



W.A.No.1525 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2025

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

W.A.No.1525 of 2021

M/s.Citadel Fine Pharmaceuticals Ltd.,
No.43, Main Road, Velachery, Ch.42,
Rep. By its Director K.Rajiv

.. Appellant

VS

1.The Deputy Commissioner of Income Tax
Corporate Circle, 1 (2),
121, Mahatma Gandhi Road,
Aayakar Bhavan – Wanaparthy Block,
6th Floor, Chennai – 34.

2.The Assistant Commissioner of Income Tax
Corporate Circle, 1 (2),
121, Mahatma Gandhi Road,
Aayakar Bhavan – Wanaparthy Block,
6th Floor, Chennai – 34.

..Respondents

Prayer : Appeal filed under Clause 15 of Letters Patent against order
dated 22.04.2021 made in W.P.No.35630 of 2016.



W.A.No.1525 of 2021

WEB COPY

For Appellant : Mr.M.V.Swaroop
For Respondents : Mr.Ramana Kumar
Senior Standing Counsel

JUDGMENT

(Delivered by Dr.ANITA SUMANTH..J)

The appellant had filed a return of income in terms of the provisions of the Income Tax Act, 1961 (in short 'Act'), for assessment year (AY) 2009-10 on 30.09.2009. The assessment was taken up for scrutiny and an order of assessment was passed on 23.12.2011 after hearing the appellant and considering the various issues that had emanated from the return of income.

2. One of the issues that was taken up for verification related to write-off of bad debts for a sum of Rs.4.94 crores (approx.) reducing the impact of the taxable long term capital gain offered to tax for that year.

3. The assessing authority examines the claim in detail, ultimately accepting the assessee's claim to an extent of Rs.4.07 crores (approx.) negating the claim of bad debts qua the period 01.04.2005 onwards. The discussion in this regard in order of assessment dated 23.12.2011 is as follows:

3.1 Out of the total bad debts of Rs.4,99,12,188/-, the assessee



WEB COPY



W.A.No.1525 of 2021

has during the year written-off bad debts of Rs.4,94,91,343/- thereby reducing the taxable long-term capital gain. The entire Bad debts relate to the amounts receivable from M/s. Polaris Health Care Pvt Ltd. The assessee company had been doing certain job works for M/s. Polaris Health Care Pvt. Ltd and the volume of job undertaken during FY 2003-04 & 2004-05 for a value of Rs.3,21,37,707/- & Rs.3,09,37,577/- respectively. In Financial Year 2005-06, further job contract for a value of Rs.1,10,89,224/- was undertaken. In FY 2004-05 itself, the assessee knew that the amount due from M/s. Polaris Health Care Pvt. Ltd (PHCPL for brevity) would not be recoverable and therefore crated a provision of Rs.4,07,03,328/- as at 31.03.2005. The provision was added back in the memo of computation of total income. Though the assessee realized that such amounts are irrecoverable, it continued to have business with the said person and claims to have undertaken job work for M/s. PHCPL even during Financial Year 2005-06. The ledger folios of M/s PHCPL as appearing in the books of the Company from 01.04.2004 to 31.03.2009 were examined. Till 31.03.2005, there had been some receipts in respect of services rendered and even TDS had been deducted on such service while making the payment. However, from 01.04.2005, the transactions are one sided and though the assessee was fully aware that the amounts could not be retrieved, it claims to have provided services to PHCPL. Notice u/s 133(6) was issued to the Principal Officer of PHCPL, on 04.10.2011, and since there was no response, a reminder was issued again on 20.10.2011, which met with the same fate. It is clear from the ledger folio of PHCPL as appearing in the books of the assessee for the period from 01.04.2005 to 31.03.2006 that the transactions are in a sense, an unilateral booking which the recipient has not acknowledged. Therefore, the claim of bad debts is restricted to the period ending 31.03.2005 which amounts to Rs.4,07,03,328/- and such values of bad debts beyond the period from 01.04.2005 and beyond this value of Rs.4,07,03,328/- is not entertained.



W.A.No.1525 of 2021

WEB COPY

4. While so, a notice under Section 148 of the Act came to be issued on 05.01.2016 and in response to the same, the appellant vide letter dated 01.02.2016 reiterated the return filed by it originally and sought a copy of the reasons of assessment in line with the judgment of the Supreme Court in *GKN Driveshafts Income Tax Officer V.* (258 ITR 19). The reasons furnished vide letter dated 11.08.2016 read as follows:

The assessee filed its return of income of Rs.29,04,120/- under normal provision and Rs.2,61,40,681/- under the provision of MAT for AY 2009-10 on 30-09-2009 and the assessment was completed under 143(3) dated 23.12.2011 determining the taxable income of Rs.2,81,44,792/- under normal provision and Rs.2,61,40,681/- under MAT provision.

The assessee had shut down its business activity and the factory land and building at Maraimalainagar were sold for a consideration of Rs.7 crores. Further it is ascertained that the profit and loss account for the year exhibits profit on sale of fixed assets, taxable interest income, and exempt dividend income. The write-back of provision of Rs.93,44,509/- and sale of scrap written-off not in any way impart the characteristic of business activity during the year. Further for same reason, of that there was no business activity, ignoring the business loss and only short term capital gain was brought to tax, during the assessment year 2008-09.

Based on the reasons enumerated above, the write-off of bad debts of Rs.4,07,03,328/- during the AY 2009-10, which is relating to business is not allowable expenditure and the same is not eligible for set-off against the capital gain during the year. Since the activity for the year does not exhibit real, substantial and systematic or organized course



WEB COPY



W.A.No.1525 of 2021

of activity of conduct with a set purpose. Therefore, the expenditure akin to business debited in the profit and loss account is not allowable. Hence the allowability of deduction of Rs.4,07,03,328/- towards bad debts as a business loss against the capital gain requires to be withdrawn.

As the assessee has failed to disclose fully and truly all material facts necessary for the assessment, I have reasons to believe that income chargeable to tax has escaped assessment within the meaning of section u/s 147 of the Income Tax Act.

5. The assessee filed its objections to the reasons on 24.08.2016 and a speaking order was passed on 19.09.2016. To be noted that the Supreme Court in the aforesaid judgment has set out the procedure for re-assessment as follows:

We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under [Section 148](#) of the Income tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the assessing officer has to dispose of the objections, if filed, by passing a speaking Order before proceeding with the assessment in respect of the abovesaid five assessment years.

6. Speaking order dated 19.09.2016 came to be challenged in



W.A.No.1525 of 2021

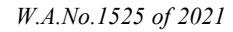
WEB COPY

W.P.No.36522 of 2016 where the assessee sought and obtained interim stay as regards the re-assessment at the time of admission. However, an order of re-assessment came to be passed even prior to the order of stay being communicated to the Department, necessitating the moving of W.P.No.35630 of 2016.

7. The re-assessment proceedings thus came to be the subject matter of both Writ Petitions that came to be dismissed by way of a common order dated 22.04.2021, as against which W.A.Nos.1527 and 1525 of 2021 came to be filed. W.A.No.1527 of 2021 has been closed as infructuous on 26.11.2024 and hence we hear today W.A.No.1525 of 2021 on the merits of the re-assessment proceedings.

8. We have heard the detailed submissions of Mr.M.V.Swaroop, learned counsel for the appellant and Mr.Ramana Kumar, learned Senior Standing Counsel for the Income Tax Department.

9. The assessee would reiterate the submissions made before the assessing authority objecting to the assumption of jurisdiction on the ground that notice under Section 148 of the Act has been issued beyond the period of 4 years and hence, it was incumbent on the authority to have



10. According to the assessee, all materials necessary to adjudicate upon on the merits of the matter had been presented to the assessing authority even at the time of original assessment. Hence, and as the reasons would itself reveal, there was nothing new that had been brought to the table by the assessing authority. The impugned proceedings are thus nothing but a review in the garb of re-assessment, which is impermissible in law.

11. On the merits of the disallowance, the appellant would rely on the judgment of the Supreme Court in *TRF Ltd. V. Commissioner of Income Tax* (323 ITR 397). As per that judgement, once there had been a reversal of the bad debt in the previous year relevant to the subject assessment year, nothing further needed be done, and the write-off of the debt was permitted in law.

