

Gurbax Singh
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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ITA No. 223 of 2016 (O&M)
Date of decision: 28.08.2017**

Pr. Commissioner of Income Tax, Faridabad

.....Appellant

Vs.

**M/s ECO Auto Components Private Limited, Plot No.20, Sector-6,
Faridabad**

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Tajender Kumar Joshi, Senior Standing Counsel for the
appellant-revenue.

None for the respondent.

Ajay Kumar Mittal,J.

1. The appellant-revenue has filed the instant appeal under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 20.01.2016, Annexure-III, passed by the Income Tax Appellate Tribunal, New Delhi (in short, "the Tribunal") in ITA No. 1967/DEL/2009, for the assessment year 2005-06, claiming following substantial questions of law:-

- (i) "Whether on the facts and in the circumstances, the learned ITAT was right in law in upholding the order of CIT(A) in deleting the addition of ₹ 90,97,536/- made by the Assessing Officer on account of bad debts written off disregarding the fact that the assessee had failed to prove that the written off

debts had actually become bad and also failed to furnish any justification?

(ii) Whether on the facts and in the circumstances, the learned ITAT was right in law in upholding the order of learned CIT(A) in deleting the addition of ₹ 15,55,893/- made by the Assessing Officer on account of cessation of liabilities under Section 41(1) of the Act disregarding the fact that the assessee had failed to prove that the liability still subsisted and in contravention of decision of Hon'ble Calcutta High Court in the case of Kesoram Industries & Cotton Mills Limited reported in 1961 ITR 845?

(iii) Whether on the facts and in the circumstances, the learned ITAT was right in law in upholding the order of learned CIT(A) in deleting the addition of ₹ 10,02,735/- made by the Assessing Officer on account of VRS expenses disregarding the fact that the payments of VRS expenses were made prior to introduction of Section 35DDA and the said section was brought on the statute w.e.f. 01.04.2001 without any retrospective effect?

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The return declaring loss of ₹ 1,35,71,940/- was filed on 31.10.2005. Subsequently, return was revised on 13.12.2006 showing a loss of ₹ 1,11,10,266/-. The assessment order was passed on 31.12.2007 determining business loss at ₹ 49,32,857/- and taxable income (other than business income) at ₹ 2,36,73,360/- under Section 143(3) of the Act. Certain additions were made by the Assessing Officer. The relevant for the purposes of this appeal would be that amount of ₹ 90,97,536/- was added on account of bad debts written off; ₹ 15,55,893/- on account of cessation of liability under Section 41(1) of the Act and ₹ 10,02,735/- on account of VRS expenses. Among various

additions made by the Assessing Officer as noticed above, relief was allowed by the Commissioner of Income Tax (Appeals) [CIT(A)] in respect of these additions made by the Assessing Officer vide order dated 09.03.2009, Annexure A.II. The revenue filed an appeal before the Tribunal. Vide order dated 20.01.2016, Annexure-III, the Tribunal dismissed the appeal inter alia on the ground that the Assessing Officer had added an amount of ₹ 90,97,536/- on account of bad debts written off during the year under consideration on the ground that the assessee had failed to prove that the written off bad debts had actually become bad. The CIT(A) deleted the addition of ₹ 90,97,536/- made by the Assessing Officer relying upon CBDT's circular dated 23.01.1990 and various judicial pronouncements by observing that the assessee was not required to prove that the bad debts had become bad. The Tribunal upheld the decision of the CIT(A). According to the appellant-revenue, the assessee could not prove that the debts had actually become bad and even list of parties whose debts were written off, had not been provided despite numerous opportunities. Further, the Assessing Officer had added an amount of ₹ 15,55,893/- on account of cessation of liability under Section 41(1) of the Act on the ground that the assessee had failed to prove that the liability subsisted. The CIT(A) deleted the addition of ₹ 15,55,893/- made by the Assessing Officer relying upon judicial pronouncements observing that when the liabilities were standing in the balance-sheets of the assessee, they could not be held to have ceased. Still further, the Assessing Officer had added an amount of ₹ 10,02,735/- on account of disallowing the deduction of VRS expenses for the financial year 2000-01 under Section 35DDA on the ground that the aforesaid section was operative w.e.f. 01.04.2001 without any retrospective effect. The CIT(A) deleted the

addition of ₹ 10,02,735/- made by the Assessing Officer relying upon the decisions of the Apex Court and Kerala High Court by observing that introduction of Section 35DDA did not preclude the Assessing Officer to consider the VRS payments as revenue expenditure. The Tribunal upheld the decision given by the CIT(A) on this issue. Hence, the instant appeal by the appellant-revenue.

3. We have heard learned counsel for the appellant-revenue. None has appeared on behalf of the respondent.

4. With regard to question No.1, qua addition of ₹ 90,97,536/- made by the Assessing Officer on account of bad debts written off, it has been recorded by the CIT(A) that the Assessing Officer was oblivious of the amendments made by the Finance Act w.e.f. 01.04.1989 which had been explained by the CBDT's circular dated 23.1.1990 wherein in Para 6.6 it had been mentioned that the amendment was to rationalize the provisions regarding the allowability of all debts. It was laid down that the assessee had only to write off debts as irrevocable in its account and was not required to prove that they had become bad. Thus, in view of Section 36(1)(vii) read with Section 36(2) of the Act, the disallowance of ₹ 90,97,536/- was deleted. The relevant findings recorded by the CIT(A) in this regard read thus:-

“I have carefully considered the submissions of the Ld. A.R. and perused the order of assessment. I find that the A.O is oblivious of the amendments made by the Finance Act with effect from 01.04.1989 which have been explained by the CBDT's circular No.551 dated 23.01.1990 vide para 6.6 wherein it has been mentioned that the amendment was to rationalize the provisions regarding the allowability of all debts. It was laid down that the assessee has only to write off debts as irrecoverable in its accounts

and was not required to prove that they had become bad. This law has been followed by the Hon'ble Delhi High Court in the following cases:-

- (i) Commissioner of Income Tax Vs. Global Capital Limited (2008) 306 ITR 332(Delhi)
- (ii) Commissioner of Income Tax Vs. Autometers (2007) 292 ITR 345 (Delhi)
- (iii) Commissioner of Income Tax Vs. Morgan Securities and Credits Private Limited (2007) 292 ITR 339 (Delhi)

Therefore, keeping in view the above submissions of the Ld. A.R., both on merits and law i.e. Section 36(1)(vii) read with Section 36(2) of the Income Tax Act, 1961, the disallowance of ₹ 90,97,536/- is deleted.”

The said finding has been upheld by the Tribunal. Learned counsel for the revenue was unable to demonstrate that the concurrent approach of CIT(A) and the Tribunal was perverse or erroneous in any manner. Thus, the claim for bad debts written off by the assessee could not be validly declined by the Assessing Officer.

5. As regards question No.(ii), qua addition of ₹ 15,55,893/- made by the Assessing Officer on account of cessation of liabilities under Section 41(1) of the Act, relying upon the judgment of the Apex Court in ***CIT Vs. Sugauli Sugar Works Private Limited***, (1999) 236 ITR 518, it was held that merely by virtue of the fact that a debt becomes time barred, the right of the creditor will not come to an end nor the liability will cease and in these circumstances, Section 41(1) of the Act was not attracted. Thus, when the liability qua the amount which was still standing in the balance sheet of the assessee, which fact had not been disputed by the Assessing Officer, the same could not be said to have ceased. Thus, the

Tribunal did not interfere with the findings recorded by the CIT(A) on this issue. The relevant findings recorded by the Tribunal on this issue read thus:-

“15.The A.O. made addition of ₹ 15,55,893/- under Section 41(1) on account of cessation of liability under Section 41(1) of the Act on the ground that the assessee had failed to prove that the liability subsists. Undisputedly, the liabilities to the tune of ₹ 15,55,893/- are still subsisting in the balance sheet of the assessee. Ld. A.R. by relying upon the judgment cited as *CIT Vs. Sugauli Sugar Works Private Limited* 236 ITR 518 (S.C.), *CIT Vs. Shri Vardhman Overseas Limited* 343 ITR 408, *Mysore Agencies Private Limited Vs. CIT* 114 ITR 853, *CIT Vs. Tamilnadu Warehousing Corpn* 292 ITR 310 and *Ambica Mills Limited Vs. CIT* 54 ITR 167 (Guj.) contended that even unilateral entry in the accounts does not amount to cessation of liability. Hon’ble Apex Court in the judgment cited at Sugauli Sugar Works (supra) decided the issue in controversy and the operative part thereof is reproduced as under for ready reference.

“The principle that expiry of the period of limitation prescribed under the Limitations Act could not extinguish the debt but it would only prevent the creditor from enforcing the debt, has been well settled. If that principle is applied, it is clear that mere entry in the books of account of the debtor made unilaterally without any act on the part of the creditor will not enable the debtor to say that the liability has come to an end. Apart from that, that will not by itself confer any benefit on the debtor as contemplated by the section. The decision of the Calcutta High Court in *CIT Vs. Sugauli Sugar Works Private Limited* 140 ITR 286 affirmed.”

15.1 The issue to be decided by the Tribunal is squarely covered by the judgment cited as *Sugauli Sugar Works Limited* (supra) because merely by virtue of fact that a debt

become time barred the right of the creditor will not come to an end nor the liability will cease and in these circumstances, Section 41(1) of the Act is not attracted. So, when the liability qua the amount which is still standing in the balance sheet of the assessee, which fact has not been disputed by the A.O, the same cannot be said to have ceased. So, we are of the considered view that there is no scope to interfere in the findings returned by Ld. CIT(A). Hence, ground No.5 is determined against the revenue.”

6. Adverting to question No.(iii) relating to addition of ₹ 10,02,735/- made by the Assessing Officer on account of VRS expenses, a perusal of the order passed by the Assessing Officer showed that addition had been made merely on the basis of wrong interpretation of the provisions contained in Section 35DDA of the Act. It was disallowed on the premises that the deduction was inadmissible for a period prior to its insertion, i.e., Financial Year 2000-01 as claimed by the assessee. We find the said approach of the Assessing Officer to be fallacious and legally unsustainable. Any deduction claimed for the financial year 2000-01 in question under Section 35DDA of the Act was to be considered for the assessment year 2001-02, when undisputedly, Section 35DDA was incorporated in the statute w.e.f. 01.04.2001. Thus, the assessee was certainly entitled to get the benefit for the same. Moreover, the Assessing Officer had allowed VRS payment in the earlier year and deduction claimed in the year under consideration was only a consequential relief for the 5th year. Further, Section 35DDA of the Act did not preclude the assessing authority to consider the VRS payment as revenue expenditure. Thus, the Tribunal rightly upheld the findings recorded by the CIT(A) on this issue. The relevant findings recorded by the Tribunal on this issue read thus:-

“16. The. A.O. made an addition of ₹ 10,02,735/- by disallowing the deduction of VRS expenses for the financial year 2000-01 under Section 35DDA on the ground that the aforesaid section came into effect w.e.f. 01.04.2001 without any retrospective effect.

16.1 A perusal of the findings returned by the A.O. in para 5 of the assessment order apparently go to prove that the addition has been made merely on the basis of wrong interpretation of the provision contained under Section 35DDA of the Act. Any deduction claimed for the assessment year 2001-02, when undisputedly, Section 35DDA became the statute w.e.f. 01.04.2001, the assessee is certainly entitled to get the benefit for the same. Moreover, A.O. himself had allowed VRS payment in the earlier year, and the deduction claimed in the year under consideration is only a consequential relief for the 5th year. So, even otherwise, Section 35DDA does not preclude the assessing authority to consider the VRS payment as revenue expenditure. So, finding no ground to interfere into the findings returned by Ld. CIT(A), ground No.6 is determined against the revenue.”

5. Learned counsel for the appellant-revenue has not been able to point out any illegality or perversity in the findings recorded by the CIT(A) as well as Tribunal, warranting interference by this Court. Thus, no substantial question of law arises and the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

August 28, 2017
‘gs’
Whether speaking/reasoned
Whether reportable

(Amit Rawal)
Judge
Yes
Yes