

आयकर अपीलीय अधिकरण “ए” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, CHENNAI

माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.172/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2017-18)

M/s.Kaizen Cold Formed Steel Pvt.Ltd, 14A, Ennore High Road, Thiruvottiyur, Chennai-600 019.	बनम / Vs.	ACIT Corporate Circle-4(2), Chennai.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No.	AADCK-7625-B	
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Ms. V.Madhunika (Advocate)-Ld.AR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri R.Raghupathy (JCIT)- Ld.DR

सुनवाई की तारीख/ Date of Hearing	:	03-10-2023
घोषणा की तारीख / Date of Pronouncement	:	05-10-2023

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2017-18 arises out of the order of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 15-12-2022 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 04-12-2019. The grounds taken by the assessee read as under:

“1.The Order dated 15.12.2022 of the National Faceless Appeal Centre (NFAC) under Section 250 of the Income Tax Act (the Act) is contrary to law, facts and circumstances of the case and also opposed to the principles of equity, natural justice, and fair play (the said Order shall hereinafter be referred to as the 'Impugned Order').

2.The only legal issue that was the subject matter of the Appeal before the NF AC was whether the bad debts claimed by the Appellant was actually written off in the books of account of the Appellant.

3.It is submitted that the Appellant had written off the Bad Debts in the Profit and Loss Account and credited the same to its Bad Debts Reserve Account. The Profit and Loss account and the Bad Debts Reserve Account are netted and not shown in the balance sheet. However, a bare perusal of the Profit and Loss Account shows that the bad debts have been debited. Furthermore, the Appellant had also furnished a copy of its list of Sundry Debtors. The above-mentioned list shows that for the relevant Assessment Year, the concerned debts were transferred/adjusted to the Bad Debts Reserve Account.

4.That the Impugned Order reproduced the Appellant's list of Sundry Debtors in Paragraph 5. Furthermore, in Paragraph 6.2, the Impugned Order also notes that the Appellant/ Assessee had debited the bad debts to the Profit and Loss Account and credited the same to the bad debts reserve account. However, despite noting the above-mentioned fact, the Impugned Order disallowed the said amount on the ground that the bad debts were not written off in the manner prescribed in Paragraph 6.3.

5.It is submitted that four conditions are required to be satisfied for a bad debt to be granted under Section 36:

- (a) The debt or loan should be in respect of a business which is carried on by the assessee in the relevant accounting year.
- (b) The debt should have been taken into account in computing the income of the assessee of the accounting year or of an earlier accounting year or should represent money lent in the ordinary course of the business of banking or money lending.
- (c) The amount of the debt or loss, or part, thereof, which is claimed as a deduction should be established to have become bad in the accounting year.
- (d) The amount should have been written off as irrecoverable in the accounts of the assessee for that accounting year in which the claim for a deduction is made for the first time.

In this context, it is submitted that the bad debts the Appellant is claiming were all incurred during the course of its business for the relevant accounting year. The Respondent also does not dispute these facts in the Impugned Order. Furthermore, the Appellant has also shown the said bad debt in its profit and loss account and Bad Debts Reserve Account. Lastly, it is seen that the Sundry Debtors List provided by the Appellant concretely establishes the fact that the Appellant has legitimately written off the irrecoverable debt as a bad debt. Hence, it is submitted that the Appellant has satisfied all the requirements for the purpose of having its bad debts to be allowed under Section 36.

6.That in Paragraph 6.3 of the Impugned Order, the 1st Respondent describes the alleged correct method by which a bad debt should be written off as irrecoverable. However, it is submitted that the 1st Respondent does not have the authority or the power to **prescribe** method by which a bad debt is written off. It is submitted that the Hon'ble Supreme Court in the case of *Southern Technologies Ltd. v. JCIT [2010] 320 ITR 577 (SC)* and *TRF Ltd v. CIT [2010] 323 ITR 397 (SC)* have categorically held that for the purpose of writing off a bad debt, it would suffice if the assessee had debited the same to Profit and Loss Account, credited the same to the Bad Reserve Debts Account and maintain a Sundry Debtors list. Therefore, in this context, it is submitted that the Appellant has satisfied the above-mentioned requirements laid down by the Hon'ble Supreme Court.

7.That the Appellant had, vide its Written Submissions dated 08.12.2022, relied on the following decisions:

- (a) TRF Ltd v. CIT [2010] 323 ITR 397 (SC) and several decisions that followed the

(b) *Vithaldas H. Dhanjibhai Bardanwala v. CIT* MANU/GJ/0051/1980

However, the Impugned Order neither mentioned nor distinguishes the above- mentioned judgements.

