IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2026

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

T.C.A.No.193 of 2014

M/s. Deccan Estates
No.24, Dr.B.N.Road,
T.Nagar,
Chennai – 600 017. .. Appellant

vs

The Deputy Commissioner of Income Tax,
Company Circle III(4),
Chennai 600 034. .. Respondent

Prayer: Appeal filed under Section 260A of the Income-Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench dated 23.09.2013 in ITA No. 1060/Mds/2013.

For Appellant : Mr.R.Vijayaraghavan
for M/s. Subbaraya Aiyar Padmanabhan Ramamani

For Respondents : Mr.D.Prabhu Mukund Arunkumar
Senior Standing Counsel

JUDGMENT

*(Delivered by Dr. ANITA SUMANTH.,J)*

The appellant is the assessee, a builder, and had entered into a joint venture agreement on 10.12.1995 with landowners for development of their property under the project named 'Deccan Enclave' (property/property in question). In the financial year relevant to assessment year (AY) 2008 – 09, the appellant claimed write-off under Section 36(1)(vii) of the Income Tax Act, 1961(in short, 'Act'), of an amount of Rs.50 lakhs that the appellant claimed he had advanced to the landowner.

2. The assessing authority negated the claim, being of the view that the claim did not satisfy the conditions under Section 36(2) of the Act. Before the assessing authority, an alternate claim was also put forth, that the expenditure was allowable as business expenditure.

3. The assessing authority accepts the position that the loss was incidental to the business of the assessee, and that it could have been allowed as business expenditure under Section 37(1) of the Act, had it been so claimed in the relevant assessment year. However, as the expenditure had been incurred in financial year 1999-00, the assessing authority concluded that the claim could not be entertained in the subject assessment for AY 2008-09.

4. An appeal was filed before the Commissioner of Income-Tax (Appeals) (CIT(A)) relying upon the judgment of the Supreme Court in *TRF Industries v Commissioner of Income Tax*[1]. The appellant did not

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1 323 ITR 397

pursue the alternate claim in first appeal. The appeal was allowed on the ground that a bad debt does not require to be proved to be irrecoverable, and it would suffice if it were written off.

5. As against the order in first appeal, the Revenue instituted a second appeal before the Income Tax Appellate Tribunal (ITAT/Tribunal) contending that the condition under Section 36(2), that the bad debt ought to have been taken into account in computing the income of the assessee in a previous year in which the amount of such debt or part thereof had been written off, had not been complied in this case.

6. The Tribunal accepted the case of the Revenue and allowed the appeal on 23.09.2013, as against which the present appeal has been filed, that has been admitted on 06.08.2014 on the following question of law:-

> *Whether in the facts and circumstances of the case, the advances given in the course of construction business, which become irrecoverable and written off in the books of account, is allowable as business loss?*

7. While passing the order on admission, the Court has categorically noted that in light of the decisions in C*ommissioner of Income Tax v Inden Bislers*[2] and *Badridas Daga v Commissioner of Income Tax*[3], there is no avenue for the assessee to pursue the claim of bad debt under Section 36(1)(vii) and the only question of law that may

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2 181 ITR 69
3 34 ITR 10

be pursued relates to the caption of 'business loss'.

8. Mr.Vijayaraghavan argues that the write off would qualify as a business loss as it was wholly incidental to the conduct of business. He draws attention to the finding in the assessment order that the incurrence of expenditure of Rs.50 lakhs was *'in the nature of business expenditure allowable as per Section 37(1) of the Income-Tax Act'*. Having found so, the assessing authority erred in not accepting the claim as a business loss.

9. Learned counsel cites the decision of the Bombay High Court in *Harshad J Choksi v Commissioner of Income Tax*[4], wherein the High Court has considered a similar situation, concluding that if a claim was found not to be allowable under Section 36(1)(vii), then the Tribunal ought to consider the alternate claim as a trading / business loss.

10. To similar effect, he cites the decision of the Delhi High Court in *Mohan Meakin Limited v Commissioner of Income Tax*[5] holding that merely because the claim was denied under one particular provision of law, the assessee is not debarred from raising a legal question in regard to eligibility under Section 37 of the Act. In this case as well, he would argue that the claim ought to have been considered as a business loss if the Tribunal was of the view that Section 36(1)(vii) was inapplicable.

11. Per contra, Mr.Prabhu argues that the amount could well have

4 349 ITR 250
5 348 ITR 109

been accepted as a business loss, had it been claimed in the appropriate year. The expenditure had admittedly been incurred in financial year 1999 – 00, and hence the claim ought to have been made in the relevant assessment year only.

12. He further points out that the appellant has not pursued the alternate claim of business or trading loss before the first appellate authority, choosing instead to reiterate its claim on the premise of Section 36(1)(vii) alone, and the judgment of the Supreme Court in the case of *TRF Industries*[6].

13. On the facts, he draws attention to the order of assessment where the officer has recorded that the claim of expenditure by the appellant had been rebuffed by the land owners. Vide letter dated 08.05.1999, Ponnuswami, along with other joint landowners, had specifically rejected his claim, stating that the amount of Rs.50 lakhs had been adjusted as against delay in execution of the works carried out by the assessee.

14. After such adjustment, the landowners have put forth a counter claim of a sum of Rs.1,03,520/-. It is unknown as to what has transpired in relation to this matter thereafter. In fact, the power of attorney executed by the land owners in favour of the appellant had been cancelled by them

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6 Footnote supra 1

as against which, a writ petition had been filed by the assessee. There are no details or record in relation to that writ petition or the fate of the same.

15. However, the assessing authority has noticed that that writ petition did not deal with the issue of adjustment of dues from the above deposit, and hence there is nothing on record to establish that the appellant had, at any point in time, challenged the adjustment of the advance by the land owners. In light of the aforesaid, learned Standing counsel would urge that the appeal be dismissed.

16. We have heard both learned counsel and perused the material papers.

17. The undisputed facts are that the assessee is a real estate company and had entered into agreement dated 10.12.1995 for joint venture and development of the property in question, with Ponnuswami, Ponsudha, S.Vasanthi, M.Lakshmi, O.A.Karuppannan. The appellant had made an advance of Rs. 50 lakhs that, vide letter dated 08.05.1999, the land owners confirm having adjusted as against the delay in construction. For their part, they had raised a counter claim.

18. We agree with the Revenue that the claim of trading loss had crystallized at that point in time. Thus, while the nature of the debt is a business or trading loss, the claim in respect thereof ought to have been made at that juncture. In the present case, the business loss that arose

from a transaction in the year 1999 has been claimed in financial year 2007-08.

19. This Court in *Inden Bislers*[7], has held that any loss that is incidental to trade, other than a capital loss, is allowable on ordinary commercial principles, relying on the judgment in *Badridas Daga*[8], that states as follows:-

> *"While s.10 (1) of the Indian IT Act, 1922, imposes charge on the profits or gains of a business, it does not provide how these profits are to be computed. Sec.10(2) enumerates various items which are admissible as deductions but they are not exhaustive of all allowances which could be made in ascertaining the profits of a business taxable under s.10(1). Profits and gains which are liable to be taxed under s.10(1) are what are understood to be such under ordinary commercial principles."*

20. In such a case, it would have been incumbent upon the authorities to consider the alternate claim under Section 28, if the primary claim under Sections 36(1)(vii) or 37 had failed. However, it is also necessary that the materials to support the alternate claim ought to have been placed by the assessee on record.

21. In the present case, there is no material available on record to support the alternate claim under Section 28 and the assessee has itself not pursued the claim in first appeal. Reliance on the decisions in

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7 Footnote supra 2
8 Footnote supra 3

*Harshad*[9] and *Mohan Meakin Ltd*[10] thus do not advance the case of the appellant.

22. Further, a claim under Section 28 has to be incidental to the conduct of business. The business in this case, a joint development of the property in question, commenced in 1995. There is nothing on record to indicate how long the business continued or when it ended.

23. On oral instructions, Mr.Vijayaraghavan submits that the last sale had been in August, 2006. This date is not part of the record, but even going by the same, had the business come to an end in August, 2006, the claim ought to have been made in assessment year 2007-08. In the above circumstances, we are unable to accept the submissions of the Appellant.

24. The question of law is answered in favour of the Revenue and adverse to the assessee and this appeal is dismissed. No costs.

[A.S.M, J.] [M.S.K, J.]
22.01.2026

Index:Yes
Neutral Citation:Yes
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9 Footnote supra 4
10 Footnote supra 5

To

1.The Deputy Commissioner of Income Tax,
Company Circle III(4),
Chennai 600 034.

2.The Income Tax Appellate Tribunal, Madras ‘A’ Bench,
Chennai.

DR. ANITA SUMANTH,J.
and
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