

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

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

आयकर अपीलसं./I.T.A No.1057/Kol/2019

(निर्धारण वर्ष / Assessment Year: 2013-14)

Khanpur Cold Storage P. Ltd. C/o. S.N. Ghosh & Associates, Advocates "Seben Brothers' Lodge, P.O Buroshibtala, P.S. Chinsurah, Dist- Hooghly, 712105.	Vs.	ACIT, Circle-24, Hooghly.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCK2877P		
(Appellant)	..	(Respondent)

Appellant by : Shri Somnath Ghosh, Advocate

Respondent by : Smt. Ranu Biswas, Addl. CIT

सुनवाईकीतारीख/ Date of Hearing : 16/12/2019

घोषणाकीतारीख/Date of Pronouncement : 31/12/2019

आदेश / ORDER

Per Shri S. S. Godara:

This assessee's appeal for assessment year 2013-14 arises against the Commissioner of Income Tax (A) - 6, Kolkata dated 30.04.2019 passed in Case No.CIT(A), KOL-6/10416/16-17 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 former substantive ground challenges correctness of both the lower authorities' action disallowing its bad debts claim of Rs.1,20,000/- during the course of assessment as upheld in the lower appellate proceedings. The CIT(A)'s detailed discussion to this effect reads as under:

3. Ground No. 1 is against the disallowance made u/s. 36(1)(vii) of the Act by the AO observing as under : -

"2. The assessee claimed Bad Debts of Rs.1,30,000/-. From the details it is seen that the assessee initiated action to recover Rs. 10,000/- but could not recover it. Therefore Rs.10,000/- is allowable. But for balance amount of Rs. 1,20,000/- (1,30,000 -10,000) neither the assessee could furnish any details nor had it initiated any action to recover the amount. Hence, Rs. 1,20,000/- is not allowable. The assessee was given reasonable opportunity to explain why Rs. 1,20,000/- should not be disallowed in computing total income against claim of Bad Debts. But the assessee did not file any supporting evidence not had it objected to the proposed computation. Hence Rs.1,20,000/- is disallowed in computing total income."

4. During the appellate proceedings, the A/R of the appellant had vehemently disputed the action of the AO by filing a written submission along with various documents in support of his claim. The relevant portion of the written submission is incorporated as under: -

"In assailing the finding in this respect, it is vehemently submitted that the said amount represents sale price of a generator set sold to Amritapur Tea Co. Ltd. on credit during the previous year 1995-1996 which was duly accounted for in the books of accounts of the appellant. However, the said party had failed to pay the cost of the item sold to them due to insolvency and the amount could not be recovered from them since it was not considered viable. These facts were brought before the Ld. Assessing Officer who however, ignored them at his own peril. The appellant had duly shown the amount in its accounts as Sundry Debtors. Since the appellant, had duly considered the income from sale of such asset in computing its income in the assessment year 1996-1997, the appellant is entitled to deduction u/s. 36(1)(vii) of the Act on such amount since it did not receive the amount due to it. The appellant had written off this amount during the impugned assessment year in its accounts and accordingly, the amount of Rs. 1,20,000/- is admissible as deduction to the appellant. In this respect, it is contended that an amendment was brought to the provisions of s. 36(1)(vii) of the Act with effect from 01-04-1989 applicable from the assessment year 1989-1990 that a claim of bad debts or part thereof has to be allowed for in the previous year in which such bad debts or part thereof has been actually written off as irrecoverable in the accounts of the assessee for the relevant previous year. It is an undisputed fact that the impugned debt of Rs.1,20,000/- had actually been written off in the books of account of the appellant during the relevant assessment year. In fact, the amendment does not require the appellant to establish that the debt had become bad in the previous year, before getting deduction, and mere write off as irrecoverable of debt or part thereof is substantial compliance with the provisions of s. 36(1)(vii) of the Act. It is settled in the case of T.R.F. LTD. -VS- C.I.T. (2010) 323 ITR 397 (SC) that after 1-4-1989, it is not necessary for the assessee to establish that the debt, in fact, has become irrecoverable. It is enough if the bad debt is written off as irrecoverable in the accounts of the assessee. When bad debt occurs, the bad debt account is debited and the customer's account is credited, thus, closing the account of the customer. In the case of companies, the provision is deducted from sundry debtors. Further, in identical circumstances, in the case of J.S.W. STEEL LTD. - VS- A.C.I.T. (2011) 5 ITR (TRIB.) 39 (BANG), where the total amounts receivable (principal & interest) were Rs. 30,08,47,586 out of which Rs. 28,19,06,620 (principal have since been recovered, leaving a balance of Rs. 1,89,40,966 representing interests payments have become irrecoverable and even with its best efforts to retrieve the balance interests from those parties went astray, the assessee had resorted to write off the balance amount as irrecoverable fulfilling the conditions laid down under the provisions of sec. 36(1)(vii) read with sec. 36(2). The prejudicial approach of the Ld. Assessing Officer in ignoring the settled legal position on this is not in consonance with law. The Ld. Assessing Officer absolutely misconstrued the position in law and had sought to justify the addition of Rs. 1,20,000/- on the reasoning that "...neither the assessee could furnish any details nor it

had initiated any action to recover the amount" which is unknown to prescription contained in the provisions of s. 36(1)(vii) of the Act. The appellant had claimed the amount after having pursued the issue with Amritapur Tea Co. Ltd. which has closed down its operation. Therefore, the specious logic mentioned in the assessment order in this respect is bereft of any valid premise. The whole conspectus of the Ld. Assessing Officer is based on the misconception that the appellant failed to initiate an action to recover the amount. But, taking into consideration the peculiar facts and circumstances of the instant case, the Ld. Assessing Officer misconstrued the entire rationale behind the prescription of s. 36(1)(vii) of the Act in order to artificially create justification for disallowing an expense which is inescapably related to ground realities and fell within the framework of law. Therefore, the addition made by way of disallowance in the sum of Rs. 1,20,000/- being the Bad Debts was entirely misconceived and being based on totally tenuous premises sans any logic the amount so added is liable to be deleted."

5. I have considered the submissions of the A/R of the appellant in light of the facts found by the AO in the assessment order. I find that during the course of assessment proceedings, the appellant was unable to furnish any evidence to show that it had initiated any action to recover the sum of Rs. 1,20,000/- from Amritapur Tea Co. Ltd. In the instant case, the genuineness of the entries in the books was never doubted by the AO. His limited grievance was that no action was initiated by the appellant to recover the amount. In case any specific doubt has been expressed by the AO regarding genuineness in the teeth of the evidence submitted by the appellant i.e., (a) complete name and address of the Amritapur Tea Co. Ltd., (b) ledger accounts of Bad Debt and (c) Audited accounts of assessment year 1996-1997. It is a case that the requisition of the AO was not properly addressed by the appellant. The only plea made by the appellant is that the debt has been written off in the books of account. It is trite that u/s. 143(2) of the Act the Assessing Authority is empowered to require the assessee to produce the evidence in support of the return, as such where the assessee has claimed as bad debt or part thereof, written off as irrecoverable in the accounts of the assessee under the provisions of section 36(1)(vii) of the Act, then on the strength of the amendment made on April 1, 1989, it cannot be said that an inquiry is not permissible under the provision of the Income-tax Act, 1961 to see and satisfy that there is some semblance of the genuineness in the entry, which had been made, the same is not at all totally fake entry as the assessee would be entitled for deduction only if it is bad debt, or part thereof. The Hon'ble Apex Court in the case of Travancore Tea Estates Co, Ltd, vs. CIT (1999) 233 ITR 203 has taken the view, that as to whether a debt has become bad or at what point of time it became bad, are pure questions of fact. Though standard of proof of proving the same as bad debt, is not required to be adopted and is to be decided on the wisdom of the assessee and not on the wisdom of AO, but to show that entry which had been made as bad debt there has to be some material in support of the same, giving some semblance of genuineness and truthfulness to the same in the direction of forming opinion, that said debt was arising out of trading activity, there was relationship of debtor or creditor, same was irrecoverable. Merely because entries have been made, in respect of bad debt or part thereof, writing it off, claiming deduction, the said entries can always be examined by the AO, before proceeding to award deductions, and not by merely blindly following the same, but stand of the assessee has to be tested from the point of view of assessee, and assessee cannot come forward and say that on account of change brought in by way of amendment w.e.f 1st April, 1989 u/s 36(1)(vii) of the Act inquiry is not permissible."

3. We have given our thoughtful consideration to rival contentions against and in support of the impugned bad debts disallowance. There can hardly be any

dispute that hon'ble apex court's landmark decision in T.R.F. Ltd. vs. CIT (2010) 323 ITR 397 has settled the law that w.e.f. 01.04.1989 it is no more necessary for an assessee to establish the debt in question to have become actually non-recoverable in case the same is written off in the other party's ledger. We notice from the paper book that the impugned claim in fact pertains to sale price of a generator set sold to M/s Amritapur Tea Co. on credit during 1995-96 which has not been recovered till date. The assessee has placed on record the corresponding details from pages 8 to 23 to this effect. The same has nowhere been contested on merits at the Revenue's behest. Coupled with this, it has also written off the amount in question after showing the same as outstanding receivables for almost 20 years. We conclude in these facts that the assessee's bad debts claim satisfies all factual and legal parameters u/s 36(1)(vii) and (2) of the Act. We therefore direct the Assessing Officer to delete the impugned disallowance.

4. Next comes disallowance of car expenditure amounting to Rs.27,291/- alleging personal use in both the lower proceedings. Suffice to say, the assessee is a company wherein no personal user element is involved. This tribunal's coordinate bench's decision in ACIT vs. Associated Strips (P) Ltd. [2004] 1 SOT 338 (Delhi) has already decided the issue against the department. We accordingly direct the Assessing Officer to delete the impugned latter disallowance/addition as well.

5. 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

(RS, Sr.PS)

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. The Appellant - Khanpur Cold Storage P. Ltd.
2. The Respondent- ACIT, Circle-24, Hooghly.
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.