

THE INCOME TAX APPELLATE TRIBUNAL  
"H" Bench, Mumbai  
Before Shri Shamim Yahya (AM) & Shri Pawan Singh (JM)

I.T.A. No. 6537/Mum/2017 (Assessment Year 2010-11)

ITO 6(3)(4) Room No. 524 5 <sup>th</sup> Floor Aayakar Bhavan M.K. Road Mumbai-400 020. (Appellant)	Vs.	M/s. Khyati Realtors Pvt. Ltd. 301/68, Manek Bhuvan 1 <sup>st</sup> Hindu Colony, Dadar(E) Mumbai-400 014.  PAN : AACCK4422B (Respondent)
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Assessee by	Shri Anuj Kisnadwala
Department by	Shri Manoj Kumar Singh
Date of Hearing	7.8.2019
Date of Pronouncement	16.9.2019

ORDER

Per Shamim Yahya (AM) :-

This appeal by the revenue is directed against order of learned CIT(A) dated 4.9.2017 and pertains to assessment year 2010-11.

2. The grounds of appeal read as under :-

1. On the facts and circumstances of case and in law, the Ld. CIT (A) has erred in treating giving and taking of loans as normal business activity of the Assessee Company and not appreciating the fact that in order to function as money lender, the Assessee needs to obtain licences from R.B.I."
2. "On the facts and circumstances of case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.5,69,78,892/- on account of bad debts, without appreciating the fact that bad debts were in the nature of advance which is not allowable u/s 36(l)(vii) r.w.s. 36(2) of the IT Act, 1961 as the amounts were never offered to tax as income as the assessee is not doing the business in money lending."
3. The Appellant prays that the order of the CIT (Appeals) on the above grounds be set aside and that of the AO be restored."

3. Brief facts of the case as under :-

The A.O. has observed in the assessment order that the assessee has debited a sum of Rs. 6,18,26,741/- as bad debts written off in the P & L account. After examining the details of the same obtained from the appellant during the assessment proceedings, the A.O. observed that the bad debts written off included the following amounts which represented the principal amount of the loans advanced by the assessee.

Sr. No	Name of the party	Amount (Rs.)
1	Pravara Oos Tod Va Vahatuk	3,84,78,892
2	Zenal Construction Pvt. Ltd.	1,85,00,000
	Total	5,69,78,892

The A.O. held that the principal amount of the loans advanced by the assessee, which is written off in the books of account, is not eligible to be considered as a deductible expense u/s. 36(l)(vii) read with section 36(2) as "bad debts written off", since such amounts did not meet the condition laid down in section 36(2) of the Act that such debt has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt is written off or of an earlier previous year. The A.O. observed that since the principal amount of the loan advanced by the assessee has not been included in the income of the assessee either for the current year or for any of the earlier years, the condition laid down in Section 36(2) is not fulfilled and therefore the said amount of Rs. 5,69,78,892/- representing the write off of principal amount of loans advanced cannot be allowed as a deduction u/s. 36(l)(vii).

4. Against the above order assessee appealed before the CIT(A). Learned CIT(A) elaborately considered the submissions of the assessee. The learned CIT(A) noted that apart from real estate assessee is also engaged in financial transactions business. He noted that assessee has given loans and advances in the course of its financing business. The learned CIT(A) noted that when the loans and advances given in the financing business become bad and are not recoverable they are liable to be allowed under section 36(2), when they are

duly written off. In this regard learned CIT noted that assessing officer has erred in referring to only part of the provision of section 36(2). He found that the assessee's case was falling under second limb of section 36(2). Learned CIT accordingly deleted the addition/disallowance by holding as under :-

19. I have carefully considered the assessment order and the written submissions of the appellant. The appellant company is engaged in the business of real estate as well as finance services. During the previous year relevant to the present assessment year, the income from operations of Rs. 12.04 crores credited in the P & L account comprised of interest receipts from finance business of Rs. 11.95 crores and consultancy receipts of Rs. 0.08 crores. It is evident from the perusal of the memorandum of association of the appellant company that while the business of real estate is the main object of the company, the finance business consisting of "receiving of money on deposit from and to lend money to any person to any person, firm, association, society, company or corporation at interest" constituted one of the objects incidental or ancillary to the attainment of the main object. Further, it is noticed from the assessment orders passed u/s. 143(3) of the Act for the earlier assessment years 07-08 and 09-10 that the carrying on of finance business by the appellant and admission of business income therefrom has been accepted by the department. Thus, it is seen that there is no dispute regarding the fact that the appellant company is engaged in the business of finance, apart from other business activities.

20. As regards the two cases of principal amount of the loans advanced by the appellant which were written off in the books of account during the previous year and claimed as deduction towards bad debts written off, which were the subject matter of disallowance by the A.O., it is seen that these loans were advanced by the appellant in the course of carrying on of the finance business. In respect of the loan advanced to Pravara Oos Tod Va Vahatuk, it is noticed from the information furnished by the appellant before the A.O. during the assessment proceedings that two loans of Rs. 5 crores each were advanced to the said person during the previous year relevant to the A.Y. 2008-09 and interest of Rs. 16.44 lakhs (net of TDS) was charged on the said loans for that year. Principal amount to the extent of Rs. 98.46 lakhs was recovered during the same year. During the previous year relevant to the subsequent assessment year 2009-10, it is seen that principal amount to the extent of Rs. 5.16 crores was recovered and interest amount of Rs. 13.67 lakhs levied during the earlier year was recovered from the borrower. During the previous year relevant to the present assessment year, the balance principal amount of Rs. 3.84 crores and the balance interest amount of Rs. 2.77 lakhs was written off in the books of account as bad debts.

21. In respect of the loan advanced to Zenal Construction P. Ltd., it is noticed from the information furnished by the appellant before the A.O. during the assessment proceedings that loans of Rs. 1.00 crores and Rs. 3.15 crores were advanced to the said borrower during the previous years

relevant to the A.Ys. 07-08 and 08-09 respectively. Principal amounts of Rs. 1.30 crores and Rs. 1.00 crores were recovered from the borrower during the previous years relevant to the assessment years 2008-09 and 2009-10 respectively. Interest aggregating to Rs. 48.65 lakhs( net of TDS) was charged on the said loans during the previous years relevant to the A.Ys 08-09 and 09-10 and interest to the extent of Rs. 2.96 lakhs was recovered from the borrower during the previous year relevant to the A.Y. During the previous year relevant to the present assessment year, the balance principal amount of Rs. 1.85 crores and the balance interest amount of Rs. 45.69 lakhs was written off in the books of account as bad debts.

22. Further, it is noticed that the interest charged by the appellant in respect of the above mentioned loans to the two borrowers was included in the interest receipts credited to the P & L account in the relevant assessment years during which it was charged.

23. Thus, the facts available on record clearly show that the loans advanced to the two borrowers concerned were in the nature of loans advanced in the course of carrying on of the business of finance by the appellant. Hence, part of the principal amounts written off as irrecoverable represented monies lent by the appellant in the ordinary course of the business of money lending which is carried on the assessee.

24. In the assessment order, the A.O. held that the principal amount of the loans written off in the books as irrecoverable do not fulfill the condition laid down in section 36(2) of the Act that "such debt has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt is written off or of an earlier previous year" since the same were not included in the total income admitted by the assessee either for the present A.Y. or for any of the earlier A.Ys. However, it is seen that the A.O. has omitted to consider the second limb of the condition specified in Section 36(2) of the Act which is applicable to any amounts lent to the ordinary course of money lending business carried on by the assessee. In this regard, it would be useful to refer to the provisions of Clause (i) of Section 36(2) which reads as under:

"no such deduct/on shall be allowed unless such debt or part thereof has been taken into account in computing the 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, or represents money lent in the ordinary course of the business or money-lending which is carried on by the assessee."

25. It can be seen from the above that the second limb of this clause (which has been underlined) deals with an alternate condition to be fulfilled for the purpose of being eligible for deduction towards bad debts written off. This condition specifies that deduction shall be allowed where the bad debt written off represents money lent in the ordinary course of the business of banking or money lending which is carried on by the assessee. Having regard to the facts relating to the write off of principal amounts of loans advanced during the course of money lending business carried on by the appellant

which have been detailed in the preceding paragraphs, it is clearly evident that the irrecoverable principal amounts of Rs. 3,84,78,892/- in the case of the borrower Pravara Oos Tod Va Vahatuk and of Rs. 1,85,00,000/- in the case of the borrower Zenal Construction P. Ltd which were written off in the books of account during the previous year relevant to the present A.Y. satisfy the second limb of the condition specified in Clause (i) of Section 36(2).

26. In view of the above, the appellant is entitled to the deduction claimed towards bad debts written off u/s. 36(l)(vii) read with section 36(2) in respect of the said irrecoverable principal amount of loans aggregating to Rs. 5,69,78,892/-. Hence, the disallowance made by the A.O. of the said amount is hereby deleted. This ground of appeal is accordingly allowed in favour of the appellant”.

5. Against the above order revenue is in appeal before us.

6. We have heard both the Counsel and perused the records. Learned departmental representative relied upon the orders of the learned assessing officer. He reiterated that assessee is engaged in the real estate business. That the said amount was not debt due to the assessee. Hence he submitted that the same has been rightly disallowed.

7. Per contra learned counsel of the assessee reiterated that learned CIT(A) has rightly deleted the disallowance of the amount. Learned counsel of the assessee submitted that learned CIT has given an unequivocal finding that assessee is also engaged in the business of financing. That was in the ordinary course of financing business that assessee has given those loans and advances. Learned counsel submitted that in these circumstances when these loans have become bad the same are liable to be allowed when they become bad and are written off. In this regard learned counsel placed reliance upon the following case laws :-

- CIT Vs. Smt. Padma S. Bora (54 taxmann.com 319) (Bombay HC)
- All Grow Finance and Investment P. Ltd. Vs. CIT (338 ITR 496)(Delhi HC)
- B.N. Khandelwal Vs. ITO (16 SOT 343)(ITAT)

8. We have carefully considered the submissions and perused the records. We find that assessee apart from being a builder and developer is also engaged in the business of financing/money lending. Learned CIT(A) has also given a finding to this effect. This is also supported by the fact that the loans were

granted by the assessee in earlier years and the income there from has been offered to tax.

9. Now when these loans are becoming irrecoverable the writing off of the same is eligible for deduction under section 36(2). We note that section 36 (2) posits that, in making any deduction for a bad debt or part thereof the following provisions shall apply. No such deduction shall be allowed unless such debt or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof written off in any earlier previous year, or represents money lent in the ordinary course of business of banking or money lending which is carried on by the assessee.

10. From the above it is amply evident that writing off of sums which represent money lent in the ordinary course of business is allowed as deduction. The assessing officer has clearly erred in not considering the later part of the aforesaid section. He is clearly into error in holding that for writing off of money lent in ordinary course of business the allowance/deduction can be allowed only if the sum has been computed as income in the earlier assessment year.

11. This view is duly supported by the case laws referred by the learned counsel of the assessee. We may gainfully refer to the head notes of the above case as under :-

Bombay High Court in the case of Smt. Padma S. Bora (supra) :

“Section 36(1)(vii) of the Income-tax Act, 1961 - Bad debts (Money lending business) -Assessment year 2006-07 - Assessee lent certain amount in ordinary course of money lending business - Certain amount was written off after effort to recover same was unsuccessful - Whether assessee was entitled to deduction of said amount as bad debt -Held, yes - Whether merely because assessee did not have license to conduct money lending business, did not mean that claim of bad debts should be denied - Held, yes [Para 5] [In favour of assessee]”

Delhi High Court in the case of All Grow Finance and Investment P.Ltd.(supra):

“The assessee, a non-banking financial company, derived its income from interest on money lent to various parties as a part of its money-lending business. The Assessing Officer disallowed the assessee's claim for bad debts holding that under section 36(2) of the Income-tax Act, 1961, to write off any bad debt, it had to be included in the income for earlier years which was not done in the case of the assessee. The findings of the Assessing Officer were confirmed by both the Commissioner (Appeals) as well as the Tribunal. On appeal:

Held, allowing the appeal, that the amounts of debts were advanced by the assessee in the ordinary course of money lending. The only condition laid down in the second part of sub-section (2) of section 36 of the Act was that the amount should be advanced in the ordinary course of business which by itself proves its revenue nature and no further conditions were required to be satisfied which were only applicable with regard to debt qualifying as bad debt in the first part of sub-section (2). Therefore, the authorities below were not justified in holding that the amount of Rs. 34,95,000 was not allowable as bad debt under section 36(1)(vii) read with section 36(2) of the Act.”

12. In the background of aforesaid discussion and precedent in our considered opinion there is no infirmity in the order of learned CIT(A). Hence, we affirm the order of learned CIT(A).

13. In the result, this appeal filed by the Revenue stands dismissed.

Order has been pronounced in the Court on 16.9.2019.

Sd/-  
(PAWAN SINGH)  
JUDICIAL MEMBER

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 16/9/2019

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

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BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

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