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

ITA-385-2014 (O&M)

Date of Decision:- 03.07.2025

Bharti Bhushan Jindal

....Appellant

Vs.

Commissioner of Income Tax, Ludhiana (Punjab)

....Respondent

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present:- Mr. Divya Suri, Advocate
for the appellant.

Mr. Ranvijay Singh, Senior Standing Counsel,
for the respondent.

SUDEEPTI SHARMA, J.

1. The present appeal under Section 260A of the Income Tax Act, 1961 (for short, 'IT Act'), for Assessment Year 2004-2005 is preferred against order dated 13.07.2012 passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'B', Chandigarh (for short, 'the Tribunal') in ITA No.459/Chd/2011.

BRIEF FACTS OF THE CASE

2. Brief facts of the case, as per pleadings, are that the appellant is engaged in the business of manufacturing of Electric Stabilizers and Rectifiers. In addition to business income declared by the appellant, he had also declared income from capital gains and income from other sources. Under the head 'income from other sources', in addition to bank interest, FDRs, interest on unsecured loans was shown against which, the appellant

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claimed Rs.10,50,000/- as “amount written off unrealizable”. The appellant filed its return of income for the Assessment Year 2004-05 on 26.10.2004 showing income of Rs.1,70,99,800/-. Subsequently the case was selected for scrutiny. Notice under Section 142(2) dated 02.08.2005 was issued and served upon the appellant regarding the aforesaid write off of Rs.10,50,000/- on 10.08.2005. Subsequently, notices under Section 143(2) and 142(1) dated 03.08.2006 along with detailed questionnaire were issued and served upon the appellant on 07.08.2006. Appellant filed its reply dated 28.11.2006. After considering the reply, Assistant Commissioner of Income Tax, Circle-I, Ludhiana, vide order dated 29.12.2006, disallowed the return of unrealized amount of Rs.10,50,000/- and added back the same to the income of the appellant and penalty proceedings under Section 271 (1)(c) of the IT Act were initiated for furnishing inaccurate particulars of account. The appellant filed appeal against order dated 29.12.2006 before the Commissioner of Income Tax (Appeals)-II, Ludhiana, who vide its order dated 07.04.2011, dismissed the appeal. The appellant further challenged the said order dated 07.04.2011 before the learned Tribunal and vide its order dated 13.07.2012, the learned Tribunal dismissed the appeal filed by the appellant. Hence, the present appeal.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES

3. Learned counsel for the appellant contends that giving the loans and advances is a necessity of legitimate earning financing income which could not be ignored and can be taken into account as ‘commercial



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expediency'. He further contends that nature and object of business, *modus operandi*, intention, purpose for which the investment was made should have been taken into consideration. Therefore, he prays that since payments are part of the main income earning activity, hence, claim of the appellant to write off bad debts of Rs.10,50,000/- be allowed.

4. *Per contra*, learned counsel for the respondent submits that the appellant has at the third appellate stage before this Court conjured up a fresh claim stating that the said write off be treated as a capital loss, however, this claim has already been dealt with by learned Tribunal. He further submits that the appellant has offered the income under the head "Income from other sources" provisions for which are enshrined in Section 56 to 59 of the IT Act, the deduction whereof is contained in Section 57 of the IT Act and the said provisions expressly prohibit the allowance of capital expenditure. He, therefore, prays that the present appeal be dismissed.

5.. We have heard learned counsel for the parties and perused the whole record of this case.

6. This Court, vide order dated 15.12.2015, admitted the present appeal for determination of following substantial questions of law:-

- (i) *Whether under the facts & circumstances of the case, the action for rejecting the claim for allowance of bad debts under Section 36(1)(vii) read with Section 36(2) is justified as a revenue item and or capital loss, without considering the stand of 'charging to tax' the recovery so made under Section 41(1) of the Act?*



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(ii) *Whether under the facts & circumstances of the case, the action for rejecting the claim as allowable expenditure the claim as allowable expenditure under Section 37 read with Section 57(iii) is justified as a revenue item without considering the stand of 'charging to tax' the recovery so made under Section 41(1) of the Act?*

7. Before proceeding further, it would be apposite to reproduce the relevant provisions of the IT Act and relevant portion of order dated 13.07.2012 passed by the learned Tribunal, which are reproduced as under:-

Relevant provisions of the IT Act

“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) the amount of any premium paid in respect of insurance against risk of damage or destruction of stocks or stores used for the purposes of the business or profession;

(ii) any sum paid to an employee as bonus or commission for services rendered, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission;

(iii) the amount of the interest paid in respect of capital borrowed for the purposes of the business or profession;

(iv) xxx xxx xxx

(v) xxx xxx xxx

(vi) xxx xxx xxx

(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.



(2) In making any deduction for a bad debt or part thereof, the following provisions shall apply:-

(i) no such deduction shall be allowed unless such debt or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof is written off or of an earlier previous year, or represents money lent in the ordinary course of the business of banking or money-lending which is carried on by the assessee.

57. Deductions.—*The income chargeable under the head “Income from other sources” shall be computed after making the following deductions, namely:—*

(i) xxx xxx xxx

(ii) xxx xxx xxx

(iii) any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income.”

Relevant portion of order passed by learned Tribunal

“6. We have heard the rival contentions and perused the records and also the written submissions filed by the learned A.R. for the assessee. The assessee is sole proprietor carrying on the business of stabilizers and rectifiers under the name and style M/s. Jindal Electric & Machinery Corp. The assessee has furnished the computation of income for the year under consideration at page 6 of the Paper Book, under which it has declared income from business, capital gains and other sources. The income from other sources comprises of interest income received from banks and FDRs and also on unsecured loans. The total interest received on loans by the assessee during the year was Rs.4,17,600/-. The claim of the assessee is



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that it was advancing amounts to different parties for earning interest income against duly executed Hundi/promissory notes. The assessee is filing his return of income from year to year and has constantly shown the said income under the head income from other sources. During the year under consideration the assessee had claimed deduction of amount written off as unrealizable totaling Rs.10,50,000/-The assessee had claimed such deduction on account of non-recovery of the advances made to the under mentioned parties:

- | | | |
|-----------|--|---------------------|
| <i>a)</i> | <i>M/s Kaka Agro Oil Pvt. Ltd.</i> | <i>Rs.3 lacs</i> |
| <i>b)</i> | <i>M/s Jaldhara General Industries</i> | <i>Rs.3 lacs</i> |
| <i>c)</i> | <i>M/s Swaran Fastners</i> | <i>Rs.3 lacs</i> |
| <i>d)</i> | <i>M/s Yuvraj Motors</i> | <i>Rs.1.50 lacs</i> |

7. The above said amounts due from the parties were claimed to be written off in the books of account maintained by the assessee. The assessee has furnished copies of account of the respective parties during the financial year 2003-04 in the books of account of sole proprietary concern of the assessee at page 35 of the Paper Book. The loan of Rs.3 lacs was advanced to M/s. Kaka Agro Oil Pvt. Ltd. on 25.5.2001 and the assessee claims to have received interest upto August, 2002 and no interest was received thereafter. Similarly, the sum of Rs.3 lacs was advanced to M/s. Swaran Fastners on 24.11.1997 and no interest has been received after March, 1999. Further sum of Rs.3 lacs was advanced to M/s. Jaldhara General Industries on 26.3.1997 and interest was received upto September, 1998 and no interest thereafter. A sum of Re 2 lacs was advanced to M/s Yuvraj Motors on 23.6.1997, out of which sum of Rs.50,000/- was received back on 6.6.2001 and the interest was received upto March, 2001. The assessee has placed copies of the accounts of the respective parties at pages 36 to 46 of the



Paper Book. The consolidated statement of interest received from the said loanees has been placed at page 47 and total interest received from the said parties was Rs.4,43,550/-. It may be placed on record that the perusal of the copies of the account reflect the payment of interest vide cheques by the respective parties on different dates. Because of the non-payment of the interest and non-recovery of the loan by the assessee, Court proceedings were instituted against M/s. Swaran Fastners and copy of the suit for recovery of Rs.3 lacs along with interest is placed at pages 48 to 56 of the Paper Book. The decree in the case was passed on 2.6.2006 in favour of the assessee. The assessee has also filed another civil suit against M/s. Jaldhara General Industries for the recovery of Rs.3 lacs along with interest and copy of the suit is placed at pages 59 to 69 of the Paper Book. The plea of the assessee was that in view of the above said facts the said amount being not realized by the assessee was to be allowed as a deduction against the interest income earned by the assessee, as the assessee was engaged in the business of money lending.

8. *The learned AR for the assessee has brought to our attention the assessment order in the case of HUF of the assessee relating to assessment year 2004-05 and also in the case of his wife Mrs. Manju Jindal relating to assessment year 2004-05. Copies of the computation of income of the respective parties along with orders passed under Section 143(3) of the Act have been placed on record. The perusal of the respective years reflects mere allowance of the claim without any discussion on the issue.*

9. *Now coming to the issue before us, the assessee is carrying on the business of sole proprietary concern. During the course of the said carrying on of business certain amounts*



have been advanced by the assessee on interest against duly executed Hundi/ promissory notes. The assessee had furnished Profit & Loss Account, Balance Sheet from its sole proprietary concern, but had offered the income of interest received on unsecured loans as income from other source from year to year. The said interest is being offered as income from other sources in the hands of the assessee from year to year. Against the said interest income assessed under Section 56 of the Act, deductions as prescribed under Section 56 of the Act, deductions as prescribed under Section 57(iii) of the Act are allowable thus any expenditure incurred by the assessee for earning the income is allowable as a deduction under Section 57(iii) of the Act. Any expenditure in the nature of capital expenditure is not to be allowed as a deduction as prescribed under Section 57(iii) of the Act. Coming to the claim of assessee wherein it had treated the amounts advanced as loan but not realized by it, as a deduction, we find no merit in the said claim in view of the provisions of Section 57(iii) of the Act. The alternate plea of the assessee was that the said expenditure is allowable in the hands of the assessee in view of Section 36(2) (i) of the Act i.e. bad debts. The said claim of the assessee is not maintainable as firstly the said amount is to be offered as income from business and deduction is to be allowed of an amount written off which has been taken into account in computing the income of the assessee of the previous year in which the said amount has been so written off or in any of the previous year/s. Admittedly, the assessee has only shown the interest income arising on the advances made by it as its income and the capital advanced by the assessee is a capital outflow and has not been recognized as receipt/ income in its hands in the earlier years or even in the year under



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consideration. The said plea of the assessee of allowing loss representing bad debts is thus dismissed. The assessee is entitled to any expenditure incurred by it in relation to the interest income earned by it on the amounts advanced in view of the provisions of Section 57(iii) of the Act and no capital outflow is to be allowed as a deduction, while computing the income in the hands of the assessee under the head income from other sources. In the totality of the facts and circumstances of the case we find no merit in the claim of the assessee vis-à-vis of the claim of deduction of Rs.10,50,000/-. The grounds of appeal raised by the assessee are dismissed.

10. In the result, the appeal of the assessee is dismissed.”

8. A bare perusal of the above referred to order dated 13.07.2012 passed by the learned Tribunal shows that it has categorically discussed each and every aspect of this case by taking into consideration all the documents on record and therefore, does not require any interference.

ANALYSIS OF RECORD

9. For the Assessment Year 2004-05, the appellant filed its return of income on 26.10.2004 showing income of Rs.1,70,99,800/-. The case of the appellant was selected for scrutiny. It was noticed by the Assessing Officer that the appellant had claimed Rs.10,50,000/- as “amount written off unrealizable”. As per provisions of Section 36(2) of the IT Act, no deduction for a bad debt or part thereof shall be allowed unless such debt or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof is “written off” or of an earlier previous year or represents money



lent in the ordinary course of the business of banking or money lending which is carried on by the assessee.

10. As per the record, the amount claimed as bad debt was never taken into account in computing income of the appellant in any other previous years. Neither it is part of the sales nor it is part of the debtors during the year or any previous year. It is evident from the record that this amount is part of loan, which the appellant had given during earlier years and which has become irrecoverable during the Assessment Year 2004-05. The appellant was receiving “interest income” on such loans given. The IT Act clearly mentions that bad debt can represent money lent in the ordinary course of business of the banking or money lending. Admittedly, the appellant is not in the business of money lending. Though, in the reply filed before the Assessing Officer, the appellant submitted that it had been into money lending business for a long time, whereas, this seems to be a sudden claim by stating that it is engaged in money lending business. Since in its Auditor’s Report in Form 3CD, the appellant clearly mentioned that it is engaged in “Manufacturing of Electric Stabilizers and Rectifiers”. There is no mention of money lending business in the Assessment Year 2004-05 or in any of the previous years.

11. Further, the appellant himself has shown the interest as “income from other sources” in the computation of income. Had the appellant been in the business of money lending, this income would have been reflected as “business income”. As per books of accounts, which were produced before



the Assessing Officer, the same reveals that no separate books of accounts for the business of money lending were being maintained, whereas, certain transactions of money lending were incorporated, which shows that the appellant was not into a regular business of money lending and used to lend money out of its surplus capital from time to time. This would not amount to or named as “into the money lending business”. The appellant claimed that since the only requirement of allowability of bad debts under Section 36(2)(i) is of deductions to be written off irrecoverable, therefore, it should be allowed, whereas, under Section 36(2)(i), it has been specifically mentioned that bad debt can be allowed if the “written off” amount which was already shown in any previous year. Further, this bad debt was a loan given by the appellant not engaged in money lending business, which was never reflected as part of the income of the appellant. Therefore, despite being “written off”, this amount was not allowed as a bad debt during the Assessment Year 2004-05. The appellant in its statement of facts has categorically admitted that in the computation of income, income by way of interest on money lending was being shown and assessed under the head “other source” whereas the same was to be accessible under the head “income from business”. Therefore, the amount “written off unrealized” to the tune of Rs.10,50,000/- was rightly disallowed by the Assessing Officer-cum-Assistant Commissioner of Income Tax, Circle-I, Ludhiana.

12. The substantial questions of law as referred to above are accordingly answered against the appellant and in favour of the respondent.

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There is no infirmity, illegality in the impugned order dated 13.07.2012 passed by learned Tribunal. Same is thus upheld.

13. In view of the above discussion and after perusing the whole record of assessment of the appellant, we do not find any merit in the present appeal and the same is hereby dismissed.

14. Pending application(s), if any, also stand disposed of.

(LISA GILL)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

03.07.2025
Virender

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No