

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

Present :

THE HON'BLE JUSTICE T.S. SIVAGNANAM

A N D

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

ITAT NO: 211 OF 2017
Arising out of
IA NO: GA 2 OF 2017
(OLD NO: GA 1829 OF 2017)

PRINCIPAL COMMISSIONER OF INCOME TAX 2, PUNE
VS.
M/S. NALCO WATER INDIA LTD. (FORMERLY NLC NALCO INDIA
LTD.)

Mr. Tilak Mitra, Advocate
Mr. Arunava Ganguly, Advocate
...for the appellant

Mr. Paras S. Savla, Advocate
Mr. Pratik Poddar, Advocate
Mr. A.K. Dey, Advocate
...for the respondent

Heard on : 02.12.2021

Judgment on : 02.12.2021

T.S.SIVAGNANAM, J.: This appeal by the Revenue filed under Section 260A of the Income Tax Act, 1961 (the Act in brevity) is directed against the order dated 3rd February, 2016 passed by the Income Tax Appellate Tribunal "B" Bench Kolkata (Tribunal) in

ITAT/529/Kol/2008 and ITAT/1256/Kol/2009 for the Assessment Years 2003-04 and 2004-05. The revenue has raised the following substantial question of law for consideration :

- a) Whether on the facts and in the circumstances of the case, the Learned Income Tax Appellate Tribunal, has erred in law in deleting the disallowance of bad debts made by the assessing officer and later confirmed by the CIT (Appeals), by disregarding that the disallowance was made as the assessee had failed to prove the genuineness of the bad debts ?
- b) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal, has erred in law in deleting the disallowance of bad debts made by the assessing officer and confirmed by the CIT (Appeals) by disregarding that the assessee had failed to fulfill the criteria for allowability of deduction under Section 36(1)(vii) of the Income Tax Act, 1961 and disregarding that the CIT (Appeals) had gathered incontrovertible evidence of non-genuineness of bad debts, thereby causing grave prejudice to the interest of Revenue ?

We have heard Mr. Tilak Mitra, learned Counsel appearing for the appellant/revenue and Mr. Paras S. Savla, learned Senior Counsel for the respondent. The short issue which falls for

consideration in the instant case is whether the assessee has fulfilled the conditions stipulated in Section 36(1)(vii) of the Act for being eligible for protection with respect to bad debts. The assessing officer while completing the assessment by order dated 31st March, 2006 under Section 143(3) of the Act, held that relevant entries were made in the books of accounts of the assessee and disallowed the claim solely on the ground that the assessee had not proved that the debts are in fact become bad. The assessee carried the matter on appeal before the Commissioner of Income Tax Appeals (XI), Kolkata, and CIT(A) by an order dated 21st February 2008 accepted the legal position as also the fact that the conditions stipulated under Section 36(1)(vii) of the Act stood fulfilled but nevertheless chose to confirm the order of the assessing officer solely on the ground that no internal document was produced to prove the debt has become bad during the year. The assessee filed appeal before the Tribunal. The Tribunal has allowed the assessee's appeal by the impugned order. The Tribunal has taken note of the decision of the Hon'ble Supreme Court in TRF LIMITED Vs. CIT 323 ITR 397 (SC) and VIJAYA BANK Vs. CIT 323 ITR 166 (SC) and held that there is no requirement for assessee to establish that the debt in fact had become bad. The learned Senior Counsel appearing for the respondent assessee pointed out that this legal position having been well settled, the CBDT has issued a circular No. Circular No. 12/2016 New Delhi, Dated 30th May, 2016 which is reproduced hereinunder;-

Circular No.12/2016

F.No.279/Misc./140/2015-ITJ Government
of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, Dated 30th May, 2016

Subject: - Admissibility of claim of deduction of Bad Debt under section 36(1)(vii) read with section 36(2) of the Income-Tax Act, 1961-reg.

“Proposals have been received by the Central Board of Direct Taxes regarding filing of appeals/pursuing litigation on the issue of allowability of bad debt that are written off as irrecoverable in the accounts of the assessee. The dispute relates to cases involving failure on the part of assessee to establish that the debt is irrecoverable.

2. Direct Tax Laws (Amendment) Act, 1987 amended the provisions of sections 36(1)(vii) and 36(2) of the Income Tax Act 1961, (hereinafter referred to as the Act) to rationalize the provisions regarding allowability of bad debt with effect from the 1st April, 1989.

3. The legislative intention behind the amendment was to eliminate litigation on the issue of the allowability of the bad debt by doing away with the requirement for the assessee to establish that the debt, has in fact, become irrecoverable. However, despite the amendment, disputes on the issue of allowability continue, mostly for the reason that the debt has not been established to be irrecoverable. The Hon'ble Supreme Court in the case of TRF Ltd. In CA Nos. 5292 to 5294 of 2003 vide judgment dated 9.2.2010¹ has stated that the position of law is well settled. *“After 1.4.1989, for allowing deduction for the amount of any bad debt or part thereof under section*

¹ available in NJRS 2010-LL-0209-8

36(1)(vii) of the Act, it is not necessary for assessee to establish that the debt, in fact has become irrecoverable; it is enough if bad debt is written off as irrecoverable in the books of accounts of assessee.

4. In view of the above, claim for any debt or part thereof in any previous year, shall be admissible under section 36(1)(vii) of the Act, if it is written off as irrecoverable in the books of accounts of the assessee for that previous year and it fulfills the conditions stipulated in sub section (2) of sub-section 36(2) of the Act.

5. Accordingly, no appeals may henceforth be filed on this ground and appeals already filed, if any, on this issue before various Courts/Tribunals may be withdrawn/not pressed upon.

6. This may be brought to the notice of all concerned.”

(Sadhana Panwar)
DCIT (OSD) (ITJ)
CBDT, New Delhi.”

However, by dint of the above CBDT Circular informing the authorities of the department that there is no necessity for assessee to prove that the debt in fact has become bad, it is sufficient if the debt is written off in the books of accounts and if it is done the assessee would be entitled for deduction. In fact in the Circular the authorities have been advised to withdraw the appeal, if any, which has already been filed before the various High Courts in a country. Be that as it may, the legal position having been well settled in the aforementioned decision, we find that the substantial questions of law raised by the revenue have to be answered against the revenue. In the result, the appeal is dismissed and substantial questions of law are answered against the revenue.

Consequently, the applications stand dismissed.

(T. S. SIVAGNANAM, J.)

I agree.

(HIRANMAY BHATTACHARYYA, J.)

GH/RS.