

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE

BEFORE SHRI N V VASUDEVAN, VICE PRESIDENT
AND SHRI B R BASKARAN, ACCOUNTANT MEMBER

ITA No.3239/Bang/2018
Assessment year: 2014-15

Joseph Davaraj Koilpillai, No.225, Hollywood Town, Sadahalli Post, Bangalore – 562 127. PAN: AARPJ 0519L	Vs.	The Income Tax Officer, Ward 6(3)(4), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri V. Srinivasan, Advocate
Revenue by	:	Smt. R. Premi, Jt. CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	06.10.2020
Date of Pronouncement	:	09.10.2020

ORDER

Per N.V. Vasudevan, Vice President

This appeal by the assessee is directed against the order of CIT(Appeals)-7, Bengaluru dated 20.09.2018 in relation to assessment year 2014-15.

2. The only issue that arises for consideration in this appeal by the assessee is as to, whether the revenue authorities were justified in rejecting the claim of assessee for deduction of a sum of Rs.88,59,511 on account of bad debts written off.

3. The assessee is an individual carrying on business of project management and consultancy services under the name and style ‘Elhanan

Management Services'. For the AY 2014-15, the assessee filed return of income declaring total income of Rs.4,07,450.

4. In the course of assessment proceedings the AO noticed that in arriving at the income from profession, the assessee claimed deduction of Rs.88,59,511 on account of bad debts written off. The details of bad debt written off as bad debts and shown as income of the assessee in his books of account in the earlier Assessment years as furnished by the Assessee before the Revenue authorities was as follows:-

Name	Amount in Rs.	Relevant FY to which the receivable pertains	Sales register enclosed in Page no. of this Annexure	Ledger is enclosed in Page no. of WS made on 07.02.2018
ETL Infrastructure Services Ltd.	17,31,786	2007-08	11	104
L&T Ltd. (ECC Division)	10,63,495	2009-10	24	108-109
L&T Tech Park Ltd.	34,41,406	2007-08	11	111-112
L&T Tech Park Ltd.	2,92,500	2010-11	30	112-113
L&T Tech Park Ltd.	2,70,000	2011-12	36	113
Muthoot Hotels & Tourism Ventu	50,000	2006-07	4	114
Oberon Edifices	1,99,410	2007-08	11	116
Raymonds Limited	13,73,055	2008-09	18	117-118
RC Architecture Pvt Ltd	29,515	2004-05	10	119
SRK Groups	4,08,343	2007-08	11	120
	88,59,511			

5. The AO did not allow claim of assessee for deduction on the ground that the Assessee was not able to show as to how the debts that were written off as bad debts had in fact become bad and irrecoverable. The following were the relevant observations of the AO:-

“5. Details of the same were sought for and the assessee has only furnished a list and ledger accounts of such cases in whose cases, the debts are written off and no other details regarding steps initiated to recover the same like any correspondence with the entities in whose cases, the bad debts are written off, were produced by the assessee. In the absence of this, the bad debts written off by the assessee company is considered as non-genuine. Debt in the ordinary course of business denotes not only an obligation of the debtor to pay but also the right of the creditor to receive and enforce payment. In the case of the assessee, it has not furnished any proof for effective steps having been taken to recover the debt to the extent of Rs.88,59,511/-. It is also observed from the ledger accounts that the debts are too early to be written off. The very act of writing off such huge amount without any efforts to collect the debts, only shows assessee's pretext to evade tax. Hence, considering the amount to be written off i.e., Rs.88,59,511/- to be very huge in the absence of any effective steps taken for recovering the same and for the reason that they are considered to be too early to be written off, said writing off is not allowed and Rs.88,59,511/- is added back to the income of the assessee u/s.36(1)(vii) of the Income Tax Act, 1961.”

6. Before the CIT(Appeals), the assessee submitted that after the amendment of provisions of section 36(1)(vii) of the Income Tax Act, 1961 [the Act] w.e.f. 1.4.2008, it is not necessary that the assessee should establish that the written off bad debts has in fact become bad. The CIT(A) called for a remand report from the AO and in his remand report dated 23.4.2018, the AO submitted that the companies in respect of which assessee claimed that debt has become bad were prestigious reputed companies and cannot be treated as a company in liquidation nor were they loss making companies. The AO reiterated his stand as reflected in the order of assessment.

7. The CIT(Appeals) firstly accepted the fact that after the amendment to the law w.e.f. 1.4.1989 and in the light of the decision of the Hon'ble Supreme Court in the case of *TRF Ltd. [2010] 190 Taxman 391 (SC)*, it is

not necessary for the assessee to establish that the debts written off as bad debt has in fact become bad and irrecoverable and that a mere write off in the books of account of assessee is sufficient to claim deduction. The CIT(A), however, placed reliance on the decision of the ITAT Hyderabad Bench in the case of *Natco Pharma Ltd.*, 29 *taxmann.com* 297 which in turn relied on the decision of Hon'ble Supreme Court in the case of *Travancore Tea Estates Co. Ltd.*, 233 *ITR* 203 (SC) wherein a view was expressed that the assessee has to establish that the debt has become bad and irrecoverable to claim deduction on account of bad debts. The CIT(A) also referred to a decision of the ITAT Bangalore Bench in the case of *Embassy Classic (P) Ltd.*, 20 *taxmann.com* 291 wherein it was held that writing off a debt as a bad debt is not an empty formality and that the assessee has to show that the debt has become bad and that the assessee cannot convert any live amount into a bad debt only on the basis of a technical rule of writing off. The CIT(A) thereafter attempted to reconcile the balance of debts that were written off as bad debts as appearing in the books of account from AY 2007-08. The CIT(A), however, has not come out with any specific adverse finding on the claim of assessee. The CIT(A) did not dispute the fact that the sum which was written off as bad debt was shown as income by the assessee in the earlier assessment year. The chart in this regard has already been extracted in earlier part of this order. The CIT(A) finally came to the conclusion that the write off of debt as bad debts was only an effort to reduce the assessee's tax liability. The CIT(A) accordingly confirmed the order of AO.

8. Aggrieved by the order of CIT(Appeals), the assessee has preferred the present appeal before the Tribunal.

9. We have heard the rival submissions. The Id. counsel for the assessee reiterated the submissions as were made before the revenue authorities. The Id. DR relied on the order of CIT(Appeals).

10. We have given a careful consideration to the rival submissions. The first aspect which we notice is that the AO has not disputed the fact that there was an actual write off of debts as bad debts and the sums written off as bad debts were in fact shown as income of the assessee in the earlier assessment years. The only reason given by the AO was that the assessee did not establish that the debts in question have in fact become bad. The CIT(Appeals) also adopted the same reasoning. The CIT(A), however, has attempted to find some discrepancies in the balances, but those discussions in the order of CIT(A) are very vague and does not show any conclusion or effect on those observations on the claim of assessee for deduction on account of bad debts. The CIT(A) has also placed reliance on the decision of the ITAT Hyderabad Bench in the case of *Natco Pharma Ltd. (supra)* which was based on the decision of Hon'ble Supreme Court in *Travancore Tea Estates Co. Ltd. (supra)* which is a decision rendered prior to the amendment of provisions of section 36(1)(vii) w.e.f. 1.4.1989. The later decision in the case of *TRF Ltd. (supra)* supports the plea of assessee.

11. For the sake of clarity, we re-produce hereinbelow provisions of Section 36(1)(vii) of the Act, both prior to 1st April, 1989 and post-1st April, 1989:-

“Pre-1st April, 1989:

Other deductions.

36.(1) The deductions 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-

(i) to (vi) xxxx

(vii) subject to the provisions of sub-section (2), the amount of any debt, or part thereof, which is established to have become a bad debt in the previous year.

Post-1st April, 1989:

Other deductions.

36.(1) The deductions 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-

(i) to (vi) xxxx xxxx

(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."

12. In the CBDT Circular No.551 dated 23-01-1990 (1990) 183 ITR St. 37, the provisions of Section 36(1)(vii) was explained post the amendment brought vide Direct Tax laws (Amendment) Act, 1987. The circular reads as under :-

“Amendments to sections 36(1)(vii) and 36(2) to rationalise provisions regarding allowability of bad debts- The old provisions of clause (vii) of sub-section (1) read with subsection (2) of the section laid down conditions necessary for allowability of bad debt. It was provided that the debt must be established to have become bad in the previous year. This led to enormous litigation on the question of allowability of bad debt in a particular year, because the bad debt was not necessarily allowed by the Assessing Officer in the year in which the same had been written off on the ground that the debt was not established to have become bad in that year. In order to eliminate the disputes in the matter of determining the year in which a bad debt can be allowed and also to rationalise the provisions, the Amending Act, 1987 has amended clause (vii) of subsection (1) and clause (i) of sub-section (2) of the section to provide that the **claim for the bad debt will be allowed in the year in which such a bad debt**

has been written off as irrecoverable in the accounts of the assessee.”

13. It is thus clear that the deduction on account of bad debt as allowed u/s 36(l)(vii) read with section 36(2), after amendment by the Direct Tax Laws (Amendment) Act 1987, envisage merely writing off the debt as irrecoverable in the accounts of the assessee as a condition for such an allowance. Before the amendment by the DTL (Amendment) Act 1987, of course, there was a condition to establish that the debt has become bad.

14. The Hon'ble Supreme Court in the case of *T.R.F. Limited vs C.I.T reported in 323 ITR 397(SC)* has clearly observed 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.

15. The Id. DR placed reliance on the decision of Bangalore Bench of the Tribunal in the case of *Embassy Classic P. Ltd. Vs. ACIT 20 taxmann.com 291*.

16. In the aforesaid case, the facts were that, there was a search action in the case of the assessee along with a simultaneous search in the case of one *Shri. K. M. Viswanath and Smt. K. M. Parvathamma*. In the light of the materials and information collected in the course of search, the assessee was asked to file returns. In such returns filed by the assessee, it claimed deduction by way of bad debts to the tune of Rs.3.67 Crores. The assessee explained that as against the sales consideration of Rs.8,60,69,500/- the buyers had paid an amount of Rs.4,93,97,650/- and a cheque for Rs.4 crores was issued for the balance consideration. According to the assessee, the cheque so received from Shri. K. M. Viswanath and Smt. K. M. Parvathamma bounced on presentation before its bankers and the assessee was unable to realize the aforesaid sum. According to the

assessee company, certain legal proceedings were also initiated against the defaulters. As on the date of the finalization of the balance-sheet, the realization of the balance money was doubtful and the assessee took a decision to write off the amounts as bad debts. Accordingly, the assessee company wrote-off a sum of Rs.3,66,71,850/- as bad debts on account of Shri. K. M. Viswanath and Smt. K. M. Parvathamma. The Tribunal found that the sum written off as bad debt was in fact realized by the Assessee before the date of filing of return of income and hence the tribunal did not allow the claim of the Assessee for deduction, observing as follows:-

“Even though writing off a debt as bad and doubtful may be a sufficient mode of discharging the proof, the said format of statutory evidence is not an empty formality. It is not necessary for the assessee to prove that the debt has become bad. But at the same time, the assessee cannot convert any live amount into a bad debt only on the basis of the technical rule of writing off. In the present case, even though the amount was not received on the balance-sheet date, the amount was received by the assessee before filing of the return itself. In fact, the balance consideration of the sale transaction covered by the dishonour of the cheque was received by the assessee company on 30.08,2005. The assessee had filed the return of income only thereafter on 29.10.2005. Therefore, it is very clear that when the return of income was filed by the assessee, no debt was recoverable from the buyers of the property. We find a lot of force in the argument of the learned Commissioner of Income-tax regarding the non-committal of the assessee company in pursuing the legal remedies available before it for the recovery of the amount. Therefore, in these circumstances, we do not find that the debt has become bad debt. It was only a case of delayed payment. Therefore, we find that the judgement of the Hon'ble Supreme Court in the case of T R F Ltd., does not apply to the facts of the present case. In short, we find that the Commissioner of Income-tax(A) has rightly confirmed the disallowance of Rs.3,66,71,850/-.

17. It is thus clear that the facts of the case in the case of Embassy classic (supra) are distinguishable from the facts of the Assessee's case because in the case cited, the assessee had written off bad debts in the books of account. However, the amount was recovered by the assessee before filing of the return itself. Thus, at the time of filing of return of income, no debt was due. The Tribunal observed that the assessee cannot convert any live amount into a bad debt only on the basis of the technical rule of writing off. It was not a case of bad debt but a case of delayed payment. It was in backdrop of these facts the Tribunal held, that the judgment of Hon'ble Supreme Court of India in the case of TRF Limited Vs. CIT (supra) will not apply. We find that the facts in the present case are entirely at variance. Therefore, the decision of Bangalore Bench of the Tribunal in the case of Embassy Classic P. Ltd. Vs. ACIT (supra) will have no application in the facts and circumstances of the present case.

18. For the above reasons, we are of the view that the assessee is entitled to claim deduction on account of bad debts and the AO is directed to allow claim of assessee.

19. In the result, the appeal by the assessee is allowed.

Pronounced in the open court on this 9th day of October, 2020.

Sd/-
(B R BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(N V VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 9th October, 2020.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.