IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

BEFORE SHRI M. BALAGANESH, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No. 6818/Mum/2019

(**निर्धारण वर्ष** / Assessment Year:2014-15)

M/s. Mega Management Services Pvt. Ltd. 302 Level-3 Geejay House F- Block Shiv Sagar Estate Dr. Aniie Besant Worli, Mumbai-400018.	**बनाम**/ Vs.	DCIT, CC 6(4) R. No.1925, 19th Floor, Air India Building, Nariman Point, Mumbai-400021.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. :AAACM4743K		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Assessee by:	Shri Navnit Choudhary
Revenue by:	Shri Sanjay Sethi (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 01/02/2021

घोषणा की तारीख /Date of Pronouncement: 08/04/2021

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 27.09.2019 passed by the Commissioner of Income Tax (Appeals) -54, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y. 2014-15.

2. The assessee has raised the following grounds: -

> *"I The Ld. CIT(A)-54 has erred in law and in fact in upholding the addition made by Ld. AO under section 36(1)(iii) of the Act amounting to Rs.2,31,02,343/-."*

3. The brief facts of the case are that the assessee filed its return of income on 01.10.2014 declaring current year's loss to the tune of Rs.2,31,246/-. Thereafter, the case was selected for scrutiny. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. On verification, it was found that the assessee had debited a sum of

Rs.2,31,02,343/- against the head sundry balances written off. Notice was given to the assessee, the assessee furnished the ledger copy of the parties whose transaction was made in earlier year and claimed by him in his books of accounts during the current financial year. The assessee has also shown the same as bad debts written off. The assessee nowhere explained the transaction essential during the course of business, therefore, the said sundry balance written off a sum of Rs.2,31,02,343/- was disallowed and added to the income of the assessee. The assessee also received the loan of Rs.40,00,000/- from Quest Softech (India) Ltd. and Rs.10,23,793/- from Rajat Diamond Exim Pvt. Ltd. The genuineness of the said loan was not proved, therefore, both the loans were disallowed and added to the income of the assessee. After same disallowance u/s 14A r.w. Rule 8D. The total income of the assessee was assessed to the tune of Rs.2,82,93,960/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who dismissed the appeal of the assessee, therefore, the assessee has filed the present appeal before us.

ISSUE NO.1

4. Under this issue the assessee has challenged the confirmation of the addition u/s 36(1)(iii) of the Act of Rs.2,31,02,343/-. The Ld. Representative of the assessee has argued that the CIT(A) has wrongly declined the claim of the assessee, therefore, the finding of the CIT(A) is not justifiable, hence, is liable to be set aside. However, on the other hand, the Ld. Representative of the revenue has strongly relied upon the order passed by the CIT(A) in question. Before going further, we deem it necessary to advert the finding of the CIT(A) on record.:-

"5.2. The submissions have been carefully considered. Sections 36(1)(vii) and section 36(2) are reproduced hereunder for ready reference: -

36. (1) The deduction provided for in the following clauses, shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28.

(vii) subject to the provision of sub-section (2), the amount of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year: Provided that in the case of an assessee to which clause (viia) applies, the amount of the deduction relating to any such debt or part thereof shall be limited to the amount by which such debt or part thereof exceed. the credit balance in the provision for bad and doubtful debts account made under that clause.

Explanation. for the purposes of this clause, any bad debt or part thereof written off it irrecoverable in the accounts of the assessee shall not include any provision for bad and doubtful debts made in the accounts of the assessee;

As per the provisions of section 36(2) states as below:-

36(2) hi making any deduction for a bad debt or part thereof the following provisions shall apply --

(i) no such deduction shall be allowed unless such debt or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof is written off or of an earlier previous year. or represents money lent in the ordinary course of the business of banking or money-lending which is carried on by the assesse.

5.3. As per the above sub-sections, if the assessee has to write off any debt as bad, the same should have been taken into account to compute the income of the assessee either in the year in which it is written off or in any earlier previous years or the money should have been lent in the ordinary course of business of banking or money lending carried out by the assessee. In the instant case, the nature of the amounts written off do fit in the above referred sub-section. Out of the amount of Rs.2,31,02,343/-, Rs.36,35,000/- pertains to advances given to employees of associate companies. Firstly, advances given to employees would not have been accounted as income in the assessee's hands. Further in this case, the advances have been given to employees of associate companies

and not of the assessee. The counsel for the appellant had furnished a few copies of the appointment letters and resignation letters of some of the employees. It is seen that they have been hired by Arshiya International Ltd. and BDP (India) Pvt. Ltd. but not with the assessee company. Therefore, there is no way this advances were offered as income in any of the previous years. Also the counsel could not prove either during the assessment proceedings or during the appellate proceedings that these incomes have been considered as income in any year. With regard to the loan of Rs. 1,94,67,341/- given to Mega Meditex Ltd., it was submitted that the assessee company had granted a loan and as the borrowed company, Mega Meditex Ltd. has gone into liquidation the assessee has written off the loan as irrecoverable bad debt. In this case, the assessee has not brought anything on record to show that the advances given to employees or the loan given to Mega Meditex Ltd. have been taken into

account in computing the income of the assessee in any year. Further the assessee is not in the business of banking or money lending. As per the assessee's own admission, the assessee is in the business activity of providing consultancy and managerial services in Financial sectors and is not in the business of money lending or banking. Even if the loan has become irrecoverable for the reasons that it has not been offered as income in any of the years and also that the assessee is riot in the business of banking or money lending this amount cannot be allowed. Therefore, the advances written off and the loan given by the assessee to Mega Meditex Ltd. which is covered u/s. 36(2) of the I.T. Act cannot be allowed.

The Hon'ble ITAT Delhi in the case of Balaji Enterprises (P.) Ltd. v. Deputy Commissioner of Income-tax Circle 2(1), New Delhi (2010] 123 ITD 528 (Delhi) held as under:

4. On the above facts. the question is whether the amount is allowable as a deduction in the assessee's assessment We are afraid that the assessee is not entitled to succeed in its claim. .4s the accounts show. Umesh Chand Gupta has treated the amount of lb. 60 lakhs as advance recoverable from Madan Jain. The advance has been taken over by the assessee-company and written off in order to claim the same as a bad debt, it should have been a debt which arose in the course of the assessee's business and should have gone to swell its profits. Section 36(2)(i) says that the debt or part thereof should have been "taken into account" in computing the income of the assessee for the previous year in which it is written off or of an earlier previous year. This condition

has not been satisfied in the present case. Even the basic condition that it should be a debt in the proper sense has not been satisfied The amount represented money handed over to Madan Jain for being deposited into the bank. It was not a debt which arose in the course of the business of Balaji Enterprises. The amount of Rs. 60 lakhs also does my represent money lent either by &dap Enterprises or by the assessee in the course of banking or money lending business. The assessee does not carry on any such business nor did Boleti; Enterprises carry on such business. Since the conditions of section 36(2)(i) of the income tax Act have not been satisfied the advance of Rs. 60 lakhs cannot be successfully thinned as bad debts written off.

The Hon'ble ITAT Mumbai in the case of G.R. Pandya Share Broking Ltd. v. Income-tax Officer, 4(1)(2) [2008) 26 SOT 431 (Mumbai) held as under :

26. Keeping in view of the facts and circumstances of the case, we are of the considered opinion that assessee is entitled to claim for deduction of the bad debt on its writing off in the books of account from its total income under section 360) (vii, of the Act only with regard to the brokerage which has been taken into account while computing the total income of the assessee. Since the cost of the scrips were never taken into account, while computing the income of the assessee, it cannot be called to be the bad debt for the purpose of section 36(I)(vii) of the Act it can, at the most to he termed as the trading loss which can be allowed subject to fulfilment of other conditions prescribed in this regard. In the instant case, since the bifurcation of the brokerage and the cost of the scrip or compensation are not given. the matter, restored to the file of the Assessing Officer to re-adjudicate the issue afresh in the light of guidelines given in foregoing paws, after affording a proper opportunity of being heard to the assessee.

The Hon'ble Madras HIGH COURT in the case of Tube Investments of India Ltd. v. Joint Commissioner of Income-tax, Special Range-I, Chennai (2016) 67 taxmann.com 59 (Madras) held as under:

10. The assessee had advanced a sum of R.s. 100 lakhs to Ms. Sccals Ltd. out of its business surplus on 24.11 1995 on interest. at the rate of 25% for a period of 120 days. As the cheque issued by the debtor M's. Sccals Ltd. got dishonored. the assessee had filed a suit far recovery of money. Interest accrued on the principal of Rs.1 crore was waived from 01.04.1996. 50% of the principal amount was also agreed to be waived on payment of balance of 50% of the advance. Hence. on receipt of Rs.

50 Iakhs part of the balance of Rs. 50 lakhs, was written off in the boob. This amount of Rs. 10 lakhs were claimed as an admissible expenditure. under Section 36(2) of the Act, by way of bad debt. This deduction was disallowed. It is the claim of the assessee that this deduction claimed ought not to have been disallowed.

11. "Bad debts" is a commercial name for trade debts and it cannot include loans made to one's own employee or moneys overdrawn by an employee on commission account, which are entirely private limiters independent of the business. The expression 'bad debts also includes doubtful debts.

12. Clause (vii) [Section 10(2)(xi) of 1992 Act deals with bad debts, in which, conditions for disallowance has been stipulated:—

"This clause grants an allowance in respect of bad debts of a business, profession or vocation and in respect of irrecoverable. loans in the case of banking or money-lending business. A bad debt presupposes the existence of a debt [as reported in CIT v. JK Chemicals 207 ITR 985: CIT Howrah flour Mills Ltd (1999] 236 ITR 156 and in cases in which there never was any debt owing to the assessee, no question can arise of invoking this clause in reported National Petroleum v. CIT 13 ITR 336"

13. Four conditions which govern the grant of an allowance under this clause have been enlightened in the decision reported in Surangpur Cotton Mfg. Co. Ltd v. C1T 119831 1.13 ITR 166/12 Taxman 259 (Gun.

(0 The debt or loon should L., in respect of a business which is carried on by the assessee in the relevant accounting year.

(ii) The debt should have been taken into account In computing the income of the assessee of the accounting year, or of on earlier accounting year or should represent money lent in the ordinary course of his business of honking or money-lending.

(iii) The amount of the debt or loon, or port thereof, which is claimed as a deduction, should have become bad.

(iv) The amount should be written off as irrecoverable in the accounts of the assessee for that accounting year in which the claim for a deduction is made for the first time.

14. The contention of the learned counsel for the assessee is that as part of the debt had to be written off the same should have been allowed as

revenue expenditure, and that the Assessing Officer has chosen to treat the same as capital loss. which is not correct in law.

15. A perusal of the order passed by the Income tax Appellate Tribunal would go to show that rightly, the tribunal has relied upon the Judgment of this Court in CIT v. Micromax Systems (P.) Ltd. 1200.51 177 409/148 Taxman 486 and chosen to confirm the disallowance. In the reported decision, it has been held as under:—

In the present case, it can be seen that the assessee did not write off the debt in question as irrecoverable in his accounts for the previous year. Hence, on the plain language of Section 6(1)(vii) of the Act. the debt cannot be allowed as a "bad debt". It may be that the assessee committed an inadvertent mistake, but, we cannot go by notions of equity in tar matters. Making a provision is not the same thing as writing off a debt as irrecoverable.'

16. Relying upon the decision reported in CIT v. Abdullabhai Abdulkadar 1961 41 ITR 545 (SC), the Assessing Officer held that as the debt due was not an incident to the business, it cannot be termed as a debt and no deduction can be made on amount of bad debt and that it should be construed as a capital loss. It would be appropriate to quote the relevant portion of the said Judgment and the same reads as under.

"Under clause (xi) also a debt is only allowable when it is a debt and arises out of and as an incident to the trade. Except in money-lending trade debts can only he co described tithe;' are due from customers for goods supplied or loans to constituents or transactions of a similar kind. In every case the test is, was the debt due as on incident to the business; it is not of that character it will be a capital loss."

17. The claim for deduction on account of bad debt did not satisfy the eligibility criteria as enunciated in the decision reported in Sarangpur Cotton Mfg. Co. Ltd. (supra). Applying the correct legal position. the Assessing Officer has given a finding that the alleged debt was out part of assessee's stock in trade and that as it has not been incurred while purchasing or selling the goods, in which the company was dealing with, and therefore, the expenditure Involved cannot be treated as a debt and therefore. it is not an admissible deduction. Therefore, there is no reason to interfere with the findings of the Tribunal.

5.4. In view of the facts and circumstances of the case discussed above and judicial precedents referred to supra, the disallowance made by the

AO to the tune of Rs.2,31,02,343/- on account of bad debts is upheld. This ground of appeal is DISMISSED."

5. On appraisal of the above mentioned finding, we find that the assessee failed to prove this fact that the loan was given in the ordinary course of business of banking or money lending carried out by the assessee. Out of the amount of Rs.2,31,02,343/-, Rs.36,35,000/- was advanced to employees which undoubtedly would be in the ordinary course of business of the assessee. The assessee was not in the business of banking or money lending. The condition in view of the provisions u/s 36(2)(i) of the Act has not been satisfied. The facts are not distinguishable at this stage. No material of any kind has been produced to which it can be assumed that the finding of the CIT(A) is not justifiable. Taking into account all the facts and circumstances, we are of the view that the finding of the CIT(A) is quite justifiable which is not liable to be disturbed at this stage. Accordingly, we affirm the finding of the CIT(A) on this issue and dismiss the appeal of the assessee.

6. In the result, the appeal filed by the assessee is hereby dismissed**.**

Order pronounced in the open court on 08/04/2021

Sd/-	Sd/-
(M. BALAGANESH)	**(AMARJIT SINGH)**
लेखा सदस्य / ACCOUNTANT MEMBER	**न्यायिक सदस्य/JUDICIAL MEMBER**

मुंबई Mumbai; दिनांक Dated : 08/04/2021
Vijay Pal Singh/Sr. P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Assistant Registrar**)**
आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**