

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “E” DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.1731/DEL/2018
Assessment Year 2008-09

ITO, Ward-17(1), New Delhi.	v.	Monnet Industries Ltd., 3 rd Floor, Mohta Building, 4-Bhikaji Cama Place, New Delhi.
TAN/PAN: AAACM0437E		
(Appellant)		(Respondent)

Appellant by:	None		
Respondent by:	Shri Bhopal Singh, Sr.D.R.		
Date of hearing:	15	03	2022
Date of pronouncement:	17	03	2022

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed at the instance of the Revenue against the order of the Commissioner of Income Tax (Appeals)-XXVIII, New Delhi [‘CIT(A)’ in short], dated 06.12.2017 arising from the assessment order dated 31.12.2015 passed by the Assessing Officer, under Section 143(3) r.w Section 245 of the Income Tax Act, 1961 (the Act) concerning AY 2008-09. The grounds of appeal raised by the assessee reads as under:

“1. Whether on the facts and circumstances of the case, the Ld. CIT(A) is legally justified in deleting disallowance of Rs. 2,16,17,150/- on account of ‘bad-written off’ even when the assessee had failed to prove that amount was actually liability and the corresponding amount was actually offered as income in earlier years and without considering the provisions of section

36(1)(vii) and Section 36(2) of the Income Tax Act (the Act)?

2. *Whether on the facts and circumstances of the case, the Ld. CIT(A) is legally justified in deleting the addition of Rs. 2,16,17,150/- u/s 36(1)(vii) of the Act by ignoring the procedure prescribed by Hon'ble Apex Court for write off an amount as irrecoverable in the case of TRF Ltd. Vs. CIT(2010)190 Taxman 391(SC)."*

2. When the matter was called for hearing, none appeared on behalf of the assessee. Accordingly, the matter was proceeded ex-parte.

3. Ld. DR for the Revenue reversed the assessment order and submitted in furtherance that it was incumbent upon the assessee to prove that amount written off as bad debt was actual liability and corresponding amount was actually offered as income in the earlier years on the touchstone of Section 36(1)(vii) r.w. Section 36(2) of the Act.

4. We have carefully considered the submission on behalf of the Revenue and perused the assessment order and the first appellate order. Ld. CIT(A) has dealt with the issue in favour of the assessee in following terms.

"6. I have considered the facts of the case, basis of disallowance made by AO and the directions of the Hon'ble ITAT as well as Hon'ble High Court. As can be seen from the order of Hon'ble ITAT, specific directions were given to AO by remanding the matter back to his file to examine the matter in the light of decision of Hon'ble Supreme Court in the case of TRF Ltd. vs CIT 323 ITR 397 after providing opportunity of hearing to the assessee. Similar directions were given by Hon'ble High Court to examine and verify whether the

amounts written off actually credited in terms of section 36(2) of the Act. However, as reflected from the assessment order, AO has examined the issue on each and every aspect, except as directed by Hon'ble ITAT and Hon'ble Court. The sole basis of making disallowance by AO is that the claim of the appellant is not bonafide. Contrary to this, the direction of higher judicial authority was to examine the facts in the light of provisions of section 36(2) of IT Act as per ruling of Hon'ble Supreme Court in the case of TRF Ltd vs CIT (Supra). In this case, Hon'ble Supreme Court has already decided that to claim the bad debt as an expenditure, it is not necessary for the assessee to establish that the debt in fact has become irrecoverable. It is enough if the bad debt is written off as irrecoverable in the accounts of the assessee. Thus, the bonafide of the claim is not a basis for allowing the expenditure. This position has been accepted by the department also vide Circular No. 12/2016, dated 30.05.2016 wherein, accepting the judgment of Hon'ble Supreme Court in the aforesaid case, it has been held that claim for any debt or part thereof in any previous year shall be admissible u/s 36(l)(vi) of the Act; if it is written off as irrecoverable in the books of account of the assessee for the previous year and it fulfills the conditions stipulated in section 36(2) of the Act. Here in the case of the appellant, as per details given by it during the assessment proceedings as well as appellate proceedings, the entries of sale/debts against which the bad debts written off have been claimed, were taken into the books of account in earlier years which were being brought forward as outstanding in the books of account. The list of such debtors and the sale amounts outstanding in those years, have already been furnished by appellant to show that the amounts, which have been claimed bad debts were shown as income in respective years. Thus, the first condition of section 36(2) of the Act that the said debts should have reflected as income in the earlier years in the books of account is fulfilled by appellant. In respect of second condition that only the writing off such debts in the books of

account is sufficient for claiming it as an expenditure in the light of the decision of Hon'ble Supreme Court in the case of TRF vs CIT (Supra) is also fulfilled as the appellant has already taken into consideration these debts in its books of account and written off as bad debts. Thus, both the conditions as per section 36(2) of the Act are fulfilled by appellant for claiming the aforesaid amount as deduction. However, the AO has not commented anything on these aspects, despite of clear and specific directions of Hon'be ITAT and Hon'ble High Court. He has altogether gone into different directions of examining the bonafide of claim and repeated the earlier version of assessment, without application of mind and without going to the specific direction of higher judicial authorities. In such situation, the disallowance made by AO is not justified and liable to be deleted. I, therefore, delete the addition made by him and allow the grounds taken by appellant.”

5. We notice that the assessee has given details of the parties where the bad debts have been claimed. The Hon'ble Supreme Court in the case of **TRF Ltd. vs. CIT, 323 ITR 397 (SC)** holds that after the amendment to Section 36(1)(vii) of the IT Act, w.e.f. 01.04.1989, in order to obtain deduction in relation to bad debts, it is not necessary for the assessee to establish that the debt, in fact, has become irrecoverable; and that it is enough if the bad debt is written off as irrecoverable in the accounts of the assessee. It is not in dispute that the bad debt is written off in the Profit and Loss Account of the assessee. On perusal of the submissions made on behalf of the assessee before the CIT(A), it is noticed that the debts claimed as bad debts are in the nature of bad debts, and therefore, eligible for deduction under Section 36(1)(vii) r.w. Section 36(2) of the Act without any further impediments in the light of the decision of the Hon'ble Supreme Court in the case of **TRF Ltd. (supra)**. We thus see no error in the order of the CIT(A) and thus decline to

interfere.

6. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 17/03/2022.

Sd/-
[KUL BHARAT]
JUDICIAL MEMBER

DATED: 17/03/2022

Prabhat

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER