आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री वी दुर्गा राव,न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA Nos.: 1891 & 1892/Chny/2018**

निर्धारण वर्ष / Assessment Years: 2007-08 & 2008-09

Shri A. Manohar Prasad, No.3, Sarangapani Street, T. Nagar, Chennai - 600 017.	v.	**The ITO,** Media Ward -1, Chennai – 34.
PAN: AAGPP 5384A		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri. AR V Sreenivasan, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 07.10.2021

घोषणा की तारीख/Date of Pronouncement : 22.10.2021

आदेश /O R D E R

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

These two appeals filed by the assessee are directed against separate but identical orders of the learned Commissioner of Income Tax (Appeals)-14, both dated 28.02.2018 and pertains to assessment years 2007-08 and 2008-09. Since, facts are identical and issues are common, for the sake of convenience, these

appeals were heard together and are being disposed off by this consolidated order.

2. The assessee has more or less raised common grounds of appeal for both assessment years. Therefore, for the sake of brevity, grounds of appeal for assessment year 2007-08 are reproduced as under:-

1. Validity of reopening proceedings Under Section 147

A. The Hon CIT Appeals Erred in Concluding the Validity of reopening proceedings Under Section 147 was correct.

B. The Hon CIT Appeals failed to appreciate the fact that that the assessment order passed under Section 143(3) read with Section 147 suffers from fundamental defects insofar as the Assessing Officer had no jurisdiction to reopen the assessment in the instant case.

c The appellant submits that the objections placed as against the reopening of the assessment were not disposed off with a proper speaking order within a reasonable time as per the mandate of the Hon'ble Supreme court in ***GKN Driveshafts*** *(India)* ***Ltd.*** *v.* ***ITO,*** reported in 259 ITR 19 (SC), the Assessing Officer is required to dispose any objections placed to the reopening of an assessment under Section 147 of the Act with a speaking order. In the instant case, the Assessing Officer has mechanically dismissed the objections raised, and, as such, the proceedings initiated under Section 147 is invalid.

D. The Hon CIT Appeals failed to appreciate the fact the appellant submits that the Assessing Officer infact and kept the matter pending for months-on-end, and load dismissed objections raised by the appellant, with a delay of more than 15 months. The appellant submits that such an act, of the assessing officer is contrary to principles of natural justice.

E. The Hon CIT Appeals failed to appreciate the fact the appellant therefore submits that the assessment order passed in pursuance of the purported Section 148 notice is in valid as the assessing officer has sought to reopen the assessment over an issue on which the learned Income Tax Appellate Tribunal has already ruled in favour of the

appellant in earlier assessment years.

2. Bad Debts disallowed — Rs.1,38, 41,435/-

A. The Hon CIT Appeals erred in conjuring the disallowance of 50% of the bad debt claimed by the appellant.
B. The appellant submits a sum of Rs2,76,82,870/-. was written off by him in the books of accounts and the Assessing Officer in this assessment order chose disallow only 50% of the claim of bad debts without assigning any reason and Hon CIT erred in confirming the disallowance of 50% of the bad debts claimed by the appellant.
C. The CIT Appeals failed to appreciate the fact that if the debt is written off as irrecoverable in the accounts of the previous year, it is sufficient compliance for claiming debt as bad debt under section 36(i)(vii) and the onus is of course on the assessee to show that he has written off the debt which is permissible under the amended provisions. *This point of view is further emphasised* by S*upreme Court decision in TRF ltd In CA No S.5292 to 5294 of 2003 vide judgement dated 09.02.2010 and the Board Circular No.12/2016 dated 30th May 2016 supports the Appellant's* contention.
D. The Appellant craves leave to add, alter, delete and modify all or any of the grounds of appeal, at any time during the course of this appeal and requests an opportunity of being heard before orders are passed.

3. Brief facts of the case are that the assessee is consultant to a leading television network, carrying on the business of money lending as a sole proprietor and he is also a partner in M/s. Anand Cine Service carrying on the business of equipment hiring. The assessee has filed his return of income for assessment years 2007-08 and 2008-09 on 27.03.2008 and 31.03.2009 admitting total income of 'Nil' and Rs.53,96,480/- respectively. The assessee had also filed revised return for both assessment years on 27.05.2008 and 27.04.2009. The assessments have been

subsequently reopened u/s.147 of the Income Tax Act, 1961 (hereinafter the 'Act') for the reasons recorded, as per which, income chargeable to tax had escaped assessment. In response to notice u/s.148 of the Act, the assessee has filed a letter and stated that return filed on 27.05.2008 & 27.04.2009 respectively may be treated as return filed in response to notice issued u/s.148 of the Act. Thereafter, the cases have been taken up for scrutiny and assessments have been completed u/s.143(3) r.w.s. 147 of the Act on 29.03.2014 and determined total income of Rs.6,05,43,609/- for assessment year 2007-08 and Rs.5,25,80,928/- for assessment year 2008-09 by making various additions including addition towards disallowance of bad debts u/s.36(1)(vii) r.w.s. 36(2) of the Act, on the ground that the assessee has failed to file any evidences to show debts really become bad and has made sufficient efforts to recover the outstanding debts.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the CIT(A), the assessee has challenged reopening of assessment for both assessment years on the ground that assessments have been reopened on mere change of opinion without there being any fresh tangible material suggesting escapement of income and also there

is a failure on the part of the assessee to disclose fully and truly all necessary material facts required for assessment. The assessee had also challenged addition made towards 50% disallowance of bad debts on the ground that once debts are written off in the books of accounts, then there is no necessity to prove to the AO that debts become really bad. The CIT(A) after considering relevant facts and also taken note of various reasons given by the AO, rejected legal ground taken by the assessee challenging reopening of assessment. The CIT(A) had also confirmed additions made by the AO towards disallowance of 50% bad debts by following certain judicial precedents including decision of Hon'ble Madras High Court in the case of South India Surgical Co. Ltd., vs. ACIT,[2006] 287 ITR 62 by holding that the assessee has failed to discharge his primary onus of demonstrating his compliance with conditions prescribed u/s.36(2) of the Act. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

5. The ld.AR for the assessee submitted that although the assessee has taken ground challenging validity of reopening of assessment u/s.147 of the Act, but the assessee does not want to press grounds taken to challenge reopening of assessment.

Therefore, legal grounds taken by the assessee for challenging reopening of assessment for both assessment years are dismissed as not-pressed.

6. As regards, addition made towards disallowance of 50% of bad debts, the ld.AR for the assessee submitted that once the AO accepted the fact that debts become bad, question of making adhoc disallowance of bad debts is not correct, because a debt becomes bad means it is bad in full but it cannot be bad debt for 50% and good debt for remaining 50% of the amount. He further submitted that the assessee has written off debts in his books of accounts and once debt has been written off in books of accounts as bad, then it is sufficient compliance of provisions of section 36(1)(vii) r.w.s. 36(2) of the Act and thus, there is no necessity to prove that debts become really bad. He supported his arguments with the help of the decision of Hon'ble Supreme Court in the case of T.R.F Limited vs. CIT, 323 ITR 397.

7. The ld.DR on the other hand strongly supporting order of the CIT(A) submitted that the assessee has failed to file any evidence to prove that deduction claimed towards bad debts 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 assessee. The ld.DR further submitted that the assessee also failed to file any evidence to prove that the debts really become bad debts and has also made sufficient efforts to recover the debt. In the absence of any evidence, the AO has rightly disallowed 50% debts and thus, there is no error in the reasons given by the AO to make addition and his order should be upheld.

8. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. In order to claim deduction for any bad debts which is reckoned as irrecoverable in the accounts of the assessee for any previous year, then the assessee shall comply with conditions prescribed under Sub-section (2) of Section 36, as per which, any debt or part of debt which 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 assessee. Further, the assessee should prove

that such debt has been written off in the books of accounts of the assessee. In this case, the assessee claimed that he is in the business of money lending. Once the assessee is in the business of money lending then the question of offering income in the earlier previous years does not arise because any advances or loans given in the ordinary course of business which is bad or irrecoverable can be written off once such debts become irrecoverable. But, fact remains that although, the assessee claims to have in the business of money lending but no evidences have been filed to prove that he is carrying on business of money lending either by furnishing necessary license obtained from competent authority or generating income from such business. Further, the assessee claimed that he has charged interest on loans and offered to tax such interest as and when he receives interest, but on perusal of financial statements, no interest has been offered to tax from loans and advances. Therefore, we are of the considered view that the fact whether the assessee is in money lending business or not and further unsecured loans given to various persons and are become bad debt is lent in the ordinary course of business or not is not forthcoming from the records. This fact needs verification. Further, once a particular debt becomes irrecoverable or bad debts then said debt becomes bad debts in full. In this case, the AO has accepted 50% of the debts as bad

debts and remaining 50% has been treated as debts which is recoverable. Therefore, considering the fact that the assessee has not placed any evidences to prove that income pertains to 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 assessee. On the other hand, the AO had also not examined the issue in light of provisions of Section 36(1)(vii) r.w.s. 36(2) of the Act, because the AO has made adhoc disallowance of 50% debt. Hence, we are of the considered view that the issue needs to go back to the file of the AO to decide the issue afresh in accordance with provisions of Section 36(1)(vii) r.w.s 36(2) of the Act. We further direct the AO while deciding the issue, he must take into account the ratio laid down by the Hon'ble Supreme Court in the case of T.R.F. Limited vs. CIT, *supra,* where it has been clearly held that once debt has been written off in books of accounts as irrecoverable, then the assessee need not to prove that said debt become really bad debts. Accordingly, we set aside the issue to the file of the AO and direct him to reconsider in light of our observations given herein above.

9. In the result, the appeals filed by the assessee for assessment years 2007-08 & 2008-09 are treated as partly allowed for statistical purpose.

Order pronounced in the court on 22nd October, 2021 at Chennai.

Sd/-	Sd/-
(वी दुर्गा राव)	(जी. मंजुनाथ)
(V. Durga Rao)	**(G. Manjunatha)**
न्यायिक सदस्य/Judicial Member	लेखा सदस्य /Accountant Member

चेन्नई/Chennai,
दिनांक/Dated, the 22nd October, 2021

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF