

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI**

**BEFORE MS PADMAVATHY S, AM &
SHRI SANDEEP SINGH KARHAIL, JM**

**I.T.A. No.2247/Mum/2024
(Assessment Year: 2012-13)**

Asst. Commissioner of Income Tax 1 st Floor, Mohan Plaza, Wayle Nagar, Khadakpada, Kalyan West, Maharashtra-421301.	Vs.	Vip Clothing Ltd. Kalyan Bhiwandi Road, Tal – Bhiwandi, Thane, Maharashtra-421302. PAN : AABCM1549A
Appellant)	:	Respondent)

**C.O. No.109/Mum/2024
(Assessment Year: 2012-13)**

Vip Clothing Ltd. VIP Compound, Kon Village, Kalyan Bhiwandi Road, Tal – Bhiwandi, Thane, Maharashtra-421302. PAN : AABCM1549A	Vs.	Asst. Commissioner of Income Tax 1 st Floor, Mohan Plaza, Wayle Nagar, Khadakpada, Kalyan West, Maharashtra-421301.
Appellant)	:	Respondent)

Appellant /Assessee by : Shri Subodh Ratnaparkhi, AR
Revenue / Respondent by : Shri Surendra Meena, Sr. DR
Date of Hearing : 27.08.2024
Date of Pronouncement : 02.09.2024

ORDER

Per Padmavathy S, AM:

This appeal by the Revenue and Cross Appeal by the assessee are against the order of Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC), Delhi [in short 'the CIT(A)'] dated 29.01.2024 for Assessment Year (AY) 2012-13. The grounds raised by the Revenue C.O. filed by the assessee are as below:

ITA No. 2247/Mum/2024

“On the facts & in the circumstances of the case, the Ld. CIT(A) erred in not appreciating the fact that the assessee had not brought on record during the assessment proceedings that the debts amounting to Rs.2,15,41,150/- are only inter branch transfers, failing which the AO was justified in disallowing the same in the assessment order.”

C.O. 109/Mum/2024

The Hon. CIT(A) erred in upholding the re-opening of assessment u/s 147 of the I.T. Act, 1961, not appreciating that the re-opening of assessment u/s 147 of the I. Tax Act 1961, by issue of the notice u/s 148 on 25.03.2019 was not as per law, and hence the notice u/s 148 as well as the assessment order flowing therefrom, was invalid and bad in law and is required to be struck down and quashed on that count.

2. The assessee is a company engaged in the business of manufacturing and trading of Hosiery, cotton yarn, garment products and related process activities. The assessee filed the return of income for AY 2012-13 on 28.09.2012 declaring a total income of Rs. 5,67,82,628/-. The case was selected for scrutiny and the assessment was completed under section 143(3) of the Act assessing the income of the assessee at Rs. 6,56,70,810/-. The Assessing Officer (AO) reopened the assessment of the assessee for the reason that the assessee has debited provision for doubtful trade receivable to the tune of Rs. 2,15,41,150/- which is not allowable expenses since the provision is made against the sales made during the year and

does not fall within the provisions of section 36(1)(vii) of the Income Tax Act, 1961 (the Act). The assessee filed the return of income in response to notice under section 148 of the Act. The AO called on the assessee to furnish various details pertaining to the provision for doubtful trade receivables. The assessee furnished the ledger copy of 221 parties and other relevant details pertaining to the impugned claim. The AO noticed that out of 221 parties in 48 parties opening balance as of 01.04.2021 is Nil and the transactions pertaining to the year have been included while making provision for doubtful trade receivable. Accordingly, the AO held the entire provision as not allowable and made addition accordingly. Aggrieved, the assessee filed further appeal before the CIT(A). Before the CIT(A) the assessee raised grounds on merits and also legal contention challenging the issue of notice under section 148 by way of additional grounds. The CIT(A) rejected the legal contentions of the assessee. On merits, the CIT(A) allowed the issue in favour of the assessee by holding that

“9.4 From the above it is seen that the only reason for making the disallowance is that in the case of 48 parties the balance on 1.4.2021 was Nil and the transactions pertained to the current. On this basis the A.O concluded that the bad debts on account of all the 221 parties was only a provision. This conclusion is erroneous and is not borne by the facts of the case from which it is seen that these amounts were part of sales for the earlier years and being unrecoverable have been written off as bad debts as per the provisions of section 36(l)(vii) of the I. T. Act, 1961. In support of the above claim, ledger accounts of all the 221 sales parties were placed on the record of the Ld AO. The very fact that the claim of Rs 2,15,41,150/- is based on the actual amount of unrecoverable dues which are ascertained and real, means that they are not in the nature of an estimated provision and hence are not a contingent liability. The write of these debts has been done given the fact that their nature is ascertained and have been held to be non recoverable. Accordingly, the disallowance or allowance of these claims has to be decided as per the provisions of section 36(l)(vii) rws 36(2) of the I. T. Act. The fact that these were not contingent liabilities were very clear when the A.O examined all the ledger accounts of the respective parties and hence the disallowance of the same as a provision was unwarranted.

9.5 Secondly, the disallowance of the entire claim of bad debts on the basis of the ledger accounts of 48 parties is also not in order. The A.O has mentioned that in the case of these 48 parties, the opening balance during the year was NIL. Hence with regard to the remaining parties the A.O was satisfied that there were old balances and has not drawn any adverse conclusions with regard to the same and yet has disallowed the entire amounts recoverable from all of the 221 parties. This action of the A.O cannot be upheld.

9.6 *****Accordingly, what remains to be decided is whether the bad debts claimed are allowable provisions of section 36(l)(vii) r.w.s 36(2) of the I. T. Act, 1961. The said section was amended by Direct Tax Laws (Amendment) Act, 1987 w.e.f. 1st April 1989. The import of the amendment was explained by CBDT in Circular no. 12 of 2016 issued on 30.05.2016, which is extracted below”

Accordingly, what has to be seen with regard to a claim of bad debts is whether it has been written off as irrecoverable in the books of account of the assessee and is in accordance with the provisions of section 36(2) of the Act. Hence the A.O cannot sit in judgement on whether or not the debts have actually become bad and whether there is chance of recovery but has to following the position adopted by the assessee. The only verification required is to ensure that the amounts representing these debts were disclosed as income/sales and brought to tax in for the purposes of Income tax, as outlined in section 36(2) of the Act. In the instant case the ledger accounts of all of the 221 parties have been submitted in the instant proceedings along with the full details of names, addresses, amounts written off and the assessment year in which the sales were recognised by the appellant and I have perused to the same. With regard to the 48 parties singled out by the A.O as having no opening balance the explanation of the appellant that these represented only inter branch transfers of debtors where only the date of transfer of the debt was posted in the ledger as many of the branches were closed and their accounts transferred to near branches, is reasonable and is accepted. With regard to the remaining parties, no adverse conclusions were drawn by the A.O.

9.7 Hence in view of the details provided by the appellant in these proceedings and the explanations and submissions given thereof, it is held that the entire claims of Rs 2,15,41,150/- do not amount to a Provision or contingent liability but are admissible as Bad Debts and allowable as per the provisions of section 36(1) (vii) r.w.s 36(2) of the I. T. Act, 1961. Accordingly, the addition/disallowance made by the A.O is deleted and the **Grounds of Appeal are Allowed.**

3. The ld. DR submitted that the assessee has not properly substantiated the provision made towards doubtful trade receivable before the AO. The ld. DR further submitted that the CIT(A) did not call for any remand report from the AO before allowing the appeal on merits in favour of the assessee. Accordingly, the ld. DR supported the order of the AO.

4. The ld. AR on the other hand, submitted that the assessee has branches all over India and that the process of writing of bad-debts is centralized as Head office. The ld. AR further submitted that out of 221 parties in 48 parties the bad-debts is arising out of transaction at the branches and the same was transferred to head office during the year under consideration for write off purposes. The ld. AR therefore, submitted that the finding of the AO that in the case of 48 parties the write off pertain to current year transactions is factually incorrect since the transactions which got transferred from branches pertain to earlier years and in the current year only transfer entries are passed in the books of head office. In this regard, the ld. AR drew our attention to the ledger copies of the parties having transactions of transfer from branch office (page 58 to 305 of PB). Accordingly, the ld. AR argued that the AO is not correct in denying the deduction towards provision for doubtful trade receivable. The ld. AR further submitted that the provision pertaining to the 48 parties amounts to only Rs. 24 lakhs and that the AO has disallowed the entire provision of Rs. 2,15,41,150/- pertaining to 221 parties. The ld. AR also submitted that the ledger copies of all the 221 parties as well as the other relevant documents have been filed before the AO and therefore there was no necessity for the CIT(A) to call for a remand report from the AO. The ld. AR presented a legal argument that in assessee's case the reopening is beyond four

years and that the reason for reopening is based on material available on assessment records. Therefore, the Id. AR argued that the reopening is not valid.

5. We heard the parties and perused the material on record. During the year under consideration the assessee has made a claim of Rs. 2,15,41,150/- towards bad-debts. The AO called for the relevant details pertaining to the claim and the assessee submitted the ledger copies of all the 221 parties against whom the assessee has claimed the bad-debts. The AO based on the details submitted noticed that in the case of 48 parties, the transactions in the account pertain to current year and that the same is written of a bad-debts. Therefore, the AO disallowed the entire claim made by the assessee. The CIT(A) though rejected the legal contentions of the assessee deleted the disallowance on merits. We notice that the assessee has submitted all the relevant details before the AO and the only reason for making the disallowance is that in the case of certain parties the current year entries have been written of as bad-debts. From the perusal of records, we notice that the transactions reflected in the ledger account are transfer entries from branches relating to various periods and therefore, we see merit in the submissions of the Id. AR that current year transactions are not written of as bad-debts. Further, we notice that based on entries in the ledger account of 48 parties the AO has disallowed the entire bad-debts pertaining to 221 parties which in our considered view is not correct. Further, the claim of the assessee pertain to the actual write of bad-debts and therefore, the CIT(A) has rightly relied on CBDT Circular No. 12/2016 dated 30.05.2016 in allowing the claim of the assessee towards bad-debts. In view of this discussion, we see no infirmity in the decision of the CIT(A) in deleting the disallowance made by the AO. Accordingly, the grounds raised by the Revenue are dismissed.

6. In the C.O. the assessee has raised the legal contentions pertaining to the validity of notice under section 148 of the Act. Since we have dismissed the appeal of the revenue upholding the order of the CIT(A) deleting the disallowance made by the AO on merits, the contentions raised by the assessee in the C.O. have become academic not warranting separate adjudication and are left open.

7. In the result, the appeal of the Revenue and C.O. by the assessee are dismissed.

Order pronounced in the open court on 02-09-2024.

Sd/-
(SANDEEP SINGH KARHAIL)
Judicial Member

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai