

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

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

ITA No.1443/Bang/2014
Assessment years: 2008-09

The Dy. Commissioner of Income Tax, Circle-1(2), Bengaluru.	Vs.	M/s Bharat Infra Tech (P) Ltd., No.186, 1 <sup>st</sup> Cross, Hosur Road, Willson Garden, Bangalore. PAN – AACCB 0960 F
APPELLANT		RESPONDENT

CO No.212/Bang/2015
Assessment years: 2008-09

M/s Bharat Infra Tech (P) Ltd., No.186, 1 <sup>st</sup> Cross, Hosur Road, Willson Garden, Bangalore. PAN – AACCB 0960 F	Vs.	The Dy. Commissioner of Income Tax, Circle-1(2), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Narendra Sharma, Advocate
Respondent by	:	Smt. Neera Malhotra, CIT (DR)

Date of hearing	:	23.03.2023
Date of Pronouncement	:	23.03.2023

**ORDER**

***Per Chandra Poojari, Accountant Member:***

The Revenue came in appeal before this Tribunal in ITA No.1443/Bang/2014 and the assessee filed Cross Objection in CO No.212/Bang/2015. These are disposed of by this Tribunal vide order dated 19/01/2018 in ITA Nos.1442 & 1443/Bang/2014 and CO Nos.211 & 212/Bang/2014, which is reproduced hereunder:-

“ITA No. 1443/Bang/2014 in Assessment Year 2008-09:-

*13. The assessee company had not filed the return of income voluntarily u/s. 139(1) even there was failure on part of the assessee in respond to notice u/s. 142(1) issued on 24.02.2009. Subsequently the Assessing Officer issued notice u/s. 142(1) of the Act requiring the assessee to produce the books of account and other documents. Subsequently, the return of income was filed on 21.10.2009 declaring income of Rs. 1,89,149/- and the assessment was completed by the ACIT, Central Circle - 1(2), Bangalore vide order dated 31.12.2009 passed u/s. 143(3) of IT Act at a total income of Rs. 1,14,82,150/-. While doing so the Assessing Officer disallowed a sum of Rs. 27,25,725/- by holding as under and also disallowed the bad debts of Rs. 5,68,497/- in respect of St. Mary's Educational Trust and Rs. 79,98,779/- and in respect of Sri Balaji Builders and Developers on the ground that the debts have not become bad. The relevant findings of the AO are as under.*

*“7. The assessee has shown under Project Advances, M/s. Gancon Project at Rs 2 crores as on 31.3.2005. As per the bank account the assessee has issued two cheques of Rs. one crore each during the F. Y. 2004-05 and the cheques were realized on 4.4.05. The total amount received as on 31.3.08 is Rs.2,59,28,3141-. The assessee has shown Rs. 32,02,5891- as income from this. It is stated that the assessee ha paid interest. The*

*assessee has not produced any documentary evidence and the purpose and the nature of loan and the details of interest paid. In the absence of any details, the difference of Rs. 27,25,725/- is added to the income. Additions : Rs. 27,25,725/-"*

*Being aggrieved, an appeal was preferred before CIT(A). The CIT(A) after calling for the remand report had deleted the addition on account of interest of Rs. 27,25,725/- based on the remand report of the Assessing Officer wherein the Assessing Officer had admitted that the said amount is not in the nature of interest, but the bank charges. As regards, the bad debts written off in the sum of Rs. 5,68,497/-, the same was confirmed as the amount written off was not in the nature of debts. As regards the amount of written off of bad debts of Sri Balaji Builders and Developers, the CIT(A) after considering the remand report and the submission of the assessee company allowed / granted relief by holding as under.*

*10.3 I have carefully considered the submissions of the appellant as well as the comments of the A. O. in the remand report. The appellant had entered into a Memorandum of Agreement with Sri. Balaji Builders & Developers for the development of a project called Gold View Apartments vide a Memorandum of Agreement dated 02.04.2005 pursuant to the agreement certain advances to Sri. Balaji Builders & Developers on various dates towards the development of project (A copy of the MOA was made part of the Written Submissions by the appellant). Bills were raised on the appellant and the same was paid by the appellant. The costs incurred towards development of the project were shown under the head advances in the books of the appellant. As seen from the ledger copies furnished by the appellant, the appellant had a running account of payments to the party. As and when bills are submitted, the same were also recorded. The bills were submitted by the said party till 25.04.2006 The appellant subsequently made a payment of Rs.25,00,000/- on 07.02.2007 and another Rs.25,00,000/- on 29.05.2007 which together with the earlier balance constituted this outstanding figure. The bills for these advances are not*

*reflected in the ledger account However considering the fact that the appellant has sold substantial flats and held the balance, the works apparently are executed Hence, this is definitely a business expenditure which should be taken as project cost.*

*10.4 I have considered the contentions and explanations of the appellant and the material available on record. The amount written off by the appellant of Rs. 79,98,7791- is towards the project undertaken by the appellant and the said amount which is written off as bad debt though technically is not correct definitely is in the nature of business expenditure. Hence, I find substance in the claim of the appellant in the written submission that the said amount of Rs. 79,98,7791- is to be appropriated towards the cost of the project. Accordingly, AO is directed to treat this as project cost. In effect, this ground is allowed."*

*14. Being aggrieved the revenue is in appeal before us. The grounds of appeal filed by the revenue challenges the relief granted by CIT(A) on the bad debts written off. The Id. CIT(DR) argued that the CIT(A) ought not to have granted the relief. On the other hand, the Id. counsel supported the order of CIT(A).*

*15. We have heard the rival submissions and perused the material on record. The only issue in this grounds of appeal is whether the CIT(A) was justified in granting relief on the addition made in respect of bad debts written off. The only grounds on which the AO has made addition is that the assessee has failed to prove that debt has become bad. After considering the submission that the amount advanced to Sri Balaji Builders and Developers was for the development of project called Gold View Apartments in terms of Memorandum of Agreement dated 02.04.2005 and these amounts were shown as cost by developer of the project and finally this project could not be completed by them and the same was written off in the books of accounts as bad debts. It is the contention of the assessee-company that if not as a bad debt the same should be allowed as a business loss, once the amounts*

written off in the books of account is bad debt, the same should be allowed as a bad debt and is no longer requirement of law to prove that the debt has become really bad. In this regard the reliance was placed by the assessee-company on the decision of Hon'ble Supreme Court in the case of T.R.F. Ltd. Vs. CIT as reported in 323 ITR 397. The assessee-company also made alternative to submission that if not as a bad debt the same should be allowed as a business loss after placing reliance on the following decisions.

"a. Harshad J Choksi Vs. CIT, 80 DTR 20 [Bom]; wherein the Hon 'ble Court has held that "If a deduction is not allowable as bad debt, there is no bar in claiming the loss as a business loss, if the same is incidental to carrying on of business.

b. CIT, Mysore Vs. Y. V.Sreenivas Murthy, 63 ITR 306 [Mysore High Court]

c. CIT Vs. Abdul Razak & Co., 136 ITR 825 [Guj]

d. Tar & bitumen Products Ltd., Vs. CIT, 136 ITR 833 [Cal],

e. CIT Vs. Sri. Vinayaga Pictures, 161 ITR 65 [Mad],

f. CIT Vs. K.M.Mody, 141 ITR 903 [Bom],

g. Bilasrai Juharmal Vs. CIT, 141 ITR 915 [Bom],

h. CIT Vs. Crescent Films (P) Ltd., 248 ITR 670 [Mad],

i. CIT Vs. Essen (F) Ltd., 49 ITR 109 [Mad]"

16. The Id. CIT(A), after considering the above submissions had allowed the relief. The Id. CIT(DR) has not placed any material on record controverting the findings of CIT(A) and since the order of CIT(A) is inconsonance with well settled position of law on the issue, we do not find any reason to interfere with the order of CIT(A). Hence the appeal filed by the revenue is dismissed.

C.O. No. 212/Bang/2015 in ITA No. 1443/Bang/2014:-

17. The Cross Objection filed by the assessee-company challenging the very validity of assessment order passed as there was no incriminating material found as a result of search action in the premises of the Managing Director of the assessee-company. Mere perusal of the assessment order would show that the assessment order

*was not framed as a consequence of the incriminating material. There is a abatement of assessment proceedings. In the revenue appeal we had confirmed the order of Id. CIT(A) granting relief.*

18. *In the result, the issues in the Cross Objections raised have become infructuous and dismissed as such.*

19. *In the result both the appeals filed by the revenue and the Cross Objections filed by the assessee are dismissed.”*

2. Against this, the assessee filed appeal before the Hon'ble Jurisdictional High Court in ITA No.424 of 2018. The Hon'ble High Court vide judgment dated 22/11/2022 decided this case holding as under:-

5. *The ITAT has dismissed Revenues appeal. With regard to cross objection, it has held that the assessment order was not framed as a consequence of an incriminating material and there is abatement of the assessment proceedings and confirmed the CIT(A)'s order.*

6. *Shri.Chandrasekhar, for the assessee pointed out ground No.2 from the grounds of appeal urged before the ITAT in assessee's appeal stating that the assessee had denied that it was not liable to tax, over and above the returned income of Rs.1,81,149/-. He argued that the question of addition pursuant to any search proceedings under Section 143(3) of the Act, does not arise.*

7. *This contention is not opposed by the learned advocate for the Revenue.*

8. *In view of the above, the matter requires re-consideration in the hands of ITAT. Hence, the following;”*

ORDER

*(i) Appeal is allowed.  
(ii) Matter is remitted to the file of ITAT for re-consideration with regard to cross objection No.212 (Bang)/2015 and addition of Rs. 5, 68,497/-.*

*(iii) Since, the matter has been remanded to the ITAT, the questions of law framed by this Court on 08.04.2019, do not require any answer and accordingly not answered.”*

3. Consequently, ITA No.1443/Bang/2014 and CO No.212/Bang/2015 listed for fresh hearing before this Tribunal.

4. As seen from the above judgment of the Hon'ble High Court cited supra, it is noted that ITA No.1443/Bang/2014 is not remitted by the Hon'ble High Court for fresh hearing. Hence, it is listed wrongly before this Bench and no adjudication is called for. In view of this, the appeal is dismissed as infructuous.

5. In the Cross-objection, the issue raised is that the assessee is not liable to tax over and above the return income of Rs.1,81,149/-. The AO made additions as under in the assessment order:-

Income as per return	:	Rs.1,89,149
Add: Additions as discussed above		
i) Income received from M/s.Gancon Projects - para 7	:	Rs.27,25,725
ii) Bad debts in respect of		
a) St.Marys Education Trust-para 8.1	:	Rs.5,68,497

b) Sri Balaji Builders & Developers –

para 8.2	:	Rs.79,98,779
		=====
Total income		Rs.1,14,82,150
		=====

6. Before us, the Id.AR was not able to controvert how the above addition as wrong so as to establish that it is wrongly made by the AO and also not placed any evidence in support of this ground. Hence, this ground of Cross-objection is dismissed.

7. With regard to addition of Rs.5,68,497/-, which has been written off as bad debt which has been advanced to the St. Mary's Education Trust, in our opinion, this written off is not satisfy the condition laid down in sec. 36(1)(vii) r.w.s 36(2) of the Act. Since the assessee has not incurred any loss in the ordinary course of business activities and also not gone into the computation of income of the assessee in any previous years and the written off the said amount cannot be allowed as deduction u/s 36(1)(vii) r.w.s 36(2) of the Act as bad debt or as a business loss u/s 37 of the Act. Accordingly, this ground also dismissed.

8. In the result, the appeal in ITA No.1443/Bang/2014 and Cross objection in CO No.212/Bang/2015 are dismissed.

Order pronounced in court on 23<sup>rd</sup> March, 2023.

Sd/-

**(BEENA PILLAI)**

Judicial Member

8Bangalore,

Dated, 23<sup>rd</sup> March, 2023

/ vms /

Sd/-

**( CHANDRA POOJARI)**

Accountant Member

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation  
.....
2. Date on which the typed draft is placed  
before the dictating Member .....
3. Date on which the approved draft comes to Sr.P.S  
.....
4. Date on which the fair order is placed  
before the dictating Member .....
5. Date on which the fair order comes back to the Sr.  
P.S. ....
6. Date of uploading the order on  
website.....
7. If not uploaded, furnish the reason for doing so  
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8. Date on which the file goes to the Bench Clerk  
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endorsement.....
10. Date on which the file goes to the Head Clerk  
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11. The date on which the file goes to the Assistant  
Registrar for signature on the order  
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12. The date on which the file goes to dispatch section  
for dispatch of the Tribunal Order  
.....
13. Date of Despatch of Order.  
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