

आयकर अपीलिय अधीकरण, न्यायपीठ – “A” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “A” KOLKATA*

Before **Shri Aby.T Varkey, Judicial Member** and
Shri Waseem Ahmed, Accountant Member

ITA No.1951/Kol/2014
Assessment Year :2008-09

DCIT, Circle-4(2), 4 th Floor, Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-69	V/s.	M/s Mega Resources Ltd.10, Clive Row, 3 rd Floor, Kolkata-01 [PAN No.AADCM 5397 E]
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

C.O. No.103/Kol/2014
(a/o ITA No.1951/Kol/2014)
Assessment Year:2008-09

M/s Mega Resources Ltd.10, Clive Row, 3 rd Floor, Kolkata-01	V/s.	DCIT, Circle-4(2), 4 th Floor, Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-69
Co-objector	..	प्रत्यर्थी/Respondent

आवेदक की ओर से/By Assessee	Shri S. Jhajhari, FCA
राजस्व की ओर से/By Respondent	Shri David Z. Chowngthu, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	11-10-2017
घोषणा की तारीख/Date of Pronouncement	06-12-2017

आदेश /ORDER

PER Waseem Ahmed, Accountant Member:-

This appeal as well as Cross Objection (CO) by the Revenue and assessee is directed against the order of Commissioner of Income Tax (Appeals)-I, Kolkata dated 02.07.2014. Assessment was framed by DCIT, CC.-VII, Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred

to as 'the Act') vide his order dated 27.12.2010 for assessment year 2008-09. The appeal and CO are disposed off by this common order for the sake of conveyance.

Shri David Z. Chowngthu, Ld. Departmental Representative appeared on behalf of Revenue and Shri S.Jhajharia, Ld. Authorized Representative appeared on behalf of assessee.

2. The Revenue has raised following revised grounds:-

" 1. The Ld. CIT(A) erred in law as facts in deleting Rs.48,76,650/- out of total disallowance of Rs.1,10,50,904/- on account of bad debt, ignoring the fact that it was not clarified whether money advanced was for purchase of shares or otherwise and that Sch-9 of the balance sheet clearly shows that Debt outstanding for more than 6 months as on 31.03.2007 is Rs.60,91,791/- and Rs.13,65,504/- as on 31.08.2008.

2. The Ld. CIT(A) erred in not appreciating the fact that borrowed fund was utilized in extending interest free advances of Rs.35 lakh.

3. That the appellant craves for leave to add, delete, amend o modify any ground before or at the time of appellate proceedings."

The assessee has raised following ground for its CO:-

"1. For that in view of the facts and circumstances of the case the Ld. CIT(A) was wholly wrong and unjustified in allowing only partial relief of Rs.48,76,650/- (out of the assessee's company's total bad debt claim of Rs.1,10,50,904/- as deduction u/s. 36 of the Act, but disallowed in the assessment) and arbitrarily confirming the disallowance of the balance bad debt claim of Rs.61,74,254/- without considering and appreciating the full facts of the case and the past records.

2. For that your petitioner craves the right to put additional grounds and/or to alter/amend/modify the present grounds before or at the time of hearing."

3. First issue raised by Revenue is that Ld. CIT(A) erred in deleting the addition made by the Assessing Officer for ₹48,76,650/- on account of bad debts written off.

4. Briefly stated facts are that the assessee is a limited company and engaged in the business of share dealings and money lending as principal business activity. The assessee during the year has debited its profit and loss

account for ₹1,10,50,904/- under the head bad debts. The relevant details of bad debt written off stand as under:-

Sl.no	Name of the parties	Amount	Remrk(s)
1	Indiabulls securities	13,924	Sale of securities
2	Karvey stock broking	1,36,519	-do-
3	BP securities pvt. Ltd	47,26,207	-do-
4	Willards India Ltd.	59,28,712	Loan given on interest (amount comprises of principal & interest i.e. Rs. 30 lacs plus 29,28,712)
5	Advance of staff	1,28,042	Advance to staff
6	Advance to staff	62,500	-do-
7	Legal advance	55,000	Advance against the legal expenses

The assessee claimed to have written off all the advances in the course of business therefore, all the bad debts are eligible for deduction. However, AO disagreed with the contention of the assessee on the ground that assessee has shown debts outstanding for more than six months only for ₹60,91,791/- and ₹13,65,504/- as on 31.03.2007 and 31.03.2008 respectively. Therefore the question claiming the bad debts for Rs. 1,10,50,904.00 does not arise. Thus, the AO opined that the amount of advance written off does not actually represent the bad debt. Accordingly, the AO disallowed the claim of ₹1,10,50,904/- and added to the total income of assessee.

5. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Id. CIT-A submitted that amount of Rs. 13,924.00, 1,36,519.00 & 47,26,207.00 represents the amount due from Indiabulls securities, Karvey stock broking and BP securities pvt. ltd on account of sale of shares. The sale amount of the above transactions were duly accounted for in the books of accounts of accounts and offered to tax.

The Id. CIT-A after considering the submission of the assessee deleted the addition made by the AO by observing as under:-

“the Id. AR has placed on record relevant documents in support of his contentions. In this factual background, I find merit in the claim of the assessee that the above amounts written off in the books of account are allowable as bad debt.

The assessee before Id. CIT-A further submitted that sum of Rs.59,28,712/- is inclusive of principal and interest of Rs. 30,00,000.00 and 29,28,712.00 only which was due from Willards India Ltd. The amount of Rs. 29,28,712.00 is representing the amount of unrealised interest prior to the AY 2001-02. The assessee further argued that the amount of loan was given in the course of business therefore the same should be allowable as deduction.

However the Id. CIT-A rejected the contentions of the assessee and confirmed the order of AO by observing as under:-

“I am not impressed with the argument that the principal amount is allowable as bad debt. Also, the assessee has failed to bring on record any material to show that the unrealized interest of Rs.29,28,712/- prior to the assessment year 2001-02 was actually considered as income in the relevant years. In view of the above, the AO was justified in not accepting the claim of Rs.59,28,712/ .”

The Id. CIT(A) also confirmed the other additions made by the AO, as discussed above by observing as under :

“I find from the submissions of the assessee that the claim of Rs.1,28,042/- and Rs 62,500/- relate to advances to staff whereas that of Rs.55,000/- pertains to advance against legal expenses. I agree with the AO that these claims are not allowable as bad debt. In effect, the claim of bad debt is restricted to Rs.48,76,650/-. The addition of Rs.61,74,254/- is confirmed. Ground no 2 is partly allowed.”

The Revenue, being aggrieved is in appeal and assessee also filed CO before us.

6. The Revenue came in appeal for the relief granted by the Id. CIT(A) for the bad debts written off on account of sales to Indiabulls securities, Karvey stock broking and BP securities Pvt. Ltd for the sale of shares for Rs. 13,924.00, 1,36,519.00 & 47,26,207.00.

The assessee is in CO for the additions confirmed by the Id. CIT(A) for Rs. 61,74,254.00 as discussed above.

First we take up the ground of appeal of the Revenue

7. The Ld. DR before us vehemently relied on the order of AO and he stated that the matter may be decided on merit.

On the other hand, Ld. AR filed paper book which is running pages from 1 to 134 and submitted that the claim for the bad debts was made in respect of following parties:-

Name of the party	Amount	Remarks
Indiabulls Securities	13,924/-	standing in sundry debtors. this is due against hare purchased/sold from them.
Karvey stock broking	1,36,519/-	-do
Dinesh KR. Singhania (-)	20,81,850/-	Lying since 2002 and related with BPS Securities
BP Securities Pvt.Ltd	68,08,057/-	Lying since 2002 and related with Dinesh Singhania

He further submitted that the shares were sold to the above parties and corresponding sales were duly shown in the IT return which was duly accepted by Revenue. So the bad debt written off was claimed within the provision of law as specified under section 36(1)(vii) of the Act. Ld. AR in support of assessee's claim drew our attention on pages from 6 to 19 where the ledger copies of all the aforesaid parties were placed. He relied on the order of Ld. CIT(A).

8. We have heard the rival contentions of both the parties and perused the material available on record. In the instant case, the disallowance of bad debt was made by the AO on the ground that the amount of bad debt claimed in the profit and loss account vis-a-vis corresponding opening and closing balance of the debtor are not matching. Therefore, the addition was made by the AO. However, on perusal of the details filed by assessee, we note that the sale of Shares for Rs. 13,924.00, 1,36,519.00 & 47,26,207.00 to Indiabulls securities, Karvey stock broking and BP Securities Pvt. ltd were duly accounted for in the

books of accounts of assessee. Therefore, we hold that the assessee is entitled to claim the deduction in respect of bad debt as discussed above. Thus after considering the facts in totality, we do not find any infirmity in the order of Ld. CIT(A). Consequently, ground raised by Revenue is dismissed.

Now coming to the ground raised by the assessee in its CO

9. The Id. AR before us submitted that the assessee has claimed deduction under the head bad debts in respect of following items:-

<i>Willards India Ltd</i>	<i>59,28,712/-</i>	<i>Unrecoverable interest</i>
<i>Advances to staff</i>	<i>1,28,042/-</i>	<i>Advances given to staff adjustable against dues.</i>
<i>A. Chatterjee</i>	<i>55,000/-</i>	<i>Advance given for legal expenses</i>
<i>Advance for expenses</i>	<i>62,500/-</i>	<i>Advance given to staff for company's expenses, but remain unaccounted due to leaving the organization by the staff.</i>

The amount shown in the name of Willards India Ltd. is representing the loan provided to it in the course of business which is inclusive of principal amount of Rs. 30,00,000.00 and interest amount of ₹29,28,312/-. The amount of interest was duly offered to tax in the earlier year.

The Ld. AR further submitted that the main business of assessee is dealing in shares and to lend the money as evident from the memorandum of association of company, which reads as under:-

"2. To carry on business of an investment company or an investment trust company or to undertake and transact trust and agency investment, financial business, financiers and for that purpose to lend or invest money and negotiate loans in any form or manner, to draw, accept, endorse, discount, buy, sell and deal in bills of exchange."

Thus, Ld. AR also submitted that the amount of interest has already been offered to tax in the earlier year for ₹29,28,712/-, therefore it is very much eligible for deduction in the year under consideration. The Id. AR also submitted that the balance amount representing the principle amount for ₹ 30 lakh which was given in the course of assessee's business. Therefore, the principal amount should be allowed as deduction u/s 28 of the Act.

Ld. AR further submitted that the amount of advance given to the staff and the amount of advance for legal expenses represent the transaction in the course of assessee's business and therefore, the same is eligible for deduction u/s 28 of the Act.

On the other hand, Ld. DR relied on the order of Authorities Below. He requested the Bench to confirm the same.

10. We have heard rival contentions and perused the material available on record. The issue in the instant case relates to the advance written off in the year under consideration. The necessary and relevant details of advance have already been discussed above. Therefore the same is not repeated herewith for the sake of brevity.

10.1 As far as advance given to the staff and for legal expenses are concerned, we find that it was provided in the course of business therefore these are eligible for deduction u/s 28 of the Act. In holding so, we draw support and guidance from the order of Hon'ble Calcutta High Court in the case of *CIT Vs. Dhawan Investment & Trading Co. Ltd.* reported in 100 taxman 562 wherein it was held as under :

"Whether the premises were taken on rent for the purpose of business or not, the concurrent finding was that it was taken for the purpose of business. Therefore, the questions being raised on findings of fact, findings could not be said to be perverse."

Similarly we draw support and guidance from the order of Hon'ble Gujarat High Court in the case of *CIT Vs. Gujarat Narmada Valley Fertilizers Co. Ltd.* reported in 218 taxman 122. The following question of law was framed before the Hon'ble Court.

- (ii) *Whether on facts and in the circumstances of the case, Tribunal has erred in law in deleting disallowance of Rs. 21,08,918/- made on account of advance written off without appreciating that provisions of Section 36(1)(vii) were not applicable and the business loss had not crystallized yet?"*

The relevant finding of the Hon'ble Court in the above case stands as under:

“5. Considering the fact that the amount of Rs.14,22,273/- was advance to the Co-operative Society, whose members are the employees of the assessee-Company, to run the petrol pump for the employees of the assessee, however, the Co-operative Society instead of running the petrol pump gave it to the contractor who defrauded the Society and it was found by the assessee that the aforesaid amount was not recoverable at all, the assessee written off the same as business loss and claimed deduction under Section 36(1)(vii) of the Act. The Assessing Officer disallowed the same, which was confirmed by the CIT(A), which came to be set aside by the learned tribunal and the learned tribunal by impugned order deleted the said disallowance of Rs.21,08,918/-, which was given on advance and, therefore, it cannot be said that the learned tribunal has committed any error and/or it raises any question of law, much less substantial question of law. Under the circumstances, we see no reason to interfere with the said appeal and the said appeal deserves to be dismissed and is accordingly dismissed.”

Thus, we are inclined to hold that the addition on account of advance given to the staff and legal expenses are not sustainable in the given facts & circumstances.

12. Now coming to the advance given to M/s Willards India Ltd., for ₹59,28,712/- inclusive of interest of ₹29,28,712/-. In this regard, Ld. AR before us demonstrated that interest income to the tune of ₹20 lakh was recognized in the assessment year 1997-98. The relevant details stand as under:-

Mega Resources Ltd.
For the year ended 31.03.97
Assessment Year: 1997-98

<i>Sub-schedule of Schedule 12</i>		<i>Details of income</i>	
<i>Interest received</i>	<i>Gross</i>	<i>TDS</i>	<i>31.3.97 NET</i>
<i>Willards India</i>	<i>2,000,000</i>	<i>435.014</i>	<i>1,564.986</i>
<i>Aravali Securities</i>	<i>1,755,099</i>	<i>385.240</i>	<i>1,369,849</i>
<i>Hemlatha Textiles</i>	<i>900,000</i>	<i>195,757</i>	<i>704,243</i>
<i>Duncn Industries</i>	<i>1,786,026</i>	<i>400,658</i>	<i>1,385,368</i>
<i>Asian Cables</i>	<i>2,796,164</i>	<i>612,883</i>	<i>2,183,281</i>
	<i>9,227,289</i>	<i>2,029,552</i>	<i>7,207,737</i>

However, assessee before us did not bring any evidence to demonstrate the balance amount of interest income for ₹9,28,712/- (29,28,712.00 – 20,00,000.00) whether such income was offered to tax or not.

However, on perusal of details we note that assessee has been carrying the business of share dealing as well as money lending. This fact has not been doubted by the lower authorities. However we note that the documentary evidence showing the income of Rs. 20 lacs offered to tax was not brought to the notice of the lower authorities. Thus, in our considered view, the issue for the deduction of loan written off needs to be reconsidered by the Id. CIT-A in accordance with the law and in the light of above discussion. Therefore we are inclined to restore the issue to the file of Id. CIT-A. Thus the ground of appeal of the assessee is partly allowed for the statistical purposes.

13. In the result, assessee's CO is partly allowed for statistical purposes.

14. Next issue raised by Revenue in this appeal is that Ld. CIT(A) erred in deleting the addition made by the AO for ₹35.59 lakh on account of diversion of interest bearing fund to non-interest bearing loan.

15. The AO during the course of assessment proceedings observed that the borrowed capital has been mainly utilized for the purpose of share and interest free advance. Therefore, the AO disallowed the amount of interest for ₹35,59,793/- and added to the total income of assessee.

16. Aggrieved, assessee preferred an appeal before Ld. CIT(A). Before Ld. CIT(A) assessee contended that investment in shares and interest free advance were made out of its own capital and reserve. The assessee in support of its claim furnished the following details:-

Capital reserve	₹114.75 Cr	Advance	₹ 56.29 Cr
		Investment in share	<u>51.21 Cr</u>
Total	₹114,75 Cr	Total	107.5 Cr

Ld. CIT(A) after considering the submissions of assessee deleted the addition made by AO by observing as under:-

"I have perused the assessment order and considered the submissions of the Ld. AR. It was argued that the investment in shares and interest free advances were made by the assessee out of its own fund and that

borrowed fund was utilized for the purposes of the business. I find from the balance sheet for the relevant year that the assessee owned sufficient fund for investing in shares or making advances. I therefore find merit in the argument that the investment in shares and interest free advances were made by the assessee out of its own fund and that the borrowed fund was utilized for the purposes of the business and consequently no disallowance out of interest expenditure was justified. The contention of the assessee is supported by the decision of the jurisdictional High Court in the case of Britannia Industries Ltd. 280 ITR 525 (Cal). Also the AO has failed to establish any nexus between the borrowed funds and the investment in shares or advances and instead has mechanically made the disallowance. This action of the AO is neither sustainable in law nor on facts. In view of the above, the disallowance of Rs.35,59,793/- as made in the impugned order is direct to be deleted. Ground no 3 is allowed.”

The Revenue, being aggrieved, is in appeal before us

16. Before us both the parties relied on the order of Authorities Below as favorable to them.

17. We have heard the rival contentions of both the parties and perused the material available on record. At the outset, it was observed that own capital of assessee was exceeding the amount of investment and interest free loan & advance made by it. The relevant details of own capital vis-a-vis investment in shares / advance are placed on page no.71 of the paper book. Thus, in our considered view, a presumption can be drawn that the own fund was utilized in the investment in shares as well as interest free advance. In holding so, we draw support and guidance from the principles laid down by the Hon'ble Bombay High Court in the case of *CIT vs. Reliance Utilities and Power Ltd.* (2009) reported in 313 ITR 340 (Bom). The relevant extract is reproduced below:-

“If there are funds available both, interest-free and overdraft and/or loans are taken, then a presumption would arise that investments would be out of the interest-free fund generated or available with the company, if the interest-free funds are sufficient to meet the investments. In the instant case said presumption was established considering the findings of fact, both by the Commissioner (Appeals) and the Tribunal.”

The facts of the present case are exactly identical with the principles laid down by the judgment of Hon'ble Bombay High Court in the case of *Reliance Utilities and Power Ltd.* (supra). Respectfully, following the same, we do not find any reason to interfere in the order of Ld. CIT(A). Consequently, ground raised by Revenue is dismissed.

18. In combine result, appeal of Revenue stands dismissed and that of assessee's CO is partly allowed for statistical purpose.

Order pronounced in the open court 06/12/2017

Sd/-
(Aby. T. Varkey)
(Judicial Member)
Kolkata,

Sd/-
(Waseem Ahmed)
(Accountant Member)

*Dkp

दिनांक:- 06/12/2017 कोलकाता ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. आवेदक/Assessee-M/s Mega Resources Ltd 10, Clive Row, 3rd Floor, Kolkata-001
2. राजस्व/Revenue-DCIT, CC-4(2), 4th Floor, Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-69
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary, Head of
Office/DDO
आयकर अपीलीय अधिकरण,
कोलकाता ।