off the amount in his books of accounts as bad debt, he is not required to prove further as held by Hon'ble Supreme Court in the case of TRF Ltd. v/s CIT reported in 190 Taxmann 391(SC) and in the case of Vijaya Bank Ltd v/s CIT reported in 190 Taxmann 257 (SC).

In view of the brief on the issue as narrated above the addition is baseless, beyond the fact of the issue and therefore not tenable in the eyes of law and therefore your honour is very earnestly requested to please delete the addition.

Supporting documents

- | | | |
|-----|--|----------|
| 7. | Copy of Audited Balance Sheet and Profit & Loss A/c of M/s Aviraj Enterprises. | Page 1-3 |
| 8. | Copy of account of Arshad Ahamad | Page 4 |
| 9. | Copy of Bad debts a/c | Page 5 |
| 10. | Copy of 190 Taxman 391 (SC) | Page 6-7 |

11. Copy of 190 Taxman 257 (SC) Page 8-12
12. Copy of News Paper cutting Page 12A

That here it is submitted that the assessee was engaged in the business and this amount was given as advance for the purpose of business and hence it is covered under the provisions of section 36 (1) (vii) of the IT Act, 1961. In this regard we have to submit, firstly that section 36(1)(vii) do not require to demonstrate that the assessee has taken any efforts to recover the amount written off as bad debts. As per the decisions of Hon'ble Supreme Court reported in 190 taxman 391(SC) and in the case reported in 190 taxman 257(SC) the only requirement is that the assessee has actually written off the amount as bad debts in his books of accounts, which the assessee has done and to prove it at page-4 of our written submissions we have filed the copy of accounts of Shri Arshad Ahmed and at page-5 copy of bad debts accounts, which proves that the assessee has actually written off the amount as bad debts in his books of accounts and at page 12A which is a newspaper clipping is vital proof that Shri Arshad Ahmed has cheated not only to the assessee but to other peoples of Meerut. Hence, on the basis of page no-4, 5 and 12A and the decisions cited supra the amount of Rs.50 lakhs actually written off by the assessee as bad debts is an allowable expenditure and may please be allowed.

Facts of the case and case law relied upon by assessee are appraised. Section 36(1)(vii) provides that :-

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]:

Provided that in the case of [an assessee] to which clause (vii) applies, the amount of the deduction relating to any such debt or part thereof shall be limited to the amount by which such debt or part thereof exceeds the credit balance in the provision for bad and doubtful debts account made under that clause.]

[*Explanation 1*].—For the purposes of this clause, any bad debt or part thereof written off as irrecoverable in the accounts of the assessee shall not include any provision for bad and doubtful debts made in the accounts of the assessee;]

[*Explanation 2*.—For the removal of doubts, it is hereby clarified that for the purposes of the proviso to clause (vii) of this sub-section and clause (v) of sub-section (2), the account referred to therein shall be only one account in respect of provision for bad and doubtful debts under clause (vii) and such account shall relate to all types of advances, including advances made by rural branches;]

Case law relied upon by assessee in the case of *T.R.F. Ltd. v. Commissioner of Income-tax 190 Taxman 391* wherein Hon'ble Supreme Court has held as under:-

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 account, the bad debt account is debited and

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.

The above case law decided the issue for bad debts. In the instant case, assessee claimed the bad debt for advance given. Dictionary meaning of bad debt is :-

A bad debt is an amount owed by a debtor that is unlikely to be paid

To be considered deductible, the debt must be:

- bona fide debt, and
- worthless within the taxable year.
- A debt is defined as a debt which arises from a debtor-creditor relationship based upon a valid and enforceable obligation to pay a determinable sum of money. The debt in question must also be considered worthless.

In the case of CIT v. Kohli Bros. Color Lab (P) Ltd. (2010) 186 Taxman 62 Hon'ble Allahabad High Court has held as under:-

The intention of Legislature is clear that once in assessment year in question debt or part thereof has been written off, as irrecoverable qua the same deductions are to be accorded as per provision of section 36(1)(vii) of the Act, subject to the provisions of section 36(2) of the Act. Prior to amendment in the aforementioned section with effect from 1-4-1989 the words 'any bad debt, or part thereof, which is established to have become, a bad debt in the previous year' were used and after the amendment with effect from 1-4-1989, same has been substituted by "any bad debt or part thereof which is written off as irrecoverable in the account of assessee for the previous year". Effect of said amendment is that now it is not necessary for the assessee to establish that debt had become bad in the previous year, before getting deductions, and mere writing off as irrecoverable of debt or part thereof is substantial compliance of the same. The question is, that whether the said entry of writing off bad debt or part thereof, made in books of account is conclusive and whether the Assessing Officer is precluded from making inquiries, before according/refusing deductions. Under the scheme as provided for under Income-tax Act, the entries which have been made, as to whether same are genuine entry and not imaginary and fanciful entry, qua the same Assessing Officer is fully empowered to make inquiry however, wisdom of the respondent-assessee cannot be in such matter questioned and no demonstrative or infallible proof of bad debt having become bad is required, and commercial expediency is to be seen from the point of view of assessee, depending on nature of transaction, capacity of debtor etc. but qua entry, semblance of genuineness has to be there and same should not be mere paper

work. All the judgment, which have been cited at the Bar, genuineness of entries, have never been doubted therein, whereas in the case in hand, specific query has been made from respondent-assessee to furnish i.e., (a) Complete names and addresses of the persons (with reference to whom bad debts written off claimed, mentioning against each amount, (b) Copies of ledger account of these persons for the relevant assessment year and three preceding years, (c) Efforts made to realize these dues. Admitted position is that said queries have not at all been replied and requisite information has not at all been furnished, rather stand has been taken, that entry has been made, no proof is required. Under section 143(2) of the Act, Assessing Officer is empowered to require the assessee to produce the evidence in support of the return, as such where respondent-assessee has claimed as bad debt or part thereof, written off as irrecoverable in the accounts of the assessee under the provision of section 36(1)(vii) of the Income-tax Act, 1961, then on the strength of the amendment made on 1-4-1989 it cannot be said, that an inquiry is not permissible under the provision of Income-tax Act to see and satisfy that there is some semblance of the genuineness in the entry, which had been made, same is not at all totally fake entry as respondent-assessee would be entitled for deduction only if its bad debt, or part thereof. Hon'ble Apex Court in the case of Travancore Tea Estates Co. Ltd. v. CIT [1998] 233 ITR 203 has taken the view, that as to whether a debt has become bad or at what point of time it became bad, are pure question of fact. Though standard of proof of proving the same is bad debt, is not required to be adopted and is to be decided on the wisdom of the respondent-assessee and not on the wisdom of Assessing Officer, but to show that entry which had been made as bad debt there has to be some material in support of the same, giving some semblance of genuineness and truthfulness to the same in the direction of forming opinion, that said debt was arising out of trading activity, there was relationship of debtor or creditor, same was irrecoverable. Merely because entries have been made, in respect of bad debt or part thereof, writing it off, claiming deduction, the said entries can always be examined by the Assessing Officer, before proceeding to award deductions, and not by merely blindly following the same, but stand of the assessee has to be tested from the point of view of assessee, and assessee cannot come forward and say that on account of change brought in by way of amendment with effect from 1-4-1989, under section 36(1)(vii) inquiry is not permissible.

16. Thus in the present case, on the substantial question of law, posed, provision of section 143(2) of Income-tax Act viz-a-viz section 36(1)(vii) of the Income-tax Act, 1961 read with section 36(1) both would be harmonized to give purposeful meaning to both the statutory provisions, as one extends benefit to the respondent-assessee of deduction for their debt or part thereof becoming bad and other authorizes Assessing Officer to see that provision of Income-tax Act are not flouted by any means.

17. Consequently, impugned order dated 4-8-2006 passed by the Income-tax Appellate Tribunal, Lucknow Bench, Lucknow is hereby quashed and set aside. As in the present case no reply had been submitted to the query made as such in case such reply is

submitted, then in that event Assessing Officer is directed to take fresh decision in accordance with law after affording opportunity of the respondent-assessee on the basis of the record produced.

With these observations, Income-tax Appeal is allowed.

In the instant case, assessee submits that debt of Rs. 50,00,000/- was made on account of advance given to Arshad Ahmed. No evidence by of a copy of Agreement was not provided by assessee either during assessment proceedings, or during appeal proceedings. Further, the AR has also not submitted any details or documents regarding any correspondence what so ever to recover the amount. Clearly the AR has failed to established the bonafides with regard to the transaction with Arshad Ahmad.

The Appellant's attention is drawn to the Latin term *Caveat emptor* which means "let the buyer beware."

Assessee is claiming that he is a trader in properties. Before entering into a transaction neither he verified the antecedents of property proposed to be purchased nor he entered into any written agreement and advanced Rs. 50 Lacs which is not acceptable. Prior to entering into the transaction, assessee did not inquire about the location of land and also did not verify whether it was Kabristan land cannot be accepted., The general reputation of the Arshad Ahmed (a local person) is also not known to assessee before giving huge advance of Rs. 50 Lacs without any agreement also cannot be accepted. The nature of advance given by assessee is also not clear; no evidence in this regard has been filed. It is quite possible, that assessee was to pay Rs. 50 Lacs to Arshad Ahmed for any earlier transaction and he could have repaid the same. In toto, assessee has failed to establish the genuineness, nature of transaction and also that the said transaction is for business purpose.

Further, if advance given by the assessee is not recoverable, then it is a capital loss to the assessee and should be deducted from capital account and not as revenue expenditure, which is claimed by assessee. This is nothing, but an attempt to bring down the profit, just to reduce the tax liability. There is another aspect of this claim, in the statement of affairs as on 31.3.2010 assessee has shown the amount under the head loans and advances in the name of Arshad Ahmed. On 31.3.2009 transaction was shown under the head loans and advances to Arshad Ahmed for plot at Delhi.

Assessing officer is not precluded for making the inquiry even after amendment in section 36(1)(vii) of the Act and assessee failed to discharge the primary onus to show that claim of assessee is bona-fide and genuine and also related to business.

In the concluding days of the Appeal the AR of the appellant submitted an alternative submission claiming that the said claim can be allowed under section 37 of the I.T Act and brought to my notice a case law of Minda (HUF)[2006] 101 ITD191(DELHI). But the AR has not realized that when the facts of the case are not clear, the transaction itself is shrouded in mystery and the AR has for reasons of his own not clarified the true nature of the transaction. There is no Agreement and the

∩

Assessee nclaims to have given an advance for property of Rs.50,00,000/- Then relying on case laws without substantiating the basic facts is nothing but a futile exercise.

Therefore, I do not find any infirmity in the action of assessing officer by disallowing the expenditure of Rs. 50,00,000/- claimed as irrecoverable debt in the books of the assessee and so claim of 36 (1) (vii) does not hold. Hence the action of assessing officer is hereby confirmed.

.....

.....

GROUND NO. 3 Addition of Rs. 12,72,400.00

Assessee had debited Rs. 12,72,400/- in Trading and P&L a/c as earth filling expenses. Assessing officer vide order sheet entry dated 28.01.2014 asked to furnish details and documentary evidences of these expenses. However assessee could not produce the same and assessing officer disallowed. During appeal proceedings assessee has submitted as under :-

That the assessee has purchased plot no 485/2 situated at Vill. Noor Nagar, Meerut on 15.03.2004 and sold on 31.01.2011.

That the facts are that when the assessee has purchased the plot it was not developed but when the plot was sold during the year it was developed and duly surrounded with boundary walls, which is evident from the purchase and sale deeds.

Supporting documents

- | | |
|-----------------------------------|------------|
| 1. Purchase deed dated 15.03.2004 | Page 26-42 |
| 2. Sale deed dated 31.01.2011 | Page 43-60 |

From the perusal of purchase deed and sale deed it is seen that as per purchase deed there was no construction on plot however as per sale deed there was boundary and estimated cost of boundary was taken at Rs. 50,000/-. Sale deed was made on 24.01.2011 while purchase deed was made on 15.03.2004. From the purchase/sale deed it is not made clear how the assessee is claiming expenditure of Rs. 12,72,400/- against the earth filling in the year under appeal when total cost of expenditure of boundary wall is estimated by stamp valuation authority for Rs. 50,000/- only. There is a gap of seven years in purchase and sale and assessee is failed to establish the year in which such construction of boundary wall was made. Moreover stamp valuation authority had valued the cost of boundary only for Rs. 50,000/- then how assessee can claim Rs. 12,72,400/- cost of earth filling no bill voucher are produced and assessee has submitted that this expenditure relates to earth filling and leveling of the land for which no external vouchers are possible to obtain.

Assessee also submitted that expenditure was incurred on various dates and duly entered in the accounts. The assessing officer has not rejected books of assessee and hence no addition could be made. Argument of the assessee cannot be accepted when assessee himself failed to established the actual incurring of the expenditure and that too in the year under consideration. **On the cost of repetition when stamp duty authority has valued the cost of boundary wall for Rs. 50,000/- then how assessee can claim the expenditure of Rs. 12,72,400/- in the year under consideration? Considering the totality of facts and taking a judicious view at best the expenditure allowable in this year can be Rs 50,000/-.**

[C.5]. Ld.DR placed reliance on the aforesaid impugned order dated 16.02.2016 of Ld.CIT(A).

[D]. We have heard both sides, patiently. We have perused the materials available on record, carefully. We have considered judicial precedents mentioned in the records or brought to our notice at the time of hearing before us. Although, the assessee has filed five grounds of appeal, essentially there are disputes in respect of two disallowances/additions. The first dispute is regarding disallowance of assessee's claim of Rs.50,00,000/- on account of bad debt written off. During appellate proceedings, it was contended from the assessee's side that this amount is also alternatively allowable u/s 37 of the Act. On careful perusal of the records, we find that there is nothing to prove that the aforesaid amount of Rs.50,00,000/- was paid by the assessee for business purposes. There is also nothing on record to prove that this amount of Rs.50,00,000/- was paid by the assessee for purchase of land. From perusal of records, we find no evidence regarding land

purchased by the assessee-either proposed to be purchased or actually purchased. Although Ld.AR of the assessee vehemently contended that the amount was paid by the assessee to Mr. Arshad Ahmad through banking channels; Ld.AR could not point out any material on the record to prove that this amount was paid for business purposes or for the purpose of purchase of land. We heard Ld. AR of the assessee with concern when he submitted at the time of hearing before us that the aforesaid Mr. Arshad Ahmad (to whom the assessee claims to have made payment of aforesaid Rs.50,00,000/-) is a politically influential person and also not a law abiding person (for which purpose Ld.AR of the assessee referred to news paper cutting dated 04.03.2015 from Meerut Edition of Hindi daily newspaper "Hindustan"). However, we decline to make any comment on whether the aforesaid Mr. Arshad Ahmad is politically influential or not; and whether he is law abiding person or not; because these aspects are irrelevant for the purposes of this appeal in ITAT. What is relevant is that the assessee has failed to prove that the aforesaid amount of Rs.50,00,000/- was paid by the assessee to Mr. Arshad Ahmad for business purposes or for purchase of land. We also find nothing on record to show that any legal remedies were attempted by the assessee for recovery of the aforesaid amount of Rs.50,00,000/- from Mr. Arshad Ahmad. In view of the foregoing assessee's claim for business loss or for

deduction u/s 37 of the Act is not sustainable. There is, further, no material on record to show that aforesaid amount of Rs.50,00,000/- or any part thereof has been taken into account in computing 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; and thus, mandatory condition u/s 36(2)(i) of the Act is not fulfilled for claim of bad debt. At the time of hearing before us, Ld.AR for the assessee also expressed inability to bring any further material on record in support of the assessee's claim for the aforesaid amount of Rs.50,00,000/-. In the forgoing facts and circumstances, the assessee's claim for deduction of the aforesaid amount of Rs.50,00,000/- deserves to be rejected whether this claim is made as bad debt written off u/s 36 of the Act or alternatively u/s 37 of the Act. In any case, in Ground No. 2 of appeal, the assessee refers to section 36(1)(viii) of the Act which is not applicable to the facts and circumstances in the case of the assessee. [Section 36(1)(viii) of the Act, is instead applicable for claims in respect of any separate reserve created and maintained by a specified entity.] In view of the foregoing, we are of the view that the assessee's claim for the aforesaid amount of Rs.50,00,000/- is unsustainable in law.

[E]. As far as the aforesaid disallowance of Rs.12,22,400/- on account of earth filling expenses is concerned, we find from the

records that the AO had disallowed the assessee's entire claim of earth filling expenses amounting to Rs.12,72,400/- stating that in spite of repeated opportunity, no document or evidence was filed by the assessee before the AO during assessment proceedings. However, Ld.CIT(A) deleted an amount of Rs.50,000/- out of this disallowance and sustained remaining addition amounting to Rs.12,24,400/-. This relief of Rs.50,000/- was allowed by Ld.CIT(A) on the basis of Stamp Valuation Authority who had valued the cost of boundary wall for Rs.50,000/-. The assessee had filed no evidences before Ld.CIT(A) to explain how the assessee claimed an amount of Rs.12,72,400/- when the valuation of the boundary wall by the Stamp Valuation Authority was only for Rs.50,00,000/-. Even in the appellate proceedings in ITAT, the assessee has not adduced any evidences to support the claim of having actually incurred the aforesaid expenditure amounting to Rs.12,72,400/- towards cost of earth filling/boundary wall. The assessee has failed to bring any material for our consideration to justify any further relief in addition to relief of Rs.50,000/- already allowed by Ld.CIT(A) on the basis of the valuation of boundary wall by Stamp Valuation Authority. In the absence of any supporting evidences in support of assessee's claim of the aforesaid amount of Rs.12,22,400/- [disallowance of which has been sustained by

Ld.CIT(A)], we are of the view that this claim of the assessee for aforesaid Rs.12,24,400/- is unsustainable in law.

[F]. As all the relevant evidences submitted by the assessee have already been appraised by the lower authorities [CIT(A) & AO] and moreover, as no further material has been placed before us from assessee's side in support of the assessee's claim for deduction of aforesaid amount of Rs.50,00,000/- & Rs.12,22,400/-, no useful purpose will be served by restoring the disputed issues back to the file of Ld. CIT(A). The prayer made in Ground No.5 of this appeal, therefore, deserves to be rejected.

[G]. In view of the foregoing, all the grounds of appeal are dismissed. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 03/09/2019.

Sd/-

(H.S.SIDHU)
JUDICIAL MEMBER

Sd/-

(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 03/09/2019

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI