

आयकर अपीलुीय अधलकरण, 'बी' नुयायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'B' BENCH: CHENNAI**

शुी रमित कुओर, लेखल सदसुय एवं  
शुी धुवुवुरु आर.एल. रेडुडी, नुयायलक सदसुय के समकुष  
**BEFORE SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER AND**  
**SHRI DUVVURU R.L.REDDY, JUDICIAL MEMBER**

**ITA No.150/Chny/2019**

नुधरुण वरुष / **Assessment Year: 2013-14**

M/s.Southern Group Industries Pvt. v. The Income Tax Officer,  
Ltd., New No.72, Old No.19, Corporate Ward-6(3),  
Raja Annamalai Building, Room No.706, 7<sup>th</sup> Floor,  
Marshalls Road, New Block, 121,  
Egmore, Chennai-6000 M.G.Road, Chennai-600034

**[PAN: AA ECS0081Q]**

(अपीललरुथुी/ **Appellant**)

(प्रतुयरुथुी/ **Respondent**)

अपीललरुथुी कुी ओर से/ Appellant by : Ms.S.Sriniranjani, Adv.  
प्रतुयरुथुी कुी ओर से /Respondent by : Mr. Gurubashyam, JCIT  
सुनवलई कुी तलरुीख/Date of Hearing : 28.11.2019  
कुषषणल कुी तलरुीख /Date of Pronouncement : 28.11.2019

**आदेश / ORDER**

**PER RAMIT KOCHAR, ACCOUNTANT MEMBER:**

This appeal filed by tassessee is directed against appellate Order dated 31.12.2018 passed by learned Commissioner of Income Tax (Appeals)-16, Chennai (hereinafter called "the CIT(A)"), in ITA No.31/CIT(A)-16/2016-17 for assessment Year (ay) 2013-14, the appellate proceedings before learned CIT(A) had arisen from assessment order dated 17.03.2016 passed by learned Assessing Officer (hereinafter called "the AO") u/s.143(3) of the Income-tax Act, 1961 (hereinafter called "the Act").

2. The grounds of appeal raised by assessee in memo of appeal filed with Income-Tax Appellate Tribunal, Chennai (hereinafter called "the Tribunal") read as under:-

*"1. The Commissioner of Income Tax (Appeals) erred in confirming the disallowance of bad debts written off of Rs.24,05,004/-.*

*2. The Commissioner of Income Tax (Appeals) erred in not considering the position of law as this stood post 01.04.1989 and the decision laid down by the Hon'ble Apex Court in TRF LTD Vs. CIT wherein it is clearly held that mere writing off of a bad debt is enough and there is no requirement to establish that the debt had really become bad.*

*3. The Commissioner of Income Tax (Appeals) erred in observing that most of the Parties were Government organizations and well-known concerns, which is factually incorrect.*

*4. Merely because most of the Parties were Government organizations and well-known concerns, the Commissioner of Income Tax (Appeals) could not have held that they can't be bad debts.*

*5. The Commissioner of Income Tax (Appeals) ought to have considered that the advances were given more than a decade back when the Assessee was in the business of selling bullet-proof jackets and that the Assessee was no longer in contact with the Parties to whom the advances were given.*

*6. Any other ground that may be raised at the time of hearing."*

3. During the course of assessment proceedings carried on by AO u/s 143(3) read with Section 143(2) of the 1961 Act , it was observed by AO that assessee had claimed write off of bad debt in return of income filed with Revenue, to the tune of Rs. 29,19,132/- under the head 'Bad Debts Written off" , out of which loans and advances written off were to the tune Rs. 22,00,830/- from 7 parties while tour advances were to the tune of Rs. 2,04,174/- from 5 parties. The AO observed that these write off are in the nature of capital loss. Further, AO observed that provisions of Section 36(1)(vii) of the 1961 Act are subject to provisions of Section 36(2) of the 1961 Act. The AO was of the view that these debts were not shown as

part of the income of the assessee , which led to disallowance of these bad debts written off by the AO by invoking provisions of u/s.36(1)(vii) , to the tune of Rs. 24,05,004/-, vide assessment order dated 17.03.2016 passed by AO u/s 143(3) of the 1961 Act.

4. The assessee being aggrieved filed first appeal before Ld.CIT(A), who was pleased to dismiss appeal of the assessee. The Ld.CIT(A) observed that assessee has written off loan & advances to the tune of Rs. 22,00,830/ and tour advances to the tune of Rs. 2,04,174/- . The Ld.CIT(A) observed that assessee has claimed to have given these loans and advances more than a decade back when assessee had claimed to be selling bullet-proof jackets but assessee has not furnished any evidence regarding nature of goods and services those parties were to render to the assessee, complete name and address of the persons , ledger account of these persons and efforts made to realize the dues. The Ld.CIT(A) referred to decision of Hyderabad-tribunal in the case of Natco Pharma Limited v. DCIT reported in (2013) 29 taxmann.com 297(hyd.-trib.) and dismissed appeal of the assessee, vide appellate order dated 31.12.2018 passed by learned CIT(A).

5. Aggrieved by an appellate order dated 31.12.2018 passed by learned CIT(A), the assessee has filed an appeal with tribunal. At outset learned counsel for the assessee submitted that assessee was earlier engaged in the business of selling bullet-proof jackets which business has ceased to

exist since long back for more than a decade ago. The learned counsel for the assessee submitted that these advances are related to said business of selling bullet-proof jackets which has since been closed for more than a decade. It is submitted that assessee is now a manufacturer and trader of zipper and zipper components. The Ld.Counsel for assessee relied upon decision of Hon'ble Supreme Court in the case of T.R.F. Limited v. CIT reported in [2010] 323 ITR 397(SC) and also decision of Hon'ble Madras High Court in the case of CIT v. Crescent Films Private Limited reported in (2001) 248 ITR 670(Mad.) to contend that these bad debts written off by assessee in its books of accounts be allowed as deduction. On being asked by the Bench, Ld.Counsel for assessee fairly submitted that no evidence is placed before authorities including tribunal to substantiate that these loans and advances were given in connection with business of selling bullet-proof jackets and income pertaining to said business of selling jackets were offered for taxation in earlier years. The Ld.Counsel for assessee prayed that matter be restored to file of AO for fresh adjudication and it was submitted that evidences will be submitted to show that these loans and advances were inextricably linked to business of bullet proof jackets and income of said business was offered for taxation to Revenue in return of income filed in earlier years . The Ld.DR did not raise any objection if the matter is restored to file of AO for fresh adjudication. After hearing both the parties and perusing material on record including cited case laws, we have observed that assessee has written off as bad debts loans and advances as well tour advances granted

to several parties, aggregating to Rs. 24,05,004/-. One such loans and advance written off as bad debt is Mr. M.L.Baharani Loan Account-Rs. 8,00,000/-. The assessee has claimed that at one point of time more than a decade ago, it was engaged in business of selling bullet proof jackets and these loans and advances are inextricably linked to said business of selling bullet proof jacket carried on by assessee at that point of time. It is also submitted that income from business of selling bullet proof jacket was offered for taxation in those years when business of selling jackets was carried on by the assessee. It is settled position that income includes losses. But, the assessee has admittedly not brought on record any evidence to the effect that , firstly it carried on business of selling bullet proof jackets in earlier years, secondly that income( which include losses) from business of selling bullet proof jackets was offered for taxation in earlier years in return of income filed with Revenue and thirdly that these loans and advances are inextricably linked to said business of selling bullet proof jackets. The assessee has prayed that if matter is restored to the file of the AO, it will produce necessary evidences to that effect . No doubt as per amended provisions of Section 36(!)(vii), if the bad debts are written off in books of accounts as irrecoverable , it will be sufficient compliances of Section 36(1)(vii) and the taxpayer is not required to prove that debts have become bad or that necessary efforts were made by it to recover the said debt. To that extent assessee plea is acceptable and assessee has rightly relied upon the cited judicial precedents . But at the same time , the primary onus is on the assessee to show that debt or part thereof was

taken into account in computing income of the assessee which has been offered to tax in previous year or even earlier years. But, assessee has admittedly not brought on record any evidence to the effect that , firstly it carried on business of selling bullet-proof jackets in earlier years, secondly that income( which include losses) from carrying on business of selling bullet proof jackets was offered for taxation in earlier years in return of income filed with Revenue and thirdly that these loans and advances are inextricably linked to said business of selling bullet proof jackets. As could be seen , Section 36(1)(vii) is subject to Section 36(2) of the 1961 Act. These evidences are not brought on record and fundamentals for grant of deduction u/s 36(1)(vii) are not complied with by the assessee but it is stated that these loans and advances are in connection with business of selling bullet proof jackets carried on by assessee which stood closed a decade ago and prayers are made to produce necessary evidences if opportunity is granted. Under these circumstances, we are inclined to restore this issue to file of AO for fresh adjudication and assessee is directed to bring on record all necessary evidence in order to prove that income(which include losses) related to business of selling bullet-proof jackets were offered for taxation in earlier years and thirdly that these loans and advances are inextricably linked to said business of selling bullet-proof jackets carried on by assessee in those years. The aforesaid primary onus is on assessee to get deduction u/s 36(!)(vii) of the 1961 Act read with Section 36(2) of the 1961 Act. Under these circumstances, we restore this issue to the file of the AO for

framing fresh assessment denovo. Needless to say that AO shall grant adequate and proper opportunity to the assessee in accordance with principles of natural justice in accordance with law, in denovo assessment proceedings. The additional evidences/explanations filed by assessee in its defense during de-novo assessment proceedings will be admitted by AO and the issues be adjudicated by AO in denovo assessment proceedings on merits in accordance with law. We order accordingly.

In the result, the appeal filed by assessee in ITA No.150/Chny/2019 for ay: 2013-14 is allowed for statistical purposes.

Order pronounced in Open Court on this 28th day of November, 2019 in Chennai.

**Sd/-**

(धुव्वुरु आर.एल. रेड्डी)

**(DUVVURU R.L.REDDY)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

**Sd/-**

(रमित कोचर)

**(RAMIT KOCHAR)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 28<sup>th</sup> November, 2019.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF