

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.134/Bang/2020
Assessment year : 2016-17

The Dy. Commissioner of Income-tax, Circle-5(1)(2), Bengaluru.	Vs.	M/s Promac Engineering Industries Ltd., Alahalli, Anjanapura Post, Bengaluru-560 062. PAN – AAACP 8178 R
REVENUE		ASSESSEE

CO No.6/Bang/2020
Assessment year : 2016-17
By Assessee

Assessee by	:	Smt. Suman Lunkar, C.A
Revenue by	:	Smt. Priyadarshini Baseganni, JCIT(DR)

Date of hearing	:	26.10.2021
Date of Pronouncement	:	12.11.2021

ORDER

Per Chandra Poojari, Accountant Member

This appeal by the Revenue is directed against the order of the CIT(A)-5 dated 19.11.2019 for the

assessment year 2016-2017 and the assessee has raised the cross objection in CO No.6/Bang/2020.

2. The Revenue has raised the following grounds in this appeal:-

- “1. The order of the Commissioner of Income Tax(Appeals)-5, Bangalore, is opposed to the law and not on the facts and circumstances of the case.*
- 2. Whether on the facts and circumstances of the case and in law, whether the honourable Tribunal in allowing the bad debts of Rs. 4,71,47,049/- without verifying the compliance of the assessee with regard to write off of bad debts of a foreign company according to which the following requirements need to be fulfilled for claiming the write off of bad debts of foreign country:-*
 - (a) The amount is outstanding for 1 year or more.*
 - (b) The total amount of write off allowed in a financial year does not exceed 10% of the total export proceeds realized during the previous Financial Year.*
 - (c) Satisfactory documentary evidence is furnished in support of the efforts made by the exporter for the recovery of the amount due.*
 - (d) The case is not subject matter of any pending civil or criminal suit.*
 - (e) The export is not under investigation by ED, CBI or any other law enforcement agency.*
 - (f) The export has surrendered the proportionate export incentives availed/ received under the duty Drawback Scheme against the relevant export.*
 - (g) Exporters, whose cases are not covered by any of the above criterion prior approval of Reserve Bank has to be obtained.*
- 3. For these and other grounds that may be urged upon, the order of the CIT(A) may be reversed and that assessment order be restored.*
- 4. The appellant craves leave to add, alter, amend or delete any other grounds on or before hearing of the appeal.”*

3. The assessee has raised the ground in Cross-objection, which is as follows:-

“1. The grounds of appeal accompanying Form 36, having not been signed by the appellant (but having been signed by the Principal Commissioner of Income-tax) makes the entire appeal filed by the department bad in law and hence is not to be admitted for hearing.

2. Without prejudice to the above, in ground No. 2, as raised, the mention of the words "whether the Honorable Tribunal is justified in allowing the bad debts....." in an appeal before the Tribunal makes the ground null and void and therefore is to be ignored.

3. In any case, the raising, of several sub-grounds in ground No.2, on the issues which were never raised in the assessment order or even at appellate proceeding including remand proceedings, is itself erroneous and this ground No. 2 is therefore to be ignored.

4. In any case the learned Commissioner of Income-tax (Appeals) had correctly allowed the claim of had debts of Rs.4,71,47,049/- and the order of the Commissioner of Income-tax (Appeals) is to be upheld and the appeal is against CBDT Circular No. 12/2016 dated 30th May 2016 and is not to be admitted for hearing.

5. For these grounds and other grounds to be adduced at the time of hearing the respondent pleads that the appropriate relief may be allowed to the respondent.”

4. In this case, assessment is framed u/s 143(3) of the Income-tax Act vide order dated 28/12/2018. The AO disallowed the claim of the assessee towards bad debts u/s 36(1)(vii) r.w.s 36(2) of the Income-tax on the reason that that the assessee has not produced any supporting document/ledger extract to establish the said amount written off as irrecoverable from Bahrain Motors Co. Ltd.,

and also there is no evidence to show that the said income of Rs.4,7147,049/- has been offered as income during the earlier year. Since there was no evidence to show that the said amount has taken into account in computing the income of the assessee during the earlier asst. year and it disallowed by the AO.

5. Against this, the assessee carried the appeal before the CIT(A). He observed that the total amount due from Bahrain Motors Co. Ltd., was of Rs.9,42,49,348/-. Out of this an amount, 50% of this i.e Rs.4,71,47,049/- has been allowed in asst. year 2012-13 and this is an amount of Rs.4,71,47,049/- has brought forward from earlier years and, therefore, the view of the AO was out of context over the previous year under consideration. It was observed that relevant return of income were already available with the Dept. and without examining the said return of income, the AO misconstrued by holding that the bad debt could not establish in computing the income laid down to the previous asst. year 2015-16 relevant to the asst. year 2016-17. Thus, he observed w.e.f 1/4/1989, if the assessee has written off the debt as bad debt as irrevocable and the same should be allowed.

Accordingly, he allowed the claim of the assessee as bad debt. Against this, the Revenue is in appeal before us.

6. The assessee has filed Cross-objection in support of the findings of the CIT(A).

7. The ld.DR submitted that there is no evidence with regard to affording of this amount of Rs.4,71,47,049/- as income in earlier years. The primary condition for allowing as bad debt, this amount should have been considered for computing income of the assessee in any previous years, as per the provisions to sec.36(1)(vii) of the Income-tax Act. Since this condition has not been fulfilled, the claim of the assessee cannot be allowed as bad debt though it was written off in the books of accounts of the assessee.

8. On the other hand, the ld.AR submitted that the assessee has made sales to Bahrain Motors Co. Ltd., for the financial year 2006-07 to 2009-10 as follows:-

Sl No.	Year	Opening Balance (Rs)	Sales (Rs)	Realization (Rs)	Bad Debts Written	Balance (Rs)
1	2006-07	-	12,21,00,895	3,22,96,47		8,98,04,424
2	200-08	8,98,04,424	40,07,00,360	34,48,96,0		14,56,08,732
3	2008-09	14,56,08,732	7,78,33,028	7,18,40,94		15,16,00,820
4	2009-10	15,16,00,820	6,13,500	1,54,64,97		13,67,49,348

5	2010-11	13,67,49,348	-	4,25,00,00		9,42,49,348
6	2011-12	9,42,49,348	-	-	4,71,69,994	4,70,79,354
7	2012-13	4,70,79,354	67,695	-		4,71,47,049
8	2013-14	4,71,47,049	-	-		4,71,47,049
9	2014-15	4,71,47,049	-	-		4,71,47,049
10	2015-16	4,71,47,049	-	-	4,71,47,049	NIL

9. Out of this, assessee has not received an amount of Rs.9,42,49,348/-. This amount has been written off in the previous asst. year 2011-12 of Rs.4,71,59,994/- and balance was written off in previous year 2015-16 relevant to asst. year 2016-17 @ Rs.4,71,47,049/- and the entire amount already gone into computation of income and on this ground the claim of the assessee u/s 36(2) r.w.s 36(1)(vii) cannot be denied.

10. She relied on the order of the CIT(A) and various case law which is kept on record.

11. We have heard both the parties and perused the materials on record and gone through the case laws cited by the parties concerned. The main contention of the ld.DR is that sec.36(1)(vii) r.w.s 36(2)(i) is not fulfilled. For claiming that as a bad debt the following conditions are to be fulfilled from asst. year 1989-90.

1. The debt or loan should be in respect of a business which is carried on by the assessee in the relevant accounting year
2. The debt or loan should have been taken into account in computing the income of the assessee for the relevant accounting year or for an earlier accounting year or should represent money lent in the ordinary course of business of bank; or money lending
- 3) the amount of debt or loan, or part thereof which is claimed as a deduction should be established to have become bad in the accounting year and
- 4) The amount should be written off as irrecoverable in the accounts of the assessee for that accounting year in which the claim for deduction is made for the first time. From asst. year 1989-90, it would be sufficient if the assessee fulfilled the conditions 1,2,and 4 in order to claim a deduction as bad debts. However, in view of the explanation inserted retrospectively w.e.f 1/4/1989 by the Finance Act 2001, one more condition is to be fulfilled, viz., the assessee should make corresponding credit entry in the debtors account. On fulfillment of all these conditions , the assessee could claim for deduction of bad debt and it is to be allowed. In the Present case, the argument of the ld.DR is that the debt which has been

written off as bad debt by assessee in the year under consideration @ Rs.4,71,47,049/- has not been taken into account while computing the income of the assessee for the relevant accounting year or for an earlier accounting year. Contrary to this, the assessee's counsel argued that it has been considered as income by way of sales in earlier asst. year 2006-07 to 2010-11 and thus it has gone into the computation of income. To demonstrate this, the assessee filed details of final accounts for these asst. years with corresponding ledger accounts of Bahrain Motors Co. WIL - 445. These documents has been filed before us without certification by Id.AR that these have been filed before the lower authorities. In the absence of such certificate, we have to hold that these evidences required to be examined at the end of AO to come to conclusion that these transactions have been taken into account in computing the income of the assessee in any accounting year. Further, the assessee has to prove the debt that should be in respect of a business which is carried on by the assessee in the relevant accounting year and also establish that assessee made corresponding credit entry in respect to debtors account also in the relevant accounting year. These facts are not emanated from the orders of the lower authorities. Hence, the issue

in dispute is remitted back to AO to examine these facts afresh.

12. It also to be note that we confined to our findings with reference to applicability of sec. 36(1)(vii) r.w.s 36(2)(i) of the IT Act only. The other grounds raised by the revenue are inconsequential and not with reference to the provisions of Income-tax Act. Accordingly, those grounds are dismissed as infructuous. Thus, the order of the CIT(A) is set aside and restored to the file of the AO to pass a fresh order in the light of our observations herein above.

13. In the result, the Revenue appeal is partly allowed for statistical purposes and Cross objection filed by the assesee is dismissed as infructuous.

Order pronounced in the open court on 12th Nov, 2021.

Sd/-

Sd/-

(BEENA PILLAI)

(CHANDRA POOJARI)

Judicial Member

Accountant Member

Bangalore,

Dated, 12th Nov, 2021

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation
.....
Date on which the typed draft is placed
2. before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
.....
4. Date on which the fair order is placed
before the dictating Member
5. Date on which the fair order comes back to the Sr.
P.S.
6. Date of uploading the order on
website.....
7. If not uploaded, furnish the reason for doing so
.....
8. Date on which the file goes to the Bench Clerk
.....
9. Date on which order goes for Xerox &
endorsement.....
10. Date on which the file goes to the Head Clerk
.....
11. The date on which the file goes to the Assistant
Registrar for signature on the order
.....
12. The date on which the file goes to dispatch section
for dispatch of the Tribunal Order
.....
13. Date of Despatch of Order.
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