



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	12.12.2022
Pronounced on	:	10.03.2023

CORAM

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

T.C.A.No.1030 of 2009

Katti Ma

... Appellant

Vs.

The Deputy Commissioner of Income Tax
Circle XV, Ayakar Bahavan
MG Road Nungambakkam,
Chennai

... Respondent

PRAYER: This Tax Case Appeal filed under Section 260 A of the Income Tax Act, 1961 against the order dated 28.01.2009 made in ITA No.1344/mds/2005 on the file of the Income Tax Appellate Tribunal, Madras 'D' Bench for the Assessment period 2001-02.

For Appellant

: Mr.N.V.Balaji

For Respondent

: Mr.Rajesh Sivanandam
for Karthik Ranganathan



JUDGMENT

WEB COPY **MOHAMMED SHAFFIQ, J.**

This Tax case appeal has been filed challenging the order dated 28.01.2009 passed by the Income Tax Appellate Tribunal, Madras 'D' Bench, in ITA No.1344/mds/2005, relating to the assessment period 2001-02, raising the following questions of law:

- " 1. Whether the Tribunal was right in not considering the details filed in the paper book containing the amounts advanced, step taken to recover advance, copies of the legal notices with acknowledgments/Court Decree/ledger extracts, in respect of all the 14 defaulters?*
- 2. Whether the Tribunal was right in holding that advance made to the suppliers of raw material/service providers during the earlier years which became irrevocable advance cannot be claimed as business loss or bad debt?"*

However, the question of law re-framed and the following question of law was admitted:



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"Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the appellant was not entitled to the alternative claim of trading loss under Section 28(i) of the Income Tax Act, 1961, in respect of the irrecoverable advances given for purchase of its stock in trade?"

Statement of facts:

2. The assessee is in the business of granite export. The return of income for the assessment year 2001-02 was filed on 30.10.2001, wherein, the assessee had written off advances of Rs.26,00,182/- as "bad debts" and accordingly claimed deduction. The above sum represented the total of the balances outstanding in the debtors account in respect of 14 parties. These advances were found to have been made in the earlier accounting period i.e., prior to 01.04.1997.

3. Aggrieved over the order of the assessing officer, the assessee preferred an appeal before the Commissioner of Income Tax (Appeal). While considering the plea of assessee, the Commissioner of Income Tax (Appeal) held that the amounts written off cannot be considered as bad debts within the



meaning of Section 36(1)(vii) nor could be allowed under Section 37 of the Act. The First Appellate Authority on examining/analyzing the debtor account as appearing in the books of account of the appellant found that the claim of bad debts by the petitioner was not sustainable as no evidence was let in to show the nature of the business transaction between the appellant and the debtor nor was any evidence let in to show that the same represented trading loss incurred during the relevant accounting period. The relevant portion of the First Appellate Authority order is extracted here under:

"1) All the debit balances written off during the impugned period were outstanding even as on 01.04.1997 and the nature of these balances is not known. No details are available regarding the actual advances made to these parties prior to this date. In the absence of such details and evidence, it is not possible to say anything about the nature of the debit balances carried over and written off during the impugned accounting period.

2) Except in few cases, in all the other cases, proper legal action have not been taken by the appellant to recover the dues.

3) Some of the debit balances also include expenditure items debited in these accounts which relate to the earlier accounting periods and such debits cannot be allowed against the profits for the accounting period ending with 31.03.2001.

4) In some cases, the party was willing to supply the materials but the appellant for reasons not known and not explained, had not taken supply of the materials but had chosen to write off the balances after a gap of three or more number of years and there is no provision in law to allow this kind of claim.

5) Even in respect of the few cases where action has been taken, it is noticed that the transactions are over even during the accounting period 1998-99 and



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it is not at all clear as to how the appellant had written off these balances in this account for the period ending 31.03.2001."

4. The matter was carried by way of further appeal by the appellant before the Income Tax Appellate Tribunal. The Tribunal also confirmed the order of the Commissioner of Income Tax (Appeals) and the relevant portion of the said order is extracted hereunder:

"6.4. It is seen from the narration of the aforesaid five entries, as appearing in the copy of account that they are in the nature of adjustment / contra entries, reversing some entries made in the past. The AR made no efforts to explain, either before the AO, or before the CIT(A), or before us, the nature of the individual entries appearing in these accounts. The explanation reproduced above is too vague and general in nature to convey anything.

6.5 In other cases the opening balances as on 01.04.1997 have been carried forward from year to year, more or less, as such. The nature of transactions resulting in these debit balances cannot be known from the copies of account appearing in the paper book.

7. There is no evidence either to show that the conditions of section 36(2) are satisfied or that these balances represent 'trading losses' relating to AY 2001-02.



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8. *In view of the facts and circumstances discussed in the above paragraphs we see no reason to interfere with the conclusions reached by the CIT(A)...."*

5. Aggrieved over the order of the Tribunal, the appellant / assessee filed the present appeal.

6. Heard both sides and perused the materials placed before this court, more particulars, the order impugned herein.

7. We find that the claim of bad debts made by the appellant / assessee was found unacceptable by the Tribunal, inasmuch as explanation given by the appellant/assessee was vague and general in nature in respect of five entries, in respect of the remaining entries there was lack of clarity as to the nature of the transaction. For treating a debt as having turned bad, it is necessary to make an objective decision on the facts as to the impossibility of collection/recovery of the debt, such an opinion must be honest and ought to be made after taking into account all the relevant factors, whereas the opinion of the appellant was found by the appellate authority to be neither honest nor objective, keeping in view the relevant factors. Therefore, the Tribunal rejected the plea of the assessee



and confirmed the order of the Commissioner of Income Tax (Appeals).

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8. Whether a debt is a bad debt is a question of fact, which would clear from the Judgment of the Hon'ble Supreme Court in ***Travancore Tea Estates Co. Ltd. v. CIT***, (1998) 8 SCC 667 at page 667, wherein it is held as follows:

“It is well settled that whether a debt has become bad or the point of time when it became bad are pure questions of fact.”

9. In this context, it is relevant to point out the observation of the Hon'ble Supreme Court in the case of ***Bank of Bihar Ltd. v. CIT***, [(1962) 45 ITR 427] which reads as under:

“6. The question whether a debt is a bad debt is one of fact and if there is some evidence to justify the conclusion it is not open to the High Court in a reference under Section 66 of the Indian Income Tax Act to reappreciate the evidence. As observed by their Lordships of the Privy Council in CIT v. S.M. Chitnavis [LR 59 IA 290] in interpreting Section 24 of the Indian Income Tax Act, 1922,

“Whether a debt is a bad debt, and, if so, at what point of time it became a bad debt, are questions which in their Lordships' view are questions of fact, to be decided in the event of dispute by the appropriate tribunal, and not by the ipse dixit of anyone else. The assessee has no option of declaring a debt as bad.... In every case it is a question of fact, to be determined after consideration of all relevant circumstances.”



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10. In the light of the aforesaid legal proposition, we find no reason to interfere with the concurrent findings of the Authorities below inasmuch as whether a debt is bad, being essentially a question of fact. As the appellant has not made out any question of law much less substantial question of law, this tax case appeal stands dismissed. No costs.

[S.V.N., J.] [M.S.Q., J.]
10.03.2023

Internet : Yes / No

Index : Yes / No

Speaking / Non Speaking order

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