

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No.202/JP/2023  
निर्धारण वर्ष/Assessment Years :2011-12

Yogendra Khandelwal 1 <sup>st</sup> Floor Somani Building Loha Mandi, Jaipur	बनाम Vs.	Assistant Commissioner of Income Tax Circle-03, Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: ADCPK 0822 B		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Sh. P. C. Jain (FCA)  
राजस्व की ओर से/ Revenue by: Sh. A. S. Nehara (Addl. CIT)

सुनवाई की तारीख/ Date of Hearing : 17/05/2023  
उदघोषणा की तारीख/ Date of Pronouncement: 14/06/2023

आदेश/ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by assessee and is arising out of the order of the National Faceless Appeal Centre, Delhi dated 09.02.2023 [here in after Id. NFAC/CIT(A) ] for assessment year 2011-12 which in turn arise from the order passed giving effect to the appellate order and from that order of effect giving appeal order of ITAT AO passed an order dated 14.10.2019

under section 143(3) of the Income Tax Act, 1961 [ here in after to as Act ]  
by Assessing Officer.

2. In this appeal, the assessee has raised following grounds: -

- “1. That the learned CIT(A) has erred in maintaining addition of Rs. 565951/-.
2. That the assessee reserve his right to add alter or delete any ground of appeal on or before the date of hearing.”

3. Succinctly, the fact as culled out from the records is that the return declaring income of Rs. 1,02,78,210/- was e-filed on 29.09.2011. Assessment u/s 143(3) of the I.T. Act was completed on 30.12.2013 assessing total income at Rs. 1,14,94,840/-. In the assessment order one of the addition of Rs. 5,65,951/- was made on account of disallowance of bad debts written off, claimed by the assessee. On appeal against the order of the CIT(A), the Hon'ble ITAT vide its order dated 25/09/2018 pronounced in ITA No. 735/JP/2016 set aside the issue of addition of Rs. 5,65,951/-, made on account of disallowance of claim of bad debts to the file of the Assessing Officer as per the request of the Id. AR of the assessee. There is no finding of the bench about the allowability of the said claim therefore, the confirmation of addition by the lower authority is bad in law. The relevant finding of the tribunal in ITA No. 735/JP/2016 is as under:-

"13. Considering the above discussion, in our opinion to treat the debt as bad debt has to be commercial or business decision of the assessee based on the relevant material in possession of the assessee. Once the assessee records the debt as bad debt in his books of account that would prima facie establish that it is a bad debt unless the Assessing Officer for good reasons holds otherwise. The writing in the accounts no doubt, has to be bona fide. Once that be the case, the assessee is not called upon to discharge any further burden. In our opinion, therefore, we are in agreement with the view taken by the majority constituting the Bench of the learned Tribunal.

14. The question as framed will have to be answered by holding that after the amendment it is neither obligatory nor is the burden on the assessee to prove that the debt written off by him is indeed a bad debt as long as it is bona fide and based on commercial wisdom or expediency. Appeal disposed of accordingly."

25. In the instant case, all that the assessee has submitted is that certain amounts were disputed with its debtors and there was no chance to recover the same therefore it was claimed as bad debts. It was further submitted that once an entry has been made in the books of accounts writing off the bad debts, there is no necessity to demonstrate that debts written off were indeed bad debts and not recoverable. In the instance case, we find that there are regular financial dealing with these parties and in respect of certain transactions, there seems to be some dispute which the assessee is claiming and which has been written off during the year. In such a situation, to claim these as bad debt, the assessee has to demonstrate through certain verifiable material in its possession to show genuineness and trustfulness in its decision making process that debt has actually become bad and irrecoverable. During the course of hearing, the Id AR submitted that if given an opportunity, the assessee would be able to prove the bonafide of its decision of treating these amounts as bad debts. In light of the same, the matter is set-aside to the file of AO to examine the same afresh taking into consideration the above discussions."

4. Since the matter was set aside to the file of the Id. AO, he sustained the addition by observing as under:-

"4.2 The assessee failed to furnish any certain verifiable material evidence to demonstrate the genuineness and trustfulness in its decision making process that debts were actually become bad and irrecoverable. The assessee has furnished only one page written submission. The assessee's reliance on the provisions of section 36(1)(vii) as they stood after 1989, is of no use here as these provisions

were already considered by the Hon'ble ITAT and after considering these provisions, certain specific directions were issued to the assessee, which he fail to comply.

5. In view of the above facts, as the assessee has failed to demonstrate through certain verifiable material that shows genuineness and trustfulness in his decision making process that debts were actually become bad and irrecoverable, the claim of the assessee of bad debts of Rs. 5,65,950/- is disallowed and added back to the income of the assessee.”

5. Aggrieved from the order of the Id. AO, assessee preferred an appeal before the Id. CIT(A):-

“5.0 As seen from the order, the Tribunal had given specific directions to the assessee to demonstrate before the AO, that debt to the extent of Rs 5,65,951 had actually become bad and irrecoverable. The assessee however, during the course of proceedings to give effect to the order did not comply with the Tribunal's directions. The only stand of the assessee at that time before the AO was that, bad debt should be allowed as it was written off in the books of account. As a consequence of not complying with Tribunal's order, AO disallowed the bad debt. Even during the appellate proceedings, assessee reiterated its earlier stand taken before the AO.

6.0 Considering the fact that the AO concluded the assessment in compliance of the Tribunal's directions and that the decision of a higher appellate forum like jurisdictional Tribunal is strictly binding in nature, I uphold the order of the AO.”

6. As the assessee is not satisfied with the finding of the lower authorities, assessee has preferred this appeal on the grounds as stated in para 2, to support the grounds so raised the Id. AR of the assessee submitted his written submission and the same is reiterated here in below:

“With regard to our appeal for ass. Year 2011-12 we submit as under :-

1.The learned CIT (A) has erred in maintaining addition of Rs.565950/- on account of bad debts made by learned income tax officer. In this regard we submit that payment was disputed due to rate difference, quality, quantity & other reasons therefore they

were not making the payment although we were having regular dealing with some of the parties but it does not mean that said payments were recoverable. It was not possible to recover the said amount from parties therefore it was claimed bad debts. There is no condition for claiming bad debts that parties account should be closed. We could not close the dealing with parties because of disputed amount even after that we feel beneficial in dealing with parties. Remittance was made by parties on account of other due bill are in the account. They are not making any payment of disputed amount. We have not received any amount of earlier claimed as bad debts. When the learned CIT(A) treat the debts as doubtful why it could not be bad when neither we are recovering the same nor recoverable in future. The documents furnished clearly shows that debts are non-recoverable we do not understand what further verifiable material is required. We have submitted copy of party account which itself big document for verification of transaction with party and recovery of money from party. We do not understand why current dues could not be bad when they are completely not recoverable although we have not claimed any current dues sometimes have passed. We feel that amount is fully disputed and no chance to recover the same therefore it was claimed as bad debts. It is wrong opinion of learned CIT and assessing officer that we are claiming bad debts as per our convenience. In our opinion it were clearly bad debts and as yet we have not received any amount from these parties. After the amendment of sec 36(i) (vii) w.e.f. 1989 it was not obligatory on the part of the assessee to prove that debts written off was indeed a bad. The statutory rule itself declare the rule of deduction of bad debts. If it were again, necessary to prove by demonstrative proof that the debts have become bad than there would be not necessary to insert a statutory rule. The amendment to law has dispensed with the need for such proof. All the decision cited by CIT (A) and income tax assessing officer is wrong and not applicable after amendment of sec. 36(i)(vii). In view of above we submit that learned CIT(A) and assessing officer is totally wrong is not allowing bad debts of Rs.565950/- now we request please to delete the addition Of Rs.565950/- on account of bad debts.”

7. This is the 2<sup>nd</sup> round of litigation wherein the only issue before us is the addition confirmed on account of writing of bed debts. This issue is set aside by the Co-ordinate Bench vide order dated 25.09.2018. The Co-ordinate Bench has given the following directions to the assessee ITA No. 656/JP/2015 as under:-

“15. In Ground No. 1, the assessee has challenged the sustenance of addition of Rs. 56,59,50/- on account of bad debt. In this regard, the relevant facts and findings of the Id CIT(A) are contained at Para 3.1.2 of the Id. CIT(A) order which is reproduced as under:-

“(i) The brief facts of the case are that during the year under consideration, the appellant has written off bad debt amounting to Rs. 5,65,950/- which was not allowed by the AO. It was held by the AO that the appellant was having regular dealing with the said parties during the year under consideration. Further, the appellant has also written back the bad debts written off in earlier years and thus the appellant was claiming bad debts as per its convenience.

(ii) During appellant proceedings, it was the contention of the appellant that since these parties were disputing rate difference and quality and were not making payments, it was not possible to recover the said amount from the parties, therefore, it was claimed as bad debts. It was the contention of the appellant that there is no condition for claiming bad debts that parties account should be totally closed. It write off dues as bad debts when it feel that it is disputed and not recoverable. In future when it remind the parties for previous dues and when it receive the amount, it was shown as bad debts recovered account. It was another contention of the appellant that after the amendment in Sec. 36(1)(vii) mere writing off the debts is sufficient and there is no requirement in law to prove that the debts has actually become bad.

(iii) I have duly considered the submissions of the appellant, assessment order and the material placed on record. It is noted from the assessment order that during the year under consideration, the appellant has claimed bad debts written off at Rs. 5,65,951/- whereas it has written back a sum of Rs. 14,12,442/- as bad debt recovered. The appellant has accepted that it was having regular dealing with the parties for which it claimed bad debts during the year under consideration and the bad debts relates to the sale made to them during the year under consideration itself. All these facts indicate that the appellant is claiming the amount of bad debts at its own convenience without examining whether these debts have become irrecoverable or not. Further, the appellant has not brought on record any material which support the contention of the appellant that there was dispute with these parties regarding rate and quality. It appears that through writing off bad debts and writing back bad debts claimed in earlier years, the appellant is postponing its tax liabilities, which cannot be permitted. It may be mentioned that in the case of CIT vs. Kohli Bros. Color Lab (P.) Ltd., [2011] 186 Taxman 62 (ALL.), it has been held by the Hon'ble Allahabad High Court that qua the entries of bad debts written off, semblance of genuineness has to be there and the same should not be mere paper work. Further, the Hon'ble Apex Court in the case of Travancore Tea Estates Co. Ltd. vs. CIT [1998] 233 ITR 203, has taken the view that though standard proof of proving the same as bad debt is not

required to be adopted and is to be decided on the wisdom of the assessee and not on the wisdom of the Assessing officer, but to show that the entry had been made as bad debt, there has to be some material in support of the same, giving some semblance of genuineness and truthfulness to the same in direction of forming an opinion that said debt was arising out of trading activity, there was relationship of debtor or creditor and same was irrecoverable. It is therefore held that the AO was justified in making addition of Rs. 5,65,951/- on account of bad debts written off by it during the year under consideration. Hence this ground of appeal is hereby rejected.”

16. We find that a similar issue has been dealt by us in assessee’s own case in AY 2008-09 in ITA No. 736/JP/2016 dated 28/02/2018 wherein we have held as under:-

“23. We have heard the rival contentions and perused the material available on record. As per the AO, copy of account of these parties shows that most of the trade dues written off relates to the sales made during the year only and these bad debts written off are in the nature of doubtful debts only which are recoverable as was done by the assessee in earlier years. As per the Id CIT(A), the assessee has accepted that it was having regular dealing with the parties for which it claimed bad debts during the year under consideration and the bad debts relates to the sale made to them during the year under consideration itself and all these facts indicate that the appellant is claiming the amount of bad debts at its own convenience without examining whether these debts have become irrecoverable or not. Further, as per the Id CIT(A), the appellant has not brought on record any material which support its contention that there was dispute with these parties regarding rate and quality. Further, he has referred to the decision of the Allahabad High Court in case of CIT vs Kohli Bros. Color Lab (P) Ltd 186 Taxmann 62 where it was held that qua the entries of bad debts written off, semblance of genuineness has to be there and the same should not be mere paper work. Further, Id CIT(A) also referred to the decision of the Hon’ble Supreme Court in case of Tranvancore Tea Estates Ltd vs CIT 233 ITR 203 wherein it was held that to show that the entry in the books of accounts had been made as bad debt, there has to be some material in support of the same giving semblance of genuineness and trustfulness to the same in direction of forming an opinion that that said debt was arising out of trading activity, there was relationship of debtor or creditor and the same was irrecoverable.

24. Further, useful reference can also be drawn to the decision of the Hon’ble Bombay High Court in case of Director of Income-tax (International Taxation) vs Oman International Bank SAOG reported in 184 Taxman 314 wherein it was held as under:

“10. Let us refer to some dictionary meanings of the word "bad debt". Chambers 20th Century Dictionary refers to bad debt as "a debt that cannot be recovered".

Mitra's Legal & Commercial Dictionary refers to bad debt as a debt becomes bad debt when the creditor has no reasonable chance of recovering it from the debtor as held in *Deoniti Prasad Singh v. CIT* AIR 1953 Pat. 360. The Law Lexicon refers to bad debt as "debt which cannot reasonably be collected. A debt about which there is no reasonable expectation of recovery; a debt believed to be unrecoverable." Reference may also be made to p. 878 of the Law and Practice of Income-tax by Kanga, Palkhiwala & Vyas, 9th Edn. where the learned Jurist opined as under :—

"Under the amended clause, the requirement of 'establishing' that the debt had become bad in the relevant accounting year is dispensed with; all that the assessee has to show is that the bad debt has been written off as irrecoverable. But, the subject-matter of the clause is still 'any bad debt' and 'not any debt'. The consequences of the amendment are mainly three :—

(i) The assessee cannot arbitrarily, irrationally or mala fide treat a good debt as bad, write it off in his accounts.

(ii) Where the assessee has acted bona fide and reasonable, the Assessing Officer cannot substitute his own subjective judgment, but must accept the assessee's decision, as to the quality of the debt.

(iii) The assessee is not obliged to write off and claim the debt in the very year in which it becomes bad. He can write it off and claim it in a subsequent year in which the debt continues to remain bad."

11. All this would indicate that when the assessee treats the debt as a bad debt in his books the decision has to be a business or commercial decision and not whimsical or fanciful. The decision must be based on material that the debt is not recoverable. The decision must be bona fide. The difference between the position, pre-amendment and postamendment would be that the burden is no longer on the assessee and can be claimed in the year it is written off in the books of account as irrecoverable. The Assessing Officer if he is to disallow the debt as a bad debt must arrive at a conclusion that the decision was not bona fide. The Assessing Officer only in those circumstances and to that extent may interfere. All that the assessee must do is to be prima facie satisfied based on the information available that the debt is bad and that would be sufficient requirement of the amended provisions.

12. Our attention was invited to the judgment of the Madras High Court in *South India Surgical Co. Ltd. v. Asstt. CIT* [2006] 287 ITR 62. In case the amount was payable by a Government Department (hospital). The Tribunal there had taken the view that the debt could not be claimed as bad on the mere ground that the hospital and the Departments might make payments as and when funds are provided. The Madras High Court after considering the various judgments was pleased to observe that it is not sufficient for the assessee to say that he has

become pessimistic about the prospect of recovery of debt in question. The assessee must honestly feel convinced that the financial position of the debtor was so precarious and shaky that it would be impossible to collect any money from him. The question is really one of fact depending upon the various facts and diverse circumstances bearing on the debtor's pecuniary position, his commitments and obligations. Further, that the judgment of the assessee in regard of the debt as a bad debt must be a honest judgment and not a convenient judgment.

Reference was also made to the judgment of the Delhi High Court in CIT v. Global Capital Ltd. [2008] 306 ITR 332. The Delhi High Court has taken the view that post the amendment the assessee is not required to establish that the concerned debt has actually become bad in the relevant year for the purpose of claiming deduction under this section and the only requirement for claiming deduction is that the assessee has to write off the relevant debt in his book treating it as bad.

This Court in CIT v. Star Chemicals (Bombay) (P.) Ltd. [2008] 220 CTR (Bom.) 319 had also taken a view that post-amendment on a reading of the section and the circular, what was required was to write off the debt as a bad debt based on the assessee's commercial wisdom and that will satisfy the purpose of the section.

13. Considering the above discussion, in our opinion to treat the debt as bad debt has to be commercial or business decision of the assessee based on the relevant material in possession of the assessee. Once the assessee records the debt as bad debt in his books of account that would prima facie establish that it is a bad debt unless the Assessing Officer for good reasons holds otherwise. The writing in the accounts no doubt, has to be bona fide. Once that be the case, the assessee is not called upon to discharge any further burden. In our opinion, therefore, we are in agreement with the view taken by the majority constituting the Bench of the learned Tribunal.

14. The question as framed will have to be answered by holding that after the amendment it is neither obligatory nor is the burden on the assessee to prove that the debt written off by him is indeed a bad debt as long as it is bona fide and based on commercial wisdom or expediency. Appeal disposed of accordingly.”

25. In the instant case, all that the assessee has submitted is that certain amounts were disputed with its debtors and there was no chance to recover the same therefore it was claimed as bad debts. It was further submitted that once an entry has been made in the books of accounts writing off the bad debts, there is no necessity to demonstrate that debts written off were indeed bad debts and not recoverable. In the instance case, we find that there are regular financial dealing with these parties and in respect of certain transactions, there seems to be some

dispute which the assessee is claiming and which has been written off during the year. In such a situation, to claim these as bad debt, the assessee has to demonstrate through certain verifiable material in its possession to show genuineness and trustfulness in its decision making process that debt has actually become bad and irrecoverable. During the course of hearing, the Id AR submitted that if given an opportunity, the assessee would be able to prove the bonafide of its decision of treating these amounts as bad debts. In light of the same, the matter is set-aside to the file of AO to examine the same afresh taking into consideration the above discussions. ”

17. Following our above decision, the matter is set aside to the file of the Assessing Officer to examine the same afresh. The ground is thus allowed for statistical purposes.”

8. The Id. AR of the assessee before us relying on the CBDT Circular No. 12/2016 dated 30<sup>th</sup> May, 2016 submitted that the direction of the bench misunderstood and they are bound by the contention of the circular which reads as under:-

“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, thereafter referred to as the Act) to rationalize the provisions regarding allowability of bad debt with effect from the 1<sup>st</sup> 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) fell 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 under section 36(1)(vii) of the Act, if it is written off as irrecoverable in the books of accounts of the assessee for that previous year and it fulfills the conditions stipulated in sub section (2) of sub-section 36(2) of the Act.

5. Accordingly, no appeals may henceforth be filed on this ground and appeals already filed, if any, on this issue before various Courts/Tribunals may be withdrawn/not pressed upon.”

6. This may be brought to the notice of all concerned.

(Sadhana Panwar)  
DCIT (OSD)(ITJ),  
CBDT, New Delhi

9. The Board has clearly directed the lower authorities, based on the judgement of the Hon'ble Supreme Court in the case of TRF Ltd that if the assessee has written off bad debts in the books of accounts, then it fulfills the conditions stipulated in sub section (2) of section 36(2) of the Act.

10. On the other hand, the Id. DR heavily relied upon the order of Id. CIT(A) and finding of the ITAT in the earlier round of litigation. The Id. DR stated that the assessee was supposed to substantiate the written off bad debts in the books.

11. In the rejoinder submission, the Id. AR of the assessee vehemently argued that the Board circular very categorically specified that if the assessee has written off bad debts in the books of accounts, then it fulfills conditions of section 36(2) of the Act and no further evidence is required to be placed on record except the ledger account which the assessee has already placed on record in his paper book before us and before lower authorities too which has not been disputed.

12. We have heard the rival contentions and perused the material placed on record. The Id. DR has not controverted the directions of the Board issued vide circular No. 12/2016 dated 30<sup>th</sup> May, 2016. He has also not supported any contrary decisions to support the contentions raised whereas the Id. AR of the assessee categorically submitted that when the CBDT, in compliance to of the litigation policy issued directions to the lower authorities the same should have been considered in its true sprits as it fulfills the conditions laid down by the Board vide circular issued and there is no contrary judgment or direction in the matter so as to confirm the addition made by the lower authorities. Since, the assessee has already written off the debt as bad in the accounts and in the second round of litigation the Id. AO did not bring any contrary finding that the amount is not

written off by the assessee, the addition sustained by the lower authority for an amount of Rs. 5,65,951 is vacated.

In the result the appeal of the assessee is allowed.

Order pronounced in the open court on 14/06/2023.

Sd/-

Sd/-

(संदीप गोसाई )

(Sandeep Gosain)

न्यायिकसदस्य / Judicial Member

( राठौड कमलेश जयंतभाई )

(Rathod Kamlesh Jayantbhai)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 14/06/2023

\*Ganesh Kumar/ santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Yogendra Khandelwal, Loha Mandi
2. प्रत्यर्धी / The Respondent- Assistant Commissioner of Income Tax, Circle-03, Jaipur
3. आयकरआयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA No. 202/JP/2023)

आदेशानुसार / By order,

सहायकपंजीकार / Asst. Registrar