8. The Impugned Order merely references the decision of the Hon'ble Supreme Court in *Vijaya Bank v. CIT* [2010] 323 ITR 166 (SC) and distinguishes it on the ground that it is a decision rendered in the specific context of banking companies. However, a bare perusal of the above-mentioned decision of the Hon'ble Supreme Court reveals that the decision was rendered in the context of Section 36(1)(vii) and even makes a specific reference to the above-mentioned decision of *Southern Technologies Ltd* to hold that for the purpose of claiming a bad debt, it would suffice if the Assessee had merely written off the same by debiting it in its profit and loss account and crediting it in its Bad Reserve Debts Account."

Though the assessee has raised multiple grounds of appeal, however, the substantive issue that arises for our consideration is disallowance of bad debts u/s.36(1)(vii).

2. The Ld. AR advanced arguments supporting the case of the assessee and drew attention to financial statements of the assessee. The Ld. Sr. DR supported the orders of lower authorities. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

3. The impugned disallowance stem from the fact that the assessee claimed bad debts written-off for Rs.13.57 Lacs which was disallowed by Ld. AO on the ground that the bad debts were not actually written-off by the assessee in the books of accounts at year end.

4. The Ld. CIT(A) confirmed the same by observing as under:-

6. ADJUDICATION:- Grounds of appeal no 1 and 3 are general and consequential in nature and require no separate adjudication. Ground no 2 is the only substantial ground where the appellant is aggrieved by the action of the assessing officer disallowing the Bad debts of Rs.13,57,915 as the party's account was not written off in the books of account though Bad debts was debited to profit and loss account and credited to Bad Debts Reserve.

6.1 Four conditions were required to be fulfilled before allowance for bad debt can be granted under section 36 which are, (1) The debt or loan should be in respect of a business which is carried on by the assessee in the relevant accounting year. (2) The debt should have been taken into account in computing the income of the assessee of the accounting year or of an earlier accounting year or should represent money lent in the ordinary course of the business of banking or money-lending. (3) The amount of the debt or loss, or part,

thereof, which is claimed as a deduction, should be established to have become bad in the accounting year. (4) The amount should be written off as irrecoverable in the accounts of the assessee for that accounting year in which the claim for a deduction is made for the first time.

6.2 The appellant had debited the profit and loss account specifically mentioning the concerned debts which could not be recovered from the debtors in question and had credited the same to bad debt reserve account by these corresponding entries about the bad debts. The contention of the assessing officer is that the assessee has forfeited its right to claim deduction under section 36(2) on the ground that by not squaring off the accounts of the concerned parties in its books, the assessee had not written off these debts as irrecoverable.

6.3 Under section 36(2) of the I. T. Act, 1961, the assessee's writing off of the bad debt as irrecoverable in his accounts *is* a condition precedent to the grant of allowance. It is clear that before any claim for allowance as bad debt is held established, it must appear that the concerned bad debt was written off as irrecoverable in the account books of the assessee for the grant of a claim for bad debt allowance. The correct way is, when a debt is found to be irrecoverable, it should be written off as a loss by means of a journal entry debiting Bag Debts Account and crediting the account of the defaulting debtor. At the end of the accounting period, the Bad Debts Account is closed by transfer to the Profit and Loss Account. Should a debt which has been written off as bad be subsequently recovered, in whole or in part, the debtor's personal account should be debited and Bad Debts Account credited, the cash received then being credited to the debtor's account. This is the necessary condition before posting the amount recovered direct from the Cash Book to the credit of the Bad Debts Account without making any entry in the debtor's personal account. This is the appropriate way by which each individual account would contain a correct and comprehensive record of the bad debt. Unless the assessee carries out the posting of the entries regarding the concerned debt to their logical end by closing the account of the concerned debtor in its books, it cannot be said that it has written off the concerned debt as irrecoverable.

6.4 As per the discussion above the appellant cannot claim bad debts written off unless it is squared off in individual ledger accounts. The honorable Supreme Court of India in civil appeal no.3286-3287 OF 2010 in the case of M/s. Vijaya Bank has given a different interpretation of section 36(1)(viiia) with respect to banking companies. But in this case, assessee is a non-banking company where section 36(2) is applicable and hence the ground raised by the appellant is hereby DISMISSED.

Aggrieved as aforesaid, the assessee is in further appeal before us.

5. Upon perusal of Profit & Loss Account as placed on record, it could be seen that the assessee has debited impugned amount as 'Bad Debts Written-off'. The ledger of this account is on record at Page No.60 of the paper book. Upon perusal of the same, it could be seen that individual debtors has been written-off in this account and aggregate figure has

been debited in the Profit & Loss Account. Thus, it is not a reserve account but bad debts actually written-off in individual ledger. The findings rendered in the impugned order are contrary to assessee's financial statements. Therefore, the impugned additions are not sustainable. By deleting the same, we allow the appeal of the assessee. The Ld. AO is directed to re-compute the income of the assessee.

6. The appeal stand allowed in terms of our above order.

Order pronounced on 05th October, 2023.

Sd/-

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखासदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated : 05-10-2023

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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF