

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “B” BENCH: BANGALORE**

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT BEENA PILLAI, JUDICIAL MEMBER**

**ITA. No. 2217/Bang/2019
Assessment Year: 2016-17**

M/s. Foretell Business Solutions Pvt. Ltd., # 146, Gopal Towers, 1 st Floor, Ramaiah Street, Old Airport Road, Kodihalli, Bangalore – 560 008. PAN: AAACF4355J	vs.	The Income Tax Officer, Ward – 3(1)(1), Bangalore.
(Appellant)		(Respondent)

Assessee by	:	Shri Padamchand Khincha, CA
Revenue by	:	Shri Priyadarshi Mishra, Addl. CIT (DR)

Date of Hearing :	07.10.2021
Date of Pronouncement :	30.11.2021

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal is filed by assessee against order dated 20/08/2019 passed by the Ld.CIT(A)-3, Bangalore for Assessment Year 2016-17 on the following grounds.

“1. General ground:

1.1 The learned Income Tax Officer , Ward 3(1)(1), Bengaluru (hereinafter referred to as AO') has erred in passing the assessment order in the manner passed by him and the learned Commissioner of Income tax(Appeals)-3, Bengaluru ['CIT(A)'] has erred in sustaining the disallowance made by the learned AO. The order passed by the CIT(A) is bad in law and liable to be quashed.

2. Grounds relating to write off of business advances:

2.1 *The learned AO erred in disallowing the business advances written off amounting to Rs. 1,47,81,233.*

2.2 *The learned AO has erred in concluding that advance written off will be loss of capital and it cannot be claimed as business expenditure under section 37 or as trading loss under section 28 of the Income tax Act, 1961.*

2.3 *The learned AO has erred in concluding that the advances written off cannot be treated as irrecoverable for the reason that the assessee is still trying to recover the money from Golden Gate Corporate Services India Pvt. Ltd.*

2.4 *The learned CIT(A) has erred in concluding that the write off of business advances cannot be considered as a trading loss or business expenditure for the year under consideration.*

2.5 *The learned AO and CIT(A) failed to appreciate that the company to which advances were made has been struck off from the list of companies by the Ministry of Corporate Affairs.*

2.6 *The learned AO and CIT(A) failed to appreciate that the business advances written off was advanced in the normal course of business.*

2.7 *The learned AO and CIT(A) erred in not appreciating that the claim of business advances written off satisfies all the ingredients laid down under section 37 and 28 of the Act.*

2.8 *The learned AO erred in stating allowability of deduction is dependent on irrecoverability of the claim and the ongoing recovery proceeding hampers the claim of deduction under section 37(1) or business loss under section 28(i) of the Act.*

2.9 *The learned AO and CIT(A) failed to adhere to instructions laid down in circular 12/ 2016 dated 30 May 2016 where the condition of establishing the irrecoverability of the debt was eliminated in the context of allowability of bad debts under section 36(1)(vii) read with section 36(2).*

2.10 *On facts and circumstances of the case and law applicable, disallowance of business advances written off amounting to Rs. 1,47,81,233 should be deleted and the same should be allowed either under section 28 or under section 37 of the Income tax Act, 1961.*

3. Levy of Interest under section 234B and 234D:

3.1 *The learned AO has erred in levying interest under section 234B and 234D amounting to Rs. 5,70,207 and Rs. 3,03,850 respectively. On facts and circumstances of the case, interest of under sections 234B and 234D are not leviable. The appellant denies its liability to pay the interest under sections 234B and 234D,*

4. Prayer:

4.1 In view of the above and other grounds to be adduced at the time of hearing, the appellant prays that the order passed by the learned CIT(A) be quashed or in the alternative

(a) Claim of business advances written off amounting to Rs.1,47,81,233 be accepted as claimed in the return of income and the disallowance be deleted and

(b) Interest under section 234B amounting to Rs. 5,70,207 be deleted;

(c) Interest under section 234D amounting to Rs. 3,03,850 be deleted.”

2. Brief facts of the case are as under:

2.1 Foretell Business Solutions Pvt. Ltd. ("the assessee") filed return of income for the A.Y 2016-17 on 17/09/2016 with a returned loss of Rs. 22,02,848/ . The Ld. AO passed the order u/s. 143(3) by disallowing the trading loss writing off amounting to Rs.1,47,81,233/- by assessee as bad and doubtful advance made in the course of the business of the assessee.

The assessee is engaged in agri-business and commodity research. It serves its clients through organizing seminars and conferences, providing information and data services, trade / procurement advisory etc. It is observed by the Ld. AO that more than 80% of the gross revenue of the assessee is generated by holding seminars and conferences.

2.2 The assessee in the course of its business intended to conduct a conference during April, 2015 in Dubai. The assessee entered into an agreement with Golden Gate Corporate Services India hereinafter referred to as Golden Gate for making necessary arrangements in Dubai for conducting conference. Golden Gate is a domestic company providing services of event management and hotel room arrangements. The assessee paid advances to Golden Gate towards booking the conference hall, rooms for guests and their boarding and lodging arrangements in Dubai as per the

agreement the assessee entered into with. As per the agreement the assessee advanced monies to Golden Gate to pay advances for booking accommodation and other facilities in Dubai. It is submitted that assessee had previous satisfactory dealings with Golden Gate for conducting similar conferences in August 2014 and February 2015 in Dubai.

2.3 The assessee paid advance payments of Rs 1,42,03,233/ till 31st March 2015 and Rs 40,00,000 on 7th April 2015 for booking hotels/accommodation and other arrangements for conference at hotel "Atlantis, The Palm" in Dubai for the events to be held on 15/04/2015. It is submitted that, the assessee was refused the facilities by the hotel "Atlantis, The Palm" on the ground that no payment has been made for booking the aforesaid facilities by Golden Gate. The assessee was forced to make once again the payment directly to the aforesaid hotel in Dubai so as to safeguard, its business interests, reputation and credibility with overseas clients and to ensure that the much publicised event took place without any hitch and hindrance.

2.4 After the event, the assessee initiated steps to recover, from Golden Gate the advances made through negotiations. Golden Gate came forward to settle the dues in instalments and an agreement was entered between Golden Gate through its Managing Director Nrupathy Shivajirao Manay, and the assessee on 19/07/2015. It is submitted that on behalf of Golden Gate, Nrupathy Shivajirao Manay issued post dated cheques. However these cheques were not honoured. A legal notice was issued on 19/12/2015 and later on 28/01/2016. Subsequently a criminal complaint was filed before The Court of Additional Chief Metropolitan Magistrate, Bengaluru. It is submitted that Golden

Gate was struck off from the list of companies by the Ministry of Corporate Services, a copy of the printout from the website of the said ministry is placed in the paperbook at pg 203 and its Directors were not traceable and absconding. It is submitted that left with no alternative, the assessee wrote off the entire advance of Rs. 1,47,81,233/- (net) in the statement of profit and loss for the year ending 31/03/2016.

2.5 It is submitted that the assessee during the course of scrutiny assessment appraised these facts along with all necessary supporting documents to support the stand that the trade advance become bad and was irrecoverable. The Ld. AO during the course of assessment u/s 143(3) held as under:

"a. The assessee has changed its claim from being a bad debt written off as claimed in the return of income to a business expenditure u/s 37 of IT Act, 1961 and finally to a trading loss u/s 28 of IT Act, 1961.

b. The amount of Rs 1,47,81,233/- was advance only and which was never 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 off any earlier previous years Therefore the claim of the assessee as made in the return of income that this amount is bad debt written off fails the condition laid out in section 36(2)(i) of IT Act, 1961. Therefore, the amount of Rs.1,47,81,233/- cannot be claimed as bad debt written off.

c. Further, an advance is placed in the balance sheet and it does not form part of P&L account. Therefore any advance written off will be loss of capital for the assessee and it cannot be claimed as business expenditure u/s 37 of IT Act, 1961 or trading loss u/s 28 of the IT Act, 1961.

d. Furthermore from the assessee's submission it is seen that the assessee is still trying to recover the money from Golden Gate Corporate Services India and it cannot be said that money is irrecoverable to the assessee.

e. Based on the above discussion, the amount of Rs 1,47,81,233/- claimed under the head of bad debt written off is disallowed and added back to the income of the assessee".

Assessee had filed alternate submission to treat the expenses as a trading loss u/s. 28 of the Act. The Ld.AO after considering submissions of assessee held as under:

“From the above submission filed on 14.12.2018 and 15.12.2018, it is seen that the assessee has changed its claim from being a bad debt written off as claimed in return of income to a business expenditure under section 37 of IT Act, 1961 and finally to a trading loss u/s 28 of IT Act, 1961.

It is a fact that, the amount of Rs 1,47,81,233/- was advance only and which was never 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 any earlier previous years. Therefore, the claim of the assessee as made in the return of income that this amount is bad debt written off fails the condition laid out in section 36(2)(i) of IT Act, 1961. Therefore, the amount of Rs 1,47,81,233/- cannot be claimed as bad debt written off.

Further, an advance is placed in the balance sheet and it does not form part of P&L account. Therefore any advance written off will be loss of capital for the assessee and it cannot be claimed as business expenditure u/s 37 of IT Act, 1961 or trading loss u/s 28 of IT Act, 1961. Furthermore from the assessee's submission it is seen that the assessee is still trying to recover the money from Golden Gate Corporate Services India and it cannot be said that the money is irrecoverable to the assessee.

Based on the above discussion, the amount of Rs 1,47,81,233/- claimed under the head of Bad Debts written off is disallowed and added back to the income of the assessee.”

Aggrieved by the order of Ld.AO, assessee filed appeal before Ld.CIT(A). Ld.CIT(A) upheld the action of the Ld.AO by observing as under:

“4.3 The submission of the appellant have duly been considered. A perusal of the details filed by the appellant shows that case under Negotiable Instruments Act was first filed by the appellant on 28.01.2016 in relation to cheque of Rs. 61,68,069/-, which had bounced during year under consideration in Nov 2015. Thereafter during the court proceedings summons were issued in the subsequent months. In response to the same the MD appeared before the court. So as such there is nothing on record to suggest that the amount had become irrecoverable during the year under consideration itself. The issue of non-cooperation on part of the MD arose much later and thereupon arrest warrants were issued in Financial Year 2017-18, 2018-19 and 2019-20. The appellant has not produced anything to which could have shown that the amount had become irrecoverable during FY 2015-16 i.e. the year under consideration. In fact the cases for cheque bouncing for the balance amount were filed after the end of FY 2015-16. As such it cannot be said that the amount of Rs. 1,47,81,233/- had become irrecoverable during year under consideration and that during the year under consideration the appellant had exhausted all remedies available to it to recover these amounts. In fact during the year under consideration the appellant

had not even filed cases related to bouncing of all the cheques as the remaining cases were filed in subsequent years. So the claim of the appellant for allowing it trading loss during year under consideration needs to be rejected. As regards the reliance of the appellant on various decisions, the same is misplaced as in the appeal under consideration the appellant has failed to show that the amount had become irrecoverable during the year under consideration. So as such it cannot be considered as a trading loss or the business expenditure of the year under consideration. Considering above the grounds of appeal 1 to 5 of the appellant are dismissed.”

Aggrieved by the order of Ld.CIT(A), assessee is in appeal before us.

3. The Ld.AR submitted that all grounds raised relates to one issue. It is prayed that the disallowance may be delted and the claim of assessee be considered u/s. 28 or section 37 of the Act.

The Ld.AR submitted as under:

“4.1 Under Income Tax Act, there is no restriction to the assessee to claim deduction u/s 28/37(1) before the assessing authorities even if it was not raised under these section but claimed under different section in the return. This has been supported by the decision of the Hon'ble Supreme Court of India, in the case of Mahalakshmi Textiles Mills Limited (1967) 66 ITR 710(SC). The court held that "the right of the assessee to relief was not restricted to the pleas raised by him before the Departmental authorities in respect of the contentions raised by the assessee, grant of relief to him on another ground is justified, it would be open to the Departmental authorities and the Tribunal, and indeed they would be under a duty to grant that relief". It is obvious from the remark of the Ld. AO that the assessee initially claimed the loss as bad debt and subsequently having regard to the fact that the loss is on account of non-recoverability of advance made in the course of the business as trading loss, which is allowable u/s. 37(1) of the Act or alternatively is a trading loss and to be allowed for the purpose of determination of the income.

4.2 Further this legal position is reiterated by the Hon'ble High Court of Delhi, in the case of Mohan Meakin Limited vs Commissioner of Income Tax, (2012)348ITR 0109 in para 12 of the order, stated that "merely because the claim was not made under one particular provision of the Act, but was so made under another provision of law, one fails to understand as to how the assessee could be debarred to raise such, legal question. Having regard to all this, it was legally permissible to raise question of deduction u/s. 37 even if it was not raised before the authorities below". In the said case it was held that "claim of deduction of non-recovery of trade advances was allowable

on the facts of the case; merely because the bad debts claim was not made out under one particular provision of law, assessee cannot be deprived of benefits of deduction of bad debts."

4.3 The assessee has claimed trade advances written off as non-recoverable as an expenditure u/s 37(1) of the Act or alternatively as a trading loss u/s. 28 of the Income Tax Act. As per the above judicial pronouncements the claim of assessee under different section from the initial claim is justified and hence allowable.

4.4 U/s 37(1) of the I r Act, any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee) laid out or expended wholly and exclusively for the purposes of the business or profession shall be, allowed in computing the income chargeable under the head "Profits and gains of business or profession".

4.5 The assessee Company has paid trade advance which became irrecoverable and written off. The said expenditure is not covered in sections 30 to 36 of the Act. The expenditure incurred is not a capital expenditure. To find out whether an expenditure is on the capital account or on revenue, one must consider for what purpose was the money laid out? Was it to acquire an asset of an enduring nature for the benefit of the business or was it an ongoing in the doing of business? If money is lost in the first circumstance it is a loss of capital, but it lost in the second circumstance, it is revenue loss. In this case money was not paid to acquire an asset of enduring nature but for ongoing business activity, ie for conducting conference which is the main business and source of income of the assessee. Thus the amount paid as advance which is subsequently written off as bad in this case is not in the nature of capital expenditure and is a revenue loss.

4.6 Further, the trade advance written off is debited to the profit and loss account for the F.Y 2015-16. Under accrual system of accounting any amount paid as advance will be initially part of the balance sheet as current asset and will be accounted as expenses under profit and loss account in the year of accrual of expenses. Thus if the advance is made for an event/seminar to be held in the subsequent financial year, in the year of payment the same is accounted as a current asset in the balance sheet. In the instant case, the trade advance of Rs1,42,02,233/- was paid in FY 2014-15 for the events to be held on 15/04/2015. In the balance sheet as on 31st March 2015, the same is shown as advance and in FY 2015-16 the same is debited to profit and loss account as bad debt/advance written off. If the advance was spent for the purpose for which it is made it would have been accounted as seminar expenses in FY 2015-16 and not as a fixed / capital asset. As the amount became irrecoverable and bad in FY 2015-16 the same was debited to profit and loss account as bad debt written off.

4.7 In the instant case, the amount expended is on account of trading loss incurred in the course of the business of the assessee. The amount is paid for booking a hotel for conducting the seminar which is the major income generating activity of the assessee company. Thus, the

amount paid as trade advance which became bad is an allowable expense u/s 37(1) of the Income Tax Act.”

4. In support, he placed reliance on following decisions:

- *K. Raheja Development Corporation v. ACIT [2005] 2 SOT 744 (BANG.)*
- *ITO vs. A.G. Gas Agency [1991] 38 ITD 589 (AHD.)*
- *Maheshwari co. v. ITO [1984] 18 TTJ 326 (DEL.)*
- *Jethabhai Hirji and Jethabhai Ramdas v. CIT [1979] 120 ITR 792 (BOM.)*
- *ACIT v. OSN Infrastructure & Projects Pvt Ltd. ITA No.346/De1/2015 dated 20.04.2018.*
- *Shriram EPC Ltd v. DCIT 1.T.A. Nos.1604 & 1740/CHNY/2016 dated 08.01.2020*
- *CIT v. Mysore Sugar Co. Ltd [1962] 46 1TR 649 (SC)*
- *TRF Ltd v. CIT [2010] 323 ITR 397 (SC)*
- *Devi Films Private Ltd v. CIT, 75 ITR 301 (Mad)*
- *CIT v. ITC Ltd [2015] 63 taxmann.com 176 (Calcutta)*

