

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER
AND
SH. O.P. KANT, ACCOUNTANT MEMBER**

ITA No. 1317/Del/2012
Assessment Year: 2002-03

M/s. Rama Vision Ltd., Rama House, 23 Najafgarh Road, Industrial Area, Shivaji Marg, New Delhi.	Vs.	Asstt. Commissioner of Income Tax, Circle-15(1), New Delhi.
PAN : AAACR0221R		
(Appellant)		(Respondent)

Appellant by	Sh. R.K. Gupta, Adv.
Respondent by	Sh. F.R. Meena, Sr.DR

Date of hearing	24.08.2016
Date of pronouncement	18.11.2016

ORDER

PER O.P. KANT, A.M.:

This appeal by the assessee is directed against order dated 14/10/2010 of learner Commissioner of Income-tax (Appeals)-XVIII, New Delhi for assessment year 2002-03 raising following grounds:

"1. That having regard to the facts and circumstances of the case Ld. CIT(A) has erred in law and on facts in confirming the disallowance of Rs. 67,096/- on account of depreciation on insurance claim of Rs. 2,68,386/- received during the year against company claim on repair of old and used D.G Set under machinery breakdown insurance policy, depreciation disallowed calculated @25% on claim received Rs. 2,68,386/-. The Ld. CIT(A) completely ignored the detailed written submission dated 16.08.2005 submitted during appeal proceedings.

2. That having regard to the facts and circumstances of the case Ld. CJT(A) has erred in law and on facts in confirming the disallowance of Rs. 2,34,000/- paid on account of professional fees after deduction of TDS (net paid Rs. 2,21,130/-) under an agreement to the Management Consultancy Firm engaged for providing technical, financial, marketing collaboration in area synergic to our existing lines of operation i.e., B&W Television picture tubes and computer monitor tubes so as to improve the economical and financial position of the company. The Ld. CIT(A) ignored the detailed written submission dated 16.08.2005 submitted during first appeal proceedings.

3. That having regard to the facts and circumstances of the case Ld. CIT(A) has erred in law and on facts in confirming the disallowance of Rs. 6,00,000/- paid on account of commission to M/S Bharat Puria Finance & Investment Ltd. Vide cheque No. 521970 dated 09.02.2000 for Rs. 1,00,000/- and cheque No. 522055 dated 30.05.2000 for Rs. 5,00,000/- toward service to represent the company case before financial institutions and banks for one time settlement of loans and waiver of interest. The Ld. CIT(A) failed to appreciate that the company got big relief of Rs. 2,97,13,702/- toward waiver of interest which evident from the profit and loss account for the year credited under extra ordinary item read with note 9(V), Schedule U of Balance Sheet. The Ld. CIT(A) ignored the detailed written submission dated 16.08.2005 submitted during first appeal proceedings.

4. That having regard to the facts and circumstances of the case Ld. CIT(A) has erred in law and on facts in confirming the disallowance of Rs. 2,26,88,161/- on account of bad debts written off under section 36(1)(vii) of Income Tax Act. The Ld. A.O. as well as Ld. CIT(A) completely mis-understood the amended provisions of section 36(l)(vii) applicable w.e.f. 01.04.1989 which inter-alia provided as under:-

36(1) "The deduction provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28-

(vii) 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."

Out of total amount of bad debts written off Rs. 2,26,88,161/- by the appellant, the Ld. A.O. has allowed bad debts fully written off Rs. 19,80,612/- and disallowed balance amount of bad debts of Rs. 2,07,07,549/- which were written off in part and/or the parties are in existence or govt, undertaking. The disallowance of Rs. 2,07,07,549 on account of bad debts written off, is bad in law.

5. That the appellant craves the leave to add, modify-, amend or delete any of the ground of appeal at the time of hearing and all the above grounds are without prejudice to each other.”

2. The facts in brief of the case are that the in the year under consideration, the assessee company was engaged in business of manufacturing of black-and-white TV picture tubes and Monochrome Monitor etc. The assessee filed return of income for the year under consideration on 31/10/2002, declaring loss of Rs.99,94,040/-. The case was selected for scrutiny and notice under section 143(2) of the Act was issued and complied with. In the scrutiny assessment completed under section 143(3) of the Act on 25/02/2005, the Assessing Officer made certain additions/disallowances to the returned loss. On appeal by the assessee, the learned First Appellate Authority allowed part relief. Aggrieved with the finding of the learned Commissioner of Income-tax (Appeals), the assessee is in appeal before the Tribunal raising the grounds as reproduced above.

3. The ground No. 1 relates to confirming of the disallowance of Rs.67,096/- on account of depreciation @ of 25% on insurance claim of Rs.2,68,386/- received during the year against DG set.

3.1 The facts in respect of the issue of claims paid/written off, the assessee furnished details before the Assessing Officer that insurance claim of Rs.12,43,508/-in respect of DG set breakdown was passed to the extent of Rs.2,68,386/- by the insurance company and the balance amount was written off. However, according to the Assessing Officer as

per the provisions of section 43(1) of the Act the actual cost of the asset means the actual cost of the asset to the assessee reduced by that portion of the cost thereof, if any, met directly or indirectly by any person or authority and, therefore, written down value/cost of the said DG set was to be reduced by the amount of insurance claim received of Rs.2,68,386/- and, accordingly, he disallowed the depreciation @ 25%, amounting to Rs.67,096/- on the amount of insurance claim received.

3.2 The learned Commissioner of Income-tax (Appeals) concurred with the Assessing Officer and upheld the disallowance.

3.3 Before us, the learned Authorized Representative of the assessee referred to details of insurance claims received available on page 32 to 34 of the assessee's paper book and submitted that expenditure incurred on repairs of the DG set was already claimed as revenue expenditure in earlier year and the claim against the expenditure made to the insurance company was credited as income. In the year under consideration, the insurance company allowed claim to the extent of Rs.2,68,386/- and, therefore, the balance amount was written off. Therefore, in the circumstances, the finding of the Revenue Authorities that claim of Rs.2,68,386/- received from the insurance company has reduced the cost of the DG set and, therefore, depreciation claimed on the DG set on the amount of claim received should be disallowed, is not correct appreciation of the facts. The expenditure incurred was towards repair of the DG sets and, therefore, amount of claim received cannot be treated as amount received to reduce the cost of the asset.

3.5 On the other hand, the learned Senior Departmental Representative relied on the lower authorities.

3.6 We have heard the rival submissions of the parties and perused the relevant material on record. From the facts of the case, we find that the assessee has incurred expenditure on breakdown of DG set

amounting to Rs.12,43,508/- in assessment years 2000-01 and 2001-02 and said expenses were claimed as revenue expenditure in those years. The assessee lodged its claim of Rs.12,43,08/- with insurance company and credited the amount of claim in profit and loss account in those years. In the year under consideration, the assessee received claim of Rs.2,68,386/- and the balance amount of claim was, therefore written off. We find that the claim received by the assessee is against the expenses claimed as revenue expenditure towards repair of the DG set, and it is not towards meeting any cost of the DG set and, therefore, provisions of section 43(1) of the Act are not attracted. The Assessing Officer in earlier year has already allowed claim of the expenditure towards DG set as revenue expenditure, and then reimbursement of the same by the insurance company cannot be held as towards cost of the DG set. Accordingly, we delete the disallowance of Rs.67,096/- confirmed by the learned Commissioner of Income-tax (Appeals) out of the depreciation claimed on DG set.

4. The ground No. 2 relates to disallowance of Rs.2,34,000/- paid on account of professional fees.

4.1 The facts in respect of issue in dispute are that the assessee entered into an agreement with M/s ARBEITEN FUR(INDIA) Inc., New Delhi, a consultancy firm for services of management/consultation for collaboration with foreign company for revival of the assessee company. It was claimed by the assessee company that as per the terms of agreement with M/s ARBEITEN FUR (INDIA) Inc, the assessee company paid Rs.50,000/- on 12/01/2001 on signing the agreement and Rs. 1,84,000/- on 25/04/2001 by account payee cheque after deducting tax at source on such professional charges, however, after sometime the said consultancy firm disappeared and the assessee could not trace despite best efforts and, therefore, the assessee company wrote off the

professional fees paid of Rs.2,34,000/- as irrecoverable balance written off. The above explanation of the assessee was not accepted by the Assessing Officer on the following grounds:

- (i) That agreement was not signed by any witness.
- (ii) That the terms of agreement contained conditions that second payment of Rs.1,84,000/- would be paid on signing of the profile and arranging the meeting with the collaborator, however, no documentary evidence in support of approval of profile and arranging a meeting with the collaborator were filed by the assessee for justification of payment of Rs.1,84,000/-
- (iii) That the agreement was silent on what kind of business the assessee company wanted to start and the payment in question had no relation with the business of the assessee company.
- (iv) That perusal of the terms of agreement revealed that it was in relation to reorganization of the business/identification of the companies and products for collaboration.
- (v) That no income from the consultancy was shown by the assessee company.

4.2 In view of above, the Assessing Officer held that payment was not related to the assessee's business and, accordingly, he disallowed the expenses of Rs.2,34,000/-. Before the learned Commissioner of Income-tax (Appeals), it was argued by the assessee that payment was made after deduction of TDS. The learned Commissioner of Income-tax (Appeals), however, held that the assessee failed to establish the genuineness of the payment for the purpose of its business and mere

deduction of TDS was not a ground for claiming deduction of expenses, accordingly, he sustained the disallowance.

4.3 Before us, learned Authorized Representative of the assessee referred to pages 35 to 48 of the assessee's paper book. He then reiterated the submission made before the learned Commissioner of Income-tax (Appeals) and submitted that the expenses incurred for appointment of consultants for providing technical, financial and marketing collaboration in the area synergic to the existing line of operation of the company and, therefore, said amount of payment was a bad debt written off during the year, which is an allowable business expenditure.

4.4 On the other hand, learned Senior Departmental Representative relying on the finding of the lower authorities submitted that according to the letter of the assessee company to the partner of M/s. ARBEITEN, which is placed on page 41 of the assessee's paper book, the consultancy was for making a new venture and, therefore, the expenses were not for the existing business and, hence, it was not wholly and exclusively for the purpose of business of the assessee company.

4.5 We have heard the rival submission of the parties and perused the relevant material on record, including the pages of the paper book referred by the learned Authorized Representative. We find that the main agreement between the assessee company and M/s. ARBEITEN is not clear, whether it was for revival of the assessee company or for targeting companies in the line of the business of the assessee or another lines of business, but in supplementary agreement, which is placed on page 41 of the assessee's paper book, it is mentioned by the Managing Director of the assessee company that it was not in a position to infuse any fresh capital required in a new venture through the technical and financial collaboration arranged by the second party. Thus, this part of the

agreement indicates that the consultancy expenses were for the purpose of establishing a new venture and not for running of the existing business. Further, the Assessing Officer has already pointed out main agreement was not witnessed by any person. On perusal of copy of collaborator's profile placed on pages 43 to 58 of the assessee's paper book, we find that it is not signed by the second party. We find that the assessee has not been able to substantiate that expenses, were in respect of the existing business. In view of above facts, we are of considered opinion that the order of learned Commissioner of Income-tax (Appeals) on the issue in dispute is well reasoned and no further interference on our part is required, accordingly, we uphold the same. The ground of appeal is accordingly dismissed.

5. The ground No. 3 of the appeal was not pressed and, therefore, dismissed as infructuous.

6. The ground No. 4 relates to confirming the disallowance of Rs. 2,26,88,161/- on account of bad debts written off.

6.1 The facts in respect of issue in dispute are that the Assessing Officer observed bad debt written off amounting to Rs.2,26,88,161/- and further observed that the parties whose bad debt was written off were in very much existence and having regular business transactions with the assessee and still showing some closing balance in their accounts and, accordingly, out of the claim of bad debts, he disallowed claim of bad debt of Rs.2,07,07,549/- in respect of following parties:

<u>Name of the party</u>	<u>Amount</u>
a. M/s Western Electronics Ltd.	1508436
b. M/s Uptron India Ltd.	470237
c. M/s P.K. Enterprises	2502818
d. M/s Nishad Electronics	6659113

e. M/s AS Impex Ltd.	8547168
f. M/s Calcom Electronics Ltd.	248268
g. M/s Orient Vision Ltd.	233387
h. M/sKonarkTVLtd.	348171
i. M/s Setech Electronics	165245
j. M/s Nitrka Electronics	24706
	<hr/>
Total	20707549
	<hr/>

6.2 However, in the computation of income, the Assessing Officer added both the total amount of bad debt of Rs.2,26,88,161/-and the amount of bad debt of Rs.2,07,07,549/-disallowed by him. On request of the assessee for rectification, the Assessing Officer stated that details of the claim of bad debts submitted with assessee was not according to the satisfaction of the Assessing Officer and, therefore, addition of Rs.2,07,07,549/- was made inadvertently in place of Rs.2, 26,88,161/- and accordingly he deleted the amount of Rs.2,07,07,549/- out of the two additions made against bad debt written off and retained the amount of Rs.2,26,88,161/- as additions against bad debts. The learned Commissioner of Income-tax(Appeals) mentioned in the impugned order that no new material was brought before him in respect of claim of deduction of bad debt written off, and accordingly, he upheld the disallowance of Rs.2,26,88,161/- for bad debt written off.

6.3 Before us, the learned Authorized Representative of the assessee referred to pages 65 to 79 of the assessee's paper book, which are copy of accounts of debtors, whose accounts were written off by the assessee as bad debt and submitted that for claiming bad debts under section

36(1)(vii) of the Act, it was not necessary to establish, whether the debt has become irrecoverable and it was enough, if the bad debt was written off a irrecoverable in the accounts of the assessee. In support of the above contention the learned Authorized Representative relied on the decision of the Hon^{ble} Supreme Court in the case of TRF Ltd. Vs. CIT, (2010) 190 taxmann 391 (SC). It was submitted by the learned Authorized Representative that accounts of the debtor in the books of accounts of the assessee were written off to the extent of bad debt claimed, and therefore, claim of bad debt is in accordance with law and allowable.

6.4 On the other hand, the learned Senior Departmental Representative relied on the findings of the lower authorities.

6.5 We have heard the rival submissions and perused the material on record. The bad debts written off is allowable to the extent of written off in books of accounts as held in the case of TRF Ltd(supra) as under:

“This position in law is well-settled. After 1st April, 1989, it is not necessary for the assessee to establish that the debt, in fact, has become irrecoverable. It is enough if the bad debt is written off as irrecoverable in the accounts of the assessee. However, in the present case, the Assessing Officer has not examined whether the debt has, in fact, been written off in accounts of the assessee. When bad debt occurs, the bad debt account is debited and the customer's account is credited, thus, closing the account of the customer. In the case of Companies, the provision is deducted from Sundry Debtors. As stated above, the Assessing Officer has not examined whether, in fact, the bad debt or part thereof is written off in the accounts of the assessee. This exercise has not been undertaken by the Assessing Officer. Hence, the matter is remitted to the Assessing Officer for de novo consideration of the above-mentioned aspect only and that too only to the extent of the write off.”

6.6 We find that the assessee has claimed that bad debts to the extent of Rs.2,26,88,161/- as written off in books of accounts of the assessee and accordingly, claimed bad debts in terms of section 36(1)(vii) of the

Act. The learned Authorized Representative has also referred to pages 65 to 79 of the paper book, which are copy of account of debtors, whose debt has been written off. However, on perusal of the printed annual report of the assessee company, which is available on page 30 of the assessee's paper book and more specifically on perusal of the internal page 25 of the annual report, we find that under the head other expenses the amount against the bad debt written off is nil whereas the amount of Rs.2,26,88,161/- which is claimed by the assessee as bad debt written off, is shown against provision for doubtful debts. It is evident from the annual report that assessee has made only provision for doubtful debt and debt has not been written off as bad in its books of accounts. Further, in note 8 of the Notes to Account, which is available on page 28 of the annual report provision for doubtful debts for current year and previous year are mentioned. According to the note also the provision for doubtful debt for the current year is Rs.2,26,88,161/-. For clarity, the said note is reproduced as under:

"8. In respect of doubtful debts and advances amounting to Rs.6,01,34,214/- (Previous year 4,98,97,385/-), a provision for Rs.4,26,40,805/- (previous year 1,99,52,644/-) has been made in the accounts, which in the opinion of the management is adequate after considering the chances of their recovery in due course of time and the company's position in suit filed cases."

6.7 In view of the facts mentioned in the annual report of the assessee, the claim of the assessee need further verification. In our opinion, it is appropriate to restore the matter back to the file of the Assessing Officer for verification of facts whether the assessee has written off the bad debts in books of accounts of the assessee. The Assessing Officer is directed to examine the audited books of accounts of the assessee and find out from the auditor of the assessee company for the inconsistency, if any, in the annual report and the copy of Ledger accounts of the

debtors and then decide the issue afresh in accordance with law. The assessee shall be afforded sufficient opportunity of hearing. Accordingly, the ground of the appeal is allowed for statistical purpose.

7. In the result, appeal of the assessee is partly allowed for statistical purpose.

The decision is pronounced in the open court on 18th Nov., 2016.

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER
Dated: 18th November, 2016.

Laptop/-
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Asst. Registrar, ITAT, New Delhi