

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'बी', अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“ B ” BENCH, AHMEDABAD

सर्वश्री राजपाल यादव, न्यायिक सदस्य एवं अनिल चतुर्वेदी, लेखा सदस्य के समक्ष।
BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
And SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No.915/Ahd/2012
(निर्धारण वर्ष / Assessment Year : 2008-09)

Smt. Mamta Gupta 602, Shantivan Apartment Nr.Jain Derasar Rupani Circle Bhavnagar – 364 001	बनाम/ Vs.	The DCIT Circle-1 Bhavnagar
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ACDPG 4647 G		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Written submission
प्रत्यर्थी की ओर से/Respondent by :	Shri James Kurian, Sr.DR

सुनवाई की तारीख / Date of Hearing	03/08/2016
घोषणा की तारीख/Date of Pronouncement	22/08/2016

आदेश / O R D E R

PER SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER :

This appeal by the Assessee is directed against the order of the Commissioner of Income Tax(Appeals)-XX, Ahmedabad dated 15/02/2012 for the Assessment Year (AY) 2008-09.

2. The relevant facts as culled out from the materials on record are as under:-

- 2 -

2.1. Assessee is proprietor of M/s.Satnarayan Steel Industries which is in the business of Iron and Steel Re-rolling Mill and Weighbridge. Assessee filed her return of income for AY 2008-09 on 27/08/2009 declaring total income of Rs. 11,20,690/-. The case was selected for scrutiny and thereafter assessment was framed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") vide order dated 27/12/2010 and the total income was determined at Rs.27,90,270/-. Aggrieved by the order of the Assessing Officer (AO), assessee carried the matter before the Id.CIT(A), who vide order dated 15/02/2012 (in Appeal No.CIT(A)/XX/614/10-11) dismissed the appeal of the assessee. Aggrieved by the order of Id.CIT(A), assessee is now in appeal before us.

2.2. On the date of hearing, none appeared on behalf of appellant-assessee, however, assessee has filed written submissions. We therefore proceed to dispose of the appeal on the basis of material on record *ex-parte* qua the assessee.

2.3. During the course of assessment proceedings, AO noticed that assessee had claimed Rs.16,69,583/- as “balances written off”. Assessee was asked to justify its claim for “write off”. The claim of the assessee was disallowed by the AO for the following reasons:-

- 3 -

(i) Assessee did not file the details and according to AO the balances “written off” were with respect to the balances recoverable from the sister-concern of the assessee and assessee had not filed any proof of “written off” in the books of accounts.

(ii) Though assessee had claimed that the party to whom the balance was receivable was closed since last 10 years but on perusal of the ledger , AO noticed that as on 1.4.2002 there was a brought forward balance of Rs.34,50,889/- and of Rs.18,5000/- was added as on 31.03/2003.

(iii) Assessee’s claim that no money was received was wrong because according to AO assessee had received more than 17 lacs in September/October-2005.

(iv) Assessee did not provide any evidence that the amounts represented debtors and the efforts put in by the assessee to recover the debts.

2.4. He accordingly denied the claim of write off of assessee and made addition by disallowing the claim of balance written off Rs.16,69,583/-. Aggrieved by the order of AO, assessee carried the matter before the Id.CIT(A), who dismissed the appeal of the assessee by observing as under:-

“2.2. I have considered the submissions made by the A.R. of the appellant and the observations of the assessing officer in the assessment order. For the detailed reasons mentioned at para-5 of the assessment order, AO disallowed the balance written off in respect of M/s.Satyanaran Steel Rolling Mill. In the written submissions it is claimed that part of the amount written off

- 4 -

represented sales made to the party and the balance represented advances towards purchases from the party. As regards alleged sales made, appellant has not been able to substantiate that such sales formed part of appellant's income in the earlier years. Hence the provisions of sec. 36(2) are not satisfied. Similarly in respect of advances made, there is nothing on record to show that these were trade advances and not capital advanced. If these were trade advances, they never formed part of appellant's income in earlier years. Hence the provisions of Sec.36(2) are not satisfied. If the advances were capital in nature, since the appellant is not a money-lender, the loss cannot be revenue loss. Therefore, I do not see any merit in the contentions of the appellant. Impugned disallowance of Rs.16,69,583/- is confirmed. This ground of appeal is dismissed.”

3. Aggrieved by the order of the Id.CIT(A), assessee is now in appeal before us and has raised the following grounds:-

The Learned Commissioner of Income Tax (Appeals)-XX Ahmedabad has erred in law and on facts:-

- (1) In confirming addition of Rs.16,69,583/- made by the assessing officer.*
- (2) In not appreciating the fact that the addition of Rs.16,69,583/- made by the assessing officer Includes Rs.5,13,088/- on account of sale of goods and eligible for claimed as bad debts U/s.36(i)(vii). He has also not appreciated that sale subject matter of claim of bad debts is credited to profit & loss account and there is no need to further substantiate that besides copy of invoices and annual accounts of the relevant year.*

4. Before us, in the written submissions assessee has submitted that the amount 'written off' includes Rs.5,13,088/- on account of sale of

- 5 -

waste and scrap which could not be recovered by the assessee and the sales of which were credited in the books of accounts in earlier years. As far as the writing off of balances amount of Rs.16,69,583/- is concerned, it was submitted that it represents the advances given by the assessee towards purchases of raw-materials in earlier assessment years which could not be recovered. Assessee also relied on the decision of Hon'ble Apex Court in the case of TRF Ltd. vs. CIT reported in 323 ITR 397 and submitted that the assessee's claim be allowed. Ld.Sr.DR, on the other hand, supported the orders of AO & Id.CIT(A) and submitted that assessee has not furnished any details before any of the authorities including the Tribunal about the compliances of the conditions required for claiming deduction u/s.36(1)(vii) r.w.s. 36(2) of the Act. He thus supported the orders of the AO and Id.CIT(A).

5. We have heard the Id.Sr.DR, perused the material available on record and gone through the orders of the authorities below. The issue in the present case is with respect to allowability of deduction on account of 'write off' of bad debts. Section 36(2)(i) of the Act allows deduction on account of satisfaction of any of one of the two conditions; namely (a) bad debts or part thereof taken into account in computing the income of the assessee for an earlier assessment year before such date or part thereof is 'written off' or (b) the debts represents money lend in the ordinary course of business of bank or money lending which is carried on

by the assessee. Therefore even if one of the two conditions of section 36(2)(i) is satisfied, then bad debts claimed u/s.36(1)(vii) has to be allowed. So far as first part of section 36(2)(i) of the Act is concerned, in the present case it is assessee's submission that the amount of Rs.5,13,088/- represents the sale of waste and scrap which was credited to the P&L A/c. in the year of sale. We find that no details of the year of sale has been furnished by the assessee either before AO or Id.CIT(A) or before us. Assessee has merely made a submission that the amount represents sale. Similarly, as far as the assessee's claim of having given advance payment for purchase of raw-material of Rs.11,56,495/- is concerned, no details of the same have been furnished by the assessee. Further, in the present case, assessee has not furnished details in support of its contention of having fulfilled the conditions specified u/s.36 of the Act for claiming deduction. We further find that before us, assessee has claimed that the issue is covered in her favour by the decision of Hon'ble Apex Court in the case of TRF Ltd.(supra). We find that there is no finding on the same by Id.CIT(A) in his order. We find that Hon'ble Supreme Court in the case of TRF Ltd.(supra), has observed that after the amendment of section 36(1)(vii) w.e.f. 01/04/1989 in order to obtain a deduction in relation to bad debts, it is not necessary for the assessee to establish that the debt in fact has become irrecoverable and it is enough if the bad debts 'written off' as irrecoverable in the accounts of the assessee. In the present case, we are of the view that in the interest of justice, the

- 7 -

assessee be granted one more opportunity to place on record about the satisfaction of the required conditions for claiming deduction of “write off”. We therefore restore the issue to the file of AO to decide the issue afresh in the light of the aforesaid decision of Hon’ble Apex Court in the case of TRF Ltd. (supra) and in accordance with law. Needless to state that the AO shall grant adequate opportunity of hearing to the assessee. The assessee is also directed to promptly furnish all the required details called for by the AO. In case, the assessee fails to furnish the required details, the AO shall be free to proceed and decide the issue on the basis of material available on record. Thus, this ground of assessee is allowed for statistical purposes.

6. In the result, assessee’s appeal is allowed for statistical purposes.

This Order pronounced in Open Court on	22/08/2016
---	-------------------

Sd/-
राजपाल यादव
(न्यायिक सदस्य)
(RAJPAL YADAV)
JUDICIAL MEMBER

Sd/-
अनिल चतुर्वेदी
(लेखा सदस्य)
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Ahmedabad; Dated 22/ 08 /2016

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-XX, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad