

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT),
'G' BENCH MUMBAI**

BEFORE SHRI JUSTICE P P BHATT, PRESIDENT

&

SHRI M. BALAGANESH, AM

**ITA No.4218/Mum/2018
(Assessment Year :2014-15)**

DCIT-13(3)(2) Room No.229, 2 nd Floor, Aayakar Bhavan M.K.Road, Mumbai – 20	Vs.	M/s. Zicom Electronic Security System Limited 502, Silver Metropolis Western Express Highway Goregaon (E), Mumbai – 400 063
PAN/GIR No.AAACZ1444J		
(Appellant)	..	(Respondent)

Revenue by	Shri V. Vinodkumar
Assessee by	None
Date of Hearing	16/09/2020
Date of Pronouncement	06/10/2020

आदेश / O R D E R

PER M. BALAGANESH (A.M.):

This appeal in ITA No.4218/Mum/2018 for A.Y.2014-15 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-21, Mumbai in appeal No.CIT(A)-21/ACIT-13(3)(2)/IT-460/2016-17 dated 26/03/2018 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 29/12/2016 by the Id. Asst. Commissioner of Income Tax-13(3)(2), Mumbai (hereinafter referred to as Id. AO).

None appeared on behalf of the assessee. We proceed to dispose off this issue on hearing the Id. DR.

2. The only effective issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in deleting the disallowance of Rs.5,17,76,297/- made on account of inter-corporate deposits written off in the facts and circumstances of the case.

3. We have heard the Id. DR and perused the materials available on record. We find that assessee had filed its return of income for the A.Y.2014-15 on 27/11/2014 declaring total income of Rs.14,13,40,880/-. During the course of assessment proceedings, the Id. AO observed that assessee had debited a sum of Rs 5,17,76,297/- under the head exceptional expenses in its profit and loss account. The Id. AO observed from the Note No.25.7 to the audited financial statements that assessee had given inter-corporate deposit (ICD) amounting to Rs.6 Crores in the year 2010 to M/s. Trusted Aerospace Engineering Ltd. The assessee was able to recover only a sum of Rs.3,25,00,000/- out of the said advance. The said ICD carried an interest rate of 12% per annum and the assessee had duly offered to tax the interest income on such ICD under the head 'income from business' as under:-

A.Y.	Amount
2010-11	Rs.85,80,822/-
2011-12	Rs.84,85,200/-
2012-13	Rs.72,10,274/-

3.1. We find that the aforesaid interest income had been duly assessed by the Id. AO under the head 'income from business' in those respective assessment years. We find that the assessee had submitted that M/s. Trusted Aerospace Engineering Pvt. Ltd., had become bankrupt and the remaining principal portion together with the interest due thereon became bad and became doubtful of recovery, pursuant to which the assessee had filed a criminal complaint for dishonouring of cheques u/s.138 of the Negotiable Instruments Act and legal suit before the Hon'ble Bombay High Court against the said company. The supporting documents in that regard were duly enclosed before the lower authorities. We find that assessee had submitted that a settlement had been arrived in terms of which the assessee received a part of the balance outstanding and accordingly, remaining sum of Rs.5,17,76,297/- was written off and claimed as business loss by the assessee in the return of income. We find that though the ICD was given in the year 2010, the assessee was able to recover the interest till 31/03/2014 and that the said interest income had been offered to tax by the assessee under the head 'income from business' which fact is not disputed by the revenue before us. We find that the assessee had submitted before the lower authorities that ICD of Rs.6 Crores given to M/s. Trusted Aerospace Engineering Pvt. Ltd., in the year 2010 was advanced in the ordinary course of its business. The Id. AO observed that the assessee company is a listed public limited company involved in the business of manufacturing, marketing, installing and maintaining electronic security systems and providing other related electronic security products and services. Hence, advancing monies in the form of ICD cannot be construed to have been done in the ordinary course of assessee's business. Accordingly, he disallowed the claim of business loss of the assessee in respect of ICD written off. We find that the Id. AO had also observed that with regard to write off of the principal

portion of ICD, the assessee had also not complied with the provisions of 36(2) of the Act by way of offering of income in the earlier years. Accordingly, he held that the assessee is not entitled to claim deduction towards bad debts or bad advances written off u/s.36(1)(vii) of the Act. We find that the following sequence of events would explain the facts of the assessee and its decision to write off the inter-corporate deposits comprising of principal and interest in the sum of Rs. 5,17,76,297/- better:-

- a) In April 2010, the Company has sanctioned inter-corporate deposit (ICD) of Rs.6,00,00,000/- with an interest rate of 12% per annum to a well known company Trusted Aerospace Engineering Ltd., (borrower) having the registered office in Madras in the ordinary course of business. As per the agreed terms between the Company and the Borrower, inter alia, the said ICD was repayable in 6 months.

- b) As per the repayment terms, the borrower had deposited two post dated cheques dated October 26, 2010 of Rs. 6,00,00,000 (towards principal amount) and Rs. 32,40,000 (Net of TDS towards interest amount) respectively but, on due date in month October-2010, the said cheques were dishonored by the banker of the borrower with remark "insufficient funds".