12. Per contra, Mr.Ramana Kumar, learned Senior Standing Counsel would defend the impugned order pointing out that there was an error in the order of assessment, which is what had been remedied in the



WEB COPY

subject re-assessment proceedings. He would further submit that the assessee had failed to place the issue in proper context in the original assessment which is what had led to the error in the first place.

13. Having heard both learned counsel, we are of the view that the assessee must succeed. Section 147 of Act, which enables re-assessment, requires notice of re-assessment under Section 148 of the Act to be issued within a period of 4 years from the end of the relevant assessment year. In the present case, notice of re-assessment had been issued on 05.01.2016, which is beyond the period of four years.

14. Hence, the proviso to Section 147 stands triggered, as per which, the assessing authority must establish as a pre-condition, that the invocation of larger limitation of six years is on account of the failure on the part of the assessee to file a proper return of income or to make a full and true disclosure of all material facts. As the Appellant has filed a return of income, the first two limbs of the proviso do not apply in the present case. Hence, the Court is required to test whether full and true disclosure has been made at the first instance.

15. The original order of assessment dated 23.12.2011 contains



WEB COPY

unambiguous findings to the effect that all materials required by the assessing authority to arrive at a proper conclusion in regard to the claim of bad debts, were available before the authority. Paragraph 3.1. of the order of assessment, extracted at paragraph No.3 supra, makes this fact clear.

16. On a comparison of paragraph 3.1 and the reasons extracted in paragraph No.5 supra, we find that no tangible material has been noted/cited by the assessing authority to justify the impugned re-assessment, that too, beyond a period of four years.

17. We are supported in this view by the judgments of the Supreme Court in *CIT V. Kelvinator of India Ltd.* (320 ITR 561) and *CIT V. ICICI Bank Ltd.* (349 ITR 482).

18. In *ICICI Bank Ltd.* (supra), the Supreme Court has held as follows:

The short point which arises in this batch of civil appeals is whether interest earned by the assessee-banks on dated Government securities was liable to be assessed under section 2(7) read with Section 4 of the Interest Tax Act, 1974. In our view, there is a basic difference between loans and advances on the one hand and investments/securities on the other. This difference is indicated in the provisions of the Income tax Act, the Companies Act as well as the Bank Regulation Act. These aspects have been discussed in detail



WEB COPY



W.A.No.1525 of 2021

in two decisions of the Bombay High Court, namely Discount and Finance House of India Ltd. v. S.K. Bhardwaj, CIT reported in MANU/MH/0628/2002, as also in another decision of the Bombay High Court reported in MANU/MH/0629/2002 in the case of CIT v. United Western Bank Ltd. It is not in dispute that the revenue has accepted the aforesaid two judgments of the Bombay High Court. We are in agreement with the view expressed by the Bombay High Court.

19. In a recent judgment in the case of *Mangalam Publications V. Commissioner of Income Tax, Kottayam* (461 ITR 159), the Supreme Court dealt with the 'perennial question in Income tax jurisprudence' relating to re-assessment of income under Section 147 of the Act as in the present case. The defence taken by that assessee, as in the present case, was that the re-assessment proceedings were barred by limitation as the notice had been issued beyond the period of 4 years from the end of the relevant assessment year.

20. Judgments of the Supreme Court in the case of *Kelvinator* (supra), *CIT V. Bimal Kumar Damani* (261 ITR 87), *Srikrishna (P) Ltd. V. CIT* ((1999) 9 SCC 534), *Phool Chand Bajrang Lal V. CIT* ((1993) 4 SCC 77), *CIT V. Lakhmani Mewal Das* (103 ITR 437) and *Calcutta Discount Co. Ltd. V. CIT* (41 ITR 191) were taken into consideration by



WEB COPY

the Court and the re-assessments were ultimately quashed on the ground that the Department had not established any failure on the part of that assessee to make available relevant material for completion of assessment even at the original stage. In that context, the Bench states as follows:

73. It is true that Section 139 places an obligation upon every person to furnish voluntarily a return of his total income if such income during the previous year exceeded the maximum amount which is not chargeable to income tax. The assessee is under further obligation to disclose all material facts necessary for his assessment for that year fully and truly. However, as has been held by the constitution bench of this Court in Calcutta Discount Company Limited (supra), while the duty of the assessee is to disclose fully and truly all primary and relevant facts necessary for assessment, it does not extend beyond this. Once the primary facts are disclosed by the assessee, the burden shifts onto the assessing officer. It is not the case of the revenue that the assessee had made a false declaration. On the basis of the "balance sheet" submitted by the assessee before the South Indian Bank for obtaining credit which was discarded by the CIT(A) in an earlier appellate proceeding of the assessee itself, the assessing officer upon a comparison of the same with a subsequent balance sheet of the assessee for the assessment year 1993-94 which was filed by the assessee and was on record, erroneously concluded that there was escapement of income and initiated reassessment proceedings.

74. We may also mention that while framing the initial assessment orders of the assessee for the three assessment years in question, the assessing officer had made an independent analysis of the incomings and outgoings of the assessee for the relevant previous years and thereafter had passed the assessment orders under Section 143(3) of the Act. We have already taken note of the fact that an assessment order under Section 143(3) is preceded by notice, enquiry and



WEB COPY

hearing under Section 142(1), (2) and (3) as well as under Section 143(2). If that be the position and when the assessee had not made any false declaration, it was nothing but a subsequent subjective analysis of the assessing officer that income of the assessee for the three assessment years was much higher than what was assessed and therefore, had escaped assessment. This is nothing but a mere change of opinion which cannot be a ground for reopening of assessment.

21. In light of the discussion supra, and the admitted and apparent position that the Department has not brought on record any material to establish failure of the Appellant to make a full and true disclosure, the assumption of jurisdiction under section 147 if held to be bad in law. Though the discussion in regard to the assumption of jurisdiction beyond the period of limitation would suffice to allow this writ petition, in the interests of completion, we add a few words on the merits too.

22. The Supreme Court in *TRF Ltd* (supra), has held that post amendment to Section 36(1)(vii) of the Act, with effect from 01.04.1989, all that is necessary for an assessee to claim a bad debt is for reversal or write-off of the debt in the relevant financial year. There is no necessity for a justification that the debt has, in fact, gone bad. The relevant portion of the judgment is extracted below:

For the sake of clarity, we re-produce herein below provisions of Section 36(1)(vii) of the Act, both prior to 1st April, 1989



WEB COPY

and post-1st April, 1989:

"Pre-1st April, 1989:

36. Other deductions. - (1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28--

(i) to (vi)

(vii) subject to the provisions of sub-section (2), the amount of any debt, or part thereof, which is established to have become a bad debt in the previous year.

Post-1st April, 1989:

36. Other deductions. (1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28--

(i) to (vi)

(vii) subject to the provisions of sub-section (2), the amount of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year."

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



WEB COPY



W.A.No.1525 of 2021

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.

Subject to above, the civil appeals filed by the assessee are disposed of with no order as to costs.

23. In the present case, the assessing authority finds that the assessee has, during the year in question written off bad debts of a sum of Rs.4.94 crores, restricted to a sum of Rs.4.07 crores (incidentally, the assessee states that it has filed an appeal as against the said restriction which is pending before the Commissioner of Income Tax (Appeals)). With the aforesaid finding, the claim as regard bad debts is liable to be allowed applying the ratio of the judgement in *TRF Ltd* (supra).

24. The Writ Court has proceeded on the basis that the assessee should be relegated to appeal. In light of the settled legal position as have we have adumbrated above, we see no necessity for the same. This is all the more reinforced by the position that there are no disputed facts at play. Impugned order dated 22.04.2021 is set aside and this Writ Appeal is allowed. No costs.

[A.S.M., J] [G.A.M., J]



W.A.No.1525 of 2021

27.01.2025

Index:Yes

Neutral Citation:Yes

sl

To

- 1.The Deputy Commissioner of Income Tax
Corporate Circle, 1 (2),
121, Mahatma Gandhi Road,
Aayakar Bhavan – Wanaparthi Block,
6th Floor, Chennai – 34.
- 2.The Assistant Commissioner of Income Tax
Corporate Circle, 1 (2),
121, Mahatma Gandhi Road,
Aayakar Bhavan – Wanaparthi Block,
6th Floor, Chennai – 34.



WEB COPY



W.A.No.1525 of 2021

DR. ANITA SUMANTH,J.
and
G. ARUL MURUGAN.,J

sl

W.A. No.1525 of 2021

27 .01.2025