

आयकर अपीलीय अधिकरण “ए” न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, PUNE

श्री विकास अवस्थी, न्यायिक सदस्य एवं श्री प्रदीप कुमार केडिया, लेखा सदस्य के समक्ष ।  
BEFORE SHRI VIKAS AWASTHY, JM AND SHRI PRADIP KUMAR KEDIA, AM

आयकर अपील सं. / ITA No. 294/PN/2014

निर्धारण वर्ष / Assessment Year : 2010-11

Dy. Commissioner of Income Tax,  
Central Circle – 9, Pune

.....अपीलार्थी / Appellant

**बनाम / V/s.**

Kinetic Communications Limited,  
G-92, D-II Block, MIDC,  
Chinchwad, Pune – 411019

PAN : AAACK7632B

.....प्रत्यर्थी / Respondent

Assessee by : Shri C.H. Naniwadekar  
Revenue by : Shri Dheeraj Kumar Jain

सुनवाई की तारीख / Date of Hearing : 30-09-2015

घोषणा की तारीख / Date of Pronouncement : 30-09-2015

**आदेश / ORDER**

**PER VIKAS AWASTHY, JM :**

The appeal has been filed by the Revenue against the order of Commissioner of Income Tax (Appeals)-V, Pune dated 22-11-2013 for the assessment year 2010-11. The solitary ground raised by the Department in appeal against the order of Commissioner of Income Tax (Appeals) is accepting the claim of writing off of bad debts.

2. The brief facts of the case are : The assessee is a company registered under the provisions of Companies Act, 1956. The assessee company is engaged in manufacturing and trading of electronic equipments like colour Monitor, UPS. CD Rom, DVD, Modem, Mother Board and Auto Electronic Components. The assessee is also providing Engineering and Design services and IT services. The assessee filed its return of income for the assessment year 2010-11 on 14-10-2010 declaring total income as Nil. The assessee had set off its business income of Rs.63,03,346/- against brought forward business losses of assessment year 2009-10. The case of the assessee was selected for scrutiny. Accordingly, notice u/s. 143(2) was issued to the assessee on 25-08-2011. During scrutiny assessment proceedings, the Assessing Officer inter alia disallowed writing off of bad debts of M/s. Kinetic Motor Co. Ltd. amounting to Rs.1,27,58,427/-.

Aggrieved by the assessment order dated 31-12-2012, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) vide impugned order accepted the appeal of the assessee in toto. The Revenue is in appeal before the Tribunal against the findings of the Commissioner of Income Tax (Appeals) in allowing writing off of bad debts.

3. Shri Dheeraj Kumar Jain representing the department submitted that the Commissioner of Income Tax (Appeals) has erred in accepting the claim of the assessee by allowing writing off of bad debts. The bad debts written off are in respect of Kinetic Motor Co. Ltd. which is a group concern. The assessee has not been able to show that the debts are actually bad and irrecoverable. The debts have been written off as bad debts only to suppress the income. It is the strategy of the group

to reduce the income of the profit making group companies and thereby reducing the incidence of tax. In support of his submissions, the ld. DR placed reliance on the decision of Bangalore Bench of the Tribunal in the case of Embassy Classic P. Ltd. Vs. ACIT reported as 7 ITR (T) 287 (Bangalore) and the decision of Hon'ble Madras High Court in the case of South India Surgical Co. Ltd. Vs. ACIT reported as 287 ITR 62 (Madras).

4. Shri C.H. Naniwadekar appearing on behalf of the assessee strongly supported the findings of Commissioner of Income Tax (Appeals). The ld. AR submitted that for claiming writing off of bad debts, the assessee has to only write off the bad debts in its books of account. It is for the assessee, not the Department to see whether the debts have become bad and irrecoverable. In support of his submissions, the ld. AR placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of TRF Limited Vs. CIT reported as 323 ITR 397 (SC). The ld. AR further submitted that Kinetic Motor Co. Ltd. is one of the group concerns and is a loss making company. The assessee could not recover debts from the said company, as the company was in financial crisis and even in future there was no chance to recover any amount whatsoever from the said company. The ld. AR placed on record the list of creditors of Kinetic Motor Co. Ltd. with which the said company had made one time settlement.

5. We have heard the submissions made by the representatives of both the sides and have perused the orders of the authorities below. The only issue raised in the appeal by the Department is, whether the Commissioner of Income Tax (Appeals) was justified in accepting the

claim of assessee in writing off of bad debts in respect of Kinetic Motor Co. Ltd.? The main contention of the Department is that the assessee has written off the debts of Kinetic Motor Co. Ltd. a group concern, to reduce the profits of the assessee company and thereby reducing the tax liability.

6. A perusal of impugned order shows that the Commissioner of Income Tax (Appeals) after considering the financial status of the debtor company has accepted the claim of the assessee. The relevant extract of the order of the Commissioner of Income Tax (Appeals) reads as under:

*“6. I have carefully considered the facts of the case as well as reply of the appellant, in this case, it is seen that KMCL which is an Associate concern of the appellant company, was engaged in manufacture of two wheelers. During the year 2008-09, KMCL entered into agreement with Mahindra 2 Wheelers Pvt. Ltd. (MTWL) for sale of Plant & Machinery and land pertaining to 2 wheeler business. Liability to vendors for supplies made by vendors to KMCL till that date was to be discharged by KMCL. At the time of sale the appellant was having balance of approx. 237 lacs to be recovered from KMCL. Out of that amount of Rs.110 lacs was recovered and balance amount of Rs.127 lacs was written off as Bad Debts. The Assessing Officer treated this arrangement as restructuring of finance necessitated by financial constraints of the group as a whole and not on account of irrecoverability of the Bad Debts in respect of KMCL. To understand the issue, the learned counsel of the appellant was asked to give the details of settlement and payment by KMCL to other vendors compared to the total Debts, The appellant submitted that percentage of amount paid in respect of total dues was 57.19% compared to 46.32% of the appellant. However, it was further submitted that, the above % of 57.19% includes secure debts of banks which was required to be given priority and if the debts of banks are excluded then the payment made by KMCL to other vendors is only 41.8%, compared to 46.32% of the appellant and as per the list submitted by the appellant it is seen that KMCL had negotiated settlement with almost all the vendors to whom only 41.88% was paid out of the total debts. This the payment of 46,32% to the appellant cannot be said to be disadvantages to the appellant*

*company and considering the totality of the facts it cannot be said that the appellant company, being associate concern was put at disadvantage compared to other vendors by KMCL in respect of one time settlement. Accordingly, it is held that the Assessing Officer was not justified in holding that writing off Bad Debts was necessitated on account of group considerations and not on account of irrecoverability of debts pertaining to the appellant company. Accordingly, the Assessing Officer is directed to delete the addition of Rs.1,27,58,427/-. Thus, the ground is allowed.”*

7. The Revenue in its appeal has not challenged the finding of fact given by the Commissioner of Income Tax (Appeals) with respect to precarious financial position of the debtor company and that it had entered into one time settlement with its various creditors including Banks. The ld. AR has brought our attention to the written submissions filed before the Commissioner of Income Tax (Appeals) where in the summarized position of the debts settled by the Kinetic Motor Co. Ltd. was furnished. The same is reproduced here-in-under:

	<i>Total Level</i>	<i>Other than Bank</i>
1. Total amount payable before the time settlement	Rs.100,59,42,834	Rs.59,95,10,775/-
2. Total paid by KMCL as one Time settlement	Rs.57,53,48,899	Rs.25,10,96,892
3. Percentage of amount paid to total dues	57.19%	41.88%
4. Percentage of amount paid to KCL to total dues	46.32%	46.32%

8. A perusal of the facts clearly shows that Kinetic Motor Co. Ltd. was in financial distress and it could pay only part of its debts. Since, the assessee in its books of account had written off bad debts, the assessee was not required to establish that debts were in fact irrecoverable. The Hon'ble Supreme Court of India in the case of TRF

Limited Vs. CIT (supra) has held that after the amendment of section 36(1)(vii) of the Act w.e.f. 1<sup>st</sup> April,1989 it is not necessary for the assessee to establish that the debt, in fact, has become irrecoverable. It is enough if the bad debt is written off as irrecoverable in the accounts of the assessee.

9. The ld. DR placed reliance on the decision of Bangalore Bench of the Tribunal in the case of Embassy Classic P. Ltd. Vs. ACIT (supra) wherein the Co-ordinate Bench of the Tribunal after considering the judgment of Hon'ble Supreme Court of India in the case of TRF Limited Vs. CIT (supra) has distinguish the same. In the said case the assessee had written off bad debts in the books of account. However, the amount was recovered by the assessee before filing of the return itself. Thus, at the time of filing of return of income, no debt was due. The Tribunal observed that the assessee cannot convert any live amount into a bad debt only on the basis of the technical rule of writing off. It was not a case of bad debt but a case of delayed payment. It was in backdrop of these facts the Tribunal held, that the judgment of Hon'ble Supreme Court of India in the case of TRF Limited Vs. CIT (supra) will not apply. We find that the facts in the present case are entirely at variance. Therefore, the decision of Bangalore Bench of the Tribunal in the case of Embassy Classic P. Ltd. Vs. ACIT (supra) will have no application in the facts and circumstances of the present case.

10. The ld. DR has also placed reliance on the decision of Hon'ble Madras High Court in the case of South India Surgical Co. Ltd. Vs. ACIT (supra). In the said case the assessee had written of the debts due from the Government as bad debts. The Hon'ble High Court held

that it would be preposterous to consider that the Government was not in a position to discharge its acknowledged debt. It might be due to certain fund-flow problem and priority between different needs and there is postponement in discharging certain liability by the Government. There was no negation of claim nor has any Government hospital written that they would not pay any of these amounts. In the light of these facts the Hon'ble High Court disallowed the claim of assessee in writing off of bad debts. In the present case the debtor company had entered into one time settlement not only with the assessee company but with various other creditors, including banks. Moreover, it is not a case where the amount is due from Government or any instrumentality of the Government. Therefore, the ratio laid down by the Hon'ble Madras High Court in the case of South India Surgical Co. Ltd. Vs. ACIT (supra) would not apply in the facts and circumstances of the present case.

11. One of the arguments raised by the ld. DR was that the assessee and the debtor company are the part of same group, writing off of bad debts is a colourable device to set off the profits of one group company from the loss of other group companies. We are not convinced with the proposition put forth by the ld. DR. Both the companies i.e. the assessee as well as Kinetic Motor Co. Ltd. are separate legal entities and the assessee have been able to show that Kinetic Motor Co. Ltd. is a loss making company. Thus, we reject this contention of the ld. DR being devoid of merit.

We do not find any infirmity in the order of Commissioner of Income Tax (Appeals) in allowing the claim of assessee.

12. In the result, the appeal of the Revenue is dismissed being devoid of merit.

Order pronounced on Wednesday, the 30<sup>th</sup> day of September, 2015.

Sd/-  
(Pradip Kumar Kedia)  
लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-  
(Vikas Awasthy)  
न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 30<sup>th</sup> September, 2015  
RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-V, Pune
4. आयकर आयुक्त / The CIT-V, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “ए” बेंच,  
पुणे / DR, ITAT, “A” Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune