

IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH KOLKATA

BEFORE SHRI S. S. GODARA, JM & Dr. A. L. SAINI, AM

आयकर अपीलसं./I.T.A No.2479/Kol/2018

(निर्धारण वर्ष / Assessment Year: 2015-16)

M/s. Asiatic Oxygen Ltd. 8, B.B.D. Bag (East), Dalhousie Square, Kolkata – 700 001.	Vs.	ACIT, Circle 4(1), Kolkata
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AACCA 6748 G		
(Appellant)	..	(Respondent)

Appellant by : Shri S.M. Surana, Advocate

Respondent by : Shri Dhrubajyoti Roy, JCIT, Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 23/12/2019

घोषणाकीतारीख/Date of Pronouncement : 31/12/2019

आदेश / O R D E R

Per Shri S. S. Godara, JM

This assessee's appeal for assessment year 2015-16 arises against the Commissioner of Income Tax (A) - 2, Kolkata dated 16.11.2018 passed in case no.10418/CIT(A)-2/17-18 involving proceedings u/s 143(3) of the Income Tax Act, 1961 (in short 'the Act').

Heard both the parties. Case file perused.

2. The assessee's sole substantive grievance canvassed in the instant appeal seeks to reverse both the lower authorities action disallowing its bad debts claim of Rs. 1,87,01,000/- related to transactions on National Spot Exchange Ltd. The CIT(A)'s detailed discussion affirming the Assessing Officer's action to this effect reads as under:

"Ground No - 2 and 3

Grounds of appeal

For that on the facts and circumstances of the case the Ld. AO erred in disallowing the claim of bad debts of Rs. 1,87,01,000/- related to transactions of National Spot Exchange Ltd , duly written off in the accounts and the same was fully allowable under the law.

For that the amount outstanding being part of the debt and written off during the year should have been allowed as bad debt.

Submission of the AR of the appellant

The second ground relates to the disallowance of the bad debt written off by the assessee, The AO has disallowed the same only on the ground that in view of the various recovery proceedings taken by the National Spot Exchange Ltd. for recovery of its assets at the instruction of the Bombay High Court, the assets of the debtor were under recovery and therefore there were still chance of recovery. The Ld AO has relied on the CBDT's Circular issued in May 2016. It is submitted that the Ld. AO has not correctly appreciated the CBDT's instructions were as under:'

*Circular No. 12/2016
F. No. 279/Misc./140/2015 - ITJ
Government of India
Ministry of Finance Department of Revenue
Central Board of Direct Taxes
New Delhi, Dated 30th May, 2016*

Subject: - Admissibility of claim of deduction of Bad Debt under section 36(1) (vii) read with section 36(2) of the Income-Tax Act, 1961- reg.

Proposals have been received by the Central Board of Direct Taxes regarding filing of appeals/pursuing litigation on the issue of allowability of bad debt that are written off as irrecoverable in the accounts of the assessee. The dispute relates to cases involving failure on the part of assessee to establish that the debt is irrecoverable.

2. Direct Tax Laws (Amendment) Act, 1987 amended the provisions of sections 36(1)(vii) and 36(2) of the Income Tax Act 1961, (hereafter referred to as the Act) to rationalize the provisions regarding allowability of bad debt with effect from the April, 1989.

3. The legislative intention behind the amendment was to eliminate litigation on the issue of the allowability of the bad debt by doing away with the requirement for the assessee to establish that the debt, has in fact, become irrecoverable. However, despite the amendment, disputes on

the issue of allowability continue, mostly for the reason that the debt has not been established to be irrecoverable. The Hon'ble Supreme Court in the case of TRF Ltd. In CA Nos. 5292 to 5294 of 2003 vide judgment dated 9.2.2010, has stated that the position of law is well settled. "After 1.4.1989, for allowing deduction for the amount of any bad debt or part thereof under section 36(1)(vii) of the Act, it is not necessary for assessee to establish that the debt in fact has become irrecoverable; it is enough if bad debt is written off as irrecoverable in the books of accounts of assessee."

4. In view of the above, claim for any debtor part thereof in any previous year shall be admissible under section 36(1)(vii) of the Act, if it is written off as irrecoverable in the books of accounts of the assessee for that previous year and it fulfills the conditions stipulated in sub section (2) of sub-section 36(2) of the Act.

5. Accordingly, no appeals may henceforth be filed on this ground and appeals already filed, if any, on this issue before various Courts/Tribunals may be withdrawn/not pressed upon.

6. This may be brought to the notice of all concerned.

*(Sadhana Panwar)
DCIT (OSD) (IT),
CBDT, New Delhi.*

It is clear that the CBDT has accepted the judgment of the Hon'bte Supreme Court and has directed that bad debt should be allowed as deduction once it is written off by the assessee. The judgment of the Hon'ble Supreme Court is also enclosed herewith.

The CBDT has clearly directed that if the consideration is section 36(2) are fulfilled the debt should be allowed as deduction. The AO has not disputed that the conditions in section 35(2) are not fulfilled. In fact the conditions are that the debt should be taken into account while computing the income for any earlier year. It is on record that this debt was part of the business transaction and the income arising from the dealing with National Spot Exchange Ltd. was taken into account while computing the total income for earlier years which facts were paced before the AO and the same ore not disputed. Not only that the amount was allowable as bad debt, the some was also allowable as business /loss since the same arose in the course of business. The Commodity trading was done as business at the platform of the exchange and money was paid

for purchase of commodity. Before the commodity on account of the assessee could be

sold, the spot exchange was closed which is also apparent from the order of the AO and was more or less

in the process of liquidation for which the Bombay High Court directed to sale its assets. There was no chance of recovery and if some amount could be recovered afterwards, section 41(1) takes care of the same and the amount so recorded shall be added as income of the assessee in the year in which it is recovered.

It is also submitted that apart from bad debt the amount was also allowable as business loss. There is no dispute that assessee was regularly having trading with National Spot Exchange Ltd. and earned profit there from the A Y 2013-14 and 2014-15. The amount was paid to them against purchase of goods. The said goods remained at stock exchange for resale and before it could be resold the exchange was closed.

Hence the amount was a trading debt which when written off is allowable as business debt. Reference in this connection is invited to the following judgements:

The Delhi High Court in the case of Mohan Meakin Ltd. CIT (2012) 348 ITR 109 has held that the amount of advance in the course of business becoming irrecoverable is deductible as business.

In case of Travancore Tea Estates Co. Ltd. vs CIT (1979) 197 ITR 528 (Ker), it has been held that under section 28, a bad debt which cannot be written off may be allowed as a trading loss, provided the loss is incurred wholly and exclusively for the purpose of the business of the assessee.

In the case of CIT vs Inden Biselers (1989) 47 Taxman 225 (1990) 181 ITR 69 (Mad), it has been held that even though the expenditure is not admissible for the computation of the total income either as a bad debt or as an expenditure wholly incurred for the purpose of business, still, it can be allowed as an expenditure as a trading loss if arises directly from carrying on the business and its incidental to the business. The facts of the reported cases are similar to those of the appellant's case. Therefore, I am of the view that the Assessing Officer was not justified in disallowing the claim of loss of bad advances written off as a trading loss. Therefore, the addition of Rs. 36,99,359/- is deleted.

The Hon'ble Supreme Court in the case of Commissioner of Income Tax vs Pandit Lakshmi Kant Kha & Others (1972) 84 ITR 481) held that a debt

incurred in the course of business activity of the assessee, if it is written off in any accounting period, it can be claimed as bad debt in the corresponding assessment year and the assessee having written off the amount.

It was therefore clear that once the bad debt was written off in the books of accounts in the same was to be allowed as deduction. The disallowance made by the AO, therefore, may be deleted."

3. We have given our thoughtful consideration to rival contentions against and in support of the impugned disallowance/decision. We noticed that both the lower authorities are very very fair in not disputing the genuineness of assessee's claim that assessee's claim in light of the relevant statutory provision u/s 36(1)(vii) read with section 36(2) of the Act. Their only case is that the assessee's impugned claim is pre-mature since recovery proceedings to this effect are going on. We make it clear that they have already examined the corresponding ledger account that the assessee has indeed written off the impugned sum. We, therefore, quote hon'ble apex court's land mark decision in TRF Ltd. vs CIT 210 ITR 392 that for raising such a bad debts claim, it is no more necessary w.e.f. 01.04.1089 as per the amended statutory provision to prove that this debts have actually become irrecoverable. We, therefore, go by the very reasoning mutatis mutandis herein as well to hold that both the lower authorities have erred in law and on facts in disallowing the assessee's impugned claim. The Assessing Officer is directed to delete the same.

4. This assessee's appeal is allowed.

Order is pronounced in the open court on 31.12.2019.

Sd/-
(A. L. Saini)
ACCOUNTANT MEMBER

Sd/-
(S. S. Godara)
JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 31/12/2019

(Biswajit, Sr.PS)

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. The Appellant - M/s. Asiatic Oxygen Ltd.
2. The Respondent- ACIT, Circle – 4(1), Kolkata.
3. आयकरआयुक्त(अपील) / The CIT(A), Kolkata [sent through email]
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, **कोलकाता**/ DR, ITAT, Kolkata [sent through email]
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Assistant Registrar,
I.T.A.T, Kolkata Benches,
Kolkata.