

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER

I.T.A. No.960/Coch/2005
Assessment Year : 1999-2000

The Deputy Commissioner of Income-tax, Circle-1, Kollam.	Vs.	M/s. Transworld Hire Purchase India Ltd., Beach Road, Kollam. [PAN:AAACT 6404G]
(Revenue-Appellant)		(Assessee-Respondent)

Revenue by	Shri A. Dhanaraj, Sr. DR
Assessee by	None

Date of hearing	20/04/2017
Date of pronouncement	21 st /04/2017

ORDER

Per GEORGE GEORGE K., JUDICIAL MEMBER:

The Hon'ble High Court of Kerala in I.T.A. No. 1441 of 2009 (judgment dated 23/08/2016) had remitted this case to the Tribunal. The Hon'ble High Court directed the Tribunal to consider Explanation 1 to section 36(1)(vii) of the I.T. Act, while disposing of the case afresh. The relevant finding of the Hon'ble High Court reads as follows:

"Reading of the aforesaid conclusions of the Tribunal would show that while arriving at its conclusion, the Tribunal has not adverted to the statutory provisions particularly Explanation 1. Therefore, we are unable to sustain the order passed by the Tribunal, and are of the view that the matter is required to be remitted for fresh consideration. Accordingly, setting aside the order passed

by the Tribunal in I.T.A. No. 960/Coch/2006, the matter is remitted to the Tribunal for fresh consideration with notice to the parties."

2. The brief facts of the case are as follows:

The assessee is a non banking financial company engaged in the business of leasing, hire purchase finance and money lending. The assessment u/s. 143(3) r.w.s. 147 of the Act was completed vide order dated 24/12/2003. The Assessing Officer in the said order had added a sum of Rs.9,02,904/- which was claimed by the assessee as bad debts written off. The Assessing Officer held that this is nothing but only a provision for bad and doubtful debts and in view of Explanation 1 to section 36(1)(vii) of the I.T. Act, the same cannot be allowed as a deduction.

3. Aggrieved by the order of the Assessing Officer, the assessee preferred an appeal before the first appellate authority. The CIT(A) vide order dated 31/03/2005 allowed the appeal of the assessee and deleted the above addition.

The relevant observation of the CIT(A) reads as follows:

"....In the instant case, the appellant has debited PL A/c with bad debit as corresponding credit entry made in the provision for bad debt a/c. Hence the condition u/s. 36(1)(vii) and explanation thereof having been fulfilled, the appellant is eligible for deduction."

4. Aggrieved by the order of the CIT(A), the Revenue filed an appeal before the Tribunal. The Tribunal vide its order dated 28/01/2008 dismissed the appeal of the Revenue and confirmed the CIT(A)'s order.

5. The Revenue filed further appeal u/s. 260A of the I.T. Act before the Hon'ble High Court of Kerala. The Hon'ble High Court remitted the issue back to the Tribunal. The Hon'ble High Court directed the Tribunal to consider the relevant statutory provisions, in particular, Explanation 1 to section 36(1)(vii) of the I.T. Act.

6. Pursuant to the judgment of Hon'ble High Court, the present appeal was taken up for hearing on 20/04/2017. None appeared on behalf of the assessee inspite of a notice being served and the concerned Assessing Officer informing the MD of the assessee of the posting of the case.

7. The Ld. DR submitted that it is only the provision for bad and doubtful debts which is claimed for deduction u/s. 36(1)(vii) of the I.T. Act and in view of Explanation 1 to the said section, the provision cannot be allowed as a deduction.

8. I have heard the Ld. DR and perused the material on record. The balance sheet filed along with the return for the year ending 31/03/1999 showed the

provision of non performing assets at Rs.36,14,959/-. The corresponding figure as on 31/03/1998 was Rs.6,68,992/-. Thus there is an increase in the liability during the year amounting to Rs.29,45,967/-. The Assessing Officer on examination of the account copies had noticed that the assessee had deducted the following items in its P&L account:-

(1) Provision for doubtful assets	: 4,77,784/-
(2) Provision for substandard assets	: 15,98,948/-
(3) Bad debts written off	: <u>9,02,904/-</u>
	<u>29,79,636/-</u>

It was further noticed by the Assessing Officer that the P&L account was credited with an amount of Rs.33,669/- as substandard provision reversed which was deducted from the income computed. The assessee had also added back the provision for doubtful debts and provision for substandard assets amounting to Rs.4,77,784/- and Rs.15,98,948/- respectively. Therefore, it was clear that bad debts written off at Rs.9,02,904/- and debited in the P&L account was out of the provision made during the relevant previous year. The Explanation to sec. 36(1)(vii) reads as follows:

"Explanation – For the purposes of this clause, any bad debt or part thereof written off as irrecoverable in the accounts of the assessee shall not include any provision for bad and doubtful debts made in the accounts of the assessee."

8.1 In the instant case, it is clear what is written off as bad debts u/s. 36(1)(vii), is only provision for bad debts. In view of Explanation to sec. 36(1)(vii), the provision for bad and doubtful debts cannot be allowed as a

deduction. Moreover the accounting entry show that the assessee had debited to the P&L account of bad debts and had credited the same to provision for NPA account. Unless the party's account is debited specifically, it cannot be stated that there is actual writing off bad debts. Therefore, the order of the CIT(A) is reversed and that of the Assessing Officer is sustained on this issue. It is ordered accordingly.

9. In the result, the appeal filed by the Revenue is allowed.

Pronounced in the open court on 21st-04-2017.

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

Place: Kochi

Dated: 21st April, 2017

GJ

Copy to:

1. M/s. Transworld Hire Purchase India Ltd., Beach Road, Kollam.
2. The Deputy Commissioner of Income-tax, Circle-1, Kollam.
3. The Commissioner of Income-tax(Appeals), Trivandrum.
4. The Commissioner of Income-tax, Trivandrum.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin