

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

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

ITA No. 1151/Bang/2009
Assessment Year : 2002-03

M/s. IBM India Pvt. Ltd., No. 12, Subramanya Arcade, Bannerghatta Road, Bangalore – 560 029. PAN: AAACI4403L	Vs.	The Deputy Commissioner of Income Tax, Circle 11 (1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Sharath Rao, Advocate
Revenue by	:	Shri Vilas V Shinde, CIT DR

Date of Hearing	:	30-06-2022
Date of Pronouncement	:	30-06-2022

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of the dated 3/11/2020 passed by *Hon'ble Karnataka High Court* in *ITA No.392/2011*. *Hon'ble High Court* admitted the following question of law vide order dated 28/03/2012:

“(i) Whether the tribunal was correct in holding that whether the appellate authority were correct in holding that maintenance of separate accounts for STP units and non STP units was only directory and not mandatory in accordance with RBI conditions, Government Notification and [Income Tax Act](#)?

“(ii) Whether the Appellate Authority were correct in holding that payments made to sub contractors who have separately exported and have been issued foreign inward remittance certificate and have also claimed 10A deduction will also be entitled to double deduction under [Section 10A](#) of the Act in hands of the assessee?

(iii) Whether the tribunal was correct in holding that the expenses like freight, telephone charges and insurance attributable to the delivery of articles or things on computer software outside India reduced from export turnover should be reduced from total turnover while computing deduction under [Section 10A](#) of the Act?

(iv) Whether the tribunal was correct in holding that the assessee is entitled for write off of a sum of Rs.12,72,91,172/- as bad debts before the debt becoming bad merely on the write off of the assessee without following the law laid down by the Apex Court in the case of TRF Ltd., 323 ITR 397 and recorded a perverse finding?

(v) Whether the tribunal was correct in allowing the write off as bad debt in the facts and circumstances of the present case, when invoices were raised few months prior to the write off of the debtors were reputed companies including Government undertakings and business was continued with the debtors by the assessee without establishing the debt has become bad and recorded a perverse finding?"

2. Hon'ble High Court after considering various decisions observed as under:

"4. Thus, from perusal of the aforesaid relevant extract of the order passed by the tribunal, it is axiomatic that the tribunal has not recorded any specific finding whether the assessee has written off bad debt in the books of accounts as irrecoverable. Therefore, the order passed by the tribunal to the extent it records the finding with regard to the bad debts is hereby quashed and the matter is remitted to the tribunal to decide the issue afresh after recording a specific finding whether or not the assessee has written off the bad debt in the books of accounts as irrecoverable. Accordingly, substantial question of law Nos.4 and 5 are answered."

3. Based on the above direction this Tribunal called upon the assessee to file details of the bad debts that were written off in the books of account as irrecoverable. The assessee vide Application dated 20/06/2022 filed petition for admission of additional evidence, wherein, the bona fide efforts taken by the assessee before writing off the debts to be bad and various ledger accounts have been filed that runs into 432 pages. It was submitted that these additional

evidences are relevant in order to dispose of the issue in accordance with the directions of *Hon'ble High Court*.

4. The Ld.DR submitted that, in the event the additional evidences are being admitted the issue may be remanded to the Ld.AO, as the voluminous documents file needs to be verified.

5. The Ld.AR did not object for the additional evidence to be remanded to the Ld.AO for proper verification and appreciation of the facts in order to consider the claim of assessee.

6. Considering the submissions by both sides, we are of the opinion that the additional evidence filed by assessee needs to be admitted and has to be remanded to the Ld.AO. The Ld.AO is directed to verify these documents in the light of the decision of *Hon'ble Supreme Court* in case of *TRF Ltd vs. CIT* reported in (2010) 323 ITR 397 and decisions of *Hon'ble Karnataka High Court* in case of *CIT vs. Fusion Software Engineering (P.) Ltd* reported in (2012) 18 taxman.com 57 and *CIT vs Millenia Developers (P) Ltd* reported in (2018) 100 taxman.com 369.

Needless to say that proper opportunity of being heard must be granted to assessee in accordance with law.

Accordingly the issue remanded by Hon'ble High Court stands partly à allowed for statistical purposes.

In the result appeal filed by assessee stands allowed.

Order pronounced in open court on 30th June, 2022.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 30th June, 2022.
/MS /

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore