

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

ITA No.686/Bang/2019
Assessment year : 2013-14

M/s. Marketing Communications & Advertising Ltd., MC&A House, No.42, Millers Road, Vasanth Nagar, Bangalore – 560 053. PAN: AAACM 7139D	Vs.	The Assistant Commissioner of Income Tax, Circle 4(1)(2), Bangaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri K.Y. Ningoji Rao, CA
Respondent by	:	Shri Kannan Narayanan, Jt. CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	12.08.2021
Date of Pronouncement	:	23.08.2021

ORDER

Per Chandra Poojari, Accountant Member

This appeal by the assessee is directed against the order of CIT(Appeals), Bangalore-9, Bangalore dated 14.02.2019 for the assessment year 2013-14.

	Grounds of Appeal	Tax effect relating to each Ground of appeal
1	The impugned order of the Commissioner of Income Tax (Appeals)-9, Bengaluru is liable to set aside in so far as the upholding of the additions and disallowances made by the Respondent Officer are incorrect, improper, unlawful and opposed to facts of the case and law.	5,41,985/-

2	The Learned Appellate Commissioner erred in upholding the disallowance made by the AO regarding claim of Bad Debts Written Off to the extent of Rs.6,89,958/-, the same being the claims of the Appellant disputed by the Director of Information and Publicity, Government of Karnataka even though the same is allowable as deduction u/s 36(1)(vii) of the Act for the A.Y.2013-14.	2,23,857/-
3	The Learned Appellate Commissioner erred in upholding the disallowance made by the AO regarding claim of Bad Debts Written Off to the extent of Rs.6,89,958/-, misconstruing the facts of the case, even though the same is allowable as deduction u/s 36(1)(vii)of the Act for the A.Y. 2013-14.	2,23,857/-
4	The Learned Appellate Commissioner erred in upholding disallowance of Rs. 9,80,516/- made by the Assessing Officer towards the unrealized TDS made by the Appellant's Customers out of its Trade Bills in the ester years for which neither TDS Certificates were issued by them nor credit for the same was given by the AO for A.Ys.2008-09, 2009-10 and 2010-11 even after being satisfied that the said amount being otherwise irrecoverable Trading Receipts amounts to Bad Debts liable to deduction u/s 36(1)(vii) of the Act for the A.Y.2013-14.	3,18,128/-
5	The Learned Appellate Commissioner erred in upholding the disallowance of Rs.9,80,516/- u/s 36(1)(vii)of the Act for the A.Y. 2013-14 with complete disregard to the provisions of Sections 198, 199, 36(1)(vii) and other applicable provisions of the Income Tax Act.	3,18,128/-

6	The Learned Appellate Commissioner erred in upholding interest levied by the Respondent Officer under section 234B of the Income Tax Act, 1961.	10,12,449/-
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2. The additional grounds raised by the assessee are as follows:-

“1. The Learned Appellate Commissioner ought to have, alternatively, allowed deduction of Rs.9,80,516/- as deduction of business expenditure u/s 37 (1) of the Income Tax Act in so far as the said Income Tax Deducted at Sources made out of the Trade Bills of the Appellant were treated and assessed as income in the past years u/s 198 of the Act, once he decided to disallow the claim of deduction u/s 36(1)(vii) of the Act for the A.Y.2013-14.

2. The Learned Appellate Commissioner ought to have, alternatively, allowed the deduction of Rs.6,89,958/- as Business Expenditure u/s 37 of the Income Tax Act, since the same is incurred and paid by the Appellant exclusively for the purposes and in the course of its business, once he decided to disallow the claim of deduction u/s 36(1)(vii) of the Act for the A.Y.2013-14.”

