

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "C", BANGALORE**

Before Shri George George K, JM & Shri B.R.Baskaran, AM

ITA No.1637/Bang/2018 : Asst.Year 2011-2012

M/s.Robert Bosch Engineering and Business Solutions Pvt.Ltd. No.123, Industrial Layout Koramangala, Hosur Road Bangalore - 560 095. PAN : AAACR7108R.	v.	The Deputy /Joint Commissioner of Income-tax, LTU, Bangalore
(Appellant)		(Respondent)

Appellant by : Sri.Anand Sondur, CA
Respondent by : Smt.Priyadarshini Besaganni. JCIT-DR

Date of Hearing : 21.12.2021	Date of Pronouncement : 22.12.2021
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ORDER

Per George George K, JM

This appeal at the instance of the assessee is directed against CIT's order dated 22.03.2018, passed u/s 263 of the I.T.Act. The relevant assessment year is 2011-2012.

2. The grounds raised read as follows:-

"1. That the Order of the Learned CIT, L TU, Bangalore is bad in law to the extent challenged herein.

2. Having regard to the facts in the Appellant's case, the Learned CIT erred in holding that the Order of the Learned Assessing Officer (hereinafter referred to as "the AO") under section 143(3) r.w.s 144C of the Income Tax Act, 1961 ("the Act") dated 28 January 2016 (rectified order passed under section 154 of the Act dated 17 February 2016, 10 March 2016, 26 December 2016 and 03 July 2017) is erroneous and prejudicial to the interest of the Revenue, in so far as the AO has not added back to the Total Income, an amount of Rs.45,54,317 Lakhs representing provision for doubtful debts under provisions of Clause (vii) of Sub-Section 1 to See 36 of

the Income Tax Act, 1961.

3. *The Learned CIT has erred in not following the decision of Jurisdictional Hon'ble Karnataka High Court in case of M/s Sandvik Asia Limited (I.T.A. Nos. 563 C/w 564/2006) wherein under identical facts, the Hon'ble High Court has held that provision for doubtful debtors debited to P&L a/ c and simultaneously reduced from the Total Debtors, need not be added back to Total Income under provisions of Clause (vii) of Sub-Section 1 to Section 36 of the Act.*

4. *The Learned CIT has erred in not following the decision of the Hon'ble Supreme Court in case of M/s Vijaya Bank (323 ITR 166).*

5. *The Learned CIT has erred in stating that the above cited decisions are distinguishable from the fact, of the Appellant.*

6. *Having regard to the fact that the Learned CIT in connection with the proceedings under section 263 of the Act has only set aside the Order of the AO directing the AO to reconsider the allowance in respect of provision for doubtful debts, the Learned CIT has erred in concluding that the Order of AO is erroneous and prejudicial to the interests of revenue and consequently further erred in invoking the revision proceedings under section 263 of the Act.*

7. *The Appellant craves leave to add to, amend or alter the ground herein.*

8. *For these and other grounds that may be urged at the time of hearing, the appellant prays for appropriate relief.”*

3. The brief facts of the case are as follows:

The assessee is a company engaged in the business of development software, dealing in automotive components, etc. For the assessment year 2011-2012, the return of income was filed on 25.11.2011, admitting total income of Rs.62,89,17,687. The assessment u/s 143(3) r.w.s. 144C of the Act was completed vide order dated 28.01.2016, wherein the assessment was completed at Rs.174,07,49,300. Subsequently, the CIT issued notice dated 12.09.2016 u/s

263 of the Act. The reasons for issuance of the notice was regarding the claim of provision for bad and doubtful debts amounting to Rs.45,54,137. According to the CIT, the AO has not considered the allowability of a sum of Rs.45,54,137, which was debited to the profit and loss account as doubtful advances. The reasons given in the show cause notice, reads as follows:-

“An amount of Rs.45,54,137/- being provision or doubtful debts was debited to P & L a/c (schedule M) and the same was not an allowable expenditure. Hence, the provision or doubtful advance should have been added back to the taxable income.”

4. The assessee filed objections vide its letter dated 21.09.2017. The assessee stated as follows:-

“.....As stated earlier, the assessee has not only charged to its P&L account amount of Rs.45.54 as provision for Doubtful debts, but has also simultaneously reduced i.e. obliterated the provision from the value of Debtors in its Balance Sheet. Accordingly, what emerges is that the assessee has effectively written off its Debtors value to the extent of Rs.45.54 lakhs from its Balance Sheet as irrecoverable. Hence, the assessee submits that such amount should be allowed as deduction for the purpose of computation of income of the assessee as envisaged under section 36(1)(va) of the Act.”

5. In this context, the assessee stated that it amounts actual of write off of debts and relied on the following judicial pronouncements:-

- (i) CIT v. M/s.Sandvik Asia Limited [ITA Nos.563 C/w 564/2006 (judgment dated 21st February, 2012)] – Karnataka High Court.
- (ii) Vijaya Bank v. CIT [(2010) 323 ITR 166 (SC)]

6. However, the CIT rejected the contentions raised by the assessee and passed the impugned order directing the A.O. to duly verify the claim of provision for bad and doubtful debts, afresh. The relevant finding of the CIT, reads as follows:-

“5..... It is clear from the P & L A/c that the issue in question is clearly mentioned as provision for doubtful debts and the facts in the case laws cited are distinguishable from the facts of the present case.

6. From the foregoing facts as narrated above, it is obvious that the claim of the assessee has not been duly verified and the claim of provision of doubtful debts is set aside and remitted back to the file of the assessing officer for considering it afresh after giving due opportunity of being heard to the assessee and pass an order in accordance with law. With the above directions, the proceedings u/s 263 of the Act is disposed of.”

7. Aggrieved by the order of the CIT, passed u/s 263 of the Act, the assessee has filed this appeal before the Tribunal. The assessee has filed a paper book enclosing therein the show cause notice u/s 263 of the Act, objections raised to the show cause notice, the extract of audited financial statements, the details of provisions for bad and doubtful debts and the judicial pronouncements relied on. The learned AR submitted that the issue in question is squarely covered by the judgment of the Hon'ble jurisdictional High Court in the case of CIT v. M/s.Sandvik Asia Limited (supra), which was followed by the Tribunal in assessee's own case for assessment year 2010-2011 in IT(TP)A No.1556 & 1582/Bang /2014 (order dated 16.09.2020).

8. The learned Departmental Representative strongly supported the orders of the Income Tax Authorities.

9. We have heard rival submissions and perused the material on record. On perusal of the assessment order, which was subjected to revision u/s 263 of the Act, we notice that there is no inquiry conducted by the A.O. in allowing the provision for bad and doubtful debts. Therefore, the CIT was correct in invoking his revisionary powers u/s 263 of the Act. However, on merits, we notice that the assessee has charged off to its profit and loss account provision for doubtful debts amounting to Rs.45,54,370 and has simultaneously reduced the same from the value of total sundry debtors in its audited balance sheet. The details of the same are placed from pages 7 to 10 of the paper book filed by the assessee. The Hon'ble jurisdictional High Court in the case of CIT v. M/s.Sandvik Asia Limited (supra) by following the judgment of the Hon'ble Apex Court in the case of Vijaya Bank (supra), held that provision for doubtful debts, which has been debited to the profit and loss account and simultaneously been reduced from the value of the total sundry debtors in its audited balance sheet would be sufficient requirement for write off of bad debts. The relevant finding of the Hon'ble jurisdictional High Court, reads as follow:-

*"2. The assessee claimed deduction in respect of doubtful debts for the assessment years 1996-97 and 1998-99. The assessee had adopted in the P & L account provision for doubtful debts of Rs. 16.94.455/- for the assessment year 1996-97 and Rs. 8,32,905/- for the assessment year 1998-99. Since the methodology followed by the assessee to write off was not in accordance with the **provisions of Section 36(1)(vii) of the Income Tax Act, 1961**, it's claim was not allowed. Aggrieved by the said order, the assessee preferred appeal to the Commissioner of Income Tax (Appeals). The appellate Commissioner held the writing off does not necessarily require credit to be given to each debtor's account. If bad debts are debited in profit and loss account and credited to another account named as "bad debt reserve account, bad debt suspense account etc," the*

requirement of writing off is met even though individual debtor's accounts are not credited. Therefore, he held, the Assessing Officer was not justified in disallowing the provision for doubtful debts in each assessment year.

3. Aggrieved by the said order, the Revenue preferred appeal to the Tribunal, which has confirmed the said order. However, the Tribunal held that it is not made mandatory that the write off can be only by squaring-up the account of debtors, The law is that the write off should be made in the accounts. In this case the assessee has debited the profit and loss account and order entry is by way of reduction of such sum from the total debtors account. Thus, the provision of Section 36(1)(vii) of the Act is duly complied with and therefore the appellate Commissioner was justified in allowing the claim of bad debt. Aggrieved by the said order the Revenue has preferred these appeals.

4. The Apex Court in the case of **VIJAYA BANK v. COMMISSIONER OF INCOME TAX** reported in (2010) 323 ITR 166 (SC) Volume 323 has held as under:-

“6. The first question is no more res integra. Recently, a Division Bench of this Court in the case of [Southern Technologies Limited v. Joint Commissioner Of Income Tax, Coimbatore](#) reported in (2010) 320 ITR 577, (in which one of us S.H Kapadia J. was a party) had an occasion to deal with the first question and it has been answered, accordingly, in favour of the assessee, vide paragraph 25, which reads as under (page 604

“Prior to April 1, 1989, the law, as it then stood, took the view that even in cases in which the assessee(s) makes only a provision in its accounts for bad debts and interest thereon and even though the amount is not actually written off by debiting the profit and loss account of the assessee and crediting the amount to the account of the debtor, the assessee was still entitled to deduction under section 36(1)(vii), (See **CIT v. Jwala Prasad Tiwari** (1953) 24 ITR 537 (Bom) and **Vithaladas H. DhanjibhaiBardanwaia v. CIT** (1981) 130 ITR 95 (Guj), Such state of law prevailed up to and including the assessment year 1988-1989, However, by insertion (with effect from April 1, 1989) of a new Explanation in Section 36(2)(vii), it has been clarified that any bad debt written off as irrecoverable in the account of the assessee will not include any provision for bad and doubtful debt made in the accounts of the assessee. The said amendment indicates that before April 1, 1989, even a provision could be treated as a write off. However, after April 1, 1989, a distinct dichotomy is brought in by way of the said Explanation to Section 36(1)(vii). Consequently, after April 1, 1989, a mere provision for Bangalore bad debt would not be entitled to dichotomy, one must understand “how to write off”. If an assessee debits an amount of doubtful debt to the profit and loss account and credits the asset account like sundry debtor's account, it would constitute a write off of an actual debt. However, if an assessee debits “provision for doubtful debt” to the profit and loss account and makes a corresponding credit to the “current liabilities and provisions” on the liabilities side of the balance sheet, then

it would constitute a provision for doubtful debt. In the latter case, the assessee would not be entitled to deduction after April 1, 1989”.

*“8. Coming to the second question, we may reiterate that it is not in dispute that **Section 36(1)(vii) of the 1961 Act** applies both to banking and non-banking businesses. The manner in which the write off is to be carried out has been explained hereinabove. It is important to note that the assessee Bank has not only been debiting the profit and loss account to the extent of the impugned bad debt, it is simultaneously reducing the amount of loans and advances or the debtors at the year-end, as stated hereinabove. In other words, the amount of loans and advances or the debtors at the year end in the balance sheet is shown as net of the provisions for the impugned debt. However, what is being insisted upon by the Assessing Officer is that mere reduction of the amount of loans and advances or the debtors at the year end would not suffice and in the interest of transparency, it would be desirable for the assessee bank to close each and every individual account of loans and advances or debtors as a pre condition for claiming deduction under **Section 36(1)(vii) of the 1961 Act**. This view has been taken by the Assessing Officer because the Assessing Officer apprehended that the assessee-Bank might be taking the benefit of deduction under **section 36(1)(vii) of the 1961 Act**, twice over. (See order of the Commissioner of Income-Tax Appeals) at pages 66, 67 and 72 of the paper book, which refers to the apprehensions of the Assessing Officer). In this context, it may be noted that there is no finding of the Assessing Officer that the assessee had unauthorisedly claimed the benefit of deduction under section 36(1)(vii) twice over. The order of the Assessing Officer is based on an apprehension that, if the assessee fails to close each and every individual account of its debtor, it may result in the assessee claiming deduction twice over. In this case, we are concerned with the interpretation of **Section 36(1)(vii) of the 1961 Act**. We cannot decide the matter on the basis of apprehension/desirability. It is always open to the Assessing Officer to call for details of individual debtor's account if the Assessing Officer has reasonable grounds to believe that the assessee has claimed deduction, twice over. In fact, that exercise has been undertaken in subsequent years. There is also a flip side to the argument of the Department. The assessee has instituted recovery suits in courts against its debtors. If individual accounts are to be closed, then the debtor/defendant in each of those suits would rely upon the bank statement and contend that an amount is due and payable in which event the suit would be dismissed.”*

In the light of the judgment of Apex Court, there is no merit in this appeal.

5. The appeals are dismissed answering the substantial question of law in favour of the assessee and against the Revenue.”

9.1 The CIT in the impugned order has not mentioned, how the decision relied on by the assessee is not applicable to the instant case (The Hon'ble Karnataka High Court judgment in

the case of CIT v. M/s.Sandvik Asia Limited (supra) was relied by the assessee in its objection dated 21.09.2017). As mentioned earlier, in the instance, the assessee has reduced the amount of provision for bad and doubtful debts from the amount of sundry debtors in the balance sheet, which is sufficient compliance of write off of bad debts going by the dictum laid down by the Hon'ble jurisdictional High Court, cited supra. Therefore, the A.O. cannot make the addition of provision for bad debts in view of the Hon'ble jurisdictional High Court judgment in the case of CIT v. M/s.Sandvik Asia Limited (supra). Hence, there cannot be any prejudice caused to the Revenue. In such circumstances, we hold that the order passed u/s 263 of the Act is to be quashed and we do so.

10. In the result, the appeal filed by the assessee is allowed. Order pronounced on this 22nd day of December, 2021.

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

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 22nd December, 2021.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT-LTU, Bengaluru.
4. The JCIT-LTU, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore