

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" Bench, Mumbai
Before Shri Shamim Yahya (AM) & Shri Amarjit Singh (JM)

I.T.A. No. 7980/Mum/2019 (Assessment Year 2015-16)

Apurva Developers Pvt.Ltd. Centrum House, 8 th Floor Plot No.5445A, Village Kurla, CST Road Kalina, Santacruz(E) Mumbai-400 098 PAN : AAACA8270F (Appellant)	Vs.	DCIT-12(1)(1) Room No.223, 2 nd Floor Aaykar Bhawan M.K.Road Mumbai-400 020 (Respondent)
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Assessee by	None
Department by	Shri Brajendra Kumar
Date of Hearing	12.07.2021
Date of Pronouncement	05.10.2021

ORDER

Per Shamim Yahya (AM) :-

This appeal by the Assessee is directed against the order of learned CIT(A)-20 dated 23.10.2019 and pertains to Assessment Year 2015-16.

2. The grounds of appeal read as under :

1. In the facts and circumstances of the case and in law, the learned CIT-A has erred in confirming disallowance of Bad-debts claimed by the assessee
2. In the facts and circumstances of the case and in law, the learned CIT-A has erred in confirming disallowance of Bad-debts ignoring the facts that underlying advances were given in course of business and for reasons of commercial expediency.
3. In the facts and circumstances of the case and in law, the learned CIT-A has erred in not admitting the additional ground of appeal to allow claim of Bad-debts under section 37 of the IT Act, 1961.

3. Brief facts of the case are that the In the profit and loss account the appellant claimed expenditure of Rs.5,33,24,853/- being debts written off. The details are as under:

Sr. No.	Name of the Party	Amount (in Rs.)
1	Pride Hill Developers Private Limited	3,00,00,000
2	Dx Technologies	94,50,000
3	Sadguru Estate Private Limited	35,78,500
4	Sindhudurg Traders Private Limited	1,02,96,353

In respect of the debts written off pertaining to Dx Technologies, Sadguru Estate Private Limited and Sindhudurg Traders Private Limited, the appellant submitted that those receivables were outstanding for last 6 years. The appellant further submitted that it was unable to trace those 3 parties. As per para 3.2 of the assessment order, the appellant submitted copy of financial statements/schedule for AY 2009-10 wherein the debts pertaining to those 3 parties were shown as "advances against properties" under the head "loans and advances". According to the AO, it was not possible to ascertain whether those amounts were actually offered for taxation in any of the earlier assessment years from the documents. In view of the above, the AO disallowed appellant's claim of bad debts written off in respect of those three parties (Dx Technologies, Sadguru Estate Private Limited and Sindhudurg Traders Private Limited) aggregating to Rs. 2,33,24,853/

Regarding the sum written off in respect of Pride Hill Developers Pvt. Ltd., the appellant submitted before the AO that it had sold a property for a total consideration of Rs. 17,50,00,000/-; that under a memorandum of understanding

entered by and between the appellant and Pride Hill Developers Pvt. Ltd., a sum of Rs.3,00,00,000/- was retained by the Pride Hill Developers Pvt. Ltd. pending compliance with certain terms and condition; that during A.Y. 2006-07, the appellant had included the entire amount of Rs. 17,50,00,000/- in its income for the year as per the terms of the MOU; that the sum of Rs.3,00,00,000/- was receivable from Pride Hill Developers Pvt. Ltd.; that the sum of Rs. 3,00,00,000/- was written off during the relevant previous year. The AO rejected the appellant's claim. The relevant portion of the assessment order is reproduced below:

“ I have considered the submission of the assessee but do not found tenable due to the following reasons:

- (i) The assessee sold Bandra Land on A. Y. 2006-07 in respect of which the assessee is claiming bad debts of Rs. 3,00,00,000/- in respect of Pride Hill Developers Pvt. Ltd. However, assessee itself mentioned that as per the terms of the MOU the amount of Rs.3,00,00,000/- is only payable when the assessee will obtain a certificate from Maharashtra Coastal Zone Management Authority that the said property is not within CRZ Zone that also within 6 months from the conveyance. Further, on going through the MOU it is noticed that the date of deed of conveyance was 12.08.2005. Therefore, in AY 2006-07 itself assessee knows that the amount of Rs.3,00,00,000/- is not payable by the Pride Hill Developers Pvt Ltd. It is also got very much clear from the fact that the letter from CRZ authorities rejecting the claim of the Assessee is dated August 2005 only. But the assessee neither claimed the bad debts on the corresponding period nor in the later year till 2014-15. However, assessee has not submitted any explanation in this regard why it has not claimed the impugned bad debts during the period A.Y. 2006-07 to A.Y. 2014-15. Further, as per the

provisions of Limitation Act 1963, the claim of the assessee of Rs.3,00,00,000/- against the Pride Hill Developers Pvt Ltd. it is also not legally enforceable.

(ii) In the A Ys 2015-16 the assessee claimed the bad debts of Rs.3,00,00,000/- in respect of Pride Hill Developers Pvt. Ltd. for which it has not given any reason. However, on going through the submission it is noticed that in last many years assessee has not offered any business income. But this year the assessee has sold the Land development rights of Redstone Projects at Bengaluru and received long term capital Gain. That is the only reason for claiming of bad debts in this year thus the current year business loss will be set off against current year Long term capital gain. If the assessee had earlier claimed business loss/bad debts than as per the provisions of I.T. Act, 1961 the carry forwarded business loss is not adjustable against the Long term Capital Gain for A.Y. 2015-16. Therefore, assessee waited for the time when it receives the Long term Capital Gain Land development rights of Redstone Projects at Bengaluru and claimed the bad debts. The assessee thus tries to evade the legitimate tax on Long term Capital Gain by claiming bad debts in the concerned year. Therefore, it is the clear tactics from the side of the assessee to reduce its income and claim the loss. The duty of the Assessing Officer is not only assessed the income of the assessee but also lift the corporate veil in respect of taxation. Accordingly, the claim of bad debts of Rs. 3,00,00,000/- in respect of Pride Hill Developers Private Limited for the A. Y. 2015-16 is disallowed and added back to the total income of the assessee."

4. Upon assessee's appeal Ld.CIT(A) deleted the disallowances by holding as under:-

“ In respect of Dx Technologies, Sadguru Estate Private Limited and Sindhudurg Traders Private Limited, I find that the sums written off represented

advances given to those parties against properties. Thus, it is clear that those debts did not arise from any sales made by the appellant to those parties. This means that those amounts were not taken into consideration in the computation of the appellant's income in any earlier year. Therefore, condition laid down in section 36(2) is not satisfied in this case. Section 36(2) reads as under:

"(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 business of banking or money-lending which is carried on by the assessee;"

The appellant's reliance on the order of the Hon'ble ITAT mentioned in paragraph 4.3.1 above is misplaced because in that case the issue before the ITAT was allowability of interest expenditure and not bad debts.

4.4.3 In view of the facts and circumstance mentioned above, the bad debts claimed by the appellant in respect of Dx Technologies, Sadguru Estate Private Limited and Sindhudurg Traders Private Limited are not allowable. Accordingly, I confirm disallowance of Rs.2,33,24,853/-.

As regards the bad debt claimed by the appellant in respect of Pride Hill Developers Private Limited, there is no dispute that the sum was taken into consideration in the computation of the appellant's income for the AY 2006-07. The AO has not also disputed the fact that the appellant had written off the said sum in its books of accounts. The AO's contention that the appellant could have written off the debt in any of the intervening assessment years (AY 2007-08 to AY 2014-15); that the appellant had written off the sum in the AY 2015-16 so that the resulting loss can be set off against the capital gain earned by the appellant during the previous year 2015-16; that the appellant cannot be allowed to write off the bad debt with a view to minimising its tax liability.

The contention of the AO, in my view is not correct. There is nothing wrong in tax planning per se. It is for the assessee to decide when the bad debt is to be written off. Therefore, if the assessee writes off a bad debt with a view to minimising its liability, no fault can be found with the assessee. It is not the AO's case that the appellant has disguised any transaction or used any unfair means

to/colourable device to minimise its tax liability. The AO has merely questioned the 'timing' of the writing off of the bad debt. In my view AO cannot dictate to the assessee when to write off a bad debt. In my view, in this case the appellant was well within its right to write off the bad debt during the P.Y. 2014-15. The conditions necessary for allowing bad debts are satisfied in this **case**. Therefore in my view, the

disallowance of Rs. 3,00,00,000/- is not sustainable. Accordingly I direct the AO to delete the addition of Rs. 3,00,00,000/-.”

5. Against the above order, assessee has filed appeal. No appeal by the revenue has been brought to our notice.
6. We have heard the Ld. DR. None appeared.
7. We find that on the impugned issue of bad debt, it is the assessee's ground that it has raised an additional ground before Ld.CIT(A) that the claim may be considered u/s. 37 of the I.T.Act.
8. We note that the assessee's plea deserves consideration. The denial of assessee's claim as bad debt is on the pleas that AO has not been able to find out whether concerned income was earlier offered or not and that the amount was lying in advances. Hence, this alternative claim to consider it as business loss deserves adjudication.
9. Hence, we remit the issue to the file of Ld.CIT(A) to adjudicate the said additional ground filed before him.
10. In the result, assessee appeal is allowed for statistical purpose.

Pronounced in the open court on 05 .10.2021.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 05 /10/2021
Thirumalesh, Sr.PS

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai