

IN THE INCOME TAX APPELLATE TRIBUNAL
"B" Bench, Mumbai
Before Shri Joginder Singh (JM) & Shri B.R. Baskaran (AM)

I.T.A. No. 8930/Mum/2010
(Assessment Year 2007-2008)

ACIT, Circle-6(1) Mumbai	Vs.	M/s. Blue Niles Holdings Ltd. No. 463, Ceat Mahal, Dr. Annie Besant Road, Worli, Mumbai - 25.
(Appellant)	..	(Respondent)

C.O. No. 168/Mum/2012
(Assessment Year 2007-2008)

M/s. Blue Niles Holdings Ltd. No. 463, Ceat Mahal, Dr. Annie Besant Road, Worli, Mumbai - 25.	Vs.	ACIT, Circle-6(1) Mumbai
(Appellant)	..	(Respondent)

PAN No.AAACB1881B

Assessee by :	Shri Ronak G. Doshi
Department by :	Shri Akhilendra P. Yadav
Date of Hearing :	18.12.2015
Date of Pronouncement :	02.03.2016

ORDER

Per B.R. Baskaran, AM :-

The appeal filed by the revenue and the cross objection filed by the assessee are directed against the order dated 27-09-2010 passed by Ld CIT(A)-14, Mumbai and they relate to the assessment year 2007-08. The revenue is aggrieved by the decision of Ld CIT(A) in deleting the rejection of claim of bad debts in respect of following items:-

- (a) Bad debts claim relating to ICD – Rs.33,00,000/-
- (b) Bad debts claim relating to advance given – Rs.7,18,31,000/-.

2. We heard the parties and perused the record. The assessee is an investment and non-banking finance company registered with RBI as NBFC. The assessee's claim of bad debts of the two items referred above was rejected by the AO. Since the Ld CIT(A) has allowed the claim, the revenue has filed this appeal before us.

3. The first item of bad debts claim relate to the Inter Corporate Deposit (ICD) made with M/s RPG Satellite Communications Ltd. The ICD amount

of Rs.33.00 lakhs was originally made by assessee's holding company named M/s RPG Cables Ltd. The fact that the assessee is a subsidiary of M/s RPG Cables Ltd is available in the submissions made by the assessee before Ld CIT(A), which is extracted in page 6 of the order of Ld CIT(A). The assessee took over the ICD made with M/s RPG Satellite Communications Ltd from its holding company, under a deed of assignment entered on 07th April, 2004 between them. Since the assessee did not receive interest on ICD and since M/s RPG Satellite communications Ltd became bankrupt, the assessee wrote off the ICD amount of Rs.33.00 lakhs as bad debts. The AO took the view that loss has arisen to the assessee on capital account and further the assessee has not satisfied the conditions prescribed u/s 36(2) of the Act. Accordingly he rejected the claim for deduction of the same. The Ld CIT(A), however, allowed the claim by holding that the assessee has advanced the amount of Rs.33.00 lakhs in the ordinary course of business of money lending.

4. At the time of hearing, a specific query was asked to Ld A.R as to whether the assessee has received any interest income from the ICD kept with M/s RPG Satellite Communications Ltd. Though the Ld A.R agreed to furnish the relevant details, but till date no such details have been furnished. No doubt, the conditions prescribed u/s 36(1)(vii) read with Section 36(2)(i) have been complied with by the assessee. However, a careful study of whole gamut of transactions, in our view, would show that the holding company of the assessee simply shifted its loss upon the assessee by way of entering into a deed of assignment. We have come to such a conclusion on the following reason:-

- (a) The ICD was made by the assessee's holding company to another company belonging to the same group.
- (b) The assessee appears to have not received any interest from ICD taken by it on assignment. This fact clearly shows that the management was aware of the fact that M/s RPG Satellite

communications Ltd would not be in a position to pay the interest. Though the assessee has substantiated its decision to write off the ICD amount as bad debt by placing reliance on the financial position of M/s RPG Satellite Communications Ltd on the basis of statement of affairs submitted to the Hon'ble Delhi High Court, yet the assessee did not show that the financial position of the above said company was stable as on 07-04-2004, i.e., the date on which the ICD amount was taken up on assignment. There should not be any doubt that a finance company shall first ensure about recovery of interest and principal by looking into the financial position of the borrower.

- (c) Since these transactions have been entered between the holding company and its subsidiary and further between the holding company and another group company, the burden of proof that the same was genuine business transaction lies upon the assessee.

5. Since the assessee has failed to establish the nature of financial position of M/s RPG Satellite Communications Ltd and further since the assessee has failed to show that it had actually received interest on ICD, we have no other option, but to take the view that the assessee has merely accommodated its holding company by taking the ICD under the deed of assignment, i.e., the loss that should have occurred to the holding company has been transferred to the assessee company. The condition prescribed in sec. 36(2)(i) for allowing the bad debts claim made u/s 36(1)(vii) states that the amount so written off represents money lent **in the ordinary course of the business of banking or money-lending** which is carried on by the assessee. In our view the expression "in the ordinary course of the business of banking or money lending" are crucial, i.e., it has to be shown that the assessee has taken all the precautions that are normally taken by a prudent business man before lending money to a person, which inter alia, includes examination of financial position of the client. Since the facts and

circumstances of the instant case show that the assessee has only accommodated its holding company by taking up the ICD on assignment, we are of the view that the ICD amount so purchased by it cannot be considered to be the money lent in the ordinary course of the business of money lending, in which case the condition prescribed u/s 36(2)(i) cannot be said to have been complied with. On this reasoning, we are of the view that the AO was justified in rejecting the claim of bad debts of Rs.33.00 lakhs referred above. In view of the above, we set aside the order of Ld CIT(A) on this issue and restore the addition made by the AO.

6. The next issue relates to the write off Rs.7.18 crores, being the advance given by the assessee company to another group company named M/s RPG Telephones Ltd. It is stated that the assessee gave this loan @ 8% to the above said company, which was promoted as special purpose vehicle for setting up and carrying on business of telecommunication. It is further stated that M/s RPG Telephones Ltd could not execute the project due to litigations and ultimately lost its ligation in July, 2005. In view of the above, the net worth of M/s RPG Telephones Ltd became negative and hence the recovery of the advance of Rs.7.18 crores given to it became doubtful. Hence the assessee wrote off the same as bad debts. The AO disallowed the same on the reasoning that the loss has occurred on capital account and further the provisions of sec. 36(2)(i) have not been complied with. The Ld CIT(A) allowed the same by holding that the assessee has lent the money to M/s RPG Telephones Ltd in the ordinary course of its business and it has complied with the conditions prescribed u/s 36(2)(i) of the Act.

7. We heard the parties on this issue. The assessee has lent a sum of Rs.7.18 crores to one of its group companies named M/s RPG Telephones Ltd. It is stated that M/s RPG Telephones Ltd was established as a Special Purpose Vehicle (SPV) for carrying on telecommunication business. The record does not contain the dates on which the advance of Rs.7.18 crores given by the assessee to the above said company. Though it is stated that the above said loan of Rs.7.18 crores was given @ 8% interest, yet the details

of the interest received by the assessee company in the past were not furnished by the assessee, even though the same was specifically asked by the bench.

8. If the assessee has actually lent the money to M/s RPG Telephones Ltd in the ordinary course of business of money lending, then the claim of the assessee is allowable u/s 36(1)(vii) of the Act. However, we are of the view that the details relating to the same requires further clarification.

- (a) It is not known as to whether the assessee has received any interest on the advances so given.
- (b) Since the recipient of the loan amount is a company belonging to the same group and since it is stated that the said company was established as Special Purpose Vehicle, it is not known as to whether the assessee has given the funds in the course of its “investment” activity or in the course of “money lending activity”. If it is given in the course of investment activity, then the loss shall acquire the character of Capital loss, whereas it had been given in the course of money lending activity, then the claim shall be allowable u/s 36(1)(vii) of the Act.

In view of the above, we are of the view that, in the interest of natural justice, the assessee should be given an opportunity to establish the nature of financing. Accordingly this issue requires fresh examination at the end of the assessing officer. Accordingly, we set aside the order of Ld CIT(A) on this issue and restore the same to the file of the AO with the direction to examine the claim of the assessee afresh in the light of discussions made supra.

9. The assessee has filed Cross objection, wherein it is contended that the claim of the assessee should be allowed as trading loss u/s 28 of the Act or as expenditure u/s 37(1) of the Act.

10. The alternative claim of the assessee is not admissible in respect of the claim of Rs.33.00 lakhs, since we have held that the said claim was only an accommodation arrangement. In respect of claim of Rs.7.18 crores, the alternative claim may be made before the AO, since we have restored the matter to his file.

11. In the result, the appeal of the revenue and the cross objection of the assessee are treated as partly allowed for statistical purposes.

Order has been pronounced in the Open Court on 02.03.2016.

Sd/-
(JOGINDER SINGH)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 2/3/2016

Sr. P.S. SSL

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai