

आयकर अपीलीय अधिकरण  
मुंबई पीठ "एच", मुंबई  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
सुश्री पद्मवती. एस, लेखाकार सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH " H", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
MS. PADMAVATHY.S, ACCOUNTANT MEMBER

आसं. 1532/मुं/2023 (नि. व. 2013-14)  
ITA NO.1532/MUM/2023 (A.Y.2013-14)

Kewal Kiran Enterprises,  
B-101, Synthofine Estate, Opp.  
Virwani Industrial Estate,  
Goregaon (East), Mumbai – 400 063  
PAN: AAAPK-2525-L

..... अपीलार्थी/ Appellant

बनाम Vs.

The Deputy Commissioner of Income-tax-41(1)(1)  
Office No.425, 4<sup>th</sup> Floor,  
Kautiliya Bhavan, BKC,  
Mumbai – 400 051.

..... प्रतिवादी/ Respondent

Assessee by : Shri Ronak Doshi &  
Ms. Ragnyi Saraf  
Revenue by : Shri Prashant Mahajan

सुनवाई की तिथि/ Date of hearing : 11/07/2023  
घोषणा की तिथि/ Date of pronouncement : 22/09/2023

आदेश/ORDER

**PER VIKAS AWASTHY, JM:**

This appeal by the assessee is directed against the order of Commissioner of Income Tax(Appeals), National Faceless Appeal Centre, Delhi [in short the 'CIT(A)'] dated 21/03/2023 , for the Assessment Year 2013-14.

2. The assessee in appeal has raised three grounds. In ground No.1 of appeal, the assessee has assailed the order of CIT(A) on the ground of violation of principles of natural justice.

2.1 In ground No.2 of appeal, the assessee has assailed the findings of CIT(A) in upholding the assessment order denying the claim of bad debts written off amounting to Rs.98,82,500/- u/s. 36(1)(vii) r.w.s. 36(2) of the Income Tax Act, 1961[ in short 'the Act'].

2.2 In ground No.3, without prejudice to ground No.2 the assessee has made an alternate prayer to allow bad debts written off as deduction u/s. 28 or u/s. 29 or u/s. 37 of the Act.

3. Shri Ronak Doshi appearing on behalf of the assessee stated at the outset that he is not pressing ground No.1 of appeal.

3.1 The Id. Authorized Representative of the assessee in respect of ground No.2 submits that the assessee is a partnership firm engaged in the business of finance and investments. The assessee has been advancing loans to various parties since 2006. A supplementary partnership deed dated 01/04/2006 was executed between the partner to include the business of financing and money lending as one of the business of the partnership firm. He referred to the Deed of Supplementary Partnership at pages 53 to 55 of the Paper Book.

3.2 The Id. Authorized Representative of the assessee submitted that during the period relevant to assessment year under appeal the assessee claimed bad debts written off under the provisions of section 36(1)(vii) of the Act in respect of loans advanced to following two parties:

Party Name	Total Amount (in Rs.)	Principal Amount	Interest Amount
Bharat Poly Plast	2,02,500	-	2,02,500
Sha Chandmal Fatehchand	96,80,000	90,00,000	6,80,000

Retreating the submissions made before CIT(A), the Id. Authorized Representative of the assessee submitted that the assessee had advanced loan of Rs.28.00 lacs to Bharat Poly Plast in F.Y. 2009-10. The assessee could recover principle amount of loan, however, interest amounting to Rs.2,02,500/- could not be recovered. Though the interest amount was offered to tax in Assessment Year 2011-12, the said amount was never received. Therefore, the interest amount which was offered to tax in Assessment Year 2011-12 has been written off in the impugned assessment year.

3.3 In respect of loan advanced to Sha Chandmal Fatehchand the Id. Authorized Representative of the assessee submitted, that the loan was advanced in the F.Y. 2001-02. The assessee charged interest on the loan @ 12% to 15% on year on year basis. The assessee offered to tax interest Rs.6,80,000/- in Assessment Year 2010-11 as business income, however, the said interest amount was never received by the assessee. The unrecoverable interest amount and principal amount Rs.90,00,000/- was written off as bad debt in the impugned assessment year. The Id. Authorized Representative of the assessee pointed that the assessee made efforts to recover outstanding loan and interest. The gist of correspondence with Sha Chandmal Fatehchand was given before the CIT(A).

3.4 The Id. Authorized Representative of the assessee submitted that the Assessing Officer had denied bad debt written off to the assessee merely for the reason that the assessee is not licenced to carry out business of financing nor it is a registered Non-Banking Finance Company (NBFC). The CIT(A) has upheld the findings of the Assessing Officer. He submitted that in past, the Revenue has always accepted income offered to tax from money lending business and has never raised objection that the assessee is not a licenced money lender or a registered NBFC. The Id. Authorized Representative of the assessee further referred to the order of CIT(A) dated 21/09/2017 for Assessment Year 2012-13, whereby the assessee's claim of bad debts written off was allowed. He pointed that in Assessment Year 2012-13 the Assessing Officer had rejected assessee's claim of bad debts written off by raising similar objection, the CIT(A) following the decision of Hon'ble Bombay High Court in the case of CIT vs. Padma S. Bora, 229 Taxman 627 and the decision of Tribunal in the case of B.N.Khandelwal vs. ITO (2007) 6 SOT 343 (Mumbai) deleted the addition.

4. Per contra, Shri Prashant Mahajan representing the Department vehemently defended the impugned order and prayed for dismissing appeal of assessee. The Id. Departmental Representative submitted that the assessee has failed to show that the assessee was authorized /licenced to carry out the business of money lending. A stray incidence of money lending by the assessee cannot be said to be a regular business activity. Hence, the claim of bad debt written off has been rightly rejected by the Assessing Officer and the CIT(A).

5. We have heard the submissions made by rival sides and have examined the orders of authorities below. We have also considered the documents and decisions that has been referred to by the Id. Authorized Representative of the assessee during the course of his submissions.

6. In so far as, ground No.1 of appeal is concerned, in the light of statement made by Id. Authorized Representative of the assessee at Bar the same is dismissed as not pressed.

7. The ground No.2 of appeal is against disallowance of bad debts written off u/s. 36(1)(vii) of the Act. The assessee inter-alia is engaged in the business of advancing loans. The assessee has written off irrecoverable interest and/or principal amount in respect of two parties i.e. Bharat Poly Plast & Sha Chandmal Fatehchand. The solitary reason for disallowing assessee's claim of bad debts written off is that the assessee is not a registered NBFC or a licenced money lender.

8. It is an undisputed fact that the assessee is in the business of money lending for the past several years and the Revenue has accepted income from money lending business of the assessee as 'Business income'. The Id. Authorized Representative of the assessee has drawn out attention to the order of CIT(A) for Assessment Year 2012-13(supra), wherein the assessee's claim of bad debts written off was rejected by the Assessing Officer for the similar reason i.e. the assessee is neither a registered NBFC or a licenced money lender. The CIT(A) allowed assessee's claim of bad debts written off by placing reliance on the decision of Hon'ble Jurisdictional High Court.

9. The Hon'ble Bombay High Court in the case of CIT vs. Padmas S. Bora, 229 Taxman 627 has held that merely because assessee does not have licence to conduct money lending business, could not be the ground for denying deduction of bad debts written off in respect of amount lent in the ordinary course of business. In the instant case we find that a Supplementary Deed of Partnership was executed, wherein apart from other business activities lending of money was also included as part of assessee's business.

10. We find no merit in the reasons for rejecting assessee's claim of bad debts written off by the Assessing Officer and CIT(A). The findings of the CIT(A) on this issue are quashed and ground No.2 of appeal is allowed.

11. In ground No.3 of appeal, the assessee without prejudice to ground No.2 of appeal has made an alternate prayer to treat bad debts written off as business expenditure u/s. 28/29/37 of the Act. Since, we have accepted the primary plea of the assessee in ground No.2, the ground No.3 has become academic, hence, not deliberated upon.

12. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on Friday the 22<sup>nd</sup> day of September, 2023.

Sd/-

(PADMAVATHY. S)

लेखाकार सदस्य/ACCOUNTANT MEMBER  
मुंबई/ Mumbai, दिनांक/Dated 22/09/2023  
Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/ DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt.Registrar)/Sr. Private Secretary ITAT,  
Mumbai