

06.10.2009

In the High Court of Judicature at Madras

Dated : 05.10.2009

Coram :-

THE HONOURABLE MR.JUSTICE F.M.IRBRAHIM KALIFULLA
and
THE HONOURABLE MRS.JUSTICE R.BANUMATHI

Tax Case (Appeal) No.912 of 2009

Commissioner of Income Tax-III
Chennai.

.. Appellant

vs.

M/s.Rajini Investment Pvt. Ltd.
(Now known as Ranjani Enterprises P. Ltd.)
45, Poes Road, II Floor, Teynampet
Chennai 600 018.

.. Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal 'D' Bench, Chennai, dated 31.03.2009 passed in I.T.A.No.715/Mds/2008.

For Appellant : Mr.K.Subramanian
Senior Standing Counsel for Income-tax

J U D G M E N T

(Judgment of the Court was delivered by F.M.IBRAHIM KALIFULLA,J.)

The Revenue has come forward with the above appeal raising the following substantial question of law:

"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee was entitled to claim deduction for bad debts of Rs.38,20,417/- in respect of the money lending

business which was closed down during the accounting year relevant to the assessment year in 1998-99, without following the ratio of the decision of the Supreme Court in the case of Commissioner of Income Tax vs. Gemini Cashew Sales Corporation (65 ITR 645) and contrary to the provisions of Section 36(2)(i) of the Income Tax Act?"

2. The issue relates to the assessee's claim in writing off of a sum of Rs.38,20,417/- as bad debts in the assessment year 1998-99. The claim for such deduction was made based on the provision contained in Section 36 of the Income-tax Act. The Assessing Authority as well as the Commissioner of Income-tax (Appeals) by making a reference to Section 36(2)(i) of the Act, took the view that since the assessee discontinued his money lending business subsequent to the relevant assessment year, the claim for deduction by way of bad debts was not permissible. The Tribunal, however, by interpreting Section 36(2)(i) of the Act, held that the assessee, having suffered a bad debt, as a matter of fact in the relevant assessment year relatable to the previous year, was entitled for the deduction. The Tribunal's reasoning as found in paragraph 5 can be usefully referred to, which reads as under:

"5. We have considered the rival submissions carefully in the light of the material on record. We find that Sec.36(2)(i) of the I.T. Act reads as under:-

"(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.]

The only condition for claiming bad debt is that such amount should represent money lending in ordinary course of business of banking or money lending. It is not denied that money was lent in the ordinary course of business when this money lending activity was carried on by the Assessee in the earlier years. We further find that when an assessee is having a composite business then such bad debt has to be allowed. In this regard, the decision of the Hon'ble Jurisdictional High Court in the case of TS Srinivasa Iyer (supra) are reproduced below:-

"Held, that the facts on record showed that the assessee was doing a composite and integrated business in films. The entire business was under one common management and there was interlacing, interlocking and unity of control among the various lines of business. Even after certain assets were transferred to the minor Hindu undivided family in the partition arrangement, the assessee was doing business in films. Simply because one line of business was closed or that part of the business assets relating to cine colour processing was transferred to the minor Hindu undivided family, it would not mean that the assessee had

discontinued its entire business in films. The bad debts amounting to Rs.17,693/- and the expenses amounting to Rs.21,682/- were deductible from the profits of the continuing business."

Further, the Hon'ble Calcutta High Court in the case of CIT v. Western Bengal Coal Fields Ltd. (233 ITR 139), while dealing with the claim for interest approvingly quoted the observations of the Hon'ble Supreme Court in the case of Veecumsees v. CIT (220 ITR 185). The relevant portion is reproduced below:-

"... The Tribunal was, in our view, right in concluding that such interest had to be treated as a deduction under Section 36(1)(iii). The loans had been obtained for the purpose of the assessee's business. The fact that the particular part of the business for which the loans had been obtained had been transferred or closed down did not alter the fact that the loans had, when obtained, been for the purpose of the assessee's business. The test of 'same business' appropriate for set-off of carry forward losses is not appropriate here."

Thus, it is clear that the condition regarding continuation of same business is relevant only for the purpose of setting off of all carry forward of loss. In these circumstances, we set aside the order of the CIT(Appeals) on this issue to the file of the Assessing Officer and direct him to allow the claim for bad debt."

3. We are in full agreement with the reasoning of the Tribunal. In our opinion, for disentitling an assessee for a deduction by way of bad debt as stipulated under Section 36(2)(i) of the Act, it will have to be shown that such claim was not taken into account in computing the income of the assessee of the previous year or on an earlier previous year, in which the amount of such bad debt was written off. That is not the case of the revenue. Therefore, merely because the money lending business was subsequently discontinued, that is in the subsequent accounting year relating to the relevant assessment year, it cannot be held that the assessee was disentitled to claim such a deduction though such claim as bad debt was, as a matter of fact, not in dispute. We, therefore, endorse the views of the Tribunal while upholding the order of the Tribunal.

4. As far as the reliance placed upon the decision reported in 65 ITR 645 Commissioner of Income-tax vs. Gemini Cashew Sales Corporation is concerned, that was a case relating to a transfer of business by the assessee, to which the provisions of Section 25FF of the Industrial Disputes Act, would apply. The amount sought to be written off as bad debt, was the retrenchment compensation, which became payable by the assessee by virtue of the transfer, which has been provided for under Section 25FF of the Industrial Disputes Act. Certainly, that was a statutory liability, which the assessee in that case was bound to meet when a transfer of establishment occurred. Such a statutory liability could not have been claimed as a bad debt merely because the assessee

discontinued his business activities. Therefore, the ratio laid down in the said decision can have no application to the facts of this case. We do not find application of Section 36(2)(i) of the Act, to result in a disallowance. The appeal, therefore, fails and the same is dismissed.

Index : Yes

(F.M.I.K.J) (R.B.I.J)

Internet : Yes

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ATR

To

1. The Secretary
Central Board of Direct Taxes
New Delhi.
2. Income Tax Appellate Tribunal
Madras 'D' Bench
Madras.
3. The Commissioner of Income Tax (Appeals)-IX
Chennai.
4. The Income Tax Officer (OSD)
Company Circle-V(3), Chennai.

F.M.IBRAHIM KALIFULLA,J

and

R.BANUMATHI,J.

ATR

TC (A) No.912 of 2009

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