

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" Bench, Mumbai**

**Before Shri A.D. Jain, Vice President
and Shri Rajesh Kumar, Accountant Member**

ITA No. 5957/Mum/2016
(Assessment Year: 2012-13)

M/s. Alcatel Lucent Managed Solutions India DLF Cyber Greens, 14th & 15th Floor Tower C, Phase-III, Gurgaon Haryana 122002	Vs.	DCIT, Circle - 9(1) Mumbai
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PAN – AAHCA1341C

Appellant

Respondent

Appellant by:	Shri Salil Kapoor & Shri Shagun Mahajan
Respondent by:	Shri Awungshi Gimson

Date of Hearing:	25.09.2019
Date of Pronouncement:	17.12.2019

ORDER

Per Rajesh Kumar, AM

This appeal filed by the assessee is directed against the order of the CIT(A)-16, Mumbai dated 21.07.2016 and it relates to A.Y. 2012-13.

2. The issue raised in Ground No. 1 is general in nature and needs no adjudication. The issue raised in Ground Nos. 2 & 3 is against the order of the CIT(A) upholding the disallowance of `30,66,21,626/- made by the AO in respect of bad debts. Ground Nos. 2 & 3 are extracted below for the sake of ready reference : -

2. *On the facts and in the circumstances of the case and in law, the Learned CIT(A) has erred in upholding disallowance of a sum of Rs.30,66,21,626/- in respect of bad debts as made by the Deputy Commissioner of Income Tax – 9(1)91, Mumbai (‘Learned AO’) without appreciating the detailed written submissions filed by the Appellant on allowability of such amount.*
3. *On the facts and in the circumstances of the case and in law, the Learned CIT(A) has wrongly interpreted the provisions of Section*

36(1)(vii) read with Section 36(2) of the Act and also erred in affirming the view of the Learned AO which is misconceived, erroneous, unjustified and incorrect."

3. Brief facts of the case are that the assessee is in the business of providing service of operations, management and maintenance of telecommunication networks. During the course of assessment proceedings, the AO observed that the assessee had debited Rs. 38,34,42,562/- as bad debts comprising `22,21,54,111/- on account of settlement of claims and appended a note no. 31 to financial statements to that effect and 17,00,00,000/- not acknowledged by Reliance entities as debts. The assessee also furnished copy of settlement deed vide letter dated 24.12.2011 which provides for issuing credit note to Reliance Entities for an amount of 38.44 crores out of the total outstanding sum of `80.33 crores. The settlement deed further states that the assessee's invoice could not be cleared by Reliance entities as there were some differences between the parties with respect to performance to be achieved and time frame thereof and also dispute with respect to claim of equipments managed to be charged. The assessee also furnished year-wise summary of opening balance and closing balance of Reliance Communication Ltd. and Reliance Telecom Ltd. Both Reliance entities are shareholders of the assessee company and assessee has entered into an agreement with Reliance Communication Ltd. to provide managed service of operation cum maintenance and management of Reliance network w.e.f. 09.05.2008. The assessee has issued bills to the following Reliance entities for the work executed in A.Y. 2012-13: -

Entity	Total Invoice value (`)
RCOM	58,51,60,395/-
RTL	10,41,86,660/-
RIL	11,40,94,665/-
TOTAL	80,34,41,720/-

4. The assessee could not realise the said bills despite hectic follow up with Reliance Communication Ltd. and Reliance Telecommunication Ltd. and ultimately a settlement agreement was reached with those companies that those companies will not make payment of `38,34,42,562/- out of the total claim of `80,34,41,720/-. The assessee also submitted before the AO that the assessee was incorporated on

27.05.2008, which was established as a joint venture between Alcatel Lucent India Ltd. holding 67% in the share capital and Reliance Communication Infrastructure Ltd. holding 33% in share capital. The AO after considering the contention of the assessee came to the conclusion that the said bad debts of `21 crores and not including `17 crores, aggregating to `38,34,42,562/- were nothing but sham transactions and colourable device on the ground that the assessee is influenced by its shareholders who have substantial control over the said entities and accordingly added to the income of the assessee vide order dated 24.02.2015 under Section 143(3) of the Act.

5. In the appellate proceedings the learned CIT(A) dismissed the appeal of the assessee after taking into consideration the contentions and submissions made by the assessee during the appellate proceedings by holding and observing as under:

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6.1.4. I have considered the submission made by the appellant and the material available on record. The appellant had not denied the fact that both Reliance Company Ltd. and Reliance Telecom Ltd. were related parties. Even the auditors of the company in form 3 CD have mentioned u/s 41A(2)(b), the name of M/s. RTL and M/s. RCOM as related parties of the assessee company. The Ld. A.O. had relied upon the judgment of Supreme Court in the case of Sovereign Securities Pvt. Ltd. The Hon'ble High Court in para 4 of its order has held as under:

"4. It is not possible to accept these contentions for more than that reason. The attempt is to have a re-appreciation and re-appraisal of the factual materials on record. It has been currently found by the Assessing Officer, Commissioner of Income-tax (Appeals) and Income-tax Appellate Tribunal that the whole claim was based on firstly terming the other private Limited entity as a sub broker. During the assessment proceedings, it has been referred to as business loss. The attempt was to enable the companies to avoid paying tax on profits which are taxable. That conclusion has been arrived at by probing and piercing transaction and dealings. If the debts were indeed written off as bad in the accounts, then, there was no reason for conflicting versions emerging from the record. Both the authorities have found that the attempt was to avoid liability of income-tax on taxable profit, you may present an appeal namely Sovereign Nariman Broking (P) Ltd. whereas Sovereign Nariman Finvest Limited was acting as the assessee's company's sub broker. That company was supposed to pay the assessee company Rs.37.93 lacs till May 2003. From June 2003 to August 2003 the company made certain payments and in August, 2003 when the amount receivable from sub-broker was Rs.26.93 lacs it finally conveyed to the assessee company that it is not possible to pay any further money. It is at that stage the Assessee Company claimed that it was a bad debt. The

Tribunal referred to the fact that one Mr. Harshad P. Chokshi is holding substantial shares in the assessee -company and also in SNFPL. This shows that there was a book entry wherein the assessee claimed bad debts as a means to reduce taxable profits. The reasons assigned in para 12 of the order of the Tribunal therefore, are essentially in the backdrop of the peculiar facts and circumstances emerging from the record. In such circumstances, we do not find any substantial questions of law arising for determination and consideration in this Appeal. This is not a case where there is a controversy or the debt written as bad in the accounts being required to be established as indeed bad debt. This is a controversy where the claim of bad debts was raised to avoid tax liability. That having been proved and the entire version is termed as a mere eye-wash, that this is not a fit case where substantial Questions of law arise for determination in this appeal. The appeal is devoid of any merits and is dismissed."

6.1.5 While deciding the issue, regarding allow ability of bad debts in the cases of related parties, the Hon'ble Jurisdictional High Court has also considered the judgment of Hon'ble Apex Court in the case of TRF Ltd. vs. CIT (supra). Therefore, respectfully following the judgment of the Hon'ble High Court, bad debts disallowed by the AO is confirmed and the appeal of the assessee is dismissed. However, the AO is directed to take the figure of bad debts for an amount of Rs.30,66,21,626/- as claimed by the appellant in its Profit & Loss Account instead of Rs.3 8,34,42,562/-. As a result, appellant will get a relief of Rs.7,68,20,936/-."

6. The learned A.R. submitted before the Bench that the assessee company is joint venture of Alcatel Lucent India Ltd. holding 67% shares and Reliance Communication Infrastructure Ltd. holding 33% shares and denied the observations of the authorities below as incorrect that Reliance Communication Ltd. and Reliance Telecom Ltd. were shareholders of the assessee company. The learned A.R. submitted that all the three entities, viz. Reliance Communication Ltd., Reliance Telecom Ltd. and assessee are separate legal entities operating independently. The learned A.R. also submitted that Alcatel Lucent India Ltd. is holding 67% of shares of the assessee and therefore it had significant control over the assessee. The learned A.R. submitted that despite the dispute of `80,34,47,720/-, the assessee could recover substantial amount and only `38,34,42,562/- became bad and ultimately written off. While rebutting the observations of the learned CIT(A) and AO regarding the address appearing on the letter head of the assessee company, the Id. AR submitted that was that of Reliance Infrastructure Ltd. The learned A.R. stated that the address of the assessee was one where its Registered Office was located and merely by using the address of an entity it cannot be said that the assessee is influenced by the

said entity. Without prejudice, the learned A.R. argued that the entity, whose address was being used, is neither shareholder of the assessee nor its customer. The learned A.R. argued that Reliance Communication Ltd. and Reliance Telecom Ltd. were major customers of the assessee. Out of the total revenue realised by the assessee during the year, approximately 99% of the revenue was contributed by Reliance entities. The learned A.R. submitted that had the settlement not reached, this would have caused huge loss to the assessee in the form of impact on assessee's business operations due to the uncongenial business relation with the Reliance entities. The learned A.R. submitted that it is not the case of the Revenue that services in respect to which debt was due were not rendered. Neither it has been alleged that the conditions prescribed in section 36(1)(viii) and 36(2) were not satisfied. The learned A.R. contended that merely because, the debts were due from sister concerns cannot form the basis for holding the same were sham transactions. The learned A.R., laying more stress on the fact that during the four years commencing from A.Y. 2009-10 to A.Y. 2012-13, the assessee has offered a revenue of `829 crores and the same has been accepted by the Revenue. The learned A.R. contended that once the revenue from rendering such services were accepted as genuine transactions, any loss due to non-recovery of the said amount cannot be held to be non-genuine and re-characterised as a sham transactions. The learned A.R. argued that the AO has failed to bring on record any material to show that the debts, which were written off, were not genuine. The learned A.R. relied heavily on the decision of the Hon'ble Supreme Court in the case of T.R.F. Ltd. vs. CIT (2010) 323 ITR 397 wherein the Hon'ble Supreme Court has held that once the debt is written off as bad then the assessee is not required to prove that the debt has become bad during the year. The learned A.R. therefore prayed that the appeal of the assessee may kindly be allowed by setting aside the issue the learned CIT(A).

7. The learned D.R. relied heavily on the orders of the authorities below by submitting that the amounts written off during the year were nothing but sham transactions which were primarily done to reduce the tax liability of the assessee. The learned D.R. submitted that since the assessee and other companies are related parties and therefore their claim have been worked out in such a manner so that the tax liability of assessee is reduced by claiming such huge loss. So far as

the settlement deed dated 24.12.2011 was concerned, the learned D.R. submitted that all these are internal documents executed by various interested parties and therefore no credence can be lent to such type of documentations. The learned D.R., relied up on the decision in the case of M/s. Sovereign Securities Pvt. Ltd. vs. ITO in ITA No. 2715/Mum/2009 for A.Y. 2004-05 order dated 10.04.2012, which was confirmed by the Hon'ble High Court, as reported in (2014) 48 taxmann.com 105 wherein the decision the decision relied upon by the assessee in the case of T.R.F. Ltd. vs. CIT (2010) 323 ITR 397 (SC) has been referred to. Finally the learned D.R. submitted that in view of these facts and judicial precedents, the appeal of the assessee may kindly be dismissed.

8. We have considered the rival submissions and perused the material on record. The undisputed facts are that the assessee company is incorporated vide joint venture deed dated 07.05.2008 between Alcatel Lucent India Ltd. holding 67% shares and Reliance Communication Infrastructure Ltd. holding 33% shares. The Reliance entities were the major customers of the assessee as the assessee derives revenue to the tune of 99% from these entities related to Reliance during the four year commencing from A.Y. 2009-10 to A.Y. 2012-13 amounting to `829 crores. It is also not the case that the assessee has not rendered any service to the Reliance entities. Dispute arose between the assessee and the Reliance entities to the tune of `80,34,47,720/-, which was settled vide deed of settlement dated 24.12.2011 wherein it has been provided that Reliance entities, i.e. Reliance Communication Ltd and Reliance Telecom Ltd. would pay `42 crores in instalments by March, 2012 and the balance would not be paid by the Reliance entities and the assessee company should issue credit notes to the respective parties. Accordingly a sum of `38,34,42,562 was agreed not to be paid to the assessee by Reliance Communication Ltd and Reliance Telecom Ltd . Out of the said amount, `9,44,67,515/- was adjusted against current year revenue of the assessee company and `7,68,20,936/- was adjusted towards deferred revenue pertaining to the customers while `21,21,54,111/- pertained to dealings done prior to March 31, 2011 which has been disclosed separately as settlement of claim in the Profit & Loss Account. The AO rejected the claim of the assessee by making disallowance of bad debts `38,34,42,562/- by holding that the amounts written off were sham transactions and was a methodology to reduce tax liability in the hands of the

assessee. The learned CIT(A) partly allowed the appeal of the assessee by sustaining the addition to the extent of `30,66,21,626/- and relief was allowed to the extent of `7,68,20,936/-. In the present case before us the Revenue has not disputed the dealings by the assessee company with Reliance entities which have been offered by the assessee to tax. We are also not in agreement with the findings of the CIT(A) that the said transactions were sham transactions especially when the revenue offered by the assessee has accepted by the Revenue authorities. Moreover, the issue is squarely covered by the decision of the Hon'ble Supreme Court in the case of T.R.F. Ltd. (supra) wherein the Hon'ble Supreme Court has held that once the debts are written off as irrecoverable, that is sufficient and assessee is not required to prove that the debt has actually become bad during the year. The case law relied upon by the learned D.R. in the case of Sovereign Securities Pvt. Ltd. (supra) wherein the bad debts were claimed by the assessee for the amount due from the brokers in respect of shares dealings and share brokerage and amount was computed as income of the assessee and the same was not offered for tax. Thus the AO held that the conditions of Section 36(1)(vii) r.w.s. 36(2) of the Act were not satisfied. But this is not the case before us and accordingly this decision of the Hon'ble Supreme Court as relied up on by the Revenue is not applicable to the case's case. In view of these facts and circumstances, in our considered view the order of the learned CIT(A) cannot be sustained as the assessee has written off the bad debts as same have been offered to tax by the assessee in the earlier year and accepted by the Revenue and therefore clearly covered by the decision of the Hon'ble Apex Court in the case of T.R.F. Ltd. (supra). We, therefore, respectfully following the decision of the Hon'ble Supreme Court set aside the order of the CIT(A) with the direction to AO to delete the disallowance.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 17th December, 2019.

Sd/-
(A.D. Jain)
Vice President

Sd/-
(Rajesh Kumar)
Accountant Member

Mumbai, Dated: 17th December, 2019

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -16, Mumbai*
4. *The Pr.CIT - 9, Mumbai*
5. *The DR, "C" Bench, ITAT, Mumbai*

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

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