- c) Upon intimation of the same to the Borrower, the Company allowed to issue fresh cheques dated November 22, 2010 in lieu of dishonored cheques. Accordingly, the borrower issued two cheques of Rs. 3,00,00,000 each towards principal and Rs.47,25,000 (net of TDS) towards interest. However these cheques were dishonored for the same reason i.e "Funds Insufficient".
- d) As the borrower failed on two occasions to honor the cheques, the Company served a statutory demand notice dated 9/12/2010 under section 138 of the Negotiable Instrument Act, 1882. In view of no proper response from the Borrower, the Company filed a complaint on 17/01/2011, before the Hon'ble Learned 33rd Metropolitan Magistrate Court u/s 138 of the Negotiable Instrument Act, 1882.
- e) During the pendency of proceedings u/s 138 of Negotiable Instruments Act, the assessee Company sent notice to the Borrower u/s 434 of the Companies Act, 1956, dated 24/01/2011. Thereafter, the Company filed winding up petition before the Hon'ble High Court of Madras, at Chennai.
- f) While the proceedings were pending, the borrower acknowledged its liability and approached the Company for settlement in month of September 2011. Accordingly, the Memorandum of Understanding (MoU) in form of consent terms was executed between the

assessee company and the Borrower. The said consent terms were taken on record by the Hon'ble Learned 33rd Metropolitan Magistrate Court on 23/11/ 2012.

- g) The Borrower had repaid Rs. 1,25,00,000, as per MOU but said cheque was dishonored for the same reason "insufficient funds". As a result, the assessee company again served a second statutory notice u/s 138 of Negotiable Instrument Act, 1882, against Borrower on 13/12/2012; and upon receipt of no response from the Borrower, filed the complaint u/s 138 of the Negotiable Instrument Act, before the Hon'ble Learned Metropolitan Magistrate 63rd Court at Andheri.
- h) Assessee Company filed the summary suit against the borrower in the High Court of Bombay , while the proceedings were pending.
- i) At the said time, the borrower approached the assessee company and informed their inability to repay the entire sum. The borrower has requested for the amicable settlement of the outstanding amount. As the management of the assessee company was aware of the stress in the borrower company, the assessee company agreed to settle the same at Rs. 2,00,00,000. As agreed, the borrower paid Rs. 2,00,00,000 and as per the agreed terms, the assessee company withdrew its case.

- j) The assessee company and Borrower approached H'ble Court for recording of settlement but no order was passed but settlement was recorded on court case paper as informed by the Lawyer and subsequent inquiry revealed that Court had treated the said matter as disposed.
- k) Due to nonpayment of the dues, the assessee tried its best to realize the ICD (both principal & interest portion) and filed legal case from time to time as referred above against the borrower, but when it become apparent that no more realization can be received out of pending principal & interest, the Company has written-off the amount from the books amounting to Rs. 5,17,76,297/-.

3.2. The assessee also submitted before the lower authorities that granting ICDs to inter-corporate is very much permissible in its Memorandum of Association and is also governed by the provisions of Section 372A of the Companies Act, 1956 which prescribes the limit within which the inter-corporate deposits could be made by one corporate to another corporate. Hence, it was argued that the act of placing ICD in another corporate was done in the ordinary course of business of the assessee and that any loss arising to the assessee due to non-recovery of principal or interest portion thereof would obviously tantamount to business loss incurred by the assessee which would be squarely allowable as deduction. It was also submitted before the lower authorities that since the loss had arose by the assessee in an exceptional circumstance due to series of litigation undergone by the assessee as listed supra in the chronology of events, the assessee had

reflected the same in its profit and loss account under the head 'exceptional items' which was in consonance with the mandate provided under Part II and Para III of Schedule-VI of the Companies Act, 1956.

3.3. From the aforesaid narration of facts together with the chronology of events thereon the following facts emerged:-

- (a) Placing of ICD was done in the ordinary course of business of the assessee.
- (b) Placing of ICD in one corporate was permitted in the Memorandum of Association of the assessee company
- (c) The interest income received on such ICD was duly offered to tax by the assessee in earlier years under the head 'income from business' and the same was taxed by the revenue as such.
- (d) The assessee had undergone series of litigations before various judicial forums for recovery of its principal and interest amount in the ICD and had finally arrived at compromise settlement to receive a sum of Rs.2 Crores as one time settlement which consequentially lead to write off of the remaining sum of Rs.5,17,76,297/- in the books which was claimed as business loss by the assessee in the return.
- (e) The aforesaid chronology of events clearly depict the picture and prove the fact beyond doubt that the borrower had duly

expressed its inability to refund the remaining principal and interest portion of the ICD.

3.4. It is not in dispute that the interest income on ICD was taxed by the revenue in earlier assessment years under the head 'income from business'. This action itself goes to prove that revenue had factually accepted the fact that ICD was advanced by the assessee in the ordinary course of its business. When such ICD together with its interest portion thereof had been written off by the assessee due to its non-recovery and due to the fact of borrower expressing its inability to pay and finally arriving at one time settlement thereof, any consequential write off of the remaining figure in ICD would obviously become only business loss incurred by the assessee as the advancing of money there of had been done in the ordinary course of its business. We find that reliance in this regard had been rightly placed by the Id. CIT(A) on the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs. Pudumjee Pulp & Paper Mill Ltd., reported in 63 Taxmann.com 283 dated 05/08/2015 wherein under similar facts and circumstances, the Hon'ble Bombay High Court had allowed the claim of write off of ICD as the business loss. While rendering this decision, the Hon'ble Bombay High Court also placed reliance on yet another decision of the Hon'ble Bombay High Court in the case of CIT vs. Shreyas S Morakhia reported in 342 ITR 285(Bom). The relevant operative portion of the decision of the Hon'ble Bombay High Court in the case of Pudumjee Pulp & Paper Mill Ltd is reproduced hereunder:-

“10. So far as Section 36(1)(vii) of the Act is concerned, it is a settled position in law that after 1st April, 1989, it is not necessary that the debt itself must be proved to be irrecoverable. The only requirement is that the amounts claimed as bad debts should be written off as irrecoverable in the account of the Assessee (see TRF Ltd. v. CIT [2010] 323 ITR 397/190 Taxman 391 (SC). The satisfaction of the above provision is not

disputed by the Revenue. The hub of the controversy is whether the requirement of Section 36(2)(i) of the Act is satisfied.

11. It is noticed that Section 36(2)(i) of the Act allows deduction on account of satisfaction of any of one of the two conditions as under:—

(a) bad debts or part thereof taken into account in computing the income of the assessee for an earlier Assessment Year before such debt or part thereof is written off; or

(b) the debt represents money lent in the ordinary course of business of banking or money-lending which is carried on by the assessee.

Therefore, even if one of the two conditions of Section 36(2)(i) of the Act is satisfied, then bad debts claimed under Section 36(1)(vii) of the Act has to be allowed.

12. So far as first part of Section 36(2)(i) of the Act is concerned, i.e. (a) above, we find that the Respondent-Assessee had during the earlier Assessment Years offered to tax an amount of Rs. 42.65 lakh received as interest on the deposit made with M/s. GSB Capital Market Ltd. The Appellant (sic.) had since Assessment Year 1998-99 claimed an amount of Rs. 49.82 lakhs as doubtful debts from M/s. GSB Capital Market Ltd. This consisted of the aggregate of principal and interest payable by M/s. GSB Capital Market Ltd. It was in the subject Assessment Year that a settlement was arrived at between the parties and the Respondent-Assessee received Rs.15 lakhs from M/s. GSB Capital Market Ltd. and the balance amount of Rs. 34.82 lakhs being non-recoverable was being claimed as bad debts by writing off the same in its books of account. It would thus be noticed the amount of Rs. 34.82 lakhs which constitutes partly the principal amount of the inter-corporate deposits and partly the interest which is unpaid on the principal debt. The Assessing Officer's contention that amount of Rs. 34.82 lakhs was not offered to tax earlier and, therefore, deduction under Section 36(2)(i) of the Act is not available, is no longer re-integra. This very issue came up for consideration before this Court in Shreyas S. Morakhia (supra) wherein the assessee was a stock broker and engaged in the business of sale and purchase of shares. The brokerage payable by the client was offered for tax. Subsequently, it was found that the principal amount which was to be received from its clients would not be received. The assessee sought to claim as bad debts not only the brokerage amounts not received but the aggregate of principal and brokerage amounts not received in respect of the shares transacted. This Court held that the debt comprises not only the brokerage which was offered to tax but also principal value of shares which was not received. Therefore, even if a part of debt is offered to tax, Section 36(2)(i) of the Act, stands satisfied. The test under

the first part of Section 36(2)(i) of the Act is that where the debt or a part thereof has been taken into account for computing the profits for earlier Assessment Year, it would satisfy a claim to deduction under Section 36(1)(vii) read with Section 36(2)(i) of the Act. In fact, the Revenue also does not dispute the above provisions as no submission in that regard were made during the course of hearing before us.

13. Therefore in view of the above self evident position in Section 36(2)(i) of the Act as well as decision of this Court in Shreyas S. Morakhia (supra), no substantial question of law arises for our consideration.

14. It is clarified that in view of the Respondent-Assessee being entitled to deduction on bad debts in view of first part of Section 36(2)(i) of the Act, we have not opined on the second part thereof viz: whether or not the Assessee was engaged in the business of money lending and/or banking. This is so as in the present facts it becomes academic.

15. Accordingly, Appeal dismissed. No order as to costs.”

3.5. In view of the aforesaid observations on the facts and also by placing reliance on the decision of the Hon'ble High Court referred to supra, we do not find any infirmity in the action of the Id. CIT(A) granting relief to the assessee with regard to allowability of write off of ICD amounts in the sum of Rs.5,17,76,297/- as business loss. Accordingly, the grounds raised by the revenue are dismissed.

4. In the result, appeal of the revenue is dismissed.

Order pronounced on 06/10/2020 by way of proper mentioning in the notice board.

Sd/-
(JUSTICE P P BHATT)
PRESIDENT

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 06/10/2020

KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai