

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH, BANGALORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER  
and  
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

ITA No.1041/Bang/2014  
(Assessment year: 2010-11)

Deputy Commissioner of Income-tax,  
Circle 11(2),  
Bangalore.

... Appellant

Vs.

M/s.Big Bags International Pvt. Ltd.  
No.61, Nadakerappa Industrial Estate,  
Viswadeepam Post,  
Peenya,  
Bangalore-560091.  
*PAN:AACB 4004 D*

... Respondent

Appellant by : Ms. Neera Malhotra, CIT(DR)  
Respondent by : Shri S.V.Ravishankar, Advocate

Date of hearing : 06/04/2016  
Date of pronouncement : 06/05/2016

**O R D E R**

**Per INTURI RAMA RAO, AM :**

This is an appeal filed by the revenue directed against the order of the learned Commissioner of Income-tax(Appeals)-I, [CIT(A)], Bengaluru dated 22/3/2014 for the assessment year 2010-11.

2. The revenue raised the following grounds of appeal:

Page 2 of 9

1. The order of the Learned CIT (Appeals), in so far as it is prejudicial to the interest of revenue, is opposed to law and the facts and circumstances of the case.
2. The CIT(A) erred in directing the AO to verify the claim of double taxation in respect of the Duty Free Import Authorisation that it had actually received and admitted in the year under consideration when his powers are co-terminus with that of the Assessing Officer and without appreciating the fact that the directions issued are beyond the mandate of the provisions of Section 251(1)(a) of the I.T. Act which do not empower the CIT(A) to set aside the issue.
3. The CIT(A) erred in deleting the disallowance made on account of bad debts written off amounting to Rs. 3,33,79,971/- on the ground that the assessee fulfills the ingredients of section 36(2)(i) and hence the AO was not justified in disallowing the same by relying on the decision of the CIT(A) for the A.Y.2009-10 without appreciating that the relied upon decision has not been accepted and an appeal u/s.253 has been preferred.
4. The CIT(A) erred in relying upon his decision for the A.Y.2009-10 in the assessee's own case wherein he had held that RBI directives cannot override the statutory provisions of Explanation to section 36(1)(vii) of the Act by placing reliance on the decision of the Hon'ble ITAT, Mumbai bench decision in the case of M/s Sabra Impex Ltd. without appreciating the fact that the decision relied upon has not reached a finality.
5. For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the CIT(A) be reversed and that of the Assessing Officer be restored.

3. Briefly facts of the case are that the assessee is a company duly incorporated under the provisions of the Companies Act, 1956 and is engaged in the business of manufacturing and job work of PP-FIBC bags. Return of income for the assessment year 2010-11 was filed on 15/02/2011 declaring a total income of Rs.1,55,05,270/-. The said return was taken up for scrutiny after processing the return u/s 143(1) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] and the assessment was completed u/s 143(3) vide order dated 22/3/2013 on a total income of Rs.13,22,67,166/-. While doing so, the Assessing Officer [AO] made an addition of

Rs.8,33,81,925/- on account of unrealized export benefits accounted as income in the books of account. The AO also disallowed the claim of bad debts written off of Rs.3,33,79,971/-.

3.1 Facts surrounding the addition in the assessment are as under: The respondent-assessee-company had made a claim for deduction of Rs.8,33,81,925/- on export benefits accounted as income in the books of account on the ground that this income had not accrued to it though accounted as income in the books of account. The respondent-assessee-company contended this income had not accrued as the same had not been accepted by the Customs authority and it was offered to tax in the subsequent year as and when received by it. It was submitted that though the export obligation has been discharged on its part, incentives are due to the assessee-company only on full execution of the order and full realization of sale proceeds of export. Thus, assessee-company contended that export incentive to the extent of Rs.8,33,81,925/- was not due and therefore, the same was claimed as deduction while computing taxable income. This claim was rejected by the AO on the ground that the income has been accounted as income in terms of the Accounting Standard issued by the Institute of Chartered Accountants and accounted as income in the books of account regularly maintained on accrual basis and accordingly brought this sum to tax.

3.2 As regards addition on account of bad debts written off of Rs.3,33,79,971/- it was the contention of the assessee-

company that this amount represents enhanced price claimed by the assessee-company from its customers to meet the cost of input on account of adverse exchange fluctuations. It was stated before the AO that enhanced price was not accepted by its customers. Debit notes raised by the assessee-company were not accepted by the customers. Hence, it is claimed that income offered to tax in the earlier year on account of such debit claims on account of such debit notes were written off during previous year relevant to the assessment year under consideration and claimed as bad debt. The AO had not allowed the claim by holding that the claim does not fall within the ambit of provisions of sec.36(1)(vii) read with sec.36(2) as the amounts were written off without permission of the Reserve Bank of India as required under the provisions of the Foreign Exchange Regulations Act and accordingly he brought the amount to tax.

4. Being aggrieved, an appeal was preferred before the Id.CIT(A) who vide impugned order partly allowed the appeal. The Id.CIT(A), following the order for assessment year 2009-10 in the assessee's own case, held that export incentive scheme (DIFA) are to be accounted, the moment exports are made and therefore, held that export incentive should be offered to tax on mercantile basis the moment the export obligation is discharged. He accordingly, rejected the claim of the assessee-company that no income has accrued during the year. However, he set aside the ground to verify the claim of the assessee that out of total

**Page 5 of 9**

amount accounted as export incentive of Rs.10,84,07,822/- for assessment years 2009-10 and 2010-11 and an amount of Rs.2,00,25,897/- could not be realized which was added back to the total income during the assessment year 2009-10. Similarly on the same principle, this amount of Rs.8,83,81,925/- was added back to the total income for the assessment year 2010-11 and therefore an amount of Rs.4,54,13,164/- which was realized during the previous year relevant to assessment year 2010-11 was included in the total income. Therefore, according to the assessee-company, it amounts to double taxation. It was further observed by the Id.CIT(A) that the assessee-company took incorrect stand no details were furnished in support of the contention that the amount of Rs.4,54,13,164/- was taxed twice. The matter was set aside for due verification by the AO. As regards the bad debt written off of Rs.3,33,79,971/-, the Id.CIT(A) allowed the claim following the order for assessment year 2009-10 wherein it was held that when the accounts of bad debt are also in the books of account, the same should be allowed as deduction.

5. Being aggrieved by this order, the revenue is in appeal before us in the present appeal.

6. The Id.CIT(DR) vehemently argued that the Id.CIT(A) ought not to have set aside the issue of examining the claim of double taxation in respect of duty free import authorization scheme,

inasmuch as the same has been received and admitted in the year under consideration. It was argued that the Id.CIT(A) has no power to set aside the issue to the AO in terms of provisions of sec.251(1A) of the Act. As regards the claim for deduction of bad debts written off, the Id.CIT(DR) argued that the debts written off represents foreign party's accounts and write off of such foreign party's accounts requires the approval of the Reserve Bank of India which is absent in the present case. Therefore, the fact that RBI had not permitted write off of such accounts, go to show that the debts have not become bad. Therefore, the Id.CIT(A) ought not to have allowed this ground of appeal.

On the other hand, learned counsel for the assessee-bank relied on the orders of the lower authorities.

7. We heard rival submissions and perused material on record. Ground Nos.1 and 5 are general in nature and do not require adjudication.

8. Ground No.2 challenges the direction of the CIT(A) to set aside the issue of double taxation in respect of Duty Free Import Authorization Scheme to the file of the AO. We find from record that the claim of double taxation was not made before the AO. Even before the Id.CIT(A) it appears that the assessee-company had not filed any evidence in support of double taxation in respect of export incentive of Rs.4,54,13,164/-. However, this claim was made for the first time before the CIT(A). In our

considered opinion, this ground of appeal does not emanate from the assessment order. In the grounds of appeal filed by the assessee-company the claim for double taxation was only in respect of Rs.3,13,72,097/-. This should have been allowed only as additional ground as it does not emanate from the assessment order. This additional ground was apparently admitted by the CIT(A) without calling for remand report. Since the issue was restored to the file of the AO to adjudicate this issue in accordance with law, revenue is not aggrieved by this direction. Hence, this ground of appeal by the revenue is dismissed.

9. Ground Nos.3 and 4 challenge the order of the CIT(A) deleting the addition on account of bad debt written off. From the facts emanating from the assessment order it is clear that the amounts written off represent the claim made by the assessee-company by raising debit notes against its customers to meet the extra input cost on account of adverse foreign exchange variation. Admittedly these amounts were offered to tax in the earlier assessment year and the claims were not accepted by the respective customers, hence, reversed. Going by the facts as marshaled by the assessee-company during the assessment proceedings, income to the extent of such additional claim made by the assessee-company had not accrued. In support of this proposition, respondent-assessee-company relied on the following decisions:

Page 8 of 9

- i. *CIT vs. Bharat Petroleum Corporation Ltd.* (202 ITR 492)(Cal);
- ii. *CIT vs. Kerala State Drugs & Pharmaceuticals Ltd.*(192 ITR 1)(Ker);
- iii. *CIT vs. Rehmat Khan* (213 ITR 134)(Raj);
- iv. *CIT vs. Sikaria Sons & Co.* (216 ITR 440)(Gauhati);
- v. *Godhra Electricity Co. Ltd. vs. CIT* (225 ITR 746)(SC); and
- vi. *P.Mariappa Gounder vs. CIT* (232 ITR 2)(SC)

Thus, going by the submissions of the respondent-assessee-company, there was never any debt/debts. A bad debt pre-supposes the existence of a debt and therefore, the provisions of sec.36(1)(vii) are not applicable to the facts of this case. In such cases, question of invoking provisions of sec.36(1)(vii) of the Act does not arise. We place reliance in this regard on the following decisions:

- i. *National Petroleum vs. CIT* (13 ITR 336);
- ii. *Muthukaruppan vs. CIT* (11 ITR 38);
- iii. *Southern Agencies vs. CIT* (45 ITR 602);
- iv. *CIT vs. Vanguard* (97 ITR 546);
- v. *CIT vs. Shivlal* (193 ITR 196) and
- vi. *Mohandas Moolchand vs. CIT* (212 ITR 482)

In the case of *Mohandass Moolchand* (supra), the Hon'ble Rajasthan High Court held (head-note) that :

*"The assessee was not a creditor at any point of time nor was K a debtor and as such the first necessary element for claiming the amount as a bad debt did not exist besides the other requirements of law. The assessee had also failed to produce any evidence by which it could have been proved that A had made a claim for the said amount from the assessee, and, therefore, there was no justification for claiming the amount as a business loss."*

**Page 9 of 9**

In the instant case, if the income had not accrued, as claimed by the assessee-company in the respective years, remedy is available to the assessee-company under other provisions of the Act to seek relief but deduction cannot be allowed as bad debts and to this extent, the decision of the CIT(A) is reversed. The addition made by AO is upheld.

10. In the result, the appeal filed by the revenue is partly allowed.

*Order pronounced in the open court on 06<sup>th</sup> May, 2016*

sd/-  
**(VIJAY PAL RAO)**  
**JUDICIAL MEMBER**

sd/-  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

Place : Bangalore  
D a t e d : 06/05/2016

*srinivasulu, sps*

**Copy to :**

- 1 Appellant
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- 4 CIT
- 5 DR, ITAT, Bangalore.
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By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore