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IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA NO. 587 of 2011

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ITA 974 of 2011

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Date of Decision: September 27, 2011.

(1) ITA NO. 587 of 2011

THE COMMISSIONER OF INCOME TAX

... APPELLANT

Through :

Ms. Rashmi Chopra,
Advocate

VERSUS

VAN OORD ACZ INDIA (P) LTD.

... RESPONDENT

Through:

Mr. Ajay Vohra with Ms.
Kavita Jha, Ms. Akanksha
Aggarwal and Mr. Somnath
Shukla, Advocates.

(2) ITA 974 of 2011

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and Mr. Somnath Shukla,
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ITA No. 587/2011 & 974/2011

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the digital data is as per the physical
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CORAM:-

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE M.L. MEHTA

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.(Oral)

1. This appeal pertains to the assessment year 2004-05. The assessee, in this year had shown debt written off in the books of accounts which was taken to profit and loss account as well. The Assessing Officer had queried the assessee about the writing off the aforesaid debt as bad debt to which reply was furnished by the assessee on 21st December, 2006 giving elaborate explanation for writing off this debt as a bad debt. In the assessment order passed by the Assessing Officer nothing was mentioned about the writing off the said bad debt implying thereby that he had accepted the stand of the assessee and did not chose to make any addition thereupon.

2. The Commissioner of Income Tax, however, exercising his powers under Section 263 of the Act, remitted the case back to the

Assessing officer on this aspect on the ground that the Assessing Officer has not applied his mind on the issue. The order of the CIT(A) would further revealed that according to him the claim was still alive, inasmuch as, the assessee had moved an application under Section 11(6) of the Arbitration and Conciliation Act before the Supreme Court for appointment of Arbitrator which showed that the matter was pending for arbitration and, therefore, as there was ray of hope for recovery of the amount and in these circumstances the debt could not be treated as bad debt. The Commissioner referred to the judgment of Kerala High Court in **Travancore Tea Estate Co. Ltd. Vs. CIT**, 197 ITR 528 in support of his aforesaid view and the said judgment was approved by the Supreme Court in the case of **Travancore Tea Estate Ltd. Vs. CIT**, 233 ITR 203.

3. The assessee preferred appeal thereagainst which has been allowed by the Tribunal vide impugned order dated 26th March, 2010. The Tribunal has, inter alia observed that the Assessing Officer had specifically required the assessee to furnish a copy of the ledger account of the parties whose balances were written off as bad debt and the assessee in pursuance thereto had given elaborate

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explanation in his reply dated 21st December, 2006. This would show that the Assessing Officer had applied his mind and accepted the claim of right off of bad debts in the light of the prevailing provisions of law. This view taken by the Assessing Officer was plausible and it was not a case of total non-application of mind, the CIT (A) could not invoke his jurisdiction under Section 263 of the Act and take different view.

4. After hearing counsel for the parties we are of the view that no question of law arises and the aforesaid view of the Tribunal is correct in law. The Tribunal has rightly observed that in view of the prevailing legal provisions the AO had accepted the claim of the assessee in writing off the certain debt as bad debt. After the amendment of Section 36 (1) (vii) of the Income-Tax Act w.e.f. 1st April, 1989, it is not necessary for the assessee now to establish that the debt, infact, had become recoverable for obtaining a deduction in relation to a bad debt. It is sufficient for the assessee to write off the same as recoverable in the accounts of the assessee. This is so held by the Supreme Court in ***T.R.F. Ltd. Vs. Commissioner of Income-Tax***, 323 ITR 397:-

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"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."

5. As per the aforesaid judgment, the Assessing Officer should ascertain as to whether debt has in fact been written off as bad debt in the accounts books. Insofar as present case is concerned, there is no dispute about this fact. In fact order of the Commissioner under Section 263 of the Act starts with the observation that the bad debts were written off in the profit and loss account for the year under reference. The only ground for

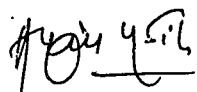
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passing the impugned order by the Commissioner was that last course of action cannot be taken by the assessee having regard to the fact that arbitration proceedings in respect of these very debts was still pending in the Supreme Court. The reliance by the Commissioner on the judgment of the Kerala High Court in the case of **Travancore Tea Estate Co. Ltd.** (*supra*) is clearly misplaced as the law is discussed in the light of unamended section 36(1)(vii) of the Act.

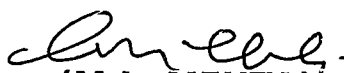
6. We thus, do not find any merit in this appeal which is accordingly dismissed.

7. We may record that in case the assessee ultimately succeeds in the arbitration proceedings and the award is rendered in its favour and it is able to recover any amount that can always been shown as income on which tax would be payable under Section 44 (4) of the Act.

8. We may record that after the orders were passed by the Commissioner under Section 263 of the Act and the matter was remitted back to the Assessing Officer, the Assessing Officer had passed fresh orders of assessment disallowing the claim of write off which order has been set aside by the Tribunal on the ground that the order passed under Section 263 of the Act by the Commissioner itself is set aside.

9. As the order of the Tribunal setting aside the order of the Commissioner under Section 263 has been upheld by us above, this appeal is dismissed on this ground.


(A.K. SIKRI)
JUDGE


(M.L. MEHTA)
JUDGE

SEPTEMBER 27, 2011.
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