



IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCHES "A", PUNE

BEFORE DR.MANISH BORAD, ACCOUNTANT MEMBER  
AND SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.978/PUN/2024  
Assessment Year : 2002-03

Lalchand Mehrumal Jagwani, Flat No. A-38, Atlantis Building, Near Nagarwalla School, Kalyani Nagar, Pune 411 006 Maharashtra PAN : ADSPJ8025F	Vs.	ACIT, Central Circle, Aurangabad
Appellant		Respondent

Appellant by	:	Shri Hari Krishan
Revenue by	:	Shri Chandra Vijay
Date of hearing	:	21.01.2025
Date of pronouncement	:	03.04.2025

**आदेश / ORDER**

**PER DR. MANISH BORAD, ACCOUNTANT MEMBER :**

The captioned appeal at the instance of assessee is directed against the order dated 13.03.2024 framed by CIT(A), Pune-12 which inturn is arising out of Assessment order dated 28.12.2006 passed u/s.153A r.w.s.143(3) of the Income-tax Act, 1961 (in short 'the Act').

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

"1. The Ld. Commissioner of Income Tax has erred, in confirming the disallowance of Rs.21,20,000/- made by the Assessing Officer on account of the claim of bad debts.

2. The Ld. Commissioner of Income Tax (Appeals) has failed to appreciate that, the entire undisclosed activity of money lending consisting of giving loans and advances was detected as a result of the search operations. Therefore, in order to compute the net taxable income from the said undisclosed activity of money lending, the effect has to be



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*given to the provisions regarding bad debts in respect of the loans given in the said money Lending activity.*

3. *The assessee craves leave to add, to modify to delete or to amend any or all of the above grounds of appeal.”*

3. Brief facts of the case are that the assessee is an individual and was subjected to search u/s.132 of the Act on 23.09.2004 along with the search at group of cases in the case of M/s. Ramdeo Oil Industries Pvt. Ltd. Certain documents, unaccounted jewellery and other miscellaneous items were found. Notice u/s.153A of the Act was served to file the return of income to which necessary compliance was made. Return for A.Y. 2002-03 filed on 24.04.2006 declaring loss of Rs.2,19,108/-. So far as the issue under consideration is concerned, the same relates to claim of bad debts at Rs.21,20,000/- made by the assessee in his return filed u/s.153A of the Act. After the return being selected for scrutiny and validly serving of notices u/s.143(2) and 142(1) of the Act, ld. AO during the course of assessment proceedings noticed that the assessee has declared income from carrying on business of investments and loans and advances for the first time and has also claimed bad debts at Rs.21,20,000/-. It was submitted by the assessee/Authorized Representative that even though no such business was disclosed in the regular return of income filed earlier but since as per the seized material, it is evident that assessee is carrying on the activity of giving loans and advances and earning interest and has also offered the income of Rs.16,20,000/- from this business, therefore the expenses incurred in connection thereto including the bad debts at Rs.21,20,000/- which remains unrecovered from Mr.Mohd Ali Ganji should be allowed as an expenditure. Ld. AO however denied this contention and disallowed the bad debt claim and assessed the income at Rs.19,00,890/-.



4. Aggrieved assessee preferred appeal before the Id.CIT(A) but failed to succeed. Thereafter, assessee preferred appeal before this Tribunal and vide order dated 17.11.2017 this Tribunal restored the issue to the file of Id.CIT(A) by observing as follows :

*“6. On hearing both the parties on this limited issue, we find there is no dispute on the fact of non-recording of the giving loans and advances as ‘business’ of the assessee in the books of account. The search and seizure action conducted on the assessee on 23-09-2004 in the group cases of M/s. Ramdeo Oil Industries Pvt. Ltd. of Jalgaon, dug out the concealed unaccounted business of the assessee. There is requirement of clear cut finding by the authorities below on the exact nature of the business activities of the assessee, leaving alone unaccounted business activities of the assessee. CIT(A) is directed to examine (1) unaccounted business of giving loans & advances for earning interest, (2) the circumstances under which the recoveries of the bad debts out of said loans and advances given by the assessee and (3) taxing of the said recoveries as ‘business income’ of the assessee in the later assessment years.*

*7. To our mind, Revenue cannot treat the said loans and advances as of ‘Capital in nature’ for denying the deduction and tax the recoveries as ‘business income’ of the assessee stating that the same falls in the Revenue field. With these observations, we remand all the grounds raised by the assessee before us to the file of CIT(A) for fresh adjudication in accordance with the set principles of natural justice. Accordingly, all the grounds raised by the assessee are allowed for statistical purposes.”*

5. On the directions of this Tribunal vide order dated 17.11.2017, Id.CIT(A) carried out the appellate proceedings and during the course of proceedings it was claimed by the assessee that out of the alleged claim of bad debts assessee has recovered Rs.10.00 lakh in the subsequent period and they have been disclosed as income (bad debts recovered) in A.Y. 2005-06 and offered it to tax and the same has also been accepted by the Revenue authorities. Therefore, since the Revenue authorities have accepted the claim of bad debts recovered in A.Y. 2005-06, Id. AO erred in denying the claim for the instant year and further erred in observing that the assessee has not carried out any such



activity of giving loans and advances. However, ld.CIT(A) was not satisfied with these arguments and affirmed the action of the AO observing as follows :

*“4.7 I have considered the submissions and the material on record. The deduction u/s. 36(1) (vii) of the IT Act could have been allowed in favour of the appellant "subject to the provisions of sub-section (2), the amount of any bad debt or part thereof, which is written off as irrecoverable in the accounts of the assessee for the previous year". Section 36(2)(i) also provides that no such bad debt deduction shall be allowed unless such debt or part thereof has been taken into account in computing the income of the assessee of the previous year, in which the amount of such bad debt or part thereof is written off or of earlier previous year or represents money lent in the ordinary course of business of banking or money lending, which is carried on by the assessee. Therefore, the essential feature for claiming deduction on account of bad debt has been that such bad debt is written off as irrecoverable in the accounts of the assessee for the previous year and such business was conducted by the assessee in ordinary course of business. However, the AO has specifically noted in the assessment order that during the course of search conducted on 23.09.2004, books of account and other incriminating documents were seized. The appellant was required to file the return u/s. 153A of the Act which was filed on 24.04.2006 at Rs. (-)2,19,108/- claiming bad debts for the first time. Thus, it is seen that no income on account of undisclosed interest from debtors was shown in the original return of income and no claim of bad debts was made in the original ROI filed. The appellant on the basis of the seized documents accepted that the impugned loans and advances have not been recorded in the regular books of account. During the course of search, it was found that the appellant had not disclosed the unrecorded loans and advances. Such facts were not recorded in the regular books of account. Since such loans and advances were not recorded in the regular books of account, but the appellant made claim of bad debts of Rs.21,20,000/-, the AO gave specific notice to the appellant as to why such claim of bad debt should not be disallowed because there is no writing off of any bad debt in the accounts of the appellant for any previous year and on the basis of the seized material and records, it is seen that the appellant has advanced huge sums to the borrower but the appellant made claim of bad debts of Rs.21,20,000/-, the AO gave specific notice to the appellant as to why such claim of bad debt should not be disallowed because there is no writing off of any bad debt in the accounts of the appellant for any previous year and on the basis of the seized material and records, it is seen that the appellant has advanced huge sums to the borrower. The appellant could not give any justification. The facts recorded by the AO in the assessment order have not been disputed by the appellant. It is, therefore, clear that whatever books of accounts maintained by the appellant in the regular course of business did not have mention of any loans and advances. Therefore, there is no question of taking the same figures in the accounts of the appellant maintained in the ordinary course of business of money lending. The appellant filed returns of*



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*income originally at very meager income u/s 139(1) of the IT Act and it was only when the search was conducted, the undisclosed income was unearthed by the department. On the basis of the seized material, the appellant made a claim of bad debt as per the accounts prepared on the basis of the seized material. Therefore, it cannot be accepted that the appellant has written off the bad debt as irrecoverable in the accounts maintained for previous year in the ordinary course of business. The assessment is framed u/s. 153A of the IT Act, which is specifically meant for computation of undisclosed income, which is found during the course of search. The appellant in order to circumvent the provisions of law has tried to reduce the amount in question out of total undisclosed income determined in the course of search by claiming a bad debt which was never claimed in the regular books of account or in the original return of income filed u/s. 139(1) of the IT Act. The claim of the appellant is, thus, not supported by the provisions of law and the seized material cannot be considered as books of account maintained by the appellant in the regular course of business. Since, as per section 153A of the Act, the assessment is to be framed on conducting the search in the case of the assessee to compute income of the assessee for the block period, therefore, the assessee cannot be allowed to flout the provisions of law by making wrong claim. Thus, the conditions of section 36(1) (vii) have not been satisfied in this case. The Ld. AO and Ld. CIT(A), therefore, on proper appreciation of facts and the material on record have rightly not allowed the claim of the appellant of bad debts. Reliance is placed on the decision of Hon'ble ITAT Jodhpur Bench in the case of Gendmal Kothari V/s. Deputy Commissioner of Income-tax, Central circle-1, Udaipur ITA NO. 570 (JODH.) OF 2010 [AY 2001-02] dated JULY 6, 2012. Taxing of the said recoveries of bad debts in AY 2005-06 as 'business income' would also not make the claim of the appellant allowable u/s 36 (1) (vii), as the appellant has himself paid the taxes on the recovered amount, and it is not the case that the AO brought the same to tax. Considering the peculiar facts of the case as noted above, I do not find any reason to deviate from the stand of my predecessor. The grounds of appeal no. 1 to 4 are, accordingly, dismissed."*

6. Aggrieved assessee is now in appeal before this Tribunal.
7. Ld. Counsel for the assessee argued referring to the written submissions running into 17 pages along with referring to the return of income for the A.Yrs. 2002-03 and 2005-06 as well as the paper book containing 285 pages which mainly includes the copies of statement of Mr. Mohd Ali Ganji recorded u/s.131 of the Act on 24.11.2006, copy of seized documents, remand report dated 17.04.2008 and other relevant documents. While summarizing the arguments, ld. Counsel for the assessee claimed



that assessee was carrying on the business of giving loans and advances but it was not part of the regular business account and income-tax return. Since during the course of search it was unearthed that assessee is carrying on this business of giving loans and advances and income from such business income has been offered to tax, therefore, the bad debts arising from such business also needs to be allowed.

8. On the other hand, ld. Departmental Representative vehemently argued supporting the orders of the lower authorities.

9. We have heard the rival contentions and perused the record placed before us. Claim of bad debts of Rs.21.20 lakh is in dispute before us. From the assessee's side, the contentions putforth by the ld. Counsel for the assessee in short are that the assessee along with his three brothers gave some loans and advances to Mr. Mohd Ali Ganji on interest and agreements were entered are duly notarized. Lateron, there was default from Mr. Mohd Ali Ganji and therefore the assessee and his brothers who were having the post dated cheques given by Mr. Mohd Ali Ganji lodged the complaint/FIR and subsequently part of the amount was recovered. It has been claimed from the assessee's side that since in the return filed in response to notice u/s.153A after the carrying out of search, assessee declared income from this business of advancing loans and advances, therefore, bad debts from such business amounting to Rs.21.20 lakh also needs to be allowed. It has also been claimed that subsequently part of bad debts have been recovered to the extent of Rs.10.00 lakh and which have been offered to income in the return of income for the A.Y. 2005-06 and such income has been duly accepted by the Revenue authorities and therefore the observation of the Revenue



authorities that such amount being capital in nature cannot be accepted and the alleged claim deserves to be allowed.

10. We further on going through the remand report placed at pages 218 to 221 and also going through the statement of Mr. Mohd Ali Ganji recorded on 24.11.2006 notice that actually the funds were given for entering into partnership business in the name of New Naaz Bakery and Biryani House. The documents also reveal that Mr. Mohd Ali Ganji wanted to purchase some shops for which he was awaiting the loans from the bank but since it was getting delayed, he received certain funds from the assessee and his brothers. Mr. Mohd Ali Ganji has refused that he has received any sum as loan on interest and even the contents of the agreement referred to by the Id. Counsel for the assessee also states that if Mr. Mohd Ali Ganji is unable to pay the same, then the person giving the loans which in this case is assessee and his three brothers would each become 5% shareholding partners in the business of Mr. Mohd Ali Ganji. The matter is of A.Y. 2002-03 and there is no clear cut evidence on record which could prove that assessee was having any license to carry out the money lending business because the assessee was not showing any regular income from this business.

11. It is also noticed that the alleged loans and advances have been given during the year under consideration and out of the 4 post dated cheques only one Cheque bearing number 177941 dated 15.03.2002 and the remaining 3 were falling in F.Y. 2002-03. Therefore, it is not understandable that how the assessee has arrived at the conclusion that loans and advances given by him have become bad debt because the date of repayment was majorly falling in subsequent period. It is also an admitted fact that the



assessee has only given the funds of Rs.5.00 lakh and the remaining amount have been given by his three brothers but still this transaction has been declared in the hands of assessee during the course of search.

12. It is also an admitted fact that it is not the assessee who is claiming to have given the loan but the loan has been given by the assessee's brothers also and it is not known as to what is the fate in the income assessed in their respective hands of assessee's brothers. The facts are not narrated properly so as to bring to the concrete conclusion that whether the assessee was carrying on the business of money lending/giving loans and advances on interest or it was a mere deal of keeping the share in the business carried out by Mr. Mohd Ali Ganji in case he is unable to pay the sum advanced. Even some documents reveal that Mr. Mohd Ali Ganji agreed to pay the sum at a future date to assessee and his brothers to leave the partnership business orally agreed upon.

13. However, it remains an undisputed fact that assessee had offered the income for the A.Y. 2005-06 under the head 'other business income' including bad debts amounting to Rs.23.00 lakh. This income is part of the total income (Revenue) of Rs.30,49,228/- for the F.Y. 2004-05. Assessee has also claimed expenses of Rs.7,49,412/- during F.Y. 2004-05. Though there is no bifurcation of the 'other business income' including bad debts of Rs.23.00 lakh but in the first round of proceedings this Tribunal has also observed this fact coupled with the fact Mr. Mohd Ali Ganji has also stated in his statement that he has given sum of Rs.10.00 lakh to the assessee during F.Y. 2004-05. Thus, even if the nature of alleged sum of bad debts is not apparent to be the one incurred in the regular course of money lending



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business but still Rs.10.00 lakh has been offered as Revenue in the F.Y. 2004-05.

14. We are therefore of the considered view that even though the assessee has not proved to have carried out the business of money lending business/loans and advances on interest but even if it is considered that the expenditure which has been wrongly claimed for the impugned assessment year but then we cannot ignore the fact that the income of Rs.10.00 lakh has been offered out of the alleged claim of bad debts in the return for A.Y. 2005-06. Therefore, to this extent, the assessee deserves relief since it has been taxed in A.Y. 2005-06 because the facts are of mixed nature, not giving the clear cut picture of the actual nature of business carried out by the assessee as well as the observation of the AO for the one taken for A.Y. 2002-03 and for the one taken for A.Y. 2005-06 accepting the recovery of bad debts. We therefore partly allow the grounds of appeal raised by the assessee and affirm the disallowance of bad debts of Rs.11.20 lakh and delete the addition of Rs.10.00 lakh solely on the ground that the same has been offered to tax in A.Y. 2005-06. Effective grounds of appeal raised by the assessee are partly allowed.

15. In the result, the appeal of the assessee is partly allowed.

Order pronounced on this 03<sup>rd</sup> day of April, 2025.

Sd/-  
**(VINAY BHAMORE)**  
**JUDICIAL MEMBER**

Sd/-  
**(MANISH BORAD)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 03<sup>rd</sup> April, 2025.

Satish



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**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

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Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.