3. The assessee submitted that due to inadvertence the assessee could not raise these grounds in the original grounds and submitted that all the facts relevant to the issue are already on record and these additional grounds may be admitted under Rule 11 of the Income-tax (Appellate) Tribunal Rules, 1963 [the Rules]. The Id. DR had no serious objection for admission of the additional grounds. After hearing both the parties, in our opinion, all the facts relating to the issue are already on record and placing reliance on the judgment of Hon'ble Supreme Court in the case of *National Thermal Power Company Ltd. v. CIT, 229 ITR 283 (SC)*, we admit the additional grounds for adjudication.

4. The first issue of claim of the assessee is with regard to bad debts on account of TDS amount of Rs.9,80,516 relating to AYs 2008-09, 2009-10 & 2010-11 which credited was not given to the assessee u/s. 199 of the Act, though relevant income was taxed in the hands of assessee.

5. The Id. AR submitted that the income relating to this period was already subject to tax and recovery of TDS amount has become bad in the assessment year under consideration and it was written off in the books of account in terms of section 36(1)(vii) of the Income-tax Act, 1961 [the Act] and this amount is claimed to be allowed as bad debts. Even otherwise, it is submitted that the same should be allowed as business loss u/s. 37(1) of the Act by way of additional ground of appeal.

6. The Id. DR submitted that non-availability of credit in respect of TDS cannot be reason to write off u/s. 36(1)(vii) or it can be considered as business loss since there is no evidence to show that it was duly deducted the tax and relevant income offered by the assessee for taxation.

7. We have heard both the parties and perused the material on record. In this case, the assessee's claim is that TDS was not refunded by the department and the same has to be allowed as bad debt. To claim TDS credit, the assessee shall furnish the details of TDS by the deductor and the relevant certificate of TDS issued by the deductor. First of all, the assessee has not furnished the TDS certificate to the corresponding amount of Rs.9,80,516. Without furnishing these details, the assessee is claiming benefit of TDS refund. Since the TDS was not given credit, the assessee is claiming the same as bad debts u/s. 36(1)(vii) of the Act.

8. Similar issue came up for consideration before the Kolkata Bench of the Tribunal in ITA No.927/Kol/2013 in the case of *Mc Nally Sayaji Engineering Ltd. v. ACIT* and by order dated 10.03.2017 it was held as under:-

“With regard to allowability of TDS recoverable written off is concerned, we find that the assessee had filed the details of the same before the Id AO , wherein it was clearly mentioned that the assessee had decided to write off the same due to non – availability of TDS certificates. Since the recoverability arose only in the form of collection of TDS certificates, it goes beyond

doubt that the assessee had offered the same as income in the earlier years as admittedly the TDS would be relatable to income only. Moreover, we hold that there is no requirement to satisfy the test of offering of income in the earlier years in terms of section 36(2) of the Act as the subject mentioned issue is not towards bad debts but only bad advances written off. Hence, the allowability of the same would be governed by the provisions of section 28 of the Act. The assessee in the instant case had written off the TDS portion due to non-availability of the same and hence it becomes a trading loss u/s 28 of the Act as to that extent, it had neither received the money nor the TDS certificate. Hence it becomes a trading loss allowable u/s 28 of the Act. Accordingly, the Ground No. 2(a) raised by the assessee in ITA No. 927/Kol/2013 for Asst Year 2009-10 is allowed.”

9. However, in the present case, the assessee has not furnished the details of TDS from deductor by furnishing valid TDS certificates. It is incumbent upon the assessee to show that the amount has actually been deducted by the deductor towards TDS due from the assessee. Once the assessee establishes that it has been actually deducted from the deductor, the corresponding write off by the assessee on non-recovery of TDS credit is to be allowed. With these observations, we remit this issue to the file of Assessing Officer for fresh consideration. Accordingly, the main ground and additional ground raised by the assessee on this issue is disposed of.

10. The next ground is with regard to allowability of Rs.6,89,958 towards service tax which was written off as bad debt u/s. 36(1)(vii) of the Act. The Department of Information & Publicity [DIP] takes care of publicity for the Government of Karnataka. The Government directs the appellant to publish various advertisements /publicity material in media and for these services the appellant raises the invoices in the name of Government of Karnataka in particular DIP. Since the appellant is liable to pay service tax and VAT on this, the appellant raised the invoices and charged service tax. This service tax should have been reimbursed by DIP. However, they refused to do so. The contention of the Id. AR is that assessee has written off Rs.6,89,958

due from the DIP on the reason that it was already paid by the assessee, but could not be recovered from the DIP on the ground that DIP is not paying service tax for the last 20 years since they are following the guidelines of the Department of Audio Visual Publicity [DAVP] of the Central Govt. and that it is also not paying service tax to any of the other advertising agencies also. Hence it was written off as bad debt and the same has to be allowed or otherwise it should be allowed as business loss u/s. 37(1) of the I.T. Act.

11. On the other hand, the Id. DR submitted that the assessee has not offered it as income and it was only a statutory liability routed through balance sheet and write off cannot be allowed as bad debt in terms of section 36(1)(vii) r.w.s. 36(2) of the Act. The alternative contention of the assessee is that if it is not allowed as bad debt, the same has to be allowed as business loss as the assessee has already made payment on this count to the Government authority. According to the Id. DR, this contention is also not having any merit.

12. We have heard both the parties and perused the material on record. The contention of the Id. AR is that the claim of bad debt was allowable to the assessee if the same has been written off as irrecoverable by the assessee and it was not necessary to establish that the debt has actually become bad. The Id. AR submitted though service tax was routed through balance sheet, the relevant income relating to this transaction was offered to tax and assessee failed to recover the service tax charged to its customer which was claimed as bad debt and the same has to be allowed.

13. In this case, the consideration paid as service tax was to be claimed as receivable from DIP. In the assessment year under consideration, the assessee came to know that it is not recoverable and has written off as bad debts in the books of account. The only contention of the Id. DR is that since it has not routed through Profit & Loss account, it cannot be allowed

as bad debt. We are of the view that the argument of the Id. DR is not tenable and cannot be accepted on the reason that service tax is shown as receivable from the DIP which was not received on the fact that DIP is not paying service tax in view of the guidelines of the DAVP of the Central Govt. and it is also not paying service tax to any other advertising agencies. However, the assessee has already paid this amount to the Government. Since service tax payment recovery is denied by the DIP, the assessee has written off it as bad debt. Therefore, we are of the view that the assessee is justified in claiming it as bad debt by writing off in the Profit & Loss account. Accordingly we allow the claim of the assessee. This view of our is fortified by the order of the Tribunal in the case of *DCIT v. M/s Singhania & Sons Pvt. Ltd. in ITA No.1896/Kol/2014 dated 04.12.2017* wherein it was held as follows:-

“7. Having heard the rival submissions and perused the materials available on record, we note that the assessee claimed the expenditure as per mercantile system of accounting. During the Financial Year 2010-11, in the instant case of the assessee, the Service Tax Authorities have passed various orders and the total claim of refund had been allowed to the extent of Rs.78,43,992/- and the balance refund was not allowed, which is at Rs.96,78,546/-. The balance amount of refund at Rs. 96,78,546/-, which had been disallowed by the Service Tax Officer, therefore, the same amount had been written off by the assessee by debiting the same to the Profit & Loss Account. The Assessing Officer has not allowed the claim of the assessee on the reasoning that the appeal was not filed by the assessee against the order passed by the Service Tax Officer. We do not accept the argument of the Assessing Officer, due to the reason that orders passed by the Service Tax Officer are quasi-judicial orders as equivalent to an order of a Court and it is the duty of the assessee to follow the same. Filing of appeal is only a prerogative which is optional and which may or may not be exercised.”

14. Accordingly, this ground of the assessee is allowed.

15. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Pronounced in the open court on this 23rd day of August, 2021.

Sd/-

Sd/-

(N V VASUDEVAN)
VICE PRESIDENT

(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,

Dated, the 23rd August, 2021.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.