

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **1216/CHNY/2023**

निर्धारण वर्ष/Assessment Year: 2013-14

Shri Manohar Prasad Akkineni,
No.2, Sarangapani Street,
T.Nagar, Chennai -600 017.

The Income Tax Officer,
Vs. Non-Corporate Circle 20(1),
Chennai.

PAN: AAGPP 5384A

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri N. Arjun Raj, CA

प्रत्यर्थी की ओर से/Respondent by

: Shri AR.V. Sreenivasan, JCIT

सुनवाई की तारीख/Date of Hearing

: 12.03.2024

घोषणा की तारीख/Date of Pronouncement

: 12.03.2024

आदेश / O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in Order No.ITBA/NFAC/S/250/2023-24/1055403823(1) dated 24.08.2023. The assessment was framed by the ACIT, Non-Corporate Circle 20(1), Chennai for the assessment year 2013-14 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 31.03.2016.

2. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of the AO in making addition of bad debts written off by the assessee amounting to Rs.18,14,970/-. For this, assessee has raised argumentative grounds, hence need not be reproduced.

3. Briefly stated facts are that the assessee is an individual and claimed to have carrying on the business of money lending in film financing and film production. The AO during the course of assessment proceedings noticed that the assessee has claimed an amount of Rs.18,14,970/- as bad debts but unable to produce any evidence of bad debts, the ledger copies or any further documents. The AO also noted that the payment of camera man was also written off which has no relevance to the business of assessee. Hence, he disallowed the claim of assessee. Aggrieved, assessee preferred appeal before CIT(A). The assessee before CIT(A) claimed that the AO during the course of assessment proceedings called for information and assessee has filed a detailed note of justification for write off and the explanation for non-disallowance of bad debts along with ledger copies of respective parties where the bad debts written off. But the CIT(A) noted that the written off of bad debts in respect of individual persons who are cameraman, production manager,

advocate, as a car loan or one Miss Sushila, whose business and professional activities are not known. Since according to CIT(A), none of the persons are into the film production or financing, the disallowance was confirmed by CIT(A). Aggrieved, assessee is in appeal before the Tribunal.

4. Before us, the Id.counsel for the assessee filed copy of Tribunal order in assessee's own case in ITA No.1891 & 1892/CHNY/2018, wherein Tribunal has set aside the issue by observing as under:-

8. *We have heard both the parties, perused materials available on record and gone through orders of the authorities below. In order to claim deduction for any bad debts which is reckoned as irrecoverable in the accounts of the assessee for any previous year, then the assessee shall comply with conditions prescribed under Sub-section (2) of Section 36, as per which, any debt or part of debt which 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 is written off or of an earlier previous year, or represents money lent in the ordinary course of the business of banking or money-lending which is carried on by the assessee. Further, the assessee should prove that such debt has been written off in the books of accounts of the assessee. In this case, the assessee claimed that he is in the business of money lending. Once the assessee is in the business of money lending then the question of offering income in the earlier previous years does not arise because any advances or loans given in the ordinary course of business which is bad or irrecoverable can be written off once such debts become irrecoverable. But, fact remains that although, the assessee claims to have in the business of money lending but no evidences have been filed to prove that he is carrying on business of money lending either by furnishing necessary license obtained from competent authority or generating income from such business. Further, the assessee claimed that he has charged interest on loans and offered to tax such interest as and when he receives interest, but on perusal of financial statements, no interest has been offered to tax from loans and advances. Therefore, we are of the considered view that the fact whether the assessee is in money lending business or not and further unsecured loans given to various persons and are become bad debt is lent in the ordinary course of business or not is not forthcoming from the records. This fact needs verification. Further, once a*

particular debt becomes irrecoverable or bad debts then said debt becomes bad debts in full. In this case, the AO has accepted 50% of the debts as bad debts and remaining 50% has been treated as debts which is recoverable. Therefore, considering the fact that the assessee has not placed any evidences to prove that income pertains to 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 is written off or of an earlier previous year, or represents money lent in the ordinary course of the business of banking or money-lending which is carried on by the assessee. On the other hand, the AO had also not examined the issue in light of provisions of Section 36(1)(vii) r.w.s. 36(2) of the Act, because the AO has made adhoc disallowance of 50% debt. Hence, we are of the considered view that the issue needs to go back to the file of the AO to decide the issue afresh in accordance with provisions of Section 36(1)(vii) r.w.s 36(2) of the Act. We further direct the AO while deciding the issue, he must take into account the ratio laid down by the Hon'ble Supreme Court in the case of T.R.F. Limited vs. CIT, supra, where it has been clearly held that once debt has been written off in books of accounts as irrecoverable, then the assessee need not to prove that said debt become really bad debts. Accordingly, we set aside the issue to the file of the AO and direct him to reconsider in light of our observations given herein above.

4.1 The Id.counsel for the assessee stated that the Tribunal has given specific directions to consider the evidences filed by assessee whether the income pertaining to debt or part thereof was taken into account for computing the income of the assessee in which the amount of such debt or part thereof is written off or represents money lent in the ordinary course of banking or money lending, which is carried out on by the assessee. The Tribunal also directed to take into consideration the ratio laid down by the Hon'ble Supreme Court in the case of T.R.F. Ltd., vs. CIT reported in 323 ITR 397.

5. The Id.Senior DR also not objected of remanding the matter back to the file of the AO as done by the Tribunal in earlier years.

6. After hearing rival contentions and going through the facts of the case, we respectfully following the earlier years Tribunal decision remand the matter back to the file of the AO exactly on the same directions. The AO is directed to consider the direction of the Tribunal in earlier year and redecide accordingly. The orders of the lower authorities are set aside and appeal of the assessee is allowed for statistical purposes.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court at the time of hearing on 12th March, 2024 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 12th March, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.