5. On the contrary, the Ld.Sr.DR relied on the orders passed by authorities below.

We have perused the submissions advanced by both sides in light of records placed before us.

6. From the documents placed in the paper book at page 179 onwards, we note that assessee proceeded under section 138 of N.I. Act against the Managing Director of Golden Gate Corporate Services. We note that the Ld.CIT(A) in his order recorded that there is an arrangement between assessee and the MD of Golden Gate Corporate regarding refund of Rs. 1,61,68,069/-. It is also recorded that partial payment of Rs. 15 Lakh was paid by Golden Gate to assessee upto 24.07.2015. Subsequently post dated cheques issued by the MD of Golden Gate bounced.

6.1 Admittedly the money advanced by assessee to Golden Gate was for the purposes of business. The Ld.AO rightly rejected the claim of assessee under section 36(2) as assessee had never taken into account the said advance in computing the income of assessee in any of the previous year which is the necessary

condition laid down in section 36(2)(i). However, the Ld.AO did not verify the claim as a trading loss u/s. 28 of the Act. The Ld.CIT(A) admitted to the fact that assessee took steps to recover the money from Golden Gate. However, upheld the addition by holding that for year under consideration assessee did not file any case related to bouncing of remaining cheques.

6.2 The Ld.AR argued that assessee exhausted all remedies to recover the balance, however the steps taken were unsuccessful. There is nothing on record brought by the revenue that the expenses incurred by assessee was not genuine. It is also clear that assessee had written off the advances in the normal course of business to Golden Gate after taking necessary steps for recovery of the same and also filing complaint before the “Additional Chief Metropolitan Magistrate” at Bangalore, copy of which is attached at page 178 of the paper book.

6.3 It is therefore incorrect to say that no legal steps were taken by assessee for recovery of money advanced. *Hon'ble Supreme Court* in the case of *CIT v. Mysore Sugar Company Limited* [46 ITR 649(SC)] and by the *Hon'ble Madras High Court* in the case of *Devi Films Private Limited v. CIT* [75 ITR 301 (Mad.)]. Reliance was placed on the judgment of the *Hon'ble Supreme Court* in the case of *CIT v. Abdullabhai Abdulkadar* reported in 41 ITR 545. Reliance was also placed on the decision of the *Kolkata Bench* of this *Tribunal* in case of *DCIT v. ITC Limited* in ITA No. 157/KOL/1996, order dated 30.04.2001.

6.4 In the present facts of the case, there is no dispute that the advances were given by the assessee in the normal course of its business and when a loss arises due to non-recovery of such advances and when the same is irrecoverable and written off as

such, the same should be allowed as a business loss while computing the profit and gains of business. The *Hon'ble Delhi High Court* in the case of *CIT v. Sumangal Overseas Limited [I.T.A. No. 174 of 2011(Del)]* held as follows:

"A trading loss has a wider connotation than a bad debt. A bad debt may also be a trading loss. But a trading loss need not necessarily be a bad debt. There may be a bad debt which may not fall within the purview of section 36(1)(vii) of the Act, but may well be regarded as one eligible for deduction incurred in the course of carrying on business will come under that category and will naturally enter into computing the net total income as the real profit chargeable to tax cannot be arrived at without setting off legitimate trading loss."

10. Respectfully following the same, we hold that the amount that could not be recovered is to be treated as trading loss.

Accordingly, the grounds raised by assessee stands allowed.

In the result, the appeal filed by the assessee stands allowed on the alternate claim.

Order pronounced in the open court on 30th November, 2021.

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Dated: 30th November, 2021.
/MS/

Copy to

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

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore