

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D.S.SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2828/Mds/2016
निर्धारण वर्ष /Assessment Year: 2013-14

The Dy. Commissioner of Income
Tax, Corporate Circle-6(1),
Aayakar Bhavan, New Block,
121, M.G.Road, 7th Floor,
Chennai-600 034.

Vs. M/s.Shriram Equipment
Finance Co. Ltd., No.4,
Mookambika Complex, Lady
Desikachary Road, Mylapore,
Chennai-600 004.

[PAN: AAACS 7018 R]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr.Shiva Srinivas, JCIT

प्रत्यर्थी की ओर से /Respondent by

: Mr.R.Sivaraman, Adv.

सुनवाई की तारीख/Date of Hearing

: 31.03.2017

घोषणा की तारीख /Date of Pronouncement

: 30.05.2017

आदेश / O R D E R

PER D.S.SUNDER SINGH, ACCOUNTANT MEMBER:

This is an appeal filed by the Revenue against the Order dated 15.06.2016 of Commissioner of Income Tax (Appeals)-15, Chennai, in ITA No.340/CIT(A)-15/15-16 for the AY 2013-14 and raised the following grounds:

1. The Order of the Commissioner of Income Tax (Appeals) is contrary to the law and facts of the case.

2. The Ld.CIT(A) erred in directing the AO to allow Rs.15,05,19,823/- as non performing assets or provision for bad debts.

2.1 The Ld CIT(A) erred in allowing bad debts to the tune of Rs.1843.93 lakhs when only sum of Rs.348.73 lakhs was written off in the books of account maintained by assessee on the basis of which financial statements were prepared by the assessee company which were placed before the AGM for approval and also submitted such approval financial statements before other Statutory Authorities under Registrars of Companies.

2.1 The Ld CIT(A) failed to note that its order in assessee's group case (M/s. Shriram City Union Finance Ltd Vide in ITA No 726/Mds/2010) for the AY 2006-07 and M/s.Shriram Transport Finance Co. Ltd. vide ITA No.725/Mds/2010 for AY 2006-07 which is relied upon in the impugned order has not attained finality and revenue's appeal against the above asst. years are pending before Honourable High Court of Madras.

2.2 The Ld.CIT(A) erred in directing the AO to treat royalty as revenue expenditure.

2.3 The Ld.CIT(A) erred in deleting the addition made towards royalty payment, since assessee was getting enduring benefit and acquired an intangible asset, which made the payment capital in nature.

2.4 The Ld CIT(A) failed to appreciate that the decision of the ITAT relied upon by the Ld. CIT(A) in the assessee's one of the group Companies case (M/s.Shriram Transport Finance Co. Pvt. Ltd., & M/s.Shriram City Union Finance Co.) has not become final and the Department has preferred appeal before the Hon'ble High Court of Madras.

3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored.

2.0 Ground Nos.1 & 3 are general in nature, which do not require specific adjudication.

3.0 Ground Nos.2.0 to 2.1 are related to the disallowance of provisions for bad debts. During the previous year relevant to the AY 2013-14, the assessee has claimed the deduction of Rs.18,53,93,014/- as under:

Provisions for non Performing assets: 1505.20 Lacs

Bad Debts write off: 348.73 lacs

Total 1853.93 lacs

3.1 The reason for claiming the deduction of NPA was explained by the assessee before the AO stating that the assessee is maintaining separate books of accounts to comply with the provisions of Income Tax Act and Companies Act. The assessable income under regular computation

is arrived at on the basis of income tax books. In the case of assessee's group company viz., Shriram Transport Finance Company Limited, this method has been approved by the Appellate authorities in the earlier years and the Appellate Tribunal has held that the assessable income has to be computed on the basis of Income Tax books. (Hon'ble ITAT, Chennai, Order in ITA No.725/Mds/2010 dated 16.12.2010 for assessment year 2006-2007 in the case of M/s.Shriram Transport Finance Company Limited). In the subsequent years also, the ITAT has held that the income has to be computed on the basis of income tax books only. Copy of ITAT's order for the Assessment year 2006-07 in the case of Shriram Transport Finance company Limited was available to the A.O. The assessee further stated that from the Profit & Loss Account and Balance Sheet prepared from IT books, it could be seen that no provision has been made for NPA. As the assessee has not made any provision for NPA, the question of adding back the same does not arise. In the Income Tax books the assessee stated to have written off bad debts, after due process of enquiry. The NPA amount of Rs.1505.20 lakhs was made in corporate accounts to comply with the requirements of Company Act. The assessee further stated that the figures of NPA appearing in the corporate accounts maintained for Company Law purposes cannot be imported in the present proceedings to disallow the NPA. The Profit & Loss and other figures in the books maintained for Company Law purposes can be considered only for computing income u/s.115JB of the Act and not under regular Computation. The assessee further submitted before the AO that, in the

books of accounts maintained for income tax purpose, the assessee has written off the bad debts. The write off has been done after the branch managers have explored all possibilities of recovering these debts in full or in part. The branches pursue the collections by issuing notices, taking recourse to seizure, deputing the field officers to make on the spot study to consider the various possibilities of collection and when it is found that the chances of collection are remote, the write off is done. In a few cases, when parties come for payment of final installments, settlement etc, they do not pay the full amounts and insist on some discount, which is allowed keeping in view the good relations with customer.

3.2 Not being satisfied with the explanation of the assessee, the AO disallowed the claim of the assessee u/s.36(1)(vii) stating that no actual write off took place in the accounts to the extent of NPA provision of Rs.1505.20 lacs.

3.2 The assessee went on appeal before the CIT(A) and the Ld.CIT(A) deleted the addition in Para No.5.2.2 of the Ld.CIT(A) which is extracted as under:

5.2.2 I have considered the findings given by the AO and also submissions made by the AR of the appellant. The Hon'ble ITAT "B" Bench, Chennai in consolidated order in the case of M/s. Shriram City Union Finance Ltd. vide ITA No.726/Mds/2010 for A.Y.2006-07 and M/s. Shriram Transport Finance Company Ltd. Vide ITA No.725/Mds/2010 for A.Y.2006-07 dated 16.12.2010 has dismissed the revenue's appeal on the issue of bad debts. Respectfully following the decision of Hon'ble ITAT in the aforesaid orders, the is directed to allow Rs.15,05,19,823/- as non-performing assets or provision for bad debts. This ground of appeal is allowed.

4.0 We heard both the parties and perused the material placed before us. The Ld.AR vehemently argued that the assessee is maintaining two separate sets books of accounts for Income Tax purpose and another set as per Companies Act. In the Income Tax books, the Ld.AR submitted that the bad debts were written off whereas in the corporate accounts it was shown as provisions for NPA. The Ld.AR further contended that since the bad debts were completely written off in the Income Tax accounts, the deduction claimed by the assessee u/s.36(1)(vii) is in order and should be allowed as deduction. The Ld.AR further argued that the issue regarding maintenance of two separate books of accounts is upheld by the Hon'ble jurisdictional High Court in the case of the assessee's group company M/s.Shriram Transport Finance Company Ltd v. CIT in Appeal No.621/2013.

4.1 We heard both the parties on hearing both the sides, the issue required to be decided is whether the assessee has maintained two sets of books of accounts separately for the purpose of Income Tax and for the purpose of Companies Act. If the answer is affirmative whether the assessee is entitled for deduction u/s.36(1)(vii) or not? As for as this issue u/s Sec. 36(1)(vii) is concerned, the Hon'ble jurisdictional High Court has held that the assessee is permitted to maintain two separate books of accounts, one for the Companies Act and the second for the purpose of Income tax. Now the question pending for answer is whether the assessee is maintaining two separate books of accounts or not. On

careful reading of the Assessment Order, it appears that the assessee has neither produced two separate books of accounts nor the AO has examined the same. There was no finding in the Assessment Order by the AO that two separate set of books of account were maintained and produced before the AO and examined by him and the bad debts were actually written off in the Income Tax accounts. The balance sheet, Profit & Loss A/c, filed by the assessee before this Tribunal shows that in the Profit & Loss A/c maintained for the purpose of Income Tax, the assessee had written off bad debts but not reduced from the sundry debtors. The Balance of Sundry Debtors for Loans and advances shows the same amount of debtors in the balance sheet compiled both for the purpose of Income Tax as well as corporate accounts as under:

Companies Act: Sundry debtors as on 31.03.2013	
Asset Clause-B	
Long term loans and advances	Rs.175,784.80 (as it is)
Income Tax Act: sundry debtors as on 31.03.2013 asset clause-B	
Long term loans and advances	Rs.175,784.80

4.2 From the above, it appears that the assessee has not written off the debtors in the books of accounts maintained for the purpose of Income Tax Act. The assessee has only debited the Profit & Loss A/c but kept the same amount in the sundry debtors for the purpose of Income Tax Act. The Hon'ble jurisdictional High Court in the assessee group company's case in Para No.8 & 9 observed as under:

8. What remains is to decide whether the methodology for write-off adopted is correct and in accordance with the methodology set out by the Supreme Court. The assessing office raised a query in this regard at the

time of assessment in response to which the Assessee has submitted the following:

'With reference to your query regarding bad debts, we submit that the bad debts are debited to the Profit & Loss Account and corresponding credit is given to the individual account of the debtors. Thus the bad debts are actually written off in the accounts and they are not provisions. If there are any collections from those debtors at a later date, the amount is credited to the Bad debts Recovery account. During the year ended 31.03.06, there have been Bad Debts Recovery to the extent of Rs. 1,90,75,851/-. This has been shown in Schedule 'J' of Profit & Loss Account — Income from operations — Bad Debts Recovery.'

9. Our attention has also been invited to the Profit and Loss account that substantiates the above methodology. Thus, it is clear that the claim of bad debts relates to debts actually written off and not a provision made in this regard. The Supreme Court in the case of Vijaya Bank (supra) explaining the methodology for proper write-off set out in accordance with the Judgment of the Supreme Court in Southern Technologies (supra) states as follows:

'To understand the above dichotomy, one must understand 'how to write off'. If an assessee debits an amount of doubtful debt to the P&L Account and credits the asset account like sundry debtor's Account, it would constitute a write off of an actual debt. However, if an assessee debits 'provision for doubtful debt' to the P&L Account and makes a corresponding credit to the 'Current liabilities and provisions' on the Liabilities side of the balance sheet, then it would constitute a provision for doubtful debt. In the latter case, assessee would not be entitled to deduction after 1-4-1989.'

In view of the above, the Assessee has, in accordance with the provisions of Section 36 (1)(vii), written off the bad debt and the claim is allowable. Substantial Question No.1 is answered in favour of the assessee and against the Department.

4.3 The assessing officer disallowed the claim stating that the assessee had not actually written off the bad debts. During the appeal hearing, we have directed the Ld.AR to produce 44AB report and the books of accounts maintained as per section 44AB and the corporate of accounts as per the companies Act for verification. The Ld.AR argued that the issue regarding the maintenance of books of accounts was accepted by the Income Tax

Department and the Tribunal has no jurisdiction to go into that issue. We examined the submissions of the Ld.AR and we are of the considered opinion that as per the Assessment Order, there was no findings given by the AO with regard to the production of two sets of books of accounts. Being final fact finding authority, this Tribunal has to examine the fact regarding maintenance of two sets of books of accounts and duty bound to give finding on it. Since the assessee failed to produce the books of accounts before us in spite of giving repeated opportunities, we are of the considered opinion that the issue should go back to the file of the AO to verify whether the assessee is maintaining two sets of books of accounts as stated by the company and from Income tax books true and correct income can be deduced or not? Whether the assessee has written off the Provision for Bad debt in income tax books or not, require verification and finding need to be given.

4.4 On the similar facts, in the assessee's group company in ITA No.868 & 869/Mds/2015 the issue was remitted back to the file of the AO in Para Nos.13 & 14 are as under:

13. The next ground raised in the appeal of the Revenue is with regard to deletion of disallowance made by the Assessing Officer towards provision for non-performing assets [NPA]. The assessee has claimed non-performing assets of ₹.32.36 crores as bad debts. The Assessing Officer has disallowed the same as the assessee has made two sets of accounts i.e. one set of books of account for Income Tax Act and another set of accounts for Companies Act purposes. According to the Assessing Officer, the assessee cannot maintain two sets of account and he observed that the assessee has shown as provision in the statutory books and was claimed deduction as written off for the purpose of income tax. He observed that as per section 36(1)(vii) bad debts actually written off is only to be allowed as deduction. He further observed that the decision of the Tribunal in I.T.A. No. 22/Mds/2011 dated 10.10.2011 for the assessment year 2006-07 cannot be applied as there is an appeal pending before the Hon'ble High Court. However, the Id. CIT(A) has concurred with the submissions of the assessee and allowed the ground raised by the assessee, against which, the Revenue is in appeal before the Tribunal for all these assessment years.

14. We have heard both sides. The main contention of the assessee is that the issue has already been decided by the Tribunal by order cited (*supra*) and it has to be followed. However, we observed from the order of the Assessing Officer that he has given a finding that in the account prepared for the purpose of Income Tax, the assessee has claimed ₹.11659.84 lakhs as bad debt written off and the amount of ₹.3236.89 lakhs, which was shown as provision in statutory books was taken as written off for the purpose of income tax. From this, it is not clear to us as to whether this amount has been actually written off in the books of accounts maintained and got audited by the assessee under statute by crediting each individual debit account, then, it could be allowed as bad debt as held by the Hon'ble Supreme Court in the case of TRF Ltd. v. CIT 323 ITR 397, wherein, the Hon'ble Supreme Court has held that after 01.04.1989, 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. Further, in the present case, the Assessing Officer has not examined as to whether the debt has, in fact, been written off, in the accounts of the assessee. This exercise has not been undertaken by the Assessing Officer. Hence, the matter is remitted back to the Assessing Officer for de novo consideration of the above mentioned aspect only, that too only to the extent of written off. Moreover, in our opinion, the facts of the assessee's case squarely fit into the ratio laid down by the above judgement of the Hon'ble Supreme Court rather than the order of the Tribunal in assessee's own case cited (*supra*). Being so, in our view, it is appropriate to remit back the entire issue to verify whether the debt is actually written off in the Audited books of accounts passing enough entries towards written off to the individual account and then only the assessee is entitled for deduction as bad debt provided the assessee fulfils the condition such as satisfaction of Income Tax Act as contemplated under section 36(2) of the Act. We, therefore, direct the Assessing Officer to verify the requirement of section 36(2) and decide thereupon. Accordingly, this issue raised by the Revenue is remitted back to the Assessing Officer for fresh consideration.

4.5 Therefore, we remit the matter back to the file of the AO to verify both the books of accounts and to decide the issue afresh on the merits. We direct the assessee to produce both the sets of books of accounts before the AO. Accordingly, this ground of the assessee is set-aside and allowed for statistical purpose.

5.0 Ground Nos.2.2 to 2.3 are related to the to the addition of Rs.3,15,92,059/- on account of royalty payment:

6. The AO found that the assessee has claimed an amount of Rs.4,21,22,746/- as royalty under the head other expenses. The AO has called for the explanation of the assessee as to why the royalty payment

should not be treated as capital expenditure. The assessee explained that the payment was made to use the logo of the Shriram group and there was an agreement between the assessee and the Licensor for payment of royalty and there was no right of ownership in respect of the logo. Therefore, the assessee argued that the expenditure was not a capital expenditure and no permanent asset was created by payment of royalty to the Licensor. The payment of royalty paid @3% every year and hence argued that the expenditure is Revenue expenditure but not the capital expenditure. The assessee relied on the decision of CIT v. Wavin (India) Ltd. 236 ITR 214. Not being convinced with the explanation of the assessee, the AO held the expenditure as capital expenditure and allowed depreciation @25% (4,21,22,746 – 1,05,25,686 = 3,15,92,059).

6.1 The assessee went on appeal before the CIT(A) and the Ld.CIT(A) allowed the assessee's appeal placing reliance on the assessee group company's case in Shriram Transport Finance Co. Ltd., for the AYs 2010-11 & 2011-12, in ITA No.870 &871/Mds/2015 dated 29/01/2016.

7. Since the Ld.CIT(A) allowed the appeal following the order of this tribunal on identical facts in the case of M/s.Shriram Transport Company for the AYs 2010-11 & 2011-12, we confirm the order of the Ld.CIT(A) and dismiss the appeal of the Revenue.

8. In the result, the appeal of the Revenue is partly allowed for statistical purposes.

Order pronounced in the Open Court on 30th May, 2017, at Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S.SUNDER SINGH)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 30th May, 2017.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF