

IN THE INCOME TAX APPELLATE TRIBUNAL
 “E” BENCH, MUMBAI
 Before Shri Vikas Awasthy (JM) & Shri Prashant Maharishi(AM)

I.T.A. No.1659/Mum/2020
 (Assessment year 2014-1)

M/s SDN & Co
 4th Floor, Liberty Building
 Sir Vithaldas Thackersay Marg
 Mumbai-400 020
PAN : AAASF738N

vs The Income-tax Officer 7(3)(2)
 Mumbai

(APPELLANT)

(RESPONDENT)

Appellant by
 Respondent by

Shri Mayur R Makadia
 Shri Milind Chavan

Date of hearing
 Date of pronouncement

20-12-2021
 23-12-2021

O R D E R

Per Prashant Maharishi (AM)

01 This appeal is filed by the assessee against the order of the learned Commissioner of Income tax (Appeals)-28, Mumbai [the LD CIT (A)] dated 25/01/2017 for assessment year 2014-15. By this order, he confirmed disallowance of Rs 2 Crores with respect to loan advanced by assessee to Universal Ferro and Allied chemicals Ltd (UFACL) written off and claimed as business loss. Another issue is with respect to computation of tax payable by assessee.

02 The facts of the case show that assessee is a partnership firm earning income from business and capital gain. It filed its return of income on 19/11/2014 at Rs. 4,56,01,330/-.

- 03 During the course of assessment proceedings, Id AO noted that assessee has written off an amount of Rs. 2 crores given as loan to Universal Ferro and Allied Chemicals Ltd (UFACL). Assessee claimed it as a business loss. The learned assessing officer questioned assessee on its allowability.
- 04 The assessee submitted that assessee gave an unsecured loan to above company, which is one of family owned group of companies. Assessee also submitted that the borrower became sick in 1998 and was referred to BIFR. It further stated that out of the total loan outstanding of Rs. 3.33 crores, the assessee could not recover Rs. 2 crores and hence, the same were written off and claimed as deductible loss / allowance.
- 05 The learned assessing officer recorded the statement of partner of firm Mr. Firoze D-Neterwala and raised 25 questions to him. Learned assessing officer noted the fact that assessee gave loan to this company starting from 2001 whereas the borrower became sick in 1998 itself, such loans were not given by assessee for any business purposes but as directors of the holding company of the borrower were the partners of the assessee firm. During the statement under section 131 of the Act, partner of the firm accepted that loans were not given to any other party and assessee is not engaged in the business of borrowing and lending. Assessing Officer also noted that there is no business exigency involved in granting of the above loan. Looking to the transaction with the borrower, assessing officer noted that assessee has not received any interest on loan except on 07/03/2003 when the interest of Rs. 3,65,449/- was received. Thereafter From financial year 2002-03, assessee is merely passing an entry for accrual of the interest and subsequently

writing it off till 2006-07 and thereafter, no interest income provision was made. The assessing officer further noted that the basic condition of the allowability of bad debt is that the sum should have been credited in the books of account of the assessee in earlier years. In view of this, he disallowed a sum of Rs. 2 crores and assessed total income of the assessee at Rs. 656,01,320/- vide order dated 28/12/2016 passed under section 143(3) of the Act.

06 Assessee aggrieved with the order of the learned AO, preferred appeal before the CIT(A), who confirmed the disallowance holding that same is neither allowable under section 37(1) or under section 36(1)(vii) or under section 36(2). Accordingly, the appeal of the assessee was dismissed.

07 Assessee, aggrieved with that has preferred this appeal before us. The learned representative submitted one paper book submitting various documents and other paper book relying on several judicial precedents. The learned authorised representative referred to the ledger account of the borrower in the books of the assessee since 2000 and submitted that assessee has granted loans to the above party of more than Rs. 10 crores and has earned interest from the above loan. He further submitted that out of the above sum, Rs.8 crores along with interest have been recovered and balance Rs. 2 crores could not be recovered; hence, they are written off. He referred to the partnership deed dated 01/06/1974 placed at pages 9 to 15 of the paper book showing that business of the assessee is builder, interior decorators, dealers in furniture, estate agents and business of financiers. To substantiate the above fact, he referred to the annual accounts of the assessee in the year ended on 31/03/2002 and

31/03/2014 stating that the assessee is earning interest income and the same is being assessed on year-to-year basis under the head "Income from business or profession". He referred to the balance-sheet showing that as on 31/03/2002, the assessee has loans and advances of Rs.5,73,41,275/- and has earned interest of Rs.1,13,75,934/- for the year ended in March, 2002 which has been taxed as business income. Thus, according to him, assessee is in the business of money lending/financing. He further referred to the provisions of section 36(2) which provides that if the assessee is engaged in the business of advancing of the loan, there is no requirement that the bad debts to be allowed should have been earlier taken into the income of the assessee. Therefore, he submitted that according to him, the above sum is allowable as a bad debt to the assessee.

- 08 He further referred to the judicial precedent on this issue to show that the
- a. Write off an Amount, which has become bad, is allowable as a bad debt to a concern, which is engaged in the business of advancing of loans.
 - b. Where the money is advanced to a group company, the test of business expediency is satisfied.
 - c. Merely because the borrower is a related party, the loss written off cannot be disallowed.
 - d. if the interest income is assessed as business income in past, revenue cannot deny the write off of the loan in a subsequent year when it becomes bad.
- 09 In view of the above facts, he submitted that the disallowance confirmed by the learned CIT(A) deserves to be deleted.

- 10 The learned authorised representative referred to paragraph 4.4 of the order of the learned assessing officer and relied upon that. He further referred to the statement of the partner of the assessee firm wherein it has conclusively proved that the main source of income of the assessee is rental income and interest income is merely from fixed deposits. He further referred to question No.10 where the partner has categorically replied that to earn interest income by giving loans to others is not business of the assessee firm. In view of this, he submitted that the assessee is not engaged in the business of financing and, therefore, the loss or bad debt cannot be allowed to the assessee. Assessee has written off loan given to a sick company, which is a related party and advancing loan to such a borrower does not show any business exigency. Accordingly, he supported orders of the lower authorities.
- 11 The learned authorised representative, in rejoinder submitted that the statement of the partner was with respect to assessment year 2014-15 where there is no business income. He submitted that in this year, the issue is of write off the loan and, therefore, the partner has correctly stated that during the year only bank interest income is received. With respect to the activities of the assessee company, he submitted that the partnership deed, annual accounts show the clear picture. He also stated that even otherwise, if there are certain discrepancies in the statement of the partner, the facts brought out before the assessing officer and the past history of the assessment cannot be ignored. Accordingly, he submitted that the assessee should be allowed the claim of business loss during the year.

12 We have carefully considered the rival contentions and perused the orders of the lower authorities. The only issue in this ground of appeal is whether the assessee is entitled to deduction of Rs. 2 crores written off in the books of account as bad debt or not. The assessee is a partnership firm formed with effect from 01/06/1974 as per deed of partnership. The preamble of the deed also shows that the party of the fourth part was entered into partnership for carrying on the business of financiers, investors and dealers in investments. Clause 4 of the partnership deed also specifies the business of financiers as business of the firm. Assessee has submitted annual accounts for the year ended on 31/03/2002 which shows that the assessee has shown loans and advances amounting to Rs. 5,73,41,275/- and assessee has shown interest income of Rs.1,13,75,934/-. The above amount also include the interest income earned from Universal Ferro and Allied Chemicals Ltd amounting to Rs. 4,06,959/-. The claim of the assessee is that above sum has been shown as business income by the assessee and the revenue accepts it. Assessee has also submitted the ledger account of the borrower starting from 01st April 2000 to 02nd January 2017. The above account shows that for the year ended on 31st March, 2002, the assessee lent Rs. 2,30,00,000/- and received back Rs.1,80,00,000/- and also earned interest of Rs. 3,65,449/- . Similarly, for the year ended 31st March 2003, the assessee earned interest of Rs. 49,62,739/- and further advanced a sum of Rs. 6 crores and received back Rs. 92,50,000/-. Similarly in March 2004 assessee further lent Rs. 1,75,00,000/- and repaid Rs. 2,60,00,000/-. The outstanding as on 31st March 2004 was Rs. 4,56,75,000/-. The borrower repaid Rs. 1,54,00,000/- for the year ended on 31/03/2005. Further, for

the year ended on 31/03/2011, there is a repayment of Rs. 80 lakhs and on 31/03/2012 such repayment was Rs. 22,75,000/-. Thus, as on 31/03/2012 R. 2 crores were outstanding to the debit of the borrower in the books of account of the assessee. This amount was written off on 30th September, 2013 and claimed as a deduction as bad debt. In earlier years also, there was a write off the interest from August 2004 to June 2005, which was claimed as bad debts written off. According to the provisions of section 36(2) of the Act, if the debt written off represents money lent in the ordinary course of business of banking or money lending business carried on by the assessee is allowable as deduction in terms of provisions of section 36(1)(vii) of the Act. It is an uncontroverted fact that assessee is a partnership firm engaged in the business of financiers and financed Universal Ferro and Allied Chemicals Ltd and outstanding loan amount of Rs 2 crores have been written off in the books of account of the assessee on 13 September 2013. The assessee as business income has offered the interest income earned by the assessee and it has been taxed as such, this fact remained uncontroverted. It is undisputed fact that if interest income is assessed in past as business income and the loan from which such interest income arises is written off, such sum is allowable to the assessee as deduction under section 36(2) of the Act. Furthermore, merely because the parties are related parties and there is no evidence of any collusion, the loss incurred by the assessee by writing off of the above sum could not be disallowed. The learned AO has relied heavily on the statement of the partner of the firm. Reply to questions No.6, 7 & 9 shows that the partner stated that the nature of interest income earned by the assessee is

from fixed deposits with the banks and assessee has not given any loans to any other party for earning interest income. In response to question No.10, the partner has also stated that earning of the interest income by giving loans to others is not the business of the assessee. We find that for assessment year 2014-15, the assessee has earned no interest from private parties and the assessee only earned the interest from bank FDRs. Therefore, if the statement of the partner is looked into with respect to the activities of the assessee for assessment year 2014-15, the facts are stated correctly. However, the partner was fully aware about the loan given and the amount repaid by the borrower. This is demonstrated from answers to questions No.14 to 25. Therefore, in view of the overwhelming evidences, such as ledger account of the borrower showing advances of Rs 10 crores, proof of earning interest income, repayment of sum , outstanding remaining of Rs 2 Crores, such sum being written off in the books of accounts, object of the partnership deed and past assessment records of the assessee, merely using the statement of the partner against the assessee for disallowance of the above loss is not justified. Merely because the borrower is a related party and in which the partners of the assessee firm are interest, cannot be the reason for disallowance of the above loss. As the assessee has satisfied all the conditions of section 36(1)(vii) read with section 36(2) of the Act, the claim of the assessee is allowable. In the result, we reverse the orders of the lower authorities and direct the assessing officer to delete the above disallowance of Rs. 2 crores. Thus, Ground No 1 of appeal is allowed.

13 Ground 2 of the appeal is against the erroneous set off of business loss against the capital gains rather than against the business income of the year. As per the assessment order, the long term capital gain of the assessee is Rs. 5,48,65,125/-. However, as per the income-tax computation form, the learned assessing officer has taken long term capital gain of Rs. 4,56,01,325/- . Thus, the total income remains same at Rs.6,56,01,325/- but the figure of the long term capital gain has been changed by the assessing officer in the income-tax computation form. Thus, we direct the learned assessing officer to correctly compute the income-tax computation by taking the long term capital gain at Rs.5,48,65,125/- only. Accordingly, ground 2 of the appeal of the assessee is allowed.

14 In the result, appeal filed by the assessee in ITA No.6978/Mum/2019 for assessment year 2013-14 is allowed.

Order pronounced on 23/12/2021.

Sd/-

(VIKAS AWASTHY)
JUDICIAL MEMBER

sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Mumbai,

Date : 23/12/2021

Pavanan

Copy to :

1. Appellant
2. Respondent
3. The CIT concerned
4. The CIT(A)
5. The DR, ITAT, Mumbai
6. Guard File

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By Order

Asstt. Registrar, ITAT, Mumbai