

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

**BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER**

**ITA No. 187/Srt/2020
(ASSESSMENT YEAR: 2012-13)**

K Patel International, Residential Plot 64, GIDC, Ankleshwar-393002. PAN No. AACFK 7262 Q	Vs.	A.C.I.T., Circle-2, Bharuch.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri Surendra Modiani, CA
Respondent represented by	Shri Abhishek Gautam, Sr.DR
Date of hearing	01/06/2022
Date of pronouncement	01/06/2022

Order under section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-3, Vadodara (in short, the Id. CIT(A) dated 30/06/2020 for the Assessment year 2013-14 wherein the assessee has raised solitary ground of appeal which reads as under:

“1. The Id. CIT(A) erred in confirming disallowance of Rs. 1,31,589/- on account of bad debts.”

2. The brief facts of the case are that the assessee is engaged in the business of exporting and local trading of all kinds of dyes, chemicals, pigments, pharmaceuticals and commission agent. The assessee filed its

return of income on 13/09/2013 declaring total income of Rs. 94,08,260/-.

The assessee has shown total sales of Rs. 9,84,19,879/- on which declared gross profit of Rs. 3.12 cores, which is 31.72% as against the preceding year at 31.31% on total sales of Rs. 9.30 crores. The case of assessee was selected for scrutiny. The Assessing Officer during the assessment, besides the other additions, made disallowance of bad debt of Rs. 1,31,589/-. The Assessing Officer during the assessment, noted that the assessee had debited an amount of Rs. 1.75 lacs on account of bad debts. In order to ascertain the claim, the Assessing officer asked the assessee to furnish bills and ledgers of parties whose debts written off. In response thereof, the assessee submitted a combined ledger of bad debts. The assessee was again asked to justify the claim of bad debts written off. In response to notice, the assessee furnished break up of bad debts consisting an amount of Rs. 1,31,589/- paid as an advance for purchase of material to Limbani Salt Industries. The assessee also explained that the bad debt is a normal expenditure of the firm and once it is write off in the books, there is no question of its genuineness. The explanation furnished by the assessee was not accepted by the Assessing Officer. The Assessing Officer noted that on the invoice date 17/10/2008, there is a remark "advance given for purchase of material". The transaction not involving of sales of goods

which cannot be considered as debtors. When there is no debtor in the name of Limbani Salt Industries, it cannot be written off as bad debts, thus the claim of assessee is wrong and disallowed the same.

3. On appeal before the Id. CIT(A), the assessee submitted that the disallowance is not justified for the reasons that the amount written off did not arise on account of sales and not allowable under Section 36 of the Income Tax Act, 1961 (in short, the Act). It was submitted that it is evident from the ledger account of the party that the amount was advanced for purchase of stock in trade and not any fixed asset. The amount was written off as the same was not recovered for more than three years. The loss of this account is allowable under Section 28 of the Act. The assessee also relied on the decision of Kolkata Tribunal in ITO Vs Shree Gouri Shankar Jute Mills Ltd. in ITA No. 1185/Kol/2012 order dated 08/10/2015. The Id. CIT(A) after considering the submission of assessee held that the amount written off did not arise on account of sales. The payment was made on account of advance for purchase of stock in trade and not of any kind of fixed asset. The Assessing Officer distinguished the case relied upon by the assessee on the ground that when there is no sale and debtor is in the list of debtor in the name of Limbani Salt Industries, the claim of bad debt does not arise. On alternative plea for allowability

under Section 28 of the Act, the Id. CIT(A) held that the claim of assessee is not tenable as the written off in the present case is within three years. In the decision cited by the assessee, the advances were converted to loan and charged interest which was offered as income for many years. The advances were written off only when the person to whom the loan was given had died. No discernible effort for recovery of advance is made and that decision of Chennai Tribunal in Shriram Exports Pvt. Ltd. (60 taxman.com 239) is applicable on the facts of present case. With the above observation, the Id. CIT(A) has confirmed the action of Assessing Officer. Further aggrieved, the assessee has filed the present appeal before the Tribunal.

4. We have heard the submissions of learned authorised representative (AR) of the assessee and the learned departmental representative (DR) for the revenue and have gone through the orders of the lower authorities. The Id. AR of the assessee submits that the assessee made advances for purchase of material for its business purpose. The turnover of sales of assessee for the year was about Rs. 10.00 crores and assessee has shown gross profit as about 32% (rounded of). The assessee made advance for purchase of material. The advance was made in the course of business. Neither the material was supplied nor was the advance returned. The

assessee made advance on 17/10/2008 and write off the amount in the books in financial year 2012-13 i.e. relevant for A.Y. 2013-14. The amount of write off is very small comparative to the income offered by the assessee. The claim of bad debts is genuine and bonafide. To support his contention, the Id. AR of the assessee relied on the decision in ITO Vs Shree Gouri Shankar Jute Mills Ltd.(supra).

5. On the other hand, the Sr. DR for the Revenue supported the orders of the authorities below. The Id. Sr. DR for the revenue further submits that written off bad debts does not arise on account of sales. The amount was advanced for making purchases and does not qualify as a bad debts. The Id. CIT(A) distinguished the decision relied by the Id. AR in the case of ITO, Ward 1(1), Kolkata Vs Shree Gouri Shankar Jute Mills Ltd. (supra) as the fact of said case are different.
6. We have considered the rival submissions of the parties and have gone through the orders of the lower authorities carefully. We have also deliberated upon the various case laws relied on by the lower authorities and the Id. AR of the assessee. We find that there is no dispute that the write off amount was paid as an advance for purchase of material for stock in trade. The assessee made payment of such amount in the F.Y. 2008-09. The contention of Id. AR of assessee is that neither the party supplied the

material nor returned the amount of advance. The assessee has shown the profit @ about 32% on its sales and the amount of bad debits is comparatively a very meagre amount. The advance was made in the year 2008. We find that the Assessing Officer disallowed the claim of bad debts by taking a view that it cannot be considered as debtor as the name of party is not in the name of debtors. Before the Id. CIT(A), the assessee also raised alternative plea to allow the same under Section 28 of the Act as the advance could not be recovered for more than three years. The Id. CIT(A) upheld the order of Assessing Officer on the ground that there is no sales to the party and its name is not in the list of debtors. On alternative plea, the Id. CIT(A) held that the assessee has not made any effort to recover the advance.

7. We find that the Hon'ble Jurisdictional High Court in PCIT Vs Shreno Ltd. (2021) 127 taxmann.com 813 (Guj) while relying upon the decision of Hon'ble Supreme Court in the case of T.R.F. Ltd. Vs CIT (2010) 190 Taxman 391 (SC) held that where the assessee company write off outstanding interest on the advances paid to its subsidiary as a irrevocable when net worth of subsidiary eroded, the assessee's claim of bad debt was to be allowed without expecting the assessee to prove the bad debts has actually become bad. Considering the binding decision of Hon'ble

Jurisdictional High Court on similar ratio, we direct the Assessing Office to delete the disallowance of bad debt.

8. Considering the fact that we have accepted the primary submission of Id. AR of assessee and allowed the write off of advances, therefore, adjudication on the alternative plea of business loss and allowance under Section 28 of the Act have become academic.
9. In the result, this appeal of the assessee is allowed.

Order pronounced in the open court on 01 June, 2022.

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated:01/06/2022

**Ranjan*

Copy to:

1. Assessee –
2. Revenue -
3. CIT(A)
4. CIT
5. DR
6. Guard File

By order

Sr.Private Secretary, ITAT, Surat