

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. No. 01/Asr/2020
Assessment Year: 2016-17

The Deputy Commissioner of
Income Tax, Central Circle-1,
Jalandhar

(Appellant)

Vs. M/s Bhagwati Lacto Vegetarian
Exports (P) Ltd., Shop No. 18-
1/2, Anaj Mandi, Ferozepur,
Cantt

[PAN: AADCB 4295Q]

(Respondent)

Appellant by : None (Written submission)
Respondent by: Sh. Rohit Mehra, CIT DR

Date of Hearing: 08.02.2023
Date of Pronouncement: 17.02.2023

ORDER

Per Dr. M. L. Meena, A.M.:

This appeal is directed against the order of the Ld. Commissioner of Income Tax (Appeals)-5, Ludhiana, dated 10.01.2019, in respect of the Assessment Year 2016-17, wherein the department objects to the

deletion of the disallowance of bad debts of Rs. 1,98,63,037/- in contravention into the provisions of section 36(1)(vii) of the I.T. Act, 1961.

2. Briefly, the facts of the case are that the record of the appellant-company filed return of income declaring net income of Rs.11,95,70,120/- on 31.03.2017. During the course of scrutiny proceedings, the AO noticed that as per the audited profit and loss account, the assessee had earned net profit at Rs.16,32,40,485/-, however, the return of income was filed declaring an income of Rs.11,95,70,119/-. The AO asked the assessee to reconcile these figures with reference to claim of bad debts in particular. The appellant-assessee has explained before the AO that he has claimed bad debts amounting to Rs.1,98,63,037/- being debts due from M/s Royal Wings Food Stuff Trading LLC, Dubai which were outstanding since April, 2013 and the debtor was not responding to the assessee's request for making the payment and so the chances of the recovery were bleak. The Assessing Officer has not been satisfied with the explanation of the assessee and accordingly, the AO held that the assessee could not substantiated this claim of the bad debts, that there was no chances of recovery and that this claim was not included in the balance-sheet. Accordingly, the AO rejected the assessee's claim of the bad debts and added to the total income of the assessee.

3. Aggrieved, with the assessment order, the assessee filed an appeal before the Id. CIT(A) who has deleted the addition and granted relief by deleting the addition by observing vide para 3.3 of the impugned order as under:

“3.3 Ground of Appeal Nos. 3 relates to addition of Rs. 1,98,63,037/- on account of disallowance of bad debts. The AO has mentioned that from perusal of records, it was noticed that as per audited Profit and Loss Account, the assessee had earned net profit at Rs. 16,32,40,485/-, however, the return of income has been filed declaring income of Rs. 11,95,70,120/-. The assessee was asked to reconcile these figures and in reply, the assessee filed chart of computation of total income stating that in the Profit and Loss account, depreciation was claimed at the rates provided in the Companies Law at Rs. 1,17,10,417/-, whereas in the computation of total income, the same was calculated at Rs. 3,55,17,746/- and it was also stated that the assessee has claimed bad debts amounting to Rs. 1,98,63,037/- being debts due from M/s Royal Wings Food Stuff Trading LLC, Dubai, which were outstanding since April 2013. The AO also mentioned that the AR submitted that the debtor was not responding to the assessee's request for making the payments and the chances of recovery was very bleak, however, as per the AO, the assessee could not substantiate that this claim that there was no chance of recovery and secondly this claim was not included in the Audited Balance Sheet. Therefore, the submission of the assessee with regard to claim of bad debt were not found acceptable by the AO and accordingly, bad debts of Rs. 1,98,63,037/- was disallowed and added to the total income of the assessee.

The facts of the case, the basis of disallowance/addition made by the AO and the arguments of the AR during the course of appellate proceedings have been considered. The AR has argued that the assessee had regular business dealings with M/s Royal Wings Food Stuff, Dubai and during the year, the assessee claimed bad debts amounting to Rs.1,98,63,037/- being debts due from M/s. Royal Wings Food Stuff Trading, LLC Dubai which were outstanding since 2012-13. It is further submitted that the assessee made request to State Bank of India, Ferozepur Cantt for writing off of the outstanding bill relating to export to M/s. Royal Wings Food Stuff, Dubai. The AR also referred to the RBI Circular in this regard. It is however relevant to mention here that the allow-ability

of the bad debts under the Income Tax Act is Governed by provision of Section 36 and not as per the RBI Guidelines referred by the CBDT has issued Circular No. 12 of 2016 vide F. No. 279/Misc./140/2015-ITJ dated 30th May, 2016 on the issue and relevant part of which is reproduced below:

“Subject: Admissibility of claim of deduction of Bad Debt under section 36(1) (vii) read with section 36(2) of the Income Tax Act, 1961 -reg.

Proposals have been received by the Central Board of Direct Taxes regarding filing of appeals/pursuing litigation on the issue of allowability of bad debt that are written off as irrecoverable in the accounts of the assessee. The dispute relates to cases involving failure on the part of assessee to establish that the debt is irrecoverable.

2. *Direct Tax Laws (Amendment) Act, 1987 amended the provisions of sections 36(1)(vii) and 36(2) of the Income Tax Act 1961, (hereafter referred to as the Act) to rationalize the provisions regarding allowability of bad debt with effect from the 1st April, 1989.*

3. *The legislative intention behind the amendment was to eliminate litigation on the issue of the allowability of the bad debt by doing away with the requirement for the assessee to establish that the debt, has in fact, become irrecoverable. However, despite the amendment, disputes on the issue of allowability continue, mostly for the reason that the debt has not been established to be irrecoverable. The Hon'ble Supreme Court in the case of TRF Ltd. In CA Nos. 5292 to 5294 of 2003 vide judgment dated 9.2.2010, has stated that the position of law is well settled. "After 1.4.1989, for allowing deduction for the amount of any bad debt or part thereof under section 36(1)(vii) of the Act. It is not necessary for assessee to establish that the debt, in fact has become irrecoverable; it is enough if bad debt is written off as irrecoverable in the books of accounts of assessee."*

4. *In view of the above, claim for any debt or part thereof in any previous year, shall be admissible u/s 36(1)(vii) of the Act, if it is written off as irrecoverable in the books of accounts of the assessee for the previous year and it fulfills the condition stipulated in sub section (2) of sub-section 36(2) of the Act."*

It has been clarified that claim for any debt or part thereof shall be admissible, if it is written-off as irrecoverable in the books of the assessee for that previous year and it fulfills the conditions specified in sub section (2) of Section 36 of the Income Tax Act, 1961. It is also mentioned that the requirement for the assessee to establish that the debt, has in fact, become irrecoverable has been done away with. As per the requirement of Section 36(2), the AR was asked to intimate the year when the amount was taken into account as income of the assessee and in response it has been intimated that the bad debts claimed was considered as income in the A.Y. 2013-14 and to prove the same enclosed the relevant documents. Also, there was an amendment brought in Section 36(1)(vii) of the Income Tax Act, 1961 relating to bad debts and a second proviso has been inserted by Finance Act, 2015 w.e.f. 01.04.2016 as reproduced below:-

*“**Provided further** that where the amount of such debt or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof becomes irrecoverable or of an earlier previous year on the basis of income computation and disclosure standards notified under subsection (2) of section 145 without recording the same in the accounts, then, such debt or part thereof shall be allowed in the previous year in which such debt or part thereof becomes irrecoverable and it shall be deemed that such debt or part there has been written off as irrecoverable in the accounts for the purposes of this clause.”*

Therefore, in view of the documents furnished by the AR regarding the accounting of the amount as income in assessment year 2013-14, the CBDT Circular No. 12/2016 dated 31st May, 2016 and the amendment brought in Section 36(1)(vii) w.e.f. 01.04.2016 as reproduced above, the claim of bad debts of the assessee is found allowable as per law. Under the facts & circumstances of the case, the addition/disallowance of Rs. 1,98,63,037/- made by the AO is deleted.

Accordingly, this ground of appeal is allowed.”

4. The Id. CIT (DR) for the department submitted that the Commissioner of Income Tax (Appeals) has erred in deleting the disallowance in bad debts claimed at Rs.1,98,63,037/- in contravention of

specific provisions of section 36(1)(vii) of the I.T. Act, 1961. The Id. DR argued that the CIT(A) has granted relief to the assessee without appreciating the fact that bad debts were not written off as recovered in the books of account of the assessee, and were merely claimed in the computation of income without being reflecting in the balance-sheet.

5. Per contra, the defendant Id. AR placed strong reliance on the order of the CIT(A). The Id. AR contended that the appellant assessee has claimed bad debts amounting to Rs.1,98,63,037/- being debts due to M/s Royal Wings Food Stuff Trading LLC, Dubai which are outstanding since 2012-13. It was submitted that the bad debts claimed in the relevant years were considered as income in the assessment year 2013-14. As per the audited and balance-sheet set along with all annexures and audit report for assessment year 2013-14 before the Id. CIT(A) and copy filed on record. He further contended that the assessee has enclosed copy of trading account (Barley), along with Barley Sale A/c and M/s Royal Wings Food Stuff A/c from where it is proved beyond doubt that the sale made to M/s Royal Wings Food was considered as income in that year. The Id. counsel submitted that despite the best efforts taken by the assessee no amount can be recovered from the said firm, and the assessee had no chances of recovery of the said amount and therefore, he had no other

option except to write off the balance outstanding against M/s Royal Wings Food Stuff Trading LLC, Dubai. The Id. AR argued that the assessee has made a genuine claim in the return of income with the bona fide intention and there was no undue benefit was accrued. The counsel has also further submitted that the assessee has made specific request through State Bank of India, Ferozpur Cantt for writing off of the outstanding export bill relating to export to M/s Royal Wings Food Stuff, Dubai and considering the request of the assessee, the State Bank of India has duly written off the outstanding export bills relating to M/s Royal Wings Food Stuff, Dubai, copy of acknowledgement from State Bank of India is placed on record. Thus, it was a regular business loss in the firm of bad debts and the Id. CIT(A) has right deleted by passing a speaking order. He prayed that the impugned order may be upheld.

6. The Id. counsel has filed a clarification on applicability of judgment given by the Apex Court in the case of PCIT & Anr. Vs. Wipro Ltd. (2022) 327 CTR (SC) 381 regarding claim of deduction against bad debts in the revised return. He stated that in that case, the assessee claimed exemption u/s 72 of the I. T. Act in the original return filed u/s 139(1) of the Act whereas in the present case, the assessee has not claimed any such exemption under any provisions of Act u/s 1961 and that the

assessee has neither claimed exemption in original return nor withdrawn any exemption in the revised return. Thus, the judgment of Wipro Ltd. is distinguished on facts of the present case of the assessee company.

7. The Id. counsel placed reliance on the judgment given by the Hon. Apex Court in an another case of Goetze (India) Ltd. v. CIT (2006) 284 ITR 323 (SC) where it is held that any claim of deduction by way of any application cannot be entertained by the AO, unless and until, it is declared in the revised return. In the instant case, the assessee company has made a claim of deduction of bad debts through the revised return as per the principle laid down by the Hon'ble Apex Court satisfying all the conditions of section 36(1)(vii) of the Act.

8. It is evident from above, that the assessee fulfils all the conditions laid down under the provisions of section 36(1)(vii) of the Act. Accordingly, we find no infirmity or perversity in the order of the Id. CIT(A) to the facts on record. He has correctly allowed the claim of deduction in respect of bad debts in the revised return filed by the appellant assessee in the light of the judgment of the Hon'ble Apex Court (supra), and SBI's writing off the outstanding export bill due to the M/s Royal Wings Food Stuff, Dubai (bad debtor).

9. In the above view, we find no merits and substance in the grounds of the department. Therefore, the order of the Id. CIT(A) is upheld.

10. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 17.02.2023.

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

GP/Sr.PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T.

True Copy
By Order