

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'H', NEW DELHI**

**Before Dr. B. R. R. Kumar, Accountant Member**

**Sh. Yogesh Kumar US, Judicial Member**

**ITA No. 1648/Del/2021 : Asstt. Year : 2013-14**

DCIT, Circle-4(2), New Delhi-110002	Vs	M/s Carissa Investment Pvt. Ltd., B-97, 2 <sup>nd</sup> Floor, Amrit Puri, Garhi, East of Kailash, New Delhi-110065
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAACC3277A</b>		

**Assessee by : Sh. Mayank Patwari, CA  
Revenue by : Ms. Sapna Bhatia, CIT-DR**

<b>Date of Hearing: 09.11.2023</b>	<b>Date of Pronouncement: 07.02.2024</b>
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**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the Revenue against the order of Id. CIT(A)-2, New Delhi dated 02.09.2020.

2. Following grounds have been raised by the Revenue:

*"1. On the facts and circumstances of the case whether the Id. CIT(A) erred is fact and in law in restricting the quantum of disallowance under section 14A to the amount of dividend income earned during the year under consideration.*

*2. In view of the facts and circumstances of the case whether the Id. CIT(A) erred in law by relying on the decision of Indiabulls Capital Services Ltd. (2020) 114 taxman.com 647 (SC) which is a nonspeaking order and has not deliberated on the issue.*

*3. In view of the facts and circumstances of the case whether the Id. CIT(A) erred in fact and in law in allowing the claim of the assessee in respect of amount written off ignoring the fact that the amount written off is non-business, prior period and capital expenditure."*

**Disallowance u/s 14A:**

3. During the assessment proceedings, the Assessing Officer has worked out the disallowance u/s 14A of the Income Tax Act, 1961 in the following manner:

Opening Value of investment	Rs. 73,42,19,050/-
(Non current investment + Inventories)	Rs. 73,42,19,050/-
Closing value of investment	
(Non current investment + Inventories)	Rs. 73,42,19,050/-
<b>0.5% of average investment</b>	<b>Rs. 36,71,095/-</b>
	<b>(disallowed)</b>

4. The exempt income claimed by the assessee was Rs.9,83,504/- out of the shares kept in stock-in-trade and the assessee has *suo moto* disallowed Rs.2,00,000/- towards the expenses incurred for earning the exempt income.

5. Placing reliance on the following judgments,

- CIT vs. GKK Capital Market Pvt. Ltd. (392 ITR 196) (Del.)
- PCIT vs. U. K. Paints India Pvt. Ltd. (392 ITR 552) (Del.)

6. We hold that the disallowance of Rs.2,00,000/- on account of exempt income claimed of Rs.9,83,504/- is fair and sufficient. The order of the Id. CIT(A) on this ground is affirmed.

**Bad Debts:**

7. During the course of the assessment proceedings, the Assessing Officer observed that the appellant had debited a sum of Rs.18,59,19,735/- by way of bad debts written off to the P&L

account. Out of the bad debts written off an amount of Rs.16,83,56,989/- was shown in the name of M/s Indiabulls Financial Services Ltd. The same was disallowed by the Assessing Officer with the following observations as noted by the Id. CIT(A):

*"The facts of the assessee's case were also examined with reference to agreement entered by it with M/s. Indiabulls Financial Services Ltd on 12.12.2009. It is worth to note that amount paid towards settlement of capital transaction was done in FY 2009-10 relevant to AY 2010-11. The assessee failed to demonstrate/explain as how this payment was his liability and how it was discharged. The assessee itself admitted that this cost incurred by it was in pursuant to a settlement deed dated 18.11.2009 entered with M/s. Indiabulls Financial Services Ltd. As per provision of the Act, the bad debt written off as irrecoverable in the books of accounts is allowable; none of other debts is allowable against the total income. Hence this payment is even not debts (or the purpose of the business so allowance of the same under the provision of income tax is not possible with in the provision of the income tax Act.*

*Since during the year under consideration the assessee company has earned profit and sale of land and intention of the assessee was to set off the capital gain with the unusual loss. The nature of the income of Rs. 7,50,00,000/- was also explained by the assessee vide its reply dated 27.01.2016 in which it has been stated that the assessee company has into an agreement for purchase of Floor Space Index of 1,20,000 sq. ft. from M/s CSN Estates (P) Ltd @ 1200/- per sq. ft. Subsequent to the execution of agreement, M/s. CSN Estates (P) Ltd had expressed its inability to sell the said FSI to the assessee. In order to compensate the assessee for cancellation of the agreement, M/s. CSN Estate (P) Ltd, had agreed to pay to the assessee an amount of Rs. 7.5 crores as compensation. It is this said amount of*

*compensation, which has been credited by the assessee in its P&L a/c as Other Income. At the same time the unusual income earned has been set off by unusual losses (amount written off) which does not pertain to AY 2013- 14. The expense of amount written off claimed in P&L A/c is collusive in nature and clearly a colorable device to avoid tax as held by the Hon'ble Supreme Court in the case of Mc Dowels Vs. CIT 154 ITR 148 (SC) wherein the supreme court held as under:-*

*In the above case the assessee has entered into settlement deed with M/s. Indiabulls Financial Services Ltd in FY 2009-10. All the payment as per settlement deed has been paid in FY 2009-10 itself. Therefore, assessee was well verse with the fact that Rs.16,83,56,989/- as debit balance to M/s. Indiabulls Financial Services Ltd has actually no value at all. Accordingly, if amount of Rs. 16,83,56,898/- needs to be write off it must be dome in FY 2009-10 relevant to AY 2010-11. The assessee has intentionally deferred this transaction in order to avoid tax on the capital gain as well as income earned/received from M/s. CSN Estate (P) Ltd as compensation. Therefore, amount of Rs.16,83,56,989/- cannot be treated as business expenditure.*

*Where a liability arising out of a contractual obligation is disputed, the assessee is entitled, in the assessment year relevant to the previous year in which the dispute is finally adjudicated upon or settled, to claim a deduction in that behalf. As assessee company and M/s. Indiabulls Financial Services Ltd has signed settlement deed in the year of FY 2009-10. In response to the settlement deed executed between assessee company and M/s. Indiabulls Financial Services Ltd, M/s. WGF Financial Services Ltd and M/s. Dalmia Finance Ltd (both are group concern of assessee company) has paid liability of assessee company in AY 2010-11 itself. Therefore, in such case the expenses Rs. 16,83,56,989/- must have been written off in the FY 2009-10 itself. As this expense is of the nature of prior*

*period expense therefore, the same is not allowable in AY 2013-14.*

*The amount in question is also not in the nature of revenue, rather capital in nature. Based on the above submissions, the appellant's claim was repudiated and addition made."*

8. The details of the transaction carried out by the assessee are as under:

*"6.4 The company is engaged in the business of purchase and sales of shares and was doing share trading transaction through India Bulls Securities Limited who were the members of the National Stock Exchange and Bombay Stock Exchange and they were arranging margin funding from there associate concern India Bulls Financial Services Limited. All the purchases, sales and F&O transactions were of revenue nature and related to the business activities of the company and have been debited/credited to Profit and Loss Account. The difference in the amount as per settlement deed relating to the company of Rs.101,69,26,205.89 and as per the books of accounts is due to the fact that they may have charged interest, penal interest, penalty and other charges and debited the same to the account of the company in their Books. While the assessee company has not entered the same in their books due to the disputes.*

*ii. The assessee was doing trading business in shares through its broker m/s India Bull Security Ltd. (IBSL) to whom the assessee had payable amount of Rs.16,82,11,803/-.*

*iii. M/s India Bull Financial Service Ltd. (IBFSL) was the financier of the assessee in such trading business. As per terms and condition, the IBFSL used to provide fund on behalf of assessee to IBSL and in turn, such IBSL used to purchase and sales the shares of the assessee. Hence, in due cause of business the assessee had to receivable amounting to Rs.35,45,66,791/- from IBFSL.*

iv. Since IBFSL and IBSL both were group concern and in one concern the assessee had receivable amount while in other concern the assessee had payable amount. These receivables and payable amounts were pending for long back and dispute between the parties on this issue was going on.

v. With a view to settle this issue, there was tri-party agreement dated 2009 and also settlement deed dated 12.12.2009. In these "settlement, it was agreed that the assessee will not pay Rs. 16,82,11,803/- to IBSL but -it will set off such debt with the We amount of Rs.35,45,68,791/- from IBFSL. However, IBFSL not agree to repay balance amount of Rs.16,83,56,989/-.

vi. In the light if such settlement deed, the assessee during the year i.e. A. Y. 2013-14 squared the account of said IBFSL and IBSL as under:

a.	Receivables from IBFSL:	Rs.35,45,68,791/-
b.	Less: Payable amount to IBSL:	Rs. 16,82,11,803/-
c.	Net Receivables amount from IBFSL:	Rs.16,83,56,989/-
d.	Less Bad Debt VV/O u/s 36(i)(vii):	Rs.16,83,56,989/-
		NIL

vii. In this situation, Bad Debt Written Off Rs.16,83,56,989/- was debt revenue in nature being sale proceeds of share, which was already credited to the trading account in earlier years. Hence, the same is liable to be allowed as per provision of Section 36(i)(vii) of Income Tax Act, 1961.

6.5 The starting point of the present dispute relates to the settlement deed entered into by the appellant. During the course of the assessment and appellate proceedings, the appellant has filed a settlement deed which was executed on 18.11.2009. The appellant is one of the signatories to the settlement deed.

A. *Parties to the deed:*

<i>S. No.</i>	<i>Parties to the settlement deed</i>
<i>i.</i>	<i>Dear Investment Pvt. Ltd.</i>
<i>a.</i>	<i>Dalima Housing Finance Ltd.</i>
<i>iii.</i>	<i>Comosum Investment Pvt. Ltd.</i>
<i>iv.</i>	<i>Antarctica Investment Pvt. Ltd.</i>
<i>v.</i>	<i>Altar Investment Pvt. Ltd.</i>
<i>vi.</i>	<i>Carissa Investment Pvt. Ltd.</i>
<i>vii.</i>	<i>Oval Investment Pvt. Ltd.</i>
	<i>For Cross Investment Pvt. Ltd.</i>

B. *At para 15 of the settlement deed it is stated that:*

*"the obligors undertaken and represent that this settlement deed, the Mortgage deed and the Group Authorization letter have been simultaneously executed by the Obligors and all other documents required to be executed pursuant to this settlement deed shall be executed and/or registered, if required, on or before November 19, 2009."*

9. In this case, as evident from the facts of the case, the M/s IBSL was broker and M/s IBFSL was the financier. The settlement deed was entered into with the same group, the payable and receivable amounts were clubbed together. A net-receivable amount of Rs.16,83,56,989/- was the net-receivable amount that was carried over till A.Y. 2012-13. The settlement deed is the document based on which the appellant has written off an amount of Rs.16,83,56,989/-. It was further submitted by the appellant that assessee has not written off amount of Rs.16,83,56,989/ during the A.Y. 2010-11 the appellant was making efforts during A.Y. 2010-11 to A.Y. 2012-13 to ease the terms of the settlement which was made under pressure due to arrest of Sh. Sanjay Dalmia, who was confirming party to the settlement deed. However, the appellant's efforts did not bear any results due to which such amount was carried forward by

the appellant till relevant assessment year without any mala-fide intention and written off the debts in AY 2013-14. [(from the order of the CIT(A)]

10. The provision of deduction towards bad debt is contained in Section 36(1)(vii) of the Act which provides hereunder:

*"Subject to the provisions of sub-section (2), the amount of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year:*

*Provided that in the case of an assessee to which clause (vii) applies, the amount of the deduction relating to any such debt or part thereof shall be limited to the amount by which such debt or part thereof exceeds the credit balance in the provision for bad and doubtful debts account made under that clause.*

*Following second proviso shall be inserted after the first proviso to clause (vii) of sub-section (1) of section 36 by the Finance Act, 2015, w.e.f. 1-4-2016:*

*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 sub-section (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 part thereof has been written off as irrecoverable in the accounts for the purposes of this clause.*

*[Explanation I].—For the purposes of this clause, any bad debt or part thereof written off as irrecoverable in the accounts of the assessee shall not include any provision for bad and doubtful debts made in the accounts of the assessee;*

*[Explanation 2—For the removal of doubts, it is hereby clarified that for the purposes of the proviso to clause (vii) of this sub-section and clause (v) of sub-section (2), the account referred to therein shall be only one account in respect of provision for bad and doubtful debts under clause (viiia) and such account shall relate to all types of advances, including advances made by rural branches;]*”

11. In the instant case,

- (i) The amount written-off was a debt has been established with respect to the details of transactions submitted;
- (ii) It has also been established that the amount in question, written off by the appellant was incidental to the business of the appellant;
- (iii) The amount in question was taken into account while computing the assessable income in the previous years, as evidenced from the ledgers submitted by the appellant. In case of mercantile system of accounting, income is taxable on accrual basis, even if it is not realized in cash in the year of accrual of income. If debt of such a business income becomes bad, a deduction is necessary to arrive at the true profits of the business.

12. Reliance is being placed on the judgment of Hon'ble jurisdictional High Court in the case of CIT vs. Morgan Securities and Credits Pvt. Ltd. [2007] 210 CTR 336 (Del.) wherein it was held as under:

*"A conjoint reading of Section 36(2) and Section 36(i)(vii) makes it clear that the assessed would be entitled to a deduction of the*

*amount of any bad debt which has been written off as irrecoverable in its Accounts for the previous year. Any lingering doubt would vanish on a careful reading of Circular Number 551 dated 23.1.1990, the relevant portion of which reads as follows:*

*The old provisions of Clause (vii) of Sub-section (i) read with Sub-section (2) of the section laid down conditions necessary for allowability of bad debts. It was provided that the debt must be established to have become bad in the previous year. This led to enormous litigation on the question of allowability of bad debt in a particular year, because the bad debt was not necessarily allowed by the Assessing officer in the year in which the same had been written off on the ground that the debt was not established to have become bad in the year. In order to eliminate the disputes in the matter of determining the year in which a bad debt can be allowed and also to rationalize the provisions, the Amending Act, 1987 has amended Clause (vii) of Sub-section (1) and Clause (I) of Sub-section (2) of the section to provide that the claim for bad debt will be allowed in the year in which such a bad debt has been written off as irrecoverable in the accounts of the assessed.*

*Clauses (in) and (iv) of Sub-section (2) of the section provided for allowing deduction for a bad debt in an earlier or later previous year, if the Income-tax Officer was satisfied that the debt did not become bad in the year in which it was written off by the assessed. These clauses have become redundant, as the bad debts are now being straightway allowed in the year of write off. The Amending Act, 1987 has, therefore, amended these clauses to withdraw them after the assessment year 1988-89.*

*The conundrum which has arisen before us had also engaged the attention of the Gujarat High Court in Commissioner of Income-Tax v. Girish Bhagwatprasad with which we are in respectful agreement. Our learned Brothers had pointedly observed that the genuineness of the claim predicated on Section 36(i)(vii) of the IT Act was not in doubt. Where the loan transaction is itself*

*shrouded in uncertainty other provision of the statute would immediately come into play. Our learned Brothers further observed that prior to the amendment from April 1, 1989, the allowance under the said section was confined to debts and loans which had become irrecoverable in the Accounting Year. Without adverting to the above extracted Circular, it was opined that with effect from April 1, 1989 'all that the assessee had to show was that the bad debt was written off as irrecoverable. One year later an altogether different Bench of the Gujarat High Court had to decide the question of whether it was enough if the assessed writes off the debt as bad in its Books of Accounts and whether the assessed company need not establish the debt to have become bad, in Deputy Commissioner of Income-Tax v. Patidar Ginning and Pressing Co. [1999] 157 CTR Reports 177. The Appeal of the Revenue was dismissed.*

*It is our view that the Circular Number 551 leaves no scope for debate since it specifically notices the previous practice of having to establish that a debt had become bad in the previous year, which had generated enormous litigation on the question of allowability of bad debt in a particular year. The Circular expressed the hope that this litigation would be eliminated by permitting a debt to be treated as a bad or recoverable-no sooner it was written off in the books of the assessed concerned."*

13. Further, the Hon'ble Supreme Court in the case of TRF Ltd. Vs. CIT (2010) (323 ITR 397) held as under:

".....

*(vii) Subject to the provisions of sub-section (2), the amount of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year."*

*This position in law is well-settled. After 1-4-1989, it is not necessary for the assessee to establish that the debt, in fact,*

*has become irrecoverable. It is enough if the bad debt is written off as irrecoverable in the accounts of the assessee. However, in the present case, the Assessing Officer has not examined whether the debt has, in fact, been written off in accounts of the assessee. When bad debt occurs, the bad debt account is debited and the customer's account is credited, thus, closing the account of the customer. In the case of companies, the provision is deducted from sundry debtors. As stated above, the Assessing Officer has not examined whether, in fact, the bad debt or part thereof is written off in the accounts of the assessee. This exercise has not been undertaken by the Assessing Officer. Hence, the matter is remitted to the Assessing Officer for de novo consideration of the above-mentioned aspect only and that too only to the extent of the write off."*

14. Hence, keeping in view the affairs of the assessee, provisions of the Act and the judicial pronouncements, we decline to interfere with the order of the Id. CIT(A).

15. In the result, the appeal of the Revenue is dismissed.  
Order Pronounced in the Open Court on 07/02/2024.

Sd/-

**(Yogesh Kumar US)**  
**Judicial Member**

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**Dated: 07/02/2024**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**