

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

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

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| ITA No. 415/Bang/2015 |
| Assessment year: 2010-11 |

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| Pranava Electronics Private Limited Flat No. 101, 1 st Floor, Eden Park, No. 20, Vittal Mallya Road Bangalore - 560001 PAN: AADCP 2196C | Vs. | Deputy Commissioner of Income Tax – Circle 12(2) Bangalore |
| APPELLANT | | RESPONDENT |

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| Appellant by | : | Shri K.R. Pradeep, Advocate and Ms. Girija, Advocate |
| Respondent by | : | Shri Priyadarshini Mishra, Addl. CIT |

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| Date of hearing | : | 07.03.2022 |
| Date of Pronouncement | : | 06.04.2022 |

ORDER

Per Chandra Poojari, Accountant Member

This appeal by the assessee originally came up for hearing before the Tribunal on the following grounds:-

- “1. That the order of the authorities below in so far as it is against the appellant is against the law, facts, circumstances, natural justice, without jurisdiction, bad in law and all other known principles of law.
2. The total income computed and total tax computed is hereby disputed.

3. The Learned CIT(A) erred in confirming the disallowance of bad debts written off amounting to Rs. 4,86,14,074/-.
 4. The Learned CIT(A) erred in upholding the disallowance of Rs. 13,20,388/- u/s 14A of the Act without establishing nexus between the funds and investments.
 5. The Learned CIT(A) erred in rejecting the tax credit as per provisions of section 115JAA of the Act.
 6. The appellant denies liabilities for interest u/s 234B & C. Further prays that the interest if any should be levied only on returned income.
 7. For the above and other grounds and reasons which may be submitted during the course of hearing of this appeal, the assessee requests that the appeal be allowed as prayed and justice be rendered.”
2. The appeal was disposed of by the Tribunal vide order dated 22.2.2015. The assessee went in appeal before the High Court of Karnataka in ITA No.147/2016 wherein the following substantial questions of law were framed:-

- “(a) Whether in the facts and circumstances of the case, the tribunal erred in holding that none of the incidental objects mentioned in the memorandum of associations can amount to the business of imparting education to students when the objects of the memorandum of the association of the assessee categorically states "to carry on the business of education and training in technical and other fields'.
- (b) Whether in the facts and circumstances of the case, tribunal erred in denying the bad debts written off as allowable deductions in view of the decision in TRF Ltd. v. CIT, 323 ITR 397?

- (c) Whether in the facts and circumstances of the case, the tribunal erred in not taking into consideration the evidences filed by the assessee to substantiate that the interest amount was offered for tax in the earlier years and portion of the debt was taken for computing the income of the assessee.
- (d) Whether in the facts and circumstances of the case, the quantification of deduction under section 14(A) of the income Tax Act was made in accordance with the Act?
- (e) Whether in the facts and circumstances of the case, the tribunal erred in not adjudicating the issue on eligible credit available under section 115JAA, when a specific ground to that effect was raised?"

3. The Hon'ble High Court vide judgment dated 7.12.2020 on the issue of disallowance of the claim of bad debts to the sum of Rs.4,86,14,074/- and disallowance of claim under Section 14A of the Act, remanded the issue to the Tribunal with the following observations:-

“6. We have considered the submissions made by learned counsel for the parties and have perused the record. From perusal of Clause 13 of the memorandum of Association, it is evident that one of the object's of the assessee is to lend money and the assessee has been engaged in money lending business since its schedule of inception from financial year 2004-05. The schedule of loans and advances is a continuing feature in all the past years and has been accepted by the department as part of business by taxing the income under the head 'income from business'. However, the fact that assessee has been carrying on the money lending business and it has been taxed so under the head business for past 9 years has been over looked. It is pertinent to mention here that holding of money lending licence is not a prerequisite for allowing a claim of bad debts as is held by Supreme Court in TRF Ltd. Supra and it is enough if the irrecoverable debt is written off in the books of accounts. It is also pertinent to note that non charging of interest is not fatal to the claim for deduction. However, the aforesaid aspect of the matter has not been appreciated by the tribunal. Alternatively, the claim of the

assessee under Section 37(1) of the Act has also not been examined. The issue with regard to the claim of the assessee under Section 14A of the Act has not been adjudicated.

7. We therefore, quash the order passed by the tribunal insofar as it pertains to disallowance of the claim of bad debts to the sum of Rs.4,86,14,074/- and disallowance of claim under Section 14A of the Act and remit the matter to the tribunal for decision afresh in accordance with law. The orders passed by the Commissioner of Income Tax (Appeals) as well as the tribunal with regard to remaining issues are maintained. Therefore, it is not necessary for us to answer the substantial questions of law framed in this appeal.”

4. Thus, this appeal came up for hearing before the Tribunal.

5. The first issue for consideration is with regard to disallowance of the claim of bad debts to the sum of Rs.4,86,14,074.

6. The Id. AR submitted that the appellant is in appeal against the disallowance of Rs.4,03,17,086/- written off in the books of accounts as non-recoverable loan out of the loan of Rs.6,26,14,074/- advanced during the regular course of business claimed as bad debt u/s 36(1)(vii) r.w.s 36(2) of the IT Act. Alternative prayer being that if the same is not allowed u/s 36(1)(vii) r.w.s. 36(2) it was allowable u/s 37(1).

7. The Id. AR submitted that the assessee as per clause 13 of the Memorandum of Association is authorized to lend money as a part of the object clause, accordingly the company is engaged in money lending business since the inception from the FY 2004-05 until the impugned AY and even thereafter as per the details of interest earned and paid (paper book submitted by the appellant in page 24). As in the past as well as during the year income from money lending consisting of interest earned and interest paid has been offered as business income and accepted and taxed under the head business income by the income tax authorities. As per the balance sheet the assessee had extended loans and advances at

the beginning of the previous year amounting to Rs.11,14,75,485/- and closing balance under loans and advances was Rs.5,22,09,369/- as per schedule 7 to the Balance sheet (paper book page 32). The number of borrowers were in double digits. The loan to Pie Education Ltd is part of the above loans advanced in the regular course of business. Such schedule of loans and advances is a continuing feature in all the past years and has been accepted by the department as part of the business by taxing the interest earned under the head 'Income from Business'. Thus there is a continuous regular and consistent activity of money lending over a period of time. In this background any claim for bad debt is allowable under section 36(1)(vii) of the Act. However claim for bad debt written off amounting to Rs.4,03,17,086/- due from Pie Education Ltd has been disallowed on the premise that no interest was charged on the said loan and hence was held by the authorities below that such debt has not been taken into account in computing the income of the assessee for the previous year or for an earlier previous year. The lower authorities also held that the assessee did not have money lending license and hence the activity cannot be regarded as business of money lending. The lower authorities below have erred in law and fact in disallowing the claim of the appellant. It is a fact that the assessee has been carrying on money lending business and has been taxed so under the head business for the last 9 years and this has been overlooked. It has been held by various courts that where assessee is carrying on the business of banking/ money lending, there is no requirement that any interest must be charged or any income must have been taken into account in computing the income is not a condition precedent for allowing the claim for bad debt from money lending business. The holding of money lending license is also not a pre-requisite for allowing claim of bad debt. It has been held by the Hon'ble Supreme Court in the case of *TRF Ltd vs CIT in 323 ITR 397* it is enough if the irrecoverable debt

is written off in the books of account which has been duly done by the assessee. The relevant portion is reproduced as under:-

“4. This position in law is well-settled. After 1st April, 1989, 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...”.

CASELAWS ON THE ISSUE:

I) Debt from money lending is different from other businesses:

(1) The Hon'ble High Court of Andhra Pradesh in CIT vs T.Veerabhadra Rao, K.Koteswara Rao & Co. in **102 ITR 604** has held as reproduced hereunder (paper book pages **39 to 46**):

‘4.....

Now s. 36(2)(i) reads :

"In making any deduction for a bad debt or part thereof, the following provisions shall apply:

(i) No such deduction shall be allowed unless such debt or part thereof—

(a) has been taken into account in computing the income of the assessee of that previous year, or of an earlier previous year, or represents money lent in the ordinary course of the business of banking or money-lending which is carried on by the assessee, and

(b) has been written off as irrecoverable in the accounts of the assessee for that previous year."

.....

In cl. (a) two situations have been mentioned. Firstly, the bad debt must have been taken into account in computing the income of the assessee of that previous year or of an earlier previous year. Secondly, such a bad debt represents money lent in the ordinary course of the business of banking or money-lending which is carried on by the assessee. The disjunctive word "or" puts the two situations in the alternative. A claim, therefore, may come under either of the two situations

Clause (b) which appears after the conjunction word "and" lays down the second necessary requirement for allowing the deduction of a bad debt, i.e., such a bad debt must have been written off as irrecoverable in the accounts of the assessee for that previous year.

5. In cl. (a) the two alternative situations make out this point beyond any reasonable doubt. In the first alternative, what is required is that the bad debt must have been taken into account in computing the income of the assessee. Thus, the bad debt which is a part of the transaction must have been taken into account. There is nothing personal in it. Similarly, the second alternative insists that such a bad debt must represent money lent in the ordinary course of the business of banking or money-lending carried on by the assessee. Now, the second alternative thus relates only to banking or money-lending business.....

10.....Kanga and Palkhivala in their work on Income Tax, in volume I, page 397, after expressing a somewhat similar opinion that the position of the 1922 Act is no more valid in this respect under the new Act inasmuch as "such a debt will not fulfil the requirements of sub-s. 2(i)(a), viz., that the debt should have been taken into account in computing the income of the assessee", nevertheless say that :

"However, this requirement does not apply where the bad debt consists of a loan advanced in the ordinary course of banking or money-lending business....."

The decision of the Hon'ble High Court of Andhra Pradesh mentioned supra has been upheld by the Hon'ble Supreme Court in **155 ITR 152**.

(2) The Hon'ble Madras High Court in the case of P.C.Dharmalinga Mudaliar vs CIT in **152 ITR 588** has held as reproduced hereunder):

“6. We do not accept learned counsel's construction of s. 36(2)(i)(a) as being supported by any acceptable rule of statutory construction. In the first place, the IT Act, 1961, in which this provision occurs, is an amending and consolidating Act. If a departure from the earlier state of the statute is pleaded, there must be words expressing an intention to bring about a clean break with the past. We should not construe a section by reference to a single word, or merely because it is differently worded, when the provision as a whole does not convey a different statutory result. Even under s. 10(2)(xi) of the Indian IT Act, 1922, the words "in the course of business" were employed with particular reference to banking and money-lending business alone. Nevertheless, a long line of decisions of High Courts and the Supreme Court has held that the requirement of the debt having to be incurred in the ordinary course of the trade is a common feature of both money-lending and non-money-lending business. The same pattern has been followed in s. 36(2)(i)(a) and, therefore, we must hold that no departure is intended by Parliament, when the same words which had been the subject of a judicial interpretation, are followed in the subsequent enactment.

7. Quite apart from this aspect of construction, from the point of view of the evolution of the statute also, we must refer to the existence of an express requirement in s. 36(2)(i)(a) which related to non-banking or non-money-lending business. This requirement is that the debt should have figured, or should have been taken into account, in the computation of the assessee's income from that business. This provision is an a fortiori indication that the debt must have been incurred in the course of business. In order that a particular debt may figure as an item of income receipt, it is necessary that it should have been incurred not only in the course of business, but must have figured in the revenue account. Otherwise, it cannot become deductible at all, when it becomes bad. This idea that it must figure as income, either in the one or the other of the relevant years, is very pithily put by Rowlatt J., in

his famous dictum in *Curtis vs. J. & G. Oldfield Ltd.* (1925) 9 Tax Cases 319, which runs as follows :

"When the rule speaks of a bad debt it means a debt which is a debt that would have come into the balance-sheet as a trading debt in the trade that is in question and that it is bad. It does not really mean any bad debt which, when it was a good debt, would not have come in to swell the profits."

8. The first limb of s. 36(2)(i)(a) of the present Act only incorporates Rowlatt J.'s principle; that limb enacts very clearly that no deduction shall be allowed for a bad debt, unless such debt has been taken into account in computing the income of the assessee for the previous year or for an earlier previous year. It is implicit in this express condition that the debt should have arisen in the course of carrying on his business. In the second limb of s. 36(2)(i)(a), this condition is not repeated, for the simple reason that the second limb deals with money-lending and banking business in which the money itself is regarded as a stock-in-trade and, therefore, the money lent would certainly come into the revenue account, and, hence, it was perhaps thought to be unnecessary to emphasise the obvious by saying that money lent in a money-lending or banking business must have been taken into account in the computation of money-lending or banking business. The only requirement which was worthwhile to make mention of in a banking or money-lending business is that it must have been money lent in the course of the business of the assessee. Therefore, taking the provision in s. 36(2)(i)(a) as a whole, it is necessary in every case to find if a debt in a money-lending or banking business or a debt in a non-money-lending or a non-banking business must have been incurred in the course of the assessee's business. The second limb is that in the case of non money-lending or non-banking business, a debt in order to be a bad debt must have been taken into account in the computation of the income of the assessee...."

II) Money lent in the ordinary course of business, claim of bad debt allowable under section 36(1)(vii) rws 36(2)(i), alternatively under section 37(1):

(3) The Hon'ble Supreme Court in the case of Narain Swadeshi Weaving Mills vs CEPT in **26 ITR 765** has held as reproduced as hereunder:

“9....The word "business" connotes some real, substantial and systematic or organised course of activity or conduct with a set purpose.”

(4) The Hon'ble Supreme Court in the case of Indore Malwa United Mills Ltd vs State of Madhya Pradesh & Ors in **55 ITR 736** has held as reproduced as hereunder

“7.....

The next step is the borrowing of money by the managing agents from the company. Under the memorandum of association as well as under the express power conferred by the said resolution, the company, through the managing agents, could invest its funds by way of loans. If there was no mishap the managing agents would have paid the entire amount and if they did not, the company could have recovered the entire amount from them. The result, therefore, was that both the borrowing by the managing agents on behalf of the company from third parties and the lending to themselves created legal obligations. They were obligations created in the course of the business. The money lent would be a debit item in the accounts of the company in accordance with the accepted commercial practice and if the amount was realized it would be a credit item. Both would be proper items of accounts for ascertaining the profit and loss of the company. If the debt became irrecoverable, it would be a bad debt.

We, therefore, find no difficulty in holding that the said debt which had become irrecoverable was a trading loss deductible in computing the profit of the appellant- company in the assessment

year. It was a loss incidental to the appellant's business and is certainly sanctioned by commercial practice and trading principles. We, therefore, hold that the High Court went wrong in holding that the said amount represented loss incurred by the appellant de hors its business.’

(5) The Hon'ble Supreme Court in the case of *Badridas Daga vs CIT* in **34 ITR 10** has held as reproduced as hereunder:

‘4.....It is to be noted that while s. 10(1) imposes a charge on the profits or gains of a trade, it does not provide how those profits are to be computed. Sec. 10(2) enumerates various items which are admissible as deductions, but it is well settled that they are not exhaustive of all allowances which could be made in ascertaining profits taxable under s. 10(1). In *CIT vs. Chitnavis* (1932) LR 59 IA 290, the point for decision was whether a bad debt could be deducted under s. 10(1) of the Act, there having been in the Act, as it then stood, no provision corresponding to s. 10(2)(xi) for deduction of such a debt. In answering the question in the affirmative Lord Russell observed :

"Although the Act no where in terms authorises the deduction of bad debts of a business, such a deduction is necessarily allowable. What are chargeable to income-tax in respect of a business are the profits and gains of a year ; and in assessing the amount of the profits and gains of a year account must necessarily be taken of all losses incurred, otherwise you would not arrive at the true profits and gains."

5. It is likewise well settled that profits and gains which are liable to be taxed under s. 10(1) are what are understood to be such according to ordinary commercial principles. "The word 'profits'.....is to be understood", observed Lord Halsbury in *Gresham Life Assurance Society vs. Styles* (1892) AC 309, 315 : 3 Tax Cases 185,188, in its natural and proper sense—in a sense which no commercial man would misunderstand". Referring to these observations, Lord Macmillan said in *Pondicherry Railway Co. vs. CIT* (1931) ILR 54 Mad 691 :

"English authorities can only be utilized with caution in the consideration of Indian IT cases owing to the

differences in the relevant legislation, but the principle laid down by Lord Chancellor Halsbury in *Gresham Life Assurance Society vs. Styles* (1892) AC 309 is of general application unaffected by the specialities of the English tax system."

6. The result is that when a claim is made for a deduction for which there is no specific provision in s. 10(2), whether it is admissible or not will depend on whether, having regard to accepted commercial practice and trading principles, it can be said to arise out of the carrying on of the business and to be incidental to it. If that is established, then the deduction must be allowed, provided of course there is no prohibition against it, express or implied, in the Act."

(6) The Hon'ble Supreme Court in the case of *A.V.Thomas & Co Ltd vs CIT* in **48 ITR 67** has held as reproduced as hereunder:

"7.....Sec. 10(2)(xi) is in two parts. One part deals with an assessee who carries on the business of a banker or money-lender. Another part deals with business other than the aforesaid. Since this was not a loan by a banker or money-lender, the debt to be a debt proper had to be one which if good would have swelled the taxable profits."

(7) The Hon'ble Delhi High Court in the case of *All Grow Finance and Investment P Ltd vs CIT* in **338 ITR 496** has held reproduced as hereunder:

"13. We are of the view that the only condition laid down in second part of sub-s. (2) of s. 36 of the Act is that the amount should be advanced in the ordinary course of business which by itself proves its revenue nature and no further conditions are required to be satisfied which are only applicable with regard to debt qualifying as bad debt in the first part of sub-s. (2) in the manner as interpreted above."

- (8) The Hon'ble Delhi Tribunal (Third member) in the case of Poysha Oxygen (P) Ltd vs ACIT in **19 SOT 711** has held reproduced as hereunder:

“It only remains now to consider whether the fact that the assessee described the advance of Rs. 1 crore to ‘F’ as "inter-corporate deposit" or ICD in short is fatal to its claim. An inter-corporate deposit is a deposit made by one corporate entity with another corporate entity. It is not a legal term. It appears to be a term which has gained in commercial parlance. Sec. 372A of the Companies Act, 1956, deals with inter-corporate loans and investments. These are regulated strictly by the section. Under the Explanation below the section, a loan has been defined to include debentures or any deposit of money made by one company with another company, not being a banking company. The fact that in the income-tax proceedings, the advance has been described as an ICD is neither here nor there; certainly it is not decisive of the question whether it was given in the course of the money-lending business of the assessee. It is well-settled that the nomenclature given by the assessee to a transaction cannot decide its real nature.

(Para 20)

The advance was a money-lending advance. If so, the fact that it was a single transaction is not an impediment to it being called money-lending business. The transaction relating to the advance of ICD of Rs. 1 crore by the assessee was a loan transaction and represented money lent in the ordinary course of the business of money-lending carried on by the assessee; and the claim of the assessee for bad debts of Rs. 1 crore is allowable in view of the provisions contained in s. 36(1)(vii) r/w s. 36(2)(i).

(Paras 21 & 22)

- (9) The Hon'ble Delhi High Court in the case of Mohan Meakin Ltd vs CIT in **348 ITR 109** has held as reproduced hereunder (paper book pages **97 to 103**):

“12. Merely because the claim was not made out under one particular provision of the Act, but was so made out under another provision of law, we failed to understand as to how the assessee could be debarred to raise such legal question. Having regard to all this, we are of the considered view that it was legally permissible to raise question of deduction under s. 37 of the Act even if it was not raised before the authorities below.”

III) **License is not a requirement for money lending business:**

- (10) The Hon'ble Calcutta High Court in the case of CIT vs Vivek Engineering & Casting Ltd in **383 ITR 480** (paper book pages **104 to 106A**) has held that money lent claimed as bad debt was allowable even after noticing that the assessee did not have money lending licence but was carrying on the business of money lending.
- (11) The Hon'ble High Court of Bombay in CIT vs Smt. Padma S Bora in (2015) **54 Taxmann.com 319** has held as reproduced hereunder:

“5. Having perused this paragraph carefully, we find that the Tribunal may have committed a mistake in erroneous reproduction of the Commissioner's findings, but that does not mean that the Appeal would raise any substantial question of law. The allowability of bad debts was a claim considered in depth by the Commissioner and eventually granted in favour of the Assessee. The Assessee is engaged in the business of money lending. Merely because the Assessee does not have license to conduct this business, does not mean that the claim of bad debts should be denied. The Commissioner has in relation to this claim held in his order at paragraph 4.2 that the Tribunal's order in the case of *B.N. Khandelwal v. ITO* [2007] **16 SOT 343 (Mum.)**, would assist the Assessee inasmuch as the amount is lent in ordinary course of money lending business. It was written off after making efforts to recover. The effort was unsuccessful. In such circumstances, the Tribunal

did not commit any error in reaffirming the conclusion of the Commissioner of Income Tax (Appeals) and which is to be found in paragraph no. 4.2 of the Commissioner's order. The present Appeal also is continuation of the attempt by the Revenue to question such findings. The findings being purely of fact, the same do not raise any substantial question of law. The Appeal is, therefore, dismissed.”

IV) Not charging interest is not fatal to allow the claim:

(12) The Hon'ble Calcutta High Court in the case of CIT vs Gillanders Arbuthnot & Co Ltd in **138 ITR 763** has observed as under (paper book pages **109 to 112**):

“ 3....."We have given careful and anxious thought to the rival submissions made by both the sides. In our opinion, the assessee's case is well founded. From the facts as narrated in the earlier portion of this order, it would be clear that the assessee-company was engaged in various business activities, one of which was to guide the destinies of the subsidiaries by financing them or advancing loans to them in a sustained fashion and over a period of time.

.....The memorandum of association permitted the assessee-company to advance the loans and the fact that the assessee did not charge any interest to this particular subsidiary, in fact, speaks well of the business prudence of the assessee-company and does not indicate any mala fides. It was only when the subsidiary concern went into liquidation and when the liquidator clearly wrote on 31st March, 1965, to the assessee-company that there were absolutely no chance of effecting any recovery from the subsidiary that the assessee chose to write off this debt and claim it in its assessment.”

8. In summary, it was submitted that the loan to Pie Education Pvt Ltd was given during the course of carrying on of money lending business. The non-recoverable portion has been duly written off in the books of accounts and consequently meets with all the conditions u/s 36(1)(vii) and is eligible to be allowed in computing the income from business. The Id. AR

submitted that the amount has been advanced by the assessee in the course of money lending business and the impugned amount had become bad and same was written off in the books of account of the assessee. Non-charging of interest to this advance cannot be fatal to disallow the claim of bad debt.

9. Alternatively the assessee claimed that the bad debt written off should be allowed as business loss.

10. On the other hand, the Id. DR relied on the orders of lower authorities and submitted that the amount which was written off has not gone into the computation of income by charging interest thereon. Being so, the requirement of section 36(1)(vii) r.w.s. 36(2) have not been complied with and the same is to be disallowed. Even it cannot be claimed as business loss as it is not lent in the ordinary course of money lending business.

11. We have heard both the parties and perused the material on record. In the present case, the assessee advanced loan to various persons wherein the opening balance was Rs.11,14,75,485 and closing balance was Rs.5,22,09,369 as seen from Schedule VII to the balance sheet. The above loan also includes loan advanced to Pie Education Ltd. at Rs.4,03,17,086. This was written off in the books of account. The assessee claimed this amount as bad debt in terms of section 36(1)(vii) of the Act. The same was disallowed by the lower authorities on the reason that this was not advanced in the ordinary course of money lending business of assessee and also no income has gone into the computation of income under the head income from business' as the assessee has not charged any interest on the said loan. More so, the assessee is not in money lending business to advance the money to the said party. However, the admitted facts are that the assessee is carrying on money lending

business and has been taxed so under the head business for the last 9 years which has been overlooked by the authorities. However, if the assessee is not in money lending business it cannot lead to the conclusion that when money advanced by the assessee becomes bad, it cannot be written off. Even if the assessee advanced money without money lending business, if the advance becomes bad, it should be allowed as a bad debt in terms of s. 36(1)(vii) r.w. 36(2)(i) of the Act. For the purpose of Income-tax Act, for grant of claim of assessee as bad debt, holding the money lending business is irrelevant consideration. We have to look into the issue from the point of view of the assessee, whether assessee has advanced money and it became bad debt and same was written off in the books of accounts as bad debt. In the present case, assessee has advanced money in the ordinary course of carrying on business of the assessee and income earned from money lending business was offered to tax from year to year. Due to circumstances beyond the control of assessee, assessee was not able to recognize interest income on the impugned advance made to Pie Education Ltd. As per the decision of Supreme Court in the case of *TRF Ltd. v. CIT*, 323 ITR 397, it is enough if the irrecoverable debt has been written off in the books of accounts of assessee which is advanced in the ordinary course of business of assessee. The main argument of the Id. DR is that income from these advances made to Pie Education Ltd. has not gone into the computation of income in any assessment year. This has been explained by the assessee that due to circumstances beyond the control of assessee, the debt being non-performing asset, no interest income is recognized on this count which cannot be the reason to disallow the claim of bad debt. For this purpose, we rely on the judgment of Andhra Pradesh High Court in the case of *CIT v. T. Veerabhadra Rao, K. Koteswara Rao & Co*, 102 ITR 604 (AP). In our opinion, the advance made by the assessee in the ordinary course of business which is stock in trade is to be valued at cost or market price, whichever is less. In the

present case, the debt has become bad and it being stock in trade the value is NIL. Therefore, it has to be considered as business loss and allowed. We find merit in this claim of the assessee. The debt written off by the assessee in the books of account is to be allowed as bad debts and accordingly we allow the grounds taken by the assessee. However, as we have already held that it is to be allowed as bad debt, the alternative argument of the Id. AR that it should be allowed as business loss becomes academic.

12. The next issue for consideration is with regard to disallowance u/s. 14A r.w.R.8D made by the AO. The CIT(Appeals) observed that there is no dispute that dividend income of Rs.76,40,574 was earned by assessee and it had investments of Rs.4467.86 lakhs in shares/mutual funds. It also incurred expenditure of Rs.1483,842 towards administrative and interest expenses. The assessee vide letter dated 22.3.2013 submitted to AO worked out Rs.13,20,388 (being interest expenses of Rs.14,607 out of total interest expenses and administrative and office expenses of Rs.13,05,781 being 88% of the total expenses of Rs.14,83,842) as disallowance u/s. 14A r.w.s. Rule 8D. The CIT(Appeals) further observed there is no dispute to the fact that the appellant company is engaged in investment in shares/mutual funds in a big way and has also earned substantial income exempt u/s. sub-sections (34), (35) and (38) of section 10, besides earning exempt capital gains of Rs.35170310. The Id. DR did not challenge the applicability of Rule 8D or amount accepted by AO for disallowance, hence the CIT(Appeals) dismissed this ground of the assessee.

13. After hearing both the parties, we are of the opinion that this issue came for consideration before this Tribunal in assessee's own case in AY 2009-10 in ITA No.84/Bang/2019 and the Tribunal by order dated 17.7.2019 held as under:-

“8. We have heard rival submissions and perused the relevant material on record. As far as disallowance u/s 14A r.w. rule 8D(2)(ii) is concerned, plea of the assessee is that it had sufficient funds out of which it made investments in shares which are likely to yield income which is exempt in the form of dividend. To substantiate its case, the learned counsel for assessee has drawn our attention to the balance-sheet of the assessee as on 31/3/2009 to demonstrate the availability of own funds to the extent of Rs.57,47,51,114/-. Our attention was also drawn to the fact that total investment as on 31/3/2009 was Rs.51,48,12,527/- and as on 31/3/2008 the same was Rs.61,33,82,572/-. There was, thus, decrease in investments to the tune of Rs.9,85,70,045/-. Out of investments as on 31/3/2009, dividend yielding investments and non-yielding investments are the sum of Rs.23,27,03,595/- and Rs.28,21,08,931/- respectively. The break-up of total investments of dividend yielding investments and non-dividend yielding investments are given as Annexure-1 to this order. The assessee has also furnished list of secured and unsecured creditors during the previous year which are as follows:

Increase/new investment during the year

| | |
|-----------------------------------|-------------|
| <i>Adlabs Ltd</i> | 41,94,050 |
| <i>DSPML India Tiger Fund</i> | 1,05,00,000 |
| <i>Franklin India Prima Fund</i> | 1,32,234 |
| <i>HDFC Capital Builder Fund</i> | 11,10,986 |
| <i>HDFC Equity Fund</i> | 28,00,000 |
| <i>India Reit Fund Scheme-III</i> | 2,40,00,000 |
| <i>Others</i> | 2,24,047 |
| <i>Total</i> | 4,29,61,317 |

Secured loans

| <i>As on 31.03.2009</i> | <i>As on 31.03.2008</i> | <i>Net decrease</i> |
|-------------------------|-------------------------|---------------------|
| 3,28,96,020 | 15,00,89,308 | (11,71,93,288) |

Unsecured loans

| <i>As on 31.03.2009</i> | <i>As on 31.03.2008</i> | <i>Net Increase</i> |
|-------------------------|-------------------------|---------------------|
| 41,73,34,383 | 31,44,18,177 | 10,29,16,206 |

It is thus clear from the above details that the assessee had own funds which are interest-free to the extent of Rs.57,47,51,114/- whereas dividend yield investments as on 31/3/2009 were only Rs.23,27,03,595/-. Perusal of the chart annexed to this order would also show that investments and dividend yielding shares have come down from 31/3/2008 and investments in non-yielding instruments have remained same from 31/3/2008. It can therefore be safely presumed that the assessee had own surplus funds which were more than investments in dividend yielding shares. The law by now is well-settled that if available interest-free funds are much more than investments in dividend yielding shares, then there can be no disallowance under rule 8D(2)(ii) of the Act. In the case of CIT Vs. HDFC Bank Ltd. [2014] 49 taxmann.com 335 (Bombay) = 2014-TIOL-1274-HC- MUM-IT it was held where assessee's own funds and other non interest bearing funds were more than investment in tax free securities, no disallowance of part of interest payments under section 14A of the Act can be made. In light of the above factual and legal position, we are of the view that disallowance of interest under rule 8D(2)(ii) cannot be sustained and the same is directed to be deleted.

9. As far as disallowance under rule 8D(2)(iii) is concerned, the AO has disallowed a sum of Rs.28,28,488/-. The learned counsel for assessee drew our attention on page 24 of the paper book which contains the total expenditure debited in the profit & loss account of the assessee. The same is given as Annexure-2 to this order. Perusal of the same shows that total expenditure incurred by the assessee debited in the profit & loss account is only sum of Rs.28,20,488/- and the entire expenditure has been disallowed by the AO.

10. We have considered the expenditure debited in the profit & loss account and we find that only bank charges of Rs.35,676/-, remuneration to auditors of Rs.8500/-, salary and wages of Rs.2,46,000, travelling and conveyance of Rs.60,000/-, vehicle maintenance of Rs.1,81,816- are expenses which are general in nature and all other expenses are attributable to the activities other than activity of investment in shares which are likely to yield exempt income. Therefore, only the aforesaid expenses can be considered for disallowance under rule 8D(2)(iii). We may

also mention here that the mandate of section 14A of the Act is that the expenditure incurred in relation to income which does not, form part of total income has to be determined having regard to the account of the assessee. Therefore, nexus between expenses sought to be disallowed and earning of dividend income has to be seen before applying the provisions of rule 8D of the IT Rules. In that view of the matter, we direct that disallowance of expenses should be restricted to the items as set out above.

9. As far as appeal of the revenue is concerned, there is no merit in the appeal because the law, by now is well settled that disallowance u/s 14A of the Act cannot exceed exempt income earned by the assessee.”

14. In the light of the above order of the Tribunal and following the same, we direct the AO to restrict the disallowance on similar lines.

15. In the result, the appeal by the assessee is partly allowed.

Pronounced in the open court on this 06th day of April, 2022.

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 06th April, 2022.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.