

आयकर अपील अाधिकरण, अहमदाबाद ँयायपीठ  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
"C" BENCH, AHMEDABAD

BEFORE, SHRI MAHAVIR PRASAD, JUDICIAL MEMBER

And

SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.54/AHD/2017

अाधरण वष/Asstt. Year: 2012-2013

Shri Dinesh Chhaganlal Thakkar, 302, 3 <sup>rd</sup> Floor, 3 <sup>rd</sup> Eye Complex, Panchvati Cross Road, Ellisbridge, Ahmedabad.  PAN: AARPT6636J	Vs.	Income Tax Officer, Ward-5(2)(3), Ahmedabad.
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(Applicant)		(Respondent)
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Assessee by :	Shri A.L. Thakkar, A.R
Revenue by :	Shri L.P. Jain, Sr.DR

सुनवाई का ताराख/Date of Hearing : 13/06/2019

घोषणा का ताराख /Date of Pronouncement: 24/06/2019

**आदेश/O R D E R**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax(Appeals), Ahmedabad-5 [Ld.CIT(A) in short], dated 04/10/2016 arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dated 23/03/2015 relevant to Assessment Year (AY) 2012-13.

The assessee has raised the following grounds of appeal:

- 1 *The learned CIT(Appeals) has erred both in law and on facts in confirming the order of Assessing Officer granting adopting cost of the plot sold at Rs. 64,47,3007- only and not allowing cost at Rs. 84,31,8807- as evidenced by documentary evidences . The payment towards cost in respect of plot sold amounting to Rs. 20,74,8807- being directly connected with the cost of plot ought to have been allowed while computing capital gain. It be allowed now.*
- 2 *The Id CIT(Appeals) erred both in la wand on facts in not allowing the claim of deduction of Rs. 54,87,0277- as bad debt or loss incidental to business ignoring the fact that income from the business transactions relating to such bad debts was already being taxed. The CIT (appeals) failed to appreciate and consider the judgments cited before him regarding claim and comment how the same were not applicable to the appellant's case. The deduction of Rs. 54,87,0277- be allowed now.*
- 3 *The Id CIT(AppelasO also erred in law and on facts in not allowing deduction of electricity expenses of Rs. 46,4567- when the corroborative evidence regarding electricity bill and payment by cheque was furnished. The deduction of Rs. 46,4567- be allowed now.*
- 4 *The Id CIT(Appeals) ought to have allowed the appeal in toto. The claim of deductions made be allowed and additions /disallowances made as above in returned income be deleted.*
- 5 *The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at time of or before the hearing of the appeal.*

The 1<sup>st</sup> issue raised by the assessee is that the learned CIT (A) erred in confirming the order of the AO by not allowing the expenditure of 20,74,880.00 incurred in connection with the cost of the plot.

2. Briefly stated facts are that the assessee in the present case is an individual and engaged in the business of trading in commodity and shares. The assessee in the year under consideration has sold his property amounting to 3,40,50,000.00 only and claimed the cost of acquisition against the sale consideration amounting to 84,31,880.00 only. The assessee out of such expenditure claimed to have incurred a cost of 20,74,880.00 towards the transfer fees and the development expenses in connection with such property.

2.1 However, the AO found that the assessee has not furnished any documentary evidence in support of the expenditure of Rs. 20,74,880.00. Therefore the AO disallowed the same and accordingly revised the capital gain calculated by the assessee.

The aggrieved assessee preferred an appeal to the learned CIT (A).

3. The assessee before the learned CIT (A) filed the details of the expenditure incurred by him as detailed under:

- i) Rs.4,02,000/- Transfer fee to society paid by cheque on 24.02.2007 to the society.
  - ii) Rs.1,00,000/- again by cheque to the society for drainage cost Cost.
  - iii) Rs.1,00,000/- again by cheque to the society for re-development cost contribution of the Plot.
  - iv) Rs.1,00,000/- by cheque to the society for road development.
  - v) Rs.5,27,680/- to society by cheque for water connection, maintenance and deposit.
  - vi) Rs.8,25,000/- again by cheque to society for Land Development charges.
- Thus Rs.20,00,880/- are all paid by cheque so as to enable the appellant to legally have the title and ownership of the plot of the society. Rs.20,000/- was paid by the cheque No.000093 to H Desai & Co Solicitors for legal fees and thus Rs.20,20,880/- was towards cost of the plot over and above Rs.64,47,300/- as noted by the AO.

3.1 The assessee in support of his claim has also filed a letter from the society dated 7<sup>th</sup> of June 2016.

3.2 The assessee also submitted that the AO never required during the assessment proceedings to file the supporting evidence in respect of the expenditure as discussed above.

3.3 However, the learned CIT (A) disregarded the contention of the assessee by observing as under:

*“3.6. The facts of the case and the submissions are considered. While calculating the long term capital gain the appellant has claimed additional cost of*

*Rs.20,74,880/-. However, the assessee has failed to prove the additional cost by supporting evidences. In the remand report, the AO has stated that the assessee has failed to prove the additional cost by any bills/invoices and he has not submitted any documentary evidences to prove that same were capital expenditure and not of revenue in nature. The AO has also stated that the assessee has not submitted copy of bank statement wherein debit entries of above payment were reflected. In support of this additional cost, the appellant has submitted a certificate issued by the society. In the rejoinder the appellant had submitted that the certificate itself shows that the expenses were incurred with reference to the said plot and the narration of the certificate against each payment itself shows that the expenses were incurred with reference to the said plot. A perusal of the said certificate shows that the contention of the appellant is factually incorrect as the certificate only contains the date, amount, cheque number and the narration of the expenditure. Nowhere in the certificate it is mentioned that these expenses were incurred with reference to the said plot. The objection raised by the AO that whether these expenditure are of capital nature and not of revenue nature is controverted by the appellant. In the absence of all these details and supporting evidences the AO has rightly rejected the claim of the assessee of additional cost of Rs.20,74,880/- and rightly recalculated the long term capital gain and the claim of deduction u/s.54F of the Act. Thus the ground of appeal is dismissed.”*

4. Being aggrieved by the order of the learned CIT (A), the assessee is in appeal before us. The learned AR before us filed a paper book running from pages 1 to 80 and drew our attention on page 48 of the paper book where the receipt issued by the society was placed.

5. On the other hand, the learned DR vehemently supported the order of the authorities below.

6. We have heard the rival contentions and perused the materials available on record. The issue in the instant case relates to the expenditure incurred by the assessee towards the transfer fees, and the development charges paid to the society in connection with the property held by the assessee.

6.1 In this regard we find that the assessee has produced the receipt shown by the society for the expenditure incurred by him. The contents of the receipt stand as under:

**JAYENDRAPARK CO-OP. HOUSING SOCIETY LTD.**  
*Reg. No. Gh 3140 dated 4.5.1968 Thaltej, Tal. Dascroi, Dist. Ahmedabad.*  
Ref. No, Dale: 7<sup>th</sup> June  
2016.

**DUPLICATE COMBINED PAYMENT RECEIPT**

*Received with thanks from Mr. Dinesh Chhaganlal Thakkar, details as under mentioned drawn by HDFC Bank, Navrangpura Branch.*

<i>Date</i>	<i>Amount (Rs.)</i>	<i>Cheque Number</i>	<i>Narration</i>
<i>24<sup>m</sup> Mar 2007</i>	<i>4, 02,200.00</i>	<i>000212</i>	<i>Transfer Fee</i>
<i>25<sup>h</sup> Apr 2007</i>	<i>1, 00,000.00</i>	<i>000363</i>	<i>Drainage Work</i>
<i>29<sup>th</sup> Oct 2007</i>	<i>1, 00,000.00</i>	<i>000517</i>	<i>Redevelopment work</i>
<i>31<sup>th</sup> Dec 2007</i>	<i>1, 00,000.00</i>	<i>000707</i>	
<i>25<sup>th</sup> Feb 2011</i>	<i>4, 59.680.00</i>	<i>002067</i>	<i>Deposit</i>
<i>25<sup>th</sup> Feb 2011</i>	<i>14,000.00</i>	<i>002067</i>	<i>Water connection</i>
<i>25<sup>th</sup> Feb 2011</i>	<i>54,000.00</i>	<i>002067</i>	<i>Maintenance</i>
<i>07<sup>m</sup> Mar 2011</i>	<i>8,25,000.00</i>	<i>002084</i>	<i>For land</i>

6.2 None of the authorities below, has pointed out any defect in the receipt as discussed above. In case of any doubt on the genuineness of the above receipt/the expenditure incurred by the assessee, the authorities below should have taken the confirmation from the society. But the Revenue has not exercised its power granted under the statute. The assessee incurred all the payments above/expenditures through banking channel. Therefore we hold that the authorities below have made the disallowance of the claim of the assessee without bringing any cogent reason. Therefore, we reverse the order of the authorities below and direct the AO delete the addition made by him. Hence the ground of appeal of the assessee is allowed.

The 2<sup>nd</sup> issue raised by the assessee is that the learned CIT (A) erred in confirming the addition of 54,87,027.00 on account of the bad debts/loss incurred incidental to the business.

7. The assessee is holding the franchisee of the Angel group-a member BSE, NSE, MCX/SX and DP of CDSL. Accordingly, the assessee referred many clients to the angel group, which were doing business dealings with it. The assessee accordingly used to earn brokerage from the angel group for the transactions carried out by the clients referred by him. However, in many cases, the clients referred by the assessee to the angel group did not settle the accounts with it. Therefore, such amount was recovered by the angel group from the assessee. Accordingly, the assessee claimed the deduction of the amount recovered by the angel group as bad debts in his books of accounts on the ground that such bad debts were incurred in the course of the business.

7.1 However, the AO disagreed with the claim of the assessee by observing that the assessee did not show the amount of bad debts as income in any of the previous years. Thus the condition as specified under section 36(2) of the Act has not been satisfied. Accordingly, the AO disallowed the same and added to the total income of the assessee.

The aggrieved assessee preferred an appeal to the learned CIT (A).

8. The assessee before the learned CIT (A) submitted that he was under the obligation as per the agreement with the angel group to ensure that the clients referred by him do not default in the payment. The assessee also claimed that he has earned brokerage income from the angel group on the introduction of the client referred by him.

8.1 The assessee also claimed that the loss was incurred by him in the course of the business, therefore, the same is eligible for deduction under section 28 of the Act.

8.2 However, the learned CIT (A) disregarded the contention of the assessee and confirmed the order of the AO by observing as under:

*4.3. The assessee is doing business as franchise of Angel Group and in lieu of this has received brokerage income from Angel Group. Certain clients did not pay to the Angel Group and the Angel Group debited non-recoverable amount to the account of the assessee. The assessee has claimed this non-receivable amount as bad debt. The AO is of the opinion that the mandatory condition for allowing bad debt is not fulfilled by the assessee. The AO is of the view that the assessee has simply introduced the clients to Angel Group and the parties carried on the trading activity through Angel Group for which the assessee is not a party at all and no income or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of debt is written off or of an earlier year. The AO has therefore rejected the claim of bad debt and disallowed an amount of Rs.54,87,027/-.*

*4.4. During the appellate proceedings, the appellant has submitted that it was appellant's responsibility to see that the clients whose transactions were done by the appellant with Angel Group pay the dues and failing them the same was to be borne by the appellant. It is further submitted that the appellant has earned sizable brokerage from the various clients whose transactions as above were carried out by the appellant with Angel Group and which is taxed by the AO. The appellant has relied upon following decisions:-*

- 1. CIT vs. Bonanza Polrtfolio Ltd. 320ITR 178 (Delhi)*
- 2. CIT vs. Shreyas S. Morakhia 342 ITR 285 (BOM)*
- 3. Innovative Brokerage P Ltd. vs. ITOITA No.6007/Mum/2007*

*4.5. The facts of the case and the submissions are considered. The AO has disallowed the claim of the assessee on the ground that the mandatory condition for claiming the bad debt had not been fulfilled by the assessee. A perusal of the facts of the case shows that clients of Angel Group make payment to Angel Group directly and that was the income of the Angel Group not the appellant. In case of not receiving any payment the Angel Group debited those amounts to the account of the assessee. These amount are not part of the income of the assessee as well not part of brokerage income. In such a situation, it cannot be said that these amounts has been taken account in the computation of income of earlier years. Case laws cited by the appellant are on different facts. In those cases the AO has disallowed the claim of bad debt on the ground that the assessee accounts only for income from brokerage and not the value of shares sold or purchased on behalf of a client.*

*Here in the instant case, facts are totally different. Assessee is getting brokerage income only from Angel Group. No other amount is receivable by the appellant. When there is no money receivable from the client how it can be treated as and how it can be said that it becomes bad. In these circumstances, it cannot be said that these amount had been taken into account in the computation of income in the previous year or earlier years. The condition stipulated in sub-section (2) of Section 36 of the Act is not satisfied hence the assessee is not entitled to the deduction of the bad debt claimed. Accordingly the disallowance made by the AO is confirmed. Thus the ground of appeal is dismissed.*

Being aggrieved by the order of the learned CIT-A the assessee is in appeal before us.

9. The learned AR before us drew our attention to the agreement with the angel group placed on pages 20 to 32 and submitted that the impugned loss was incurred in the course of the business. The learned AR also drew our attention on the copy of account maintained by him viz a viz maintained by the angel group which are placed on pages 33 to 43 of the paper book.

10. On the other hand, the learned DR vehemently supported the order of the authorities below.

11. We have heard the rival contentions of both the parties and perused the materials available on record. The issue in the instant case relates to the bad debts claimed by the assessee on account of the amount recovered by the angel group from the assessee. Indeed, the amount recovered by the angel group from the assessee was not offered by him as income in his books of accounts. Therefore the condition as specified under section 36(2) of the Act has not been satisfied. Therefore, the amount of deduction as bad debts cannot be claimed.



11.1 However, we note that the courts have allowed such claim of the assessee as bad debts as the same was incurred in the course of the business carried on by him. Therefore in our considered view, such loss is a business loss and the same is eligible for deduction as bad debts.

11.2 In holding so, we find support and guidance from the judgment of Honøble Delhi High Court in the case of CIT versus Bonanza Portfolio Ltd. reported in 320 ITR 178 wherein it was held as under:

*“Held that the money receivable from the client had to be treated as 'debt' and since it became bad, it was rightly considered as 'bad debt' and claimed as such by the assessee in the books of account. Since this bad debt occurred in the year in question, it was shown by the assessee in that manner. Since the brokerage payable by the client was a part of the debt and that debt had been taken into account in the computation of the income, the conditions stipulated in sub-section (2) of section 36, read with section 36(1)(vii), stood satisfied. Hence, the assessee was entitled to the deduction of the bad debt claimed.”*

11.3 Similarly, we also find support and guidance from the judgment of Honøble Bombay High Court in the case of CIT versus Shreyas S. Morakhia reported in 342 ITR 285 wherein it was held as under:

*“Accordingly, it is held that the assessee is entitled to deduction by way of bad debts under section 36(1)(vii) read with section 36(2) in respect of the amount which could not be recovered by him from his clients in respect of transactions effected by him on behalf of his clients apart from the commission earned by him.”*

11.4 In view of the above, we hold that the loss incurred by the assessee in the course of the business is revenue in nature and the same is eligible for deduction as bad debts. Hence the ground of appeal of the assessee is allowed.

The last issue raised by the assessee is that the learned CIT (A) erred in confirming the order of the AO by disallowing the electricity expenses of Rs. 46,456.00 only.

12. At the outset, the learned AR for the assessee did not press the ground of appeal of the assessee on account of the smallness of the amount involved in it. Therefore we dismiss the same as not pressed.

13. In the result, the appeal filed by the assessee is partly allowed.

**Order pronounced in the Court on 24/06/2019 at Ahmedabad.**

**-Sd-  
(MAHAVIR PRASAD)  
JUDICIAL MEMBER**

**(True Copy)**  
Ahmedabad; Dated 24/06/2019  
*Manish*

**-Sd-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**