

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Tax Appeal No. 30 of 2002

Commissioner of Income Tax, Ranchi

Vs.

M/s. Metallurgical Engineering Consultants (India) Ltd., Ranchi

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE JAYA ROY

For the Appellant/Petitioner : M/s.Deepak Roshan, Sr.S.C(IT)
Rupa Kumari

For the Respondent : M/s. B.Poddar, Sr.Adv., D.Poddar,
M.K.Choudhary, P.Poddar

Dated 10th December, 2012

Heard learned counsel for the parties.

2. This appeal had been admitted for deciding the following question of law:-

Whether loss of Rs.8,35,483/-, which represented the written down value of fixed assets of the assessee company, which got vested in Nigerian company due to certain restrictions imposed by the Government of Nigeria, is a capital loss or trading loss?

3. At the outset, we may observe that in the impugned order passed by the Tribunal dated 27th May, 2002, this core issue has not been decided and we are of the considered opinion that even facts of the case have not been properly appreciated, much less appreciation of the contention of the parties. However, facts of the present case are that the Assessing Officer made several additions and many of the additions were in respect of bad debt. The assessee company claimed bad debt of Rs.2,28,57,374/-. The Assessing Officer asked the assessee to explain as to how this amount had become bad debt. The assessee's contention is that in accordance with the provision of

Federal Decree of the Government of Nigeria, the assets and liabilities were vested in the MECON (Nigeria) Ltd. One of the facts noticed by the Assessing Officer was that the assessee could not produce the Federal Decree of the Government of Nigeria, by which the assets and liabilities of the assessee were vested in the MECON (Nigeria) Ltd. The assessee furnished details, which revealed that total assets had been shown at Rs.4,70,97,404/- and net liability at Rs.2,50,75,503/- and thus, difference came out to be Rs.2,20,21,891/-. The value of fixed asset written off was Rs.8,35,482/-, which had been added and the total sum came to be Rs.2,28,57,374/- and the same had been claimed to be bad debt. The assessee produced the agreement between the assessee and the MECON (Nigeria) Ltd. According to the agreement, M/s. MECON (Nigeria) Ltd. was appointed by the assessee as sub-contractor and the assessee authorized M/s. MECON (Nigeria) Ltd. to receive payment due to the assessee-company obviously in Nigeria. The assessee claimed that the amount from sundry debtors could not be realized and hence it constituted bad debt. The Assessing Officer then observed that right to realize the sundry debtors was vested in M/s. MECON (Nigeria) Ltd., which is admittedly subsidiary company of the assessee and it realized the sundry debtor on behalf of the assessee company and therefore, this bad debt of Rs.2,28,57,374/- was not allowed.

4. Against the assessment order dated 31.12.1991, the respondent-assessee went in appeal before the Commissioner of Income Tax (Appeals), Ranchi. The appellate authority held that the

respondent's claim could not be considered under section 36(1)(vii) of the Income Tax Act. However, the appellate authority held that the Assessing Officer was correct in holding that there is no element of bad debt in whole of the transaction. The respondent transferred certain assets to the Nigerian company for utilization in that company but due to certain restrictions imposed by the Nigerian Government, they lost control over those assets and the assets ceased to belong to assessee. The sundry debtors of the respondent became the sundry debtors of the Nigerian company. Other assets like cash and bank balance, stock-in-trade etc. continued to belong to the Nigerian company. According to the appellate authority, after all efforts for recovery of assets from Nigeria, the assessee failed in getting anything and therefore, the assessee wrote off the value of the assets in their accounts. The appellate authority observed that the debts, which existed with the respondent-company, only took a different manifestation and in any case, the Nigerian company was not a debtor to the respondent-company, nor the debtors of foreign company remained the debtors of the assessee-company any longer. The appellate authority held that since there was no debtor for the respondent-company, there was no question of any debt becoming bad. The Commissioner of Income Tax observed that the claim of the respondent-company can be considered as a trading loss with reference to the provisions of section 29 of the Income Tax Act and after relying upon some judgments, Commissioner of Income Tax (Appeals) allowed relief of Rs.2,20,21,891/-, which represented trading loss but did not allow the relief of Rs.8,35,482/-, which

represented written down value of the fixed assets of the assessee, which, according to the appellant, is held by M/s. MECON (Nigeria) Ltd.

5. Against the appellate order dated 5th March, 1992 passed by the Commissioner of Income Tax (Appeals), Ranchi, the assessee preferred appeal and the same was allowed.

6. After taking note of the argument of the learned counsel for the assessee, the Tribunal decided the question of alleged bad debt treating loss due to acquisition of the assets by M/s. MECON (Nigeria) Ltd. and with respect to legal issues, the Tribunal considered the issue in para 2 of the impugned order, which are as follows:-

“2. We have perused the orders of the lower authorities and found force in the submission of the ld. Counsel for the assessee before us on the issue. There cannot be two ways to decide on the taxability of certain income and if that be so the department should come out with the citations of accounting where such income which could not have certainty in view of diplomatic and other constraints. There is no reason that the contention of the assessee be disproved if the method is in accordance with certain norms set by the Institute of Chartered Accountants as well as certain accounting standards observed in following certain accounting treatment to be meted out to business transactions which are to be borne by the assessee as the time passes.

With regard to the chargeability of interest U/s 234B, we are of the view that this becomes a consequential issue and it should be given due credence in accordance with law and the AO is directed to consider the applicability of interest to be charged U/s.234B after giving appeal effects. Provisions for contingency have already been dealt with by us in the assessee's appeal for the assessment year 1990-91 to 1993-94. The issue has been raised with regard to chargeability of interest U/s.215 which, in our view, is to be allowed to the assessee in view of the fact that once an income which cannot form part of the taxable income of the assessee cannot be considered for levy of interest U/s.215 in view of the fact that the estimate for payment of advance tax is the prerogative of the assessee and, therefore, the department cannot extract interest U/s.215 on the basis of their regular

assessment on such income which was never considered as income by the assessee in the first place. It is again a consequential point which has been dealt with by us in the appeals filed by the assessee for respective assessment years.”

7. From perusal of the above observation of the Tribunal, it is clear that the Tribunal has not decided as to for what reasons, the reasons given by the appellate authority were found to be wrong and virtually it is a non-speaking order, deciding nothing.

8. Therefore, this appeal is allowed on this ground and we are not inclined to answer the question as framed because the Tribunal has not applied its mind to the question referred to us, which should be answered by the Tribunal. Therefore, Tribunal's order dated 27th May, 2002, so far as the above issues are concerned, is set aside and the matter is remanded to the Tribunal to decide the appeal in accordance with law after considering the reasons given by the appellate authority as well as submissions made by both the parties by giving reasons. Since it is an old matter, the parties are directed to appear before the Tribunal (ITAT, Circuit Bench, Ranchi). The Tribunal is directed to decide the appeal within a period of six months from the date of receipt of a copy of this order, which be sent to ITAT, Circuit Bench, Ranchi, forthwith.

(Prakash Tatia, C.J.)

(Jaya Roy, J.)