

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

Before Shri Manjunatha G., Accountant Member
and
Shri K. Narasimha Chary, Judicial Member

आ.अपी.सं / **ITA No.958/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2018-19)

Nuevosol Energy Private Limited Hyderabad [PAN : AADCN7551K]	Vs.	Assistant Commissioner of Income Tax Circle-16(1) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Shri GVN Hari, AR	
राजस्व द्वारा / Revenue by::	Shri Srinath Sadanala, DR	
सुनवाई की तारीख / Date of hearing:	26/11/2024	
घोषणा की तारीख / Date of Pronouncement:	27/11/2024	

आदेश / ORDER

PER. MANJUNATHA G., A.M:

This appeal filed by the assessee is directed against the order dated 25/07/2024 of the learned Commissioner of Income Tax (Appeals) [Learned CIT(A)], National Faceless Appeal Centre (NFAC), Delhi, relating to A.Y.2018-19 on the following grounds :

- 1. The order of the learned Commissioner of Income Tax (Appeals) is contrary to the facts and also the law applicable to the facts of the case.*
- 2. The learned Commissioner of Income Tax (Appeals) is not justified in sustaining the addition of Rs.2,65,80,027*

made by the assessing officer towards disallowance of bad debts.

3. The learned Commissioner of Income Tax (Appeals) erred in not appreciating the fact that the impugned debts were written off in the books of account and income in respect of these debts was taken into account in computing the income of the appellant for earlier years.

4. Any other grounds may be urged at the time of hearing.

2. The brief facts of the case are that, the appellant company engaged in the business of manufacturing and installation of Solar Module mounting structures, DC works and civil works, filed its return of income for the A.Y.2018-19 on 31.10.2018, declaring total loss of Rs.4,33,16,018/- and the said return was revised on the same day, declaring total loss of Rs.3,92,59,119/-. The case was selected for scrutiny. During the course of assessment proceedings and on perusal of the books of accounts of the assessee, the Assessing Officer observed that the assessee has debited a sum of Rs.3,50,33,012/- towards bad debts receivables written off in its Profit and Loss account. In this regard, the assessee was asked to submit the details of the parties from whom the assessee could not recover its debts, along with detailed addresses and PAN of the parties. In response, the assessee filed details of bad debts written off in its books of accounts along with ledger account copies of respective debtors. The Assessing Officer on perusal of the details submitted by the assessee observed that the assessee could not prove the bad debts written off in its books of accounts are, in fact bad debts and irrecoverable with relevant evidences. In order to claim deduction towards bad

debts written off, three conditions should be satisfied and as per the said provisions, there must be a debt before claiming an amount as a bad debt and income relating to such debt should have been offered in the earlier financial years and further, the assessee must write off the said debt in the books as irrecoverable. Although, the assessee has written off debts in their books of accounts by crediting individual parties' account thereby and debiting the bad debts written off account, but could not file any evidence, as to how the said receivables are bad debts and also not filed any evidence to prove the attempt made by the assessee to recover the debts. Therefore, observed that the assessee's claim of bad debts is not allowable u/s 36(1)(vii) r.w.s. 36(2) of the Act. Accordingly, rejected the claim of the assessee in respect of bad debts amounting to Rs.2,60,80,027/- and added back to the total income.

3. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A) and submitted that it has satisfied the conditions for claiming deduction towards bad debts in terms of provisions of section 36(1)(vii) r.w.s. 36(2) of the Act and as per said provisions, the only requirement is to write off bad debts in the books of accounts and not beyond. The assessee is not required to prove before the Assessing Officer, whether, the debt is really bad or not. The Assessing Officer without appreciating the relevant facts simply made additions even though the assessee has filed all evidence to prove that the amounts claimed towards write off of bad debts is actually written off in the books of accounts of the assessee. In

this regard, the assessee relied on the decision of Hon'ble Supreme Court in the case of TRF Ltd. Vs. CIT 323 ITR 397(SC).

4. The Ld.CIT(A) after considering the relevant submissions of the assessee and also taking note of reasons given by the Assessing Officer to make additions towards write off of bad debts, observed that the appellant is not able to prove the claim of bad debts with relevant evidences and also how the deduction claimed towards write off of bad debts is really a bad debt in the impugned assessment year. The Ld.CIT(A) further observed that in order to claim deduction u/s 36(i)(vii) r.w.s.36(2) of the Act, there must be a debt in the books of accounts of the assessee and the same must have been written off in he books of accounts for the relevant assessment years. The onus is on the appellant to provide the relevant information / explanation with documentary evidences in support of its contentions. But in the present case, the appellant grossly failed to do so. Therefore, by following certain judicial precedents, including the decision of Hon'ble Supreme Court in the case of PCIT Vs. Khyati Realtors Pvt.Ltd. in Civil Appeal No.672/2020, judgement dated 25.08.2022, rejected the claim of the assessee and sustained the additions made by the Assessing Officer towards disallowance of bad debts.

5. Aggrieved by the Ld.CIT(A) order, the assessee is in appeal before the Tribunal.

6. The learned Counsel for the assessee submitted that the Ld.CIT(A) erred in facts and in law in upholding the additions

made by the Assessing Officer towards disallowance of bad debts written off without appreciating that as per the decision of Hon'ble Supreme Court in the case of TRF Ltd. Vs CIT (supra), the only requirement for claiming deduction towards bad debts is, the debt must be written off in the books of accounts as irrecoverable and not beyond. The assessee is not required to prove the debt has really become bad or not. The Ld.CIT(A) without appreciating the relevant facts, simply sustained the additions made by the Assessing Officer. The learned Counsel for the assessee, further referring to findings of the Ld.CIT(A) in light of the decision of Hon'ble Supreme Court in the case of Khyati Realtors Pvt. Ltd.(supra) submitted that the decision relied upon by the Ld.CIT(A) is not applicable to the facts of the present case, because, in the said case, the issue before the Hon'ble Court is alternative claim of the assessee for deduction towards bad debt u/s 37(1) of the Act, when the claim of the assessee has been disallowed u/s 36(1)(vii) of the Act. The Hon'ble Supreme Court, after considering the relevant provisions of the Act, held that when the claim of the assessee is not allowable in terms of specific provisions of section 30 to 36, then section 37 cannot come in. Section 37 applies only to items, which do not fall in section 30 to 36. If a provision for doubtful debt is expressly excluded from section 36(1)(vii), then such a provision cannot claim deduction u/s 37 of the Act, even on the basis of real income theory as explained above. Therefore, submitted that the order of the Ld.CIT(A) should be set aside and additions made by the Assessing Officer towards bad debts should be deleted.

7. Ld.DR on the other hand, supporting the order of the Ld.CIT(A) submitted that the Assessing Officer and the Ld.CIT(A) brought out clear facts to the effect that the claim of the assessee towards bad debt written off is not in accordance with the provisions of section 36(1)(vii) r.w.s. 36(2) of the Act. The assessee could not prove the write off of bad debts in light of relevant provisions to the satisfaction of the Assessing Officer that the said bad debts have become bad. Further, the appellant has also failed to file relevant evidences to prove any efforts made for recovery of the bad debts. Since the appellant could not prove the bad debts, the Assessing Officer and the Ld.CIT(A) has rightly disallowed the claim of the assessee and thus, their orders should be upheld.

8. We have heard both the parties, perused the material on record and gone through the orders of the authorities below. Provisions of section 36(1)(vii) deals with deduction towards bad and doubtful debts written off as irrecoverable. As per the said provisions, any bad debt written off in books of accounts as irrecoverable is allowable as deduction. The only condition provided for claiming deduction in terms of section 36(2) of the Act and as per the said provision, the only requirement is to write off of bad debts in the books of accounts by debiting to bad debts written off account and crediting to respective debtors account This principle is supported by the Hon'ble Supreme Court in the case of TRF Ltd. Vs.CIT (supra), wherein, it has been clearly held that the only requirement for claiming deduction towards bad and doubtful debts is actual write off of bad debt or part thereof in the books of accounts of the assessee

but not beyond and further, the assessee is not required to establish that the debt in fact has become irrecoverable. It is enough if bad debt is written off as irrecoverable in the books of accounts of the assessee. This legal principle is further supported by the ITAT Mumbai in the case of Aditya Commodities Pvt. Ltd. in ITA No.1971/Mum/2018, wherein, the Tribunal by following the decision of Hon'ble Supreme Court in the case of TRF Ltd. Vs.CIT (supra), held that in order to claim deduction towards bad debt, the only requirement is actual write off of bad debts as irrecoverable in the books of accounts of the assessee for that previous year and it fulfils the condition stipulated u/s 36(2) of the Act. The Tribunal has also taken support from Circular No.12/2016 dated 30.05.2016 issued by the CBDT, where, the CBDT had instructed its field officers to allow claim for deduction towards bad debts, if it is written off as irrecoverable in the books of accounts in the light of decision of Hon'ble Supreme Court in the case of TRF Ltd. Vs. CIT (supra).The sum and substance of ratio laid down by Hon'ble Supreme Court in the case of TRF Vs. CIT and later followed by ITAT Mumbai is that for claiming deduction towards bad debt written off, the only requirement is actual write off of bad debts in the books of accounts of the assessee, by debiting the Profit and Loss account and crediting to respective debtors account. In the present case, there is no dispute with regard to the fact that the appellant has written off bad debts as irrecoverable in the books of accounts by debiting bad debts in the Profit & Loss account and crediting to respective debtors account in the books of accounts of the assessee. In fact, the Assessing Officer never disputed the fact that the deduction claimed towards bad

debts has been written off in the books of accounts of the assessee. The only reason for the Assessing Officer to disallow the claim of the deduction towards bad debt is that the assessee has not established with relevant evidences to show that the debt is in fact bad debt or not. In our considered view, the law is clear from the decision of Hon'ble Supreme Court in the case of TRF Vs. CIT(supra), inasmuch as, once the debt has been written off in the books of accounts as irrecoverable, then it satisfies the conditions for claiming deduction u/s 36(1)(vii) r.w.s. 36(2) of the Act, and further, the assessee does not require to prove that the debt has become bad or not. Therefore, we are of the considered view that the Assessing Officer and the Ld.CIT(A) erred in making additions / disallowance towards bad debts written off.

9. Coming back to the finding of the Ld.CIT(A) in light of the decision of Hon'ble Supreme Court in the case of PCIT Vs.Khyati Realtors Pvt.Ltd.(supra). We find that the issue before the Hon'ble Supreme Court in the above case is whether, the alternate claim of the assessee towards deduction for bad debts written off, which was disallowed and confirmed by the Assessing Officer can be allowed as deduction u/s 37(1) of the Act. The Hon'ble Supreme Court in para 23 has discussed the issue and held that once a particular claim is disallowed under specific provisions of section 30 to 36 of the Act, then section 37 cannot come in. Section 37 applies only to items which do not fall in section 30 to 36 of the Act. If a provision for doubtful debt is expressly excluded from section 36(1)(vii), then such a provision cannot claim deduction under section 37(1) of the Act.

Therefore, we are of the considered view that the case law relied upon by the Ld.CIT(A) in the case of PCIT Vs.Khyati Realtors Pvt. Ltd.(supra) is not applicable to the present case and further the case of the assessee is squarely covered by the decision of Hon'ble Supreme Court in the case of TRF Vs. CIT (supra).

10. In view of this matter and considering the facts of the case, we are of the considered view that the assessee is eligible for deduction for bad debts written off, upon satisfying the conditions provided u/s 36(1)(vii) r.w.s. 36(2) of the Act. The Ld.CIT(A) without appreciating the relevant facts, simply sustained the additions made by the Assessing Officer. Thus, we set aside the order of the Ld.CIT(A) and direct the Assessing Officer to delete the additions made towards bad debts written off.

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

Order pronounced in the Open Court on 27th November, 2024.

Sd/- (K. NARASIMHA CHARY) JUDICIAL MEMBER	Sd/- (MANJUNATHA G.) ACCOUNTANT MEMBER
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Hyderabad, dated 27th November, 2024
L.Rama, SPS

Copy to:

S.No	Addresses
1	NUEVOSOL Energy Private Limited, H.No.1-89/A, Plot No.15, 1 st Floor, Mahi Towers, Shilp Enclave, Madhapur, Hyderabad
2	The Assistant Commissioner of Income Tax, Circle-16(1), Hyderabad
3	The Pr. CIT, Hyderabad
4	The DR, ITAT Hyderabad Benches
5	Guard File

By Order