

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "C", MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER AND
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

**ITA No.2841/M/2011
Assessment Years: 2005-06**

Asst. Commissioner of Income Tax, Range – 10(1), Room No.455, Aayakar Bhavan, MK Road, Mumbai – 400 020	Vs.	M/s. Infrastructure Leasing & Financial Services Ltd., The IL & FS Financial Centre, Plot No.C-22, G Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051 PAN: AAACI 0989F
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri Dharm Veer Singh, D.R.

Date of Hearing : 18 . 07 . 2022

Date of Pronouncement : 27. 07 . 2022

ORDER

Per Amarjit Singh, Accountant Member:

The appeal of the Revenue for assessment year 2005-06 vide ITA No.2841/M/2011 was adjudicated on 30.04.2019. Subsequently, the Revenue has filed miscellaneous application stating that while adjudicating the aforesaid appeal ground No.2, ground No.9 & ground No.10 pertaining to disallowance of bad debt, claim of deduction under section 36(1)(vii) of the Act and disallowance out of travelling and conveyance expenses were not adjudicated. Therefore the appeal of the Revenue was recalled by MA No.571/M/2019 order dated 20.01.2020 to adjudicate the aforesaid three grounds of the Revenue. The relevant facts pertaining to these three grounds of appeal are discussed while adjudicating the same as under:

Ground No.2**“Disallowance of bad debt written off”**

2. During the course of assessment the AO noticed that assessee claimed deduction of Rs.26,86,85,210/- in respect of few parties. The AO asked the assessee to establish that these debts were indeed bad debts. The assessee filed details in respect of 4 parties. However, the AO stated that assessee had filed details of litigation in respect of two parties and for the remaining two parties no details have been filed. Therefore, the AO has disallowed the claim of bad debt.

3. Aggrieved assessee filed appeal before the Ld. CIT(A). The Ld. CIT(A) has allowed the appeal of the assessee.

4. Heard both the sides and perused the material on record.

5. During the course of appellate proceedings before the Ld. CIT(A) assessee has explained that it was a non banking financial service company duly registered with the Reserve Bank of India. The main activity was granting loan advances. In the course of business of granting advances it had given advances to four parties. The details of the said parties along with the amounts outstanding which were written off were submitted by the assessee. It was also explained that condition as stipulated in section 36(1)(vii) were fully satisfied. The loans had become bad and the same had been written off. The assessee has also enclosed the copies of ledger account evidencing the right off of the loans. The Ld. CIT(A) has referred the decision of Hon'ble Bombay High Court in the case of CIT vs. Star Chemical Bombay Pvt. Ltd. wherein it has been held that once the assessee establishes that the debt has been written off, section 36(1)(vii) of the Act would be satisfied and the assessee would be

eligible for the deduction. The Ld. CIT(A) has also referred the decision of Hon'ble Supreme Court in the case of TRF Ltd. vs. CIT (190) taxman 391-SC (2010) wherein it has been held that it was enough if the bad debt was written off in the books of account as irrecoverable and it was not necessary for the assessee to establish that the debt had in fact become irrecoverable. The Ld. CIT(A) stated that the amount claimed by the assessee was admittedly a debt recoverable from the parties and after referring the decision of Hon'ble Bombay High Court in the case of Oman International, Star Chemicals Ltd. and Hon'ble Supreme Court decision in the case of TRF Ltd. held that assessee was not required to prove that the debt has become bad but assessee had proved that it has taken various unsuccessful steps for recovery of the amount which is indicative of the fact that the debt become bad. After considering the facts and findings of the Ld. CIT(A), we do not find any reason to interfere in the decision of the Ld. CIT(A), therefore ground of appeal of the Revenue stands dismissed.

Ground No.9

“Disallowance of Rs.39,83,335/- under section 36(1)(viii) of the Act”

6. Heard both the sides and perused the material on record.
7. During the course of assessment the assessee claimed deduction under section 36(1)(viii) of the Act. As per provisions of section 36(1)(viii) of the Act deduction @ 40% was available on profit derived from the eligible business i.e. providing long term finance for development of infrastructure facilities in India. The assessee's working of deduction has been reproduced by the AO in the assessment order. The assessee has claimed the deduction by reducing the interest cost based on specific number of days for which the loan was given. The assessee has taken the administrative cost on estimate basis as

the total number of transactions were only 10 transactions. However, the AO has worked out interest and other cost in accordance with the method he applied to determine the disallowance under section 14A of the Act. The AO has not established how the method of working adopted by the assessee was not correct. The Ld. CIT(A) after verification found that the assessee has worked out interest cost on scientific basis, therefore the claim of the assessee was allowed. After taking into consideration the facts and findings of Ld. CIT(A), we do not find any error in the method of working filed by the assessee. Therefore, no infirmity in the decision of Ld. CIT(A) is found. This ground of Revenue's appeal is accordingly dismissed.

Ground No.10

“Disallowance of Rs.39,54,481/- under the head travelling and conveyance expenses”

8. During the course of assessment proceedings the AO noticed that assessee has claimed expenses of Rs.19,77,24,033/- under different heads i.e. travelling and conveyance expenses, repair and maintenance, staff training and welfare expenses and legal and consultation. The AO has disallowed 2% of such expenses for want of verification.

9. Heard both the sides and perused the material on record.

10. The Ld. CIT(A) has deleted the addition. After hearing both the sides and perusing the material on record, we observe that the AO has made the impugned addition on estimation basis without specifically pointing out any justification. Therefore, we do not find any error in the decision of the Ld. CIT(A). Therefore, this ground of appeal of the Revenue also stands dismissed.

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

Order pronounced in the open court on 27.07.2022.

**Sd/-
(MS. KAVITHA RAJAGOPAL)
JUDICIAL MEMBER**

**Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER**

Mumbai, Dated: 27.07.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.