

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI C.N. PRASAD (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 5770/MUM/2018
Assessment Year: 2015-16**

M/s R.J. Trade Wings Pvt. Ltd. 18/20, Dubash Marg, Kala Ghoda, Fort, Mumbai- 400020.	Vs. Assistant Commissioner of Income Tax, Circle-2(3)(2), Aayakar Bhavan, M.K. Marg, Mumbai- 400020.
---	---

PAN No. AABCR1467J
Appellant

Respondent

Assessee by	: Ms. Aniket Shet, AR
Revenue by	: Mrs. Jothi Lakshmi Nayak, DR

Date of Hearing	: 23/09/2019
Date of pronouncement	: 30/09/2019

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the assessee. The relevant assessment year is 2015-16. The appeal is directed against the order of the Commissioner of Income Tax-6, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The 1st ground raised by the assessee in this appeal is against the order of the CIT(A) confirming the disallowance of employee's

contribution to provident fund of Rs.2,31,328/- u/s 36(1)(va) r.w.s. 2(24)(x) of the Act.

The facts are that the Assessing Officer (AO) observed on perusal of clause 20(b) of the Tax Audit Report that the assessee during the financial year 2014-15 had deposited an amount of Rs.2,31,328/- representing employee's contribution to Provident Fund beyond the stipulated due dates. Therefore, he disallowed the above amount of Rs.2,31,328/-.

3. In appeal, the Ld. CIT(A) followed the decision the Hon'ble Gujarat High Court in *CIT v. Gujarat State Road Transport Corporation* (Tax Appeal No. 637 of 2013) and confirmed the above disallowance made by the AO.

4. Before us, the Ld. counsel for the assessee submits that the above issue is decided by the Hon'ble Bombay High Court in the case of *CIT v. Ghatge Patil Transports Ltd.* (2014) 368 ITR 749 and the same may be followed.

On the other hand, the Ld. Departmental Representative (DR) relies on the order passed by the CIT(A).

5. We have heard the rival submissions and perused the relevant materials on record. We find that in *Ghatge Patil Transports Ltd.* (supra), the Hon'ble Bombay High Court has held that both employee's and employer's contributions are covered under amendment to section 43B and the judgment of the Supreme Court in *CIT v. Alom Extrusions Ltd.* (2009) 319 ITR 306 (SC).

Following the above decision of the Hon'ble Bombay High Court, we delete the disallowance of Rs.2,31,328/- made by the AO and allow the 1st ground of appeal.

6. The 2nd ground raised by the assessee in this appeal is against the order of the CIT(A) in not adjudicating the disallowance of bad debts amounting to Rs.9,78,234/-.

During the course of assessment proceedings, the AO observed that in the P&L account, the assessee has debited an amount of Rs.9,78,234/- as bad debts written off under the head "other expenses". The details are as under :

Sr. No.	Name of Party	Address	Amount in rupees
1.	Alpi USA Inc.	156-15, 146 th AVE Suite, 110, 11434, Jamaica, N.Y.USA	2,51,166/-
2.	Alpi USA Pacific	Los Angeles, 360 North Sepulveda Bldg. Suite 1015 USA	7,26,727/-
3.	Miscellaneous	Miscellaneous	341/-
		Total	9,78,234/-

The AO noted that the assessee failed to substantiate its claim u/s 36(2) of the Act with supporting documentary evidence. Therefore, he disallowed the above sum of Rs.9,78,234/-.

7. In appeal before the Ld. CIT(A), the AR of the assessee stated that they would not like to pursue the above ground of appeal as they would redress their grievance before the AO u/s 154 of the Act. Mentioning that this has been specifically noted on the order sheet dated

30.07.2018, which has been duly signed by the AR of the assessee, the Ld. CIT(A) dismissed the said ground of appeal as not pressed.

8. Before us, the Ld. counsel for the assessee submits that a rectification application has been filed on 18.10.2018 before the AO. Along with it the following details were enclosed :

1. Ledger accounts of Debtors of the respective years in which the income has been booked (to prove income has been offered to tax).
2. Invoices raised by the assessee for the above mentioned sale transactions.
3. Ledger of Debtors for the year under consideration wherein the balances have written off as Bad Debts (to prove bad debts has been actually written off in books).

The Ld. counsel submits that the above matter may be restored to the file of the AO.

9. On the other hand, the Ld. DR supports the order passed by the CIT(A).

10. We have heard the rival submissions and perused the relevant materials on record. It is well-settled that amount of any debt or part thereof is allowable as deduction subject to the following conditions:

(a) the debt has been taken into account in computing the income of the assessee of that previous year or of 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; and

(b) it has been written off as irrecoverable in the accounts of the assessee for that previous year (transfer to provision for bad and doubtful debts account is not taken as bad debts written off).

In *T.R.F. Ltd. v. CIT* (2010) 190 Taxman 391 (SC), it is held that after April 1, 1989, it is not necessary for an assessee to establish that debt, in fact, has become irrecoverable; it is enough if bad debt is written off as irrecoverable in accounts of assessee.

In view of the above position of law, we set aside the order of the Ld. CIT(A) on the above ground of appeal and restore the matter to the file of the AO to make an order afresh after giving reasonable opportunity of being heard to the assessee. We direct the assessee to file the relevant documents/evidence before the AO. Thus the 2nd ground of appeal is allowed for statistical purposes.

11. In the result, the appeal is partly allowed.

Order pronounced in the open Court on 30/09/2019.

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 30/09/2019

Rahul Sharma, Sr. P.S.

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.

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai

