IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2021

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.N.MANJULA

Tax Case Appeal No.471 of 2018

The Commissioner of Income Tax,
Chennai. ...Appellant

Vs.

M/s.Wallace Sports and Research Foundation,
No.713, Mount Road,
Chennai - 600 006.
PAN: AAAFW0805F ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 16.10.2017 passed by the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai made in I.T.A.No.1304/Mds/2016 for the assessment year 2012-13, against the order passed by the learned Commissioner of Income Tax (Appeals)-4, dated 01.02.2016 in ITA.No.112/2014-15/A.Y.2012-13 CIT(A)-4 for the assessment order dated 24.02.2015 for the Assessment year 2012-13 passed by the Assistant Commissioner of Income Tax, Non Corporate Circle -3, Chennai.

For Appellant : Ms.R.Hemalatha
Senior Standing Counsel
For Respondent : Mr.Anand Sashidharan

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal has been filed by the assessee under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity) challenging the order dated 16.10.2017 made in I.T.A.No.1304/Mds/2016 on the file of the Income Tax Appellate Tribunal, Chennai, 'C' Bench ('the Tribunal' for brevity) for the assessment year 2012-13.

2.The appeal was admitted on 04.03.2020 on the following substantial questions of law:

"1.Whether the Tribunal was right in deleting the addition of Rs.5 Crores made by the Assessing Officer as disallowance of bad debts u/s.36[1][vii] read with Section 36[2] holding even though said

sum was not a bad debt but was allowable as deduction on loss suffered in the course of its business of real estate without appreciating the fact that the amount represented only a interest free loan obtained by Sandhya Mulchandani for purchase of her house property and therefore, the loan given was no incidental to its business of real estate?

2.Whether the Tribunal was right in not considering the fact that the condition imposed as per Sec.36[2][i] for claiming the bad debts was not satisfied in the case of Assessee firm as Ms.Sandhya Mulchandani in her letter dated 29.07.2009 had confirmed that the loan was to finance to her and in another letter dated 24.02.2014 addressed to the Assessing Officer has confirmed that she would repay the amount to the Assessee?

3.Whether the reasoning and finding of the Tribunal perverse holding that the Assessee was in the business of real estate and there is a implied inference that the assessee's expectation is to participate in the gain arising out of purchase and sale of immovable property especially when by letter dated 27.09.2009 Ms.Sandhya Mulchandani has clearly stated that it was an unsecured interest free loan for the purchase of residential property by her and not for the purpose of assessee's real estate business?

3.We have heard Ms.R.Hemalatha, learned Senior Standing Counsel appearing for the appellant/revenue and Mr.Anand Sashidharan, learned counsel appearing for the respondent/assessee.

4.The assessee had filed their return of income for the assessment year under consideration, 2012-13 on 30.09.2012 admitting a total income of Rs.27,37,490/-. The said return was processed under Section 143(1) of the Act. Subsequently, the case for selected for scrutiny and notice under Section 143(2) was issued on 12.08.2013 and notice under Section 142(1) was issued on 14.02.2014. During the course of assessment, the Assessing Officer pointed out that in the profit and loss account, the assessee has returned a sum of Rs.5 Crores and the same was claimed as expenditure under the head “bad debts written off” and details were called for. The assessee submitted that it was unrecovered and unsecured loan of Rs.5

Crores given to Ms.Sandhya Mulchandani in the Financial Year 2009-10. The Assessing Officer noticed that the said person has taken interest free loan of Rs.5 Crores to purchase a residential property at Delhi and she has not repaid the same and she intends to repay it as per the letter. Further the Assessing Officer found that the transaction has taken place in the year 2009-10 and the assessee has claimed the said amount as bad debts in the written off income filed for 2012-13 and on verification of the profit and loss account, for the earlier years, the said amount of Rs.5 Crores was not taken into account while computing the income of the assessee in the previous year and even as per Form 3CD, the assessee has not mentioned anything about the money lending business. Therefore, the Assessing Officer called upon the assessee to explain as to the allowability of the amount of Rs.5 Crores paid as unsecured amount to the said person. Reply was submitted and the same was rejected on the ground that the assessee has not fulfilled the conditions prescribed under Section 36[2] of the Act. After making other disallowances, the Assessing Officer had assessed the total income of Rs.55,24,674/-. The assessee preferred an appeal before the Commissioner of Income Tax [Appeals] [hereinafter referred to as "CIT(A)"] which was dismissed by order dated 01.02.2016. Aggrieved by the same, the assessee preferred appeal before the Tribunal which has been allowed. The revenue is before us questioning the correctness of the Tribunal and seeking for an answer to the substantial questions of law framed for consideration.

5.The Tribunal found that the assessee is engaged in the real estate business other than motor racing, etc. and it is therefore clear that one of the activities of the assessee firm is real estate business. The Tribunal examined the transaction between the assessee and Ms.Sandhya Mulchandani and accepted the stand of the assessee that the assessee under bonafide belief extended the loan of Rs.5 Crores and the same has become irrecoverable and therefore, the loan amount is written off as bad debts. The Tribunal pointed out that though in strict parlance the loss suffered by the assessee cannot be considered as bad debts arising of trade debts, it is certainly a loss suffered by the assessee during the course of its business of real estate if such advance is not recoverable. Further the Tribunal pointed out that there is no bar on the revenue to scrutinize the case of Ms.Sandhya Mulchandani and examine the possibility whether the loan amount of Rs.5 Crores can be treated as income in her hands because the assessee had written off the same in its books of accounts. The Tribunal after referring to the decision of the Hon'ble Supreme Court in the case of *TRF Limited vs. Commissioner of Income Tax [230 CTR 14]* pointed out that it is not necessary to establish that the debt in fact has become irrecoverable. Thus, the Tribunal was of the view that loss written off by the assessee is genuine and has to be set off from the profit earned by it and issued direction to the Assessing Officer to grant deduction of Rs.5 Crores being the loss suffered by the assessee is irrecoverable advances with respect to real estate business and thereby delete the addition.

6.The revenue is before us contending that Ms.Sandhya Mulchandani in her letter has clearly stated that the loan given was interest free and unsecured loan and she would repay the said amount and therefore, the debt could not be a bad debt. Further the Tribunal failed to note that in the books of accounts of the assessee a sum of Rs.5 Crores has been entered as unsecured loan only and not as advance given for purchase of property. Further, the revenue seeks to dispute the the nature of business activity done by the assessee stating that they are into the business of motor racing and rallying and not in the business of money lending and therefore bad debts does not spring directly from the business of the assessee. On the above grounds, the learned senior standing counsel seeks for setting the order of the Tribunal and answering the substantial questions of law in favour of the revenue.

7.Per contra, Mr.Anand Sashidharan, learned counsel for the respondent placed on record an affidavit filed on behalf of the respondent/assessee sworn to by its partner dated 15.02.2021. On a perusal of the affidavit, it is seen that on account of the subsequent development in the matter, there is no revenue application and therefore, the revenue at this point of time cannot seek for restore the order of the Assessing Officer dated 24.02.2015. For better appreciation, the relevant paragraphs in the affidavit are quoted herein below:

> *"8.The Respondent received a Notice under sub section (6) of section 133 of the Income Tax Act, 1961 bearing Notice No.ITBA/AST/S/133(6)/2019-20/1017470357(1) dated 20.08.2019 issued by the Deputy Commissioner of Income Tax, Circle 3(1) Delhi seeking information from the Respondent in the case of Sandhya Mulchandani for Assessment Year 2012-2013. The respondent replied to this notice vide their reply dated 26.08.2019 in terms of which the information sought for was furnished to the Income Tax Department. Thereafter another notice under Section 133(6) of the Act dated 11.09.2019 was issued to the respondent seeking further information. The respondent furnished the information sought for by their replyd ated 14.09.2019.*

9.In October 2019, Mrs.Sandhya Mulchandani, contacted the respondent and explained that she was unable to repay the advance due to issues faced by her and offered to repay the amount advanced to her. The respondent gladly welcomed the offer.

10.In November 2019, a sum of rs.2,00,00,000/- (Rupees Two Crores) was repaid by Mrs.Sandhya Mulchandani to the respondent and this sum was offered as income in the financial year 2019-2020 under Section 41 of the Act. Subsequently, a sum of Rs.3,00,00,000/- (Rupees Three Crores) was repaid in the Financial Year 2020-2021 and the same has been offered as income and advance tax has been paid on the same. Therefore, the recovered amount forming part of the amount written off has been offered as income under Section 41 of the Act and there is no revenue implication. The Income Tax Department has taken action in terms of the observations of the order of the Hon'ble Tribunal and the losses recovered by the respondent have been offered to tax. In the above circumstances, the Income Tax Department is estopped from seeking to disallow the losses claimed by the respondent in the assessment year 2012-2013 while taxing the recovery of the same in the assessment year 2020-2021 and 2021-2022."

8.In the light of the above submission made by the assessee by way of a solemn affidavit sworn to its partner, the assessee is right in contending that the revenue cannot seek to sustain the order passed by the Assessing Officer and seek for disallowance of the loss claimed by the respondent in the assessment for the year 2012-2013 while taxing the recovery of the same in the assessment year 2020-2021 and 2021-2022. Thus, in the light of the subsequent development, the order passed by the CIT(A) requires to be sustained.

9.Accordingly, the appeal filed by the revenue is dismissed. However, the substantial questions of law are left open because this appeal has been dismissed on the ground of subsequent events which have taken place which has been placed on record in the form of an affidavit. No costs.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

To

1.The Income Tax Appellate Tribunal, 'C' Bench,
Chennai.

2.The Commissioner of Income Tax(Appeals)-4,
Chennai.

3.The Assistant Commissioner of Income Tax,
North Corporate Circle -3,
Chennai.

+1cc to M/s.Anand Sashidaran, Advocate SR.NO..12981
+1cc to Mr.T.Ravi Kumar, Advocate SR.NO..13408

AKM/30.03.21/6P-6C/

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