

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

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER
(Through Virtual Hearing)

ITA No.1565/Hyd/2017	
Assessment Year:2013-14	
DCIT, Circle-16(2), Hyderabad.	Vs. Margadarsi Chit Fund Private Limited, Hyderabad. PAN: AABCM 4751 G
(Appellant)	(Respondent)
Assessee by:	Shri V. Siva Kumar
Revenue by:	Smt. Divya K.J, DR
Date of hearing:	06/10/2020
Date of pronouncement:	08/10/2020

ORDER

PER A. MOHAN ALANKAMONY, AM.:

This appeal is filed by the Revenue against the order of the Ld. CIT (A)-4, Hyderabad in appeal No. 0147/2016-17/ACIT, Cir.16(2)/CIT (A)-4/Hyd/17-18, dated 14/06/2017 passed U/s. 143(3) r.w.s. 250(6) of the Act for the AY: 2013-14.

2. The Revenue has raised four grounds in its appeal which are extracted herein below for reference:-

- “1. The CIT (A) erred in directing the AO to allow “bad debts” to the extent of instalments defaulted by the prized subscribers and written off as “bad debts” in the books of the assessee, ignoring the order of the provisions of section 36(2) are not satisfied by the assessee.

2. *The Ld. CIT (A) erred in ignoring the fact that Revenue's appeal on identical issue for AY 2011-12 in the case of Shriram Chits Pvt Ltd is pending before the Hon'ble High Court.*
3. *The CIT (A) erred in deleting the disallowance made on account of business promotion expenditure of Rs. 10,88,110/- ignoring the fact that the assessee failed to substantiate the nexus between the expenditure and the business of the assessee.*
4. *Any other ground that may be urged at the time of hearing"*

3. The brief facts of the case are that the assessee is a private limited company engaged in the business of organizing Chit Fund, Entertainment, Food Process and Farm Maintenance filed its return of income on 28/09/2013 admitting gross total income of Rs. 159,28,24,270/-. The case was selected for scrutiny and finally assessment was completed U/s. 143(3) of the Act wherein the Ld. AO disallowed; the claim of bad debts written off amounting to Rs. 1,48,40,905/-, expenditure incurred towards service rendered to sister concerns Rs. 3,00,000/- and business promotion expenses of Rs. 10,88,110/-. On appeal, the Ld. CIT (A) deleted the addition with respect to the disallowance of the claim of bad debts and the business expense incurred by the assessee of Rs. 10,88,110/-. Aggrieved by the order of the Ld. CIT (A), the Revenue is now in appeal before us.

4. **Ground Nos. 1 & 2:- Disallowance of bad debts written off in the books of account amounting to Rs. 1,48,40,905/-:**

5. During the course of scrutiny assessment proceedings, it was observed by the ld. AO that the assessee had claimed deduction towards bad debts written off in the books of account of Rs. 1,48,40,905/-. On query, it was explained by the assessee that the amount pertains to money drawn by chit holders who subsequently defaulted in making payments for which the assessee stands as guarantor in lieu of the commission @ 5% earned on the face value of the Chit conducted. However, the Ld. AO opined that: -

- (i) The debts in question was not incurred during the normal course of the business.
- (ii) The debts does not arise from the revenue recognised by the assessee neither during the relevant AY nor during any of the preceding AYs.
- (iii) The money was not lent in the ordinary course of the business as the assessee was not in the banking business or money lending business.
- (iv) In case of chit holder's default in the payments there is no liability inflicted on the assessee to make good that amount because the assessee had never lent any money to anyone and does not have any debtors.

6. Thereafter, relying on the various decisions of the Hon'ble High Court cited in the order, the Ld. AO disallowed the claim of deduction

towards the amount of Rs. 1,48,40,905/- with respect to bad debts written off in the books of accounts.

7. On appeal, the Ld. CIT (A) deleted the addition made by the Ld.AO towards disallowance of bad debts by observing as under:-

“5.2. During the course of appeal proceedings, the appellant submitted that it is engaged in the business of chit funds and acts as a foreman for various groups of chits conducted by them. In the course of chit business, chit holders draw money in auction of chits conducted every month in advance which they have to pay-back in instalments. Appellants gets commission of 5% of the face value of chit for conducting the chit activity which is their main income apart from various other amounts collected from chit holders during the course of this business. As it happens in every business some of chit holders who draw money may not pay monthly instalments and become defaulters thus making them appellant's debtors. Some of such chit holders pay their dues in full though late, some may pay part of the dues and some may not pay such dues. Appellant tries to collect such dues by taking all possible steps legally and at times will not be able to collect some of such dues inspite of its best efforts. It is these unpaid dues which are written off after evaluating the possibility of their recoverability. Thus, non-recoverability of dues in chit business is an inherent business risk and arises in the course of carrying on chit business. Appellant also submit that such write offs will be in few cases whereas it has chit holders numbering about 3.08 lakhs. The appellant submitted that in their own case for the A.Y. 1993-94, the CIT(A), allowed the appeal in favour of the appellant. Further, the appellant submits that similar issue came up recently before the Hon'ble ITAT, Hyderabad Bench, in the case of Shriram Chits(P) Ltd. for the A.Y. 2009-10 wherein the Hon'ble ITAT vide its order in ITA No.651/Hyd/2012 dt. 05-04-2013 "remitted the issue back to the file of the Assessing Officer to re-examine the issue in the light of the order of earlier years and allowed the appellant's appeal on this ground for statistical purpose”.

5.3 I have carefully considered the submissions of the appellant and the decision of the Hon'ble ITAT in the case of Shriram Chits (P) Ltd., wherein it was held that "the amount of loss incurred by the assessee has to be allowed on both running and terminated chits if irrecoverable if the prized chit amount has gone out of the hands of the assessee. In other words, bad debts can be allowed to the extent of instalments defaulted by the prized subscribers and written off as bad debt in the books of the assessee. Therefore, the Assessing Officer is directed to rework the disallowance of bad debts accordingly. The ground of appeal is partly allowed. “

8. At the outset, we do not find any infirmity in the addition deleted by the Ld. CIT (A) on this issue. It is pertinent to mention that the assessee being the organiser of the Chits stands as a guarantor towards the Chit money taken in advance by the Chit holders and when they failed to comply with the payment of the instalments due the assessee shall be liable to replenish such amount lost in the transaction. For this service and for organizing the Chit the assessee earns an income on 5% on the face value of the Chit. Under these circumstances, when certain Chit holders fails to pay their instalments, the assessee is bound to fulfil their commitments and treat those defaulted chit holders as debtors. When the amount from such debtors are not recoverable, then it will be a loss incurred to the assessee which though cannot be treated as bad debts under the provisions of section 36(2)(i) of the Act it has to be necessarily treated as business loss u/s. 28(i) of the Act. Therefore, We hereby direct the Ld. AO to treat the amount of Rs. 1,48,40,905/- as the business loss incurred by the assessee during the course of the business for the relevant assessment year and accordingly delete the addition made for Rs. 1,48,40,905/-. It is ordered accordingly.

9. **Ground No.3: Disallowance of business expense of Rs. 10,88,110/-:**

10. During the course of the scrutiny assessment proceedings, it was observed by the ld. AO that the assessee had incurred expenditure

towards foreign travel which was claimed as business promotion expenditure. On query, it was explained by the assessee that its Managing Director visited USA for business promotion as many south Indian families especially from Andhra Pradesh are staying in USA earning high income and they could be sourced as potential clients of the assessee's business. However, the Ld. AO opined that the assessee could not establish sufficient nexus towards the expenditure incurred and the business of the assessee Company and therefore, disallowed the tour expense of Rs. 10,88,110/- incurred on the Managing Director of the assessee company as deduction.

12. On appeal, the Ld. CIT (A) deleted the addition made by the Ld. AO by observing as under: -

“6.2. During the course of appeal proceedings, with regard to above ground, the AR of the appellant submitted that, as already explained to the A.O. that these expenses consisting of travelling and stay expenses were incurred in connection with canvassing for business in USA by the Managing Director of the company and in connection with going to China by Managing Director and some employees for purchase of furniture for its offices. Further stated that the Assessing Officer is not justified in stating that the nexus of expenditure with the income earned is not proved when in fact some business was procured by the appellant in some of its branches from Non-Residents/their relatives. It is also relevant to note that it is not necessary that expenditure incurred should result in earning business income and it is enough if the expenditure was incurred for business purpose. Hence, the Assessing Officer is not justified in disallowing Rs. 10,88,110/- out of business promotion expenses.

6.3 I have carefully considered the assessment order and submissions of the appellant. During the course of appeal proceedings, with regard to above ground, the appellant submitted the Hon'ble ITAT Mumbai Bench, decision in the case of Parle Agro P. Ltd. vs. ACIT, in (2016) 52 ITR (Trib) 274(Mumbai), wherein it was held that, "we find the departmental authorities have not doubted genuineness

of the incurring of expenditure. They have not brought anything to prove that the expenditure had element of personal use. It is the prerogative of an assessee to incur or not to incur an expenditure and to decide its business needs. Therefore, reversing the order of the FAA and following order of the Tribunal for the earlier assessment year, we decide the third ground of appeal in favour of the assessee. The submissions of the appellant are considered and the addition made by the Assessing Officer in this regard deleted and ground of appeal allowed.”

13. Though We find merit in the explanation accepted by the Ld. CIT (A), neither before us nor before the Revenue any cogent evidence is brought on record to establish the nexus between the business promotion expenditure incurred by the assessee for Rs. 10,88,110/- being the foreign tour expense of the Managing Director of the assessee company. However, in the interest of justice, We hereby remit the matter back to the file of Ld. AO for fresh consideration thereby providing the assessee with one more opportunity to explain its case before the Revenue with proper evidence to justify its stand.

14. In the result, appeal of the Revenue is partly allowed for statistical purposes as indicated herein above.

Pronounced in the open Court on 08th October, 2020.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 08th October, 2020.

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Copy to:-

1.	M/s. Margadarsi Chit Fund Private Limited, 5-10-195, Corporate Office, Opp. Police Control Room, Hyderabad.
2.	DCIT, Circle-16(2), 2 nd Floor, B-Block, IT Towers, AC Guards, Masa Tank, Hyderabad.
3.	The CIT (A)-4, Hyderabad.
4.	The Principal Commissioner of Income Tax-4, Hyderabad.
5.	The Departmental Representative, ITAT, Hyderabad.
6.	Guard file