

आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ITA No. 893/Chny/2016
(निर्धारण वर्ष / Assessment Year: 2002-03)

Income Tax Officer Company Ward -5(1), 121, Uthamar Gandhi Salai, Chennai – 600 034.	बनाम/ Vs.	M/s. Odyssey Technologies Ltd. Arjay Apex Centre, 2 nd Floor New No. 51 (Old No. 24), College Road, Chennai – 600 006.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAACO-1055-A		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri N. Arjunraj (CA) – Ld. AR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri P. Sajit Kumar (JCIT) – Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	16-02-2022
घोषणा की तारीख / Date of Pronouncement	:	21-02-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by Revenue for Assessment Year (AY) 2002-03 arises out of the order of learned Commissioner of Income Tax (Appeals)-3, Chennai [CIT(A)] dated 20-01-2016 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s.143(3) r.w.s. 147 of the Act on 26-12-2007. The grounds raised by the revenue read as under: -

1. The order of the Ld. Commissioner of Income Tax (Appeals) is contrary to law and facts of the case.
2. The Ld. CIT(A) has erred in allowing the claim of Bad Debts without considering the fact that the Bad Debt was on account of sale of software which was made to its subsidiary company.
3. The Ld. CIT(A) has erred in not considering the fact that the claim of Bad Debts was merely an arrangement to evade tax and hence a colorable device.
4. The Ld. CIT(A) has erred in allowing the claim of Bad Debts following the decision of Hon'ble Supreme Court in the case of TRF Ltd., without considering the fact that the said transaction was between related entities.
5. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the Ld. Commissioner of Income Tax (Appeals) may please be set aside and that of the Assessing Officer be restored.

As evident, the revenue is aggrieved by allowance of bad debts in the impugned order.

2. The Ld. DR submitted that bad-debt claim arose out of the fact that the assessee sold software to its subsidiary company having common director. The same was revalued and bad-debts were claimed.. The transaction was not genuine. It was submitted that the software was sold for Rs.400 Lacs which was later on revalued at Rs.50 Lacs. Even the payment of Rs.50 Lacs was not paid rather the share were issued and the transaction was sham transactions. The Ld. DR submitted that Ld. CIT(A) did not examine the various issues flagged by Ld. AO in the assessment order.

The Ld. AR, on the other hand, submitted that the assessee was into software development which was sold to subsidiary company. It was sold in earlier years. However, it was found that the software would not generate much income and accordingly the same was revalued and sale consideration was reduced. It was submitted that sale consideration was offered to tax by the assessee in earlier years and the conditions of Sec.36(1)(vii) r.w.s. 36(2) were duly fulfilled by the assessee, The

transactions were duly evidences by the Annual Report of the assessee company as well as subsidiary company and both the entities were profit-making entities. The Ld. AR submitted that the transaction was normal business transaction and could not be held to be colorable device as alleged by Ld. AO.

3. Having heard rival submissions and after going through relevant material on records, our adjudication would be as given in succeeding paragraphs.

4. The material facts are that the assessee being resident corporate assessee is stated to be engaged in software development. Though the original return of income was processed u/s 143(1), the case was reopened vide notice u/s 148 dated 09.06.2007. It transpired that the assessee owned software in the name of 'Taexpert'. The same was sold by the assessee to its subsidiary company i.e., Taexpert.Com Ltd. on 21/09/2000 at Rs.400 Lacs. The copy of the invoice raised by the assessee is on record. However, in this year the value of the software was revised to Rs.50 Lacs and the amount of Rs.350 Lacs was claimed as Bad-Debts in the Profit & Loss Account. The amount for Rs.49 Lacs was adjusted as 'advance for investment in equity shares' and the balance was received by the assessee. This software was capitalized by the subsidiary company in its books of accounts. On the basis of these facts,. Ld. AO alleged that the transaction was colorable device with a view to evade taxes. The case law of **McDowell & Co. Ltd. 154 ITR 148** was referred to support the said allegation. Accordingly, the write-off was not allowed.

5. Upon further appeal, Ld. CIT(A) allowed the claim following the ratio of decision of Hon'ble Apex court in the case of **TRF Ltd. (323 ITR 397)**. Aggrieved, the revenue is in further appeal before us.

6. Upon due consideration of material facts, the undisputed fact that emerges are that the assessee has sold the software to its subsidiary company Taexpert.Com Ltd. on 21/09/2000 for consideration of Rs.400 Lacs. The copy of the Invoice No. OTL/INV/HO/121 raised by the assessee is on record. The sale of software has been reflected as part of assessee's sales turnover of financial year 2000-2001 in the financial statements. During financial year 2001-2002, the sale has been revalued and the amount of sundry debtors has been reduced and bad-debts of Rs.351.32 Lacs have been written off under the head 'Selling and distribution Expenses'. As per Note No.5, bad-debts written-off include Rs.350 Lacs as receivable from M/s Taexpert.Com Limited based on fresh valuation for the legacy products and as per agreement with the subsidiary company. Similar disclosures have been made in the financial statements of subsidiary company. The software purchased by that entity has been capitalized and shown separately in the Balance Sheet. The value of the software, in this year, has been reduced from Rs.400 Lacs to Rs.50 Lacs. The revaluation has been done on the basis of revaluation report of M/s NM & Co. which has been accepted by the Board of Directors of both the entities which is evident from copies of Board resolutions as filed by the assessee during the course of assessment proceedings. Both the entities are profit-making entities. On the basis of these facts, it could be seen that the assessee made a valid claim u/s 36(1)(vii) and also fulfilled the prescribed conditions of Sec.36(2). The allegations of Ld. AO are bereft of any concrete evidence

on record. This is more pertinent in view of the fact that the assessee has sold intangible software, the valuation of which would always involve estimation and guess work and the same would be exposed to rapid technological changes. Nevertheless, the transactions are duly evidenced / supported by the documentary evidences on record. Therefore, the claim made by the assessee was a valid claim and the ration of Hon'ble Supreme Court in the case of **TRF Ltd. Vs CIT (190 Taxman 391)** was applicable wherein it was held that after 01-04-1989, it is not necessary for the assessee to establish that the debt, has become irrecoverable. It was enough if bad-debts were written-off as irrecoverable in the accounts of the assessee. Therefore, finding no infirmity in the impugned order, we dismiss the appeal.

7. The appeal stand dismissed in terms of our above order.

Order pronounced on 21st February, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखासदस्य / ACCOUNTANT MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 21-02-2022
JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF