

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH MUMBAI

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 3093/MUM/2024
Assessment Year: 2014-15**

Hybrid Financial Services Ltd., 104, Sterling Centre, Andheri Kurla Road, Andheri East, Mumbai – 400 093 (PAN : AAACM2824M)	Vs.	Assistant Commissioner of Income Tax – 10(1)(1), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Shri K. Chandramouli, CA
Revenue : Shri P.D. Chougule, Sr. DR

Date of Hearing : 12.09.2024
Date of Pronouncement : 11.12.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), Coimbatore, vide order no. ITBA/APL/S/250/2023-24/1059053529(1), dated 26.12.2023 passed against the assessment order by the Assistant Commissioner of Income Tax, Circle-10(1)(1), Mumbai, u/s. 143(3) of the Income-tax Act (hereinafter referred to as the "Act"), dated 23.12.2016 for Assessment Year 2014-15.

2. Grounds taken by the assessee are reproduced as under:

"1. The CIT (Appeals) erred in not allowing the Bad Debts amounting to Rs.6,17,28,003/- as claimed in the books of accounts as "written off" and also claimed during the assessment proceedings in the revised computation.

The CIT(Appeals) erred in not allowing the additional claim of deduction of Bad Debts filed during the course of assessment other than filing a Revised Return

2 Each one of the above ground is without prejudice to the other”

2.1 We note that registry has noted a delay of 103 days in filing the present appeal before the Tribunal. In this respect, the date of impugned order of Id. CIT(A) is 26.12.2023, claimed to have been received on the same date. The present appeal has been filed before the Mumbai Bench of ITAT on 06.06.2024. Assessee has placed on record a petition for condonation of delay, wherein it is stated that initially assessee had filed the appeal before the Chennai Bench of ITAT, under a bonafide belief that the appeal is maintainable before the Chennai Bench since its first appellate authority who disposed off the assessee's appeal is located at Coimbatore. However, during the course of hearing by the Coordinate Bench of ITAT, Chennai in ITA No. 10/Chny/2024, it was held that the said appeal needs to be filed before the Mumbai Bench of ITAT, as jurisdiction of the Bench of the Tribunal to decide an appeal is determined by the location of the office of the Id. Assessing Officer. The Coordinate Bench, Chennai passed its order dated 29.05.2024 whereby it was held in para -5 that the said appeal is not maintainable due to lack of jurisdiction and was dismissed. While dismissing, the Coordinate Bench granted liberty to the assessee to file fresh appeal before the ITAT, Mumbai Bench along with petition seeking condonation of delay in filing the said appeal, since, assessee had filed the appeal before it under a bonafide belief that it was maintainable before the ITAT, Chennai Bench. After the said disposal of the appeal of the assessee by ITAT Chennai Bench on 29.05.2024, assessee submitted its appeal electronically before the Mumbai Bench of ITAT on 06.06.2024 i.e., within a weeks' time along with petition for condonation of delay explaining the above stated facts and circumstances. Considering these facts on record and liberty granted by the Coordinate Bench of ITAT,

Chennai, the delay is condoned and the matter is taken up for adjudication.

3. Brief facts of the case are that assessee filed its return of income on 23.09.2014, reporting a loss of Rs. 1,16,70,751/-. Subsequently, assessee filed revised return of income on 29.09.2014 declaring Nil income and claiming the same loss as per the original return. During the year under consideration, assessee has shown revenue from operations at Rs.54,23,213/- and other income at Rs.97,66,522/- and as per P & L Account assessee it has computed net profit of Rs. 31,821/- before tax. During the course of assessment proceedings, assessee vide letter dated 10.08.2016 made a fresh claim for "Bad Debt Written off" amounting to Rs 6,17,2,8,003/-, which was not made in the original return of income so filed.

3.1. Assessee submitted that its name was changed in the year 2009 from Mafatlal Finance Company Limited (MFCL) to Hybrid Financial Services Limited and is a public limited company with the main object of leasing and hire purchase financing as business activities. Leasing business was aggressively commenced by the assessee in the year 1993 and went up to the year 1999 wherein the company earned substantial profits. During the assessment proceedings, assessee observed about note no. 19 to the audited Profit & Loss A/c for bad debts written off for Rs.7,60,68,000/- adjusted against the accumulated provisions made in earlier years from time to time. In this respect, during the course of assessment proceeding, assessee vide letter dated 10.08.2016 made a fresh claim for "Bad Debt Written off Rs.6,17,28,003/-" (out of total bad debts written off for Rs.7,60,68,000/-). It was submitted that the bad debts were claimed only to the extent of Rs. 6,17,28,003/- and balance of Rs.1,43,40,463/- were not claimed being recoverable in due course.

3.2. Assessee submitted that ld. Assessing Officer disallowed the claim of bad debts with sole reasoning that assessee has sought to raise a fresh claim by submitting a revised computation which was originally not claimed in the return which is not supported by the decision of Hon'ble Apex Court in the case of Goetz (India) Ltd. vs. CIT [2006] 284 ITR 323 (SC). Further, ld. Assessing Officer mentioned that the claim made by the assessee is not a mistake/omission in the original return of income filed u/s 139 of the Act but it is a fresh claim on a subsequent date, made in the course of assessment proceedings. It is also stated by him that assessee has not filed any revised return u/s 139(5) of the Act to this effect and that the proceedings u/s 143(3) of the Act are not intended to provide another opportunity to the assessee to seek revision/rectification of the issue and thus the claim of the assessee was not entertained.

3.3. Before the ld. Assessing Officer, assessee placed reliance on the decision of Hon'ble jurisdictional High Court of Bombay in the case of Pruthvi Brokers and Shareholders Pvt Ltd [2012] 23 taxmann.com 23 (Bom) in which the question arose as to whether an assessee can amend the return filed for making additional claim for deduction other than filing a revised return. Further, question also arose as to admissibility of claim of deduction not made in the original return and not supported by revised return. The questions raised before Honourable Bombay High Court were allowed in favour of the assessee with the finding that it cannot termed perverse as the omission was not deliberate, malafide or even otherwise.

3.4. Assessee submitted all the requisite details of Bad Debts written off, vide letter dated 10.08.2019. Assessee commenced business of leasing and hire purchase financing from AY 1993-94 by entering into hire purchase agreements with various customers for providing

commercial and heavy vehicles. It had earned Hire Purchase Finance income/rental during the period of tenure of hire purchase agreement which was accounted in the books of accounts to the credit to P&L A/c and offered to tax from time to time. Details of finance charges offered to income-tax as per audited accounts are as under:

Sr. No.	Financial Year	Amount (Rs.)
1.	1993-1994	13,37,778
2.	1994-1995	2,93,63,244
3.	1995-1996	11,80,54,000
4.	1996-1997	16,80,13,000
5.	1997-1998	19,50,57,000
6.	1998-1999	8,00,21,000
7.	1999-2000	29,64,000
8.	2000-2001	63,79,000
9.	2001-2002	3,61,000
10.	Total	60,15,50,022

3.5. According to the assessee, it had entered into more than 3000 Hire Purchase agreements with individuals and corporates during the period 1994 to 1999 at Mumbai and branches at Delhi, Calcutta, Ahmedabad, Hyderabad, Pune, Madras, Coimbatore, Bangalore etc. Total turnover accounted on hire purchase finance income for the above stated years is Rs.60,15 50,022/-. Bad debts arose out of these hire purchase transactions, particularly made at the branches. As per assessee, it could not recover the instalments of rental from the customers on account of the following.

- i. *The dues were pending for more than 15 years and not recoverable now.*
- ii. *In most of the cases the individuals/companies had gone into financial crunch and declared as insolvent. Most of the*

companies were closed and or referred to BIFR and or gone into liquidation.

- iii. Wherever the assessee could repossess the vehicles on account of non- payment of rentals, on sale, the consideration for the same was adjusted against balance receivable including the deposit which was adjusted while writing off the amount as irrecoverable.*
- iv. In this business there was no collateral security offered/demanded as the hire purchase agreement is considered as Sale by instalment and therefore only security which was with finance company was mortgaged of the vehicles. On account of the wear & tear of the vehicles and usage over a period of time, on default when the repossessed vehicles are sold, no sufficient recovery could be made against balance instalments receivable.*
- v. On account of change of address by the customer, assessee could not follow-up for recoveries.*

3.6. During the year, assessee had written off bad debts in the books of accounts as indicated in Note 19 under the "Provisions and Write Offs" – Bad Debts written off - Rs.7,60,68,000/-. Out of the said amount, assessee had considered bad debts to the extent of Rs. 6,14,28,003/- as "irrecoverable". It is submitted that for the bad debt which are claimed in the revised computation, corresponding income was already offered to tax from time to time as the same was included in Hire Purchase finance income of Rs. 60,15,50,022/-.

3.7. Assessee also submitted that as the bad debts claimed in books of accounts, similarly the credit balances which are no longer payable are also written back in the book of accounts to the extent of Rs.2,55,753/- and taken as income. Assessee also furnished party-wise

details of the bad debts forming part of the paper book placed on record. It also submitted that in response to the notice dt. 28.11.2016, wherein ld. AO required the assessee to file bifurcation of bad debts amounts into outstanding principal and interest separately as well as sample ledger a/c of the parties, the same were submitted vide letter dt. 29.08.2016. Assessee also submitted the copies of the ledger a/c of certain parties as demanded wherein ld. AO wanted to know the last transactions made in ledger accounts.

3.8. Under these circumstances, bad debts written off during the year amounting to Rs.6.17,28,003/- as irrecoverable and claimed as deduction in the revised computation were sought to be allowed.

3.9. Assessee relied upon the decision of Hon'ble Supreme Court in the case of TRF Ltd [2010] 323 ITR 397 (SC) wherein it is held that after 01.04.1989, for allowing deduction for the amount of any bad debts or part thereof u/s 36(1)(vii) of the Act, it is not necessary for assessee to establish that the debt in fact has become irrecoverable; it is enough if that debt is written off as irrecoverable in the books of accounts of assessee. Assessee also stated that as per CDBT circular no. 12/2016 dt.30.05.2016, it has been clarified that claim of any debt or part therefore in any previous year, shall be admissible u/s 36(1)(vii) of the Act if it is written off as irrecoverable in the books of accounts of the assessee and it fulfils the conditions stipulated in sub section (2) of section 36(2) of the Act, that is, no bifurcation of debts required in respect to claim of any debt or part thereof.

3.10. Assessee also invited the attention of ld. AO to the order of Coordinate Bench of ITAT, Mumbai dt. 29.12.2016 passed in assessee's own case, particularly in AY 2009-10, wherein the Bench allowed the claim of capital loss without filing of revised return. Before us, assessee also submitted the order of ld. AO giving effect to the ITAT order wherein

long-term capital loss of Rs 5,42,33,145/- is allowed to be carried forward.

4. Before us, the only point of dispute is whether the Id. Assessing Officer was right in applying the decision of Hon'ble Supreme Court in the case of Goetz (India) Ltd. (supra) which is the only basis for rejecting the claim of the assessee made by way of revised computation filed during the course of the assessee.

4.1. We have heard both the parties and perused the material placed before us as well as judicial precedents relied upon. Admittedly, facts relating to disclosure of claim of bad debts written off in the audited financial statements under 'note no. 19' are not in dispute. These financial statements were before the Id. Assessing Officer. The claim was made by furnishing a revised computation along with complete details of the parties whose balances were written off. Also, assessee substantiated its claim by submitting that corresponding income was offered to tax in the preceding years, against which nothing cogent was brought on record by the Revenue to controvert the same. Assessee also explained the reasons which lead to the irrecoverability of the balances and were finally written off as bad debts. Position of law on the issue before us is a settled position, especially by the decision of Hon'ble Supreme Court in the case of TRF Ltd. (supra) coupled by CBDT circular referred above.

4.2. On perusal of the judgement in the case of Goetz (India) Ltd. (supra), no doubt Hon'ble Court held that assessee can make a claim of deduction which has not been claimed in the return, only by filing a revised return within the time allowed. However, in the same judgement, Hon'ble Court held that "*nothing impinges on the power of the appellate authorities to entertain such a claim of the assessee*". Thus,

power of an appellate authority to admit additional claim is not affected. In the present case before us, there is no dispute on facts that bad debts have been written off. Thus, under the law, assessee is undisputedly eligible for the claim so made. The only hurdle created by the ld. Assessing Officer is on account of this claim not made by way of filing of revised return. Considering the facts on record, material placed before us, position of law as discussed above, claim of assessee is ought to be allowed, more particularly when there is no embargo applicable on the appellate authority to consider such claim as enunciated by the Hon'ble Apex Court in Goetz (India) Ltd. (supra). Accordingly, ground taken by the assessee is allowed.

5. In the result, appeal of the assessee is allowed.

Order is pronounced in the open court on 11 December, 2024

Sd/-
(Narender Kumar Choudhry)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 11 December, 2024

MP, Sr.P.S.

Copy to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai