

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI**

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

ITA NO. 4709/MUM/2023 : A.Y : 2016-17

Tushar Jayantilal Lakhani
32/5, Swadin Sadan, C Road,
Churchgate, Mumbai 400 020.
PAN : AAAPL4784A (Appellant)

Vs. Commissioner of Income Tax
(Appeals), NFAC, Delhi.
(Respondent)

**Appellant by : Shri Tushar J. Lakhani
Respondent by : Shri P.D. Chougule**

Date of Hearing : 18/07/2024

Date of Pronouncement : 30/07/2024

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER :

The assessee has filed this appeal challenging the order dated 15.11.2022 passed by Ld CIT(A), NFAC, Delhi and it relates to the assessment year 2016-17. The only issue urged in this appeal is related to the disallowance of claim of bad debts amounting to Rs.1,31,61,121/-.

2. The assessee appeared in person. There is a delay of 341 days in filing the appeal before the Tribunal. The assessee has furnished an affidavit explaining the reasons for the delay. It is stated that the assessee was not conversant with the tax laws and further, due to heavy losses incurred in business, he could not engage a legal counsel also. The assessee did not prefer appeal against the disallowance of bad debts, since it did not have any tax effect. However, the AO initiated penalty proceedings subsequently and

fearing levy of penalty, he took steps to file the appeal. Accordingly, it was submitted that the delay in filing appeal was neither intentional nor wanton one. Accordingly, it is prayed that the bench may take a lenient view and admit the appeal. We also heard Ld D.R. Having regard to the submissions made by the assessee, we are of the view that there was reasonable cause for the assessee in filing the appeal belatedly. Accordingly, we condone the delay and admit the appeal for hearing.

3. We heard the parties and perused the record. The facts relating to the above said addition is stated in brief. The assessee filed return of income for the year under consideration declaring loss of Rs.2.72 crores. The AO noticed that the assessee has claimed bad debts of Rs.1,31,61,121/- in its profit and loss account. When enquired about the same, the assessee submitted that his business is not running well and many debtors are not coming forward to make payments. Because of that, he was not able to pay to the creditors. The assessee further submitted that it has written off debtors balances, which were not realisable. The AO noticed that there were outstanding creditors also, but the same has not been written off. According to the AO, the assessee should have furnished confirmation letters from debtors and creditors. Since they were not furnished, the AO disallowed the claim of bad debts of Rs.1,31,61,121/-. The Ld CIT(A) dismissed the appeal, since there was no representation before him.

4. We notice that the bad debts could be claimed u/s 36(1)(vii) of the Act. As per the said provision, the claim of bad debts is allowable as deduction, if the debt is written off in the books of accounts, subject to the condition prescribed in sec.36(2) of the Act. As per the provisions of sec.36(2), the amount represented by bad debts should have been taken into account while computing income of the current year or any of the earlier year/years. Hence the question of submitting confirmation letters etc, as observed by the AO, does not arise. Accordingly, we are of the view that the reasoning given by the assessing officer for disallowing the claim of bad debts is not in accordance with law. Hence, on this count alone, the impugned disallowance is liable to be deleted.

5. The assessee has furnished ledger account copies of some of the debtors. A careful perusal of the same would show that the outstanding balances represent sales made by the assessee to them, meaning thereby, the conditions prescribed u/s 36(2) has been fulfilled in those cases. Further, the ledger account also shows that the bad debts have actually been written off in the books of accounts. Hence, in our view, the provisions of sec.36(1)(vii) r.w.s 36(2) has been complied with in the instant case. Accordingly, we are of the view that there is no reason to disallow the claim of bad debts on merits of the case also.

6. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the disallowance of bad debts.

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

Order pronounced in the open court on 30th July, 2024.

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai, Date : 30th July, 2024

SSL

Copy to :

- 1) The Applicant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "E" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai