

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C' : NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.6643/DEL/2019
(Assessment Year: 2016-17)**

Instronics Limited,
806, Devika Tower – 6,
Nehru Place,
New Delhi – 110 019.

vs.

ITO, Ward 12 (1),
New Delhi.

(PAN : AAACI0163R)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None

REVENUE BY : Ms. Parul Singh, Sr. DR

Date of Hearing : 03.06.2024

Date of Order : 05.06.2024

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the ld. CIT (Appeals)-4, New Delhi dated 24.06.2019 for the assessment year 2016-17.

2. Grounds of appeal taken by the assessee read as under :-

“1. That on the facts and circumstances of the case and the provision of law, the Ld CIT Appeals has failed to appreciate that the assessment order passed by the Ld AO u/s 143(3) is illegal, bad in law and wrong on facts. The addition sustained is unjust, unlawful and arbitrary and are made against the principles of natural justice.

2. That on the facts and circumstances of the case and the provisions of law, the Ld CIT Appeals has erred in sustaining the addition on account of disallowance of Bad Debts claimed of Rs.53,11,956/- ignoring the fact that the said amount is irrecoverable and eligible to claim as deduction u/s 36(1)(vii) of the IT Act.

3. That on the facts and circumstances of the case and the provisions of law, the Ld CIT Appeals has erred in not following the provisions of circular no.12/2016 dated 30.05.2016 issued by CBDT on the admissibility of claim of deduction of bad debts u/s 36(1)(vii) r.w. section 6(2) of the IT Act, 1961 merely on suspicion and assumptions ignoring the legal fact that the appellant company is fulfilling the conditions as specified in the said circular.

4. That on the facts and circumstances of the case, the Ld CIT Appeals has erred in ignoring the fact that the appellant company is an NBFC company, registered with RBI and lending of loans is one of its primary business activities. The Ld CIT Appeals has ignored the fact that the appellant company (i.e. the lender company) and the borrower company- UM Power Ltd., are two separate distinct persons and independent of each other and distinctively assessed to Income Tax with their respective PAN's.

5. That on the facts and circumstances of the case and the provisions of law, the Ld. CIT Appeal has erred in ignoring the explanations given, evidences and materials placed and available on records. The same has not been properly considered and judicially interpreted and the same do not justify the additions/disallowances sustained. The addition of Rs.53,11,956/- has been sustained with preset mind of the Ld. CIT(A) and his order is based on surmises, conjectures and suspicion.

6. That on the facts and circumstances of the case, the various observations and findings of the Ld. CIT Appeals in the impugned appellant order is irrelevant and vitiated in the law.”

3. Brief facts of the case are that the assessee company is an NBFC and is engaged in the business of providing loans and finance. During the year under consideration, the assessee company has written off a loan given to one company UM Power Limited along with accumulated interest totalling to Rs.53,11,956/-. Before the AO, the assessee has submitted the following documents on record to suggest that the loan has been granted in the ordinary course of business and since the loan became not recoverable, the same was written off. The documents which were submitted on record are as under:

- (i) Certificate of registration of appellant company being NBFC
- (ii) Summary of outstanding loan amount of UM Power Limited
- (iii) Confirmation of UM Power Limited
- (iv) Copy of Ledger Account of UM Power Limited
- (v) Copy of resolution passed in the Board Meeting of Instronics Limited, wherein the amount due from UM Power Limited was decided to be written off.
- (vi) Copy of account of UM Power Limited for FY 2012-13, 2013-14 and 2014-15
- (vii) Copy of account of interest received on loan for FY 2012-13, 2013-14 and 2014-15

3.1 The AO considered all the documents placed on record. The AO while perusing the documents, noted that both the lender (assessee) and the borrower i.e. UM Power Limited are sister concerns and have common director. The AO after considering the same, came to a conclusion that both the entities intended to take the advantage of the appellant company being a NBFC and has mis-utilised the provisions of Section 36(2) of the Act by advancing the sum to a concern who has not been able to start its business operation. The AO held that the claim of the assessee becomes questionable as the collusion between the assessee and its debtor has come to the notice of this office as both of them share a common director.

4. Before Id. CIT (A), assessee pressed hard on the documents submitted on record and submitted that all the conditions of the provisions of section 36(1)(vii) of the Income-tax Act, 1961 (for short 'the Act') have been

fulfilled, hence the claim should be allowed. Considering the submissions,

Id. CIT (A) held as under :-

“6.1.4 I have considered the submission of the assessee, the finding of the AO and the position of law. No doubt the appellant has submitted documentary evidences to substantiate its claim, however, this transaction being a transaction between two related entities needs to be tested on the principles of fairness and on the principles of substance over form.

6.1.5 In this regard, it is noted that the purpose of granted loan has not been mentioned by the appellant company anywhere. The appellant has not stated whether the policies which the appellant company adhere to in the normal course of business have been considered in the case of UM Power Limited also or not. What was the purpose of granting loan, what due diligence was done, what project reports, documents etc were submitted by the UM' Power Limited etc.? However, nothing of such sort is provided on record.

6.1.6 Furthermore, the assessee did submit certain documents, but they are self- serving. Assessee cannot take the benefit of a provision by entering into a connivance and stating that all the conditions are fulfilled. If the similar amount would have been due to any other party other than UM Power Limited, then in that case the assessee would not have certainly acted in this manner.

6.1.7 The whole substance of the transaction suggest that the intention of the party was truly to shift funds from one entity to another entity and all the paper-work was generated in this regard. I fully agree with the finding of the AO that the appellant company has siphoned off its funds to another company having no business and claimed it as expenditure as bad debt for which it is not entitled to.

6.1.8 Thus, in view of the above, I find the claim of expenditure of bad debts as totally unacceptable. Thus, the decision of the AO is being upheld. Addition of Rs.53,11,956/-

is hereby confirmed. the grounds of appeal on this issue are dismissed.”

5. Against the above order, assessee is in appeal before us. Despite several notices, none appeared on behalf of the assessee. Hence, we are adjudicating the issue by hearing the ld. DR for the Revenue and perusing the records.

6. We find that ld. CIT (A) passed a correct order. Thus, it does not need any interference on our part, hence we uphold the same.

7. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on this 5th day of June, 2024.

**Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 5th day of June, 2024
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-4, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**