

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'ए', अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“ A ” BENCH, AHMEDABAD

समक्ष श्री जी.डी.अग्रवाल, उपाध्यक्ष (अहम. क्षेत्र) एवं श्री कुल भारत, न्यायिक सदस्य ।
BEFORE SHRI G.D. AGARWAL, VICE PRESIDENT (AZ) And
SHRI KUL BHARAT, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No. 2520/Ahd/2011
(निर्धारण वर्ष / Assessment Year : 2007-08)

Amar Enterprise 5, Shilpi Society Opp.Swami Narayan Mandir Karelibaug Baroda – 390 018	बनाम/ Vs.	The Income Tax Officer Ward-5(2) Baroda
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AALFA 1895 N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Surendra Modiani, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri Dinesh Singh, Sr.DR

सुनवाई की तारीख / Date of Hearing	03/06/2015
घोषणा की तारीख/Date of Pronouncement	05/06/2015

आदेश / ORDER

PER SHRI KUL BHARAT, JUDICIAL MEMBER :

This appeal by the Assessee is directed against the order of the Ld.Commissioner of Income Tax(Appeals)-V, Baroda ('CIT(A)' in short) dated 09/08/2011 pertaining to Assessment Year (AY) 2007-08.

The Assessee has raised the following grounds of appeal:-

- 1. The order of the learned Commissioner (Appeals) is against law and facts.*
- 2. The learned Commissioner (Appeals) erred in disallowing the expenditure of Rs.1,14,336/- in respect of bad debts written off during the year.*

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It is submitted that the Assessing Officer was not justified in disallowing the expenditure on the bad debts actually written off during the year.

*Your appellant prays that the addition of Rs.1,14,336/- be deleted.
Yours appellant craves leave to add to, alter, amend or delete any of the ground of appeal.*

2. Briefly stated facts are that the case of the assessee was picked up for scrutiny assessment and the assessment u/s.143(3) of the Income Tax Act,1961 (hereinafter referred to as “the Act”) was framed vide order dated 04/12/2009, thereby the Assessing Officer (AO in short) made disallowance of bad debt of Rs.1,14,366/- and also made addition of Rs.91,282/- on account of difference in account of Arihant Enterprises. Further, the AO made addition of Rs.5,000/- u/s.40A(3) of the Act. Against the said assessment order, the assessee filed an appeal before the Id.CIT(A), who after considering the submissions of the assessee dismissed the appeal. Aggrieved by the order of the Id.CIT(A), now the assessee is further in appeal before us.

3. The only effective ground in this appeal is against disallowing the bad debts of Rs.1,14,336/-. The Id.counsel for the assessee submitted that the authorities below were not justified in disallowing the bad debts and addition thereon. He submitted that the Id.CIT(A) ought to have deleted the disallowance. The Id.counsel for the assessee relied on the judgement of Hon’ble Apex Court rendered in the case of TRF Limited vs. CIT reported at (2010) 323 ITR 397 (SC).

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3.1. On the contrary, Id.Sr.DR supported the order of the AO and submitted that the AO has given a clear finding that the assessee in written submission stated that the firm has claimed bad debt as Bil Metal Industries Ltd. has not paid due amount during preceding years as a result of which the assessee has written off the due amount. He submitted that the AO observed that on verification of ledger account of Bil Metal Industries for the Financial Year 2006-07 relevant to AY 2007-08 from the books of account of the assessee it was found that there was opening balance of Rs.1,63,819/-, during the year as against the due balance of Rs.1,63,819/-, Rs.63,788/- was paid by Bil Metal on 22/04/2006. During the year goods worth Rs.1,02,592/- was sold by the assessee and further payment of Rs.40,000/- was received by the assessee on 24/03/2007. He submitted that the AO observed that the assessee continued its business transactions with Bil Metal Industries Ltd. He further submitted that the AR on behalf of the assessee agreed to the proposed addition of bad debt of Rs.1,14,336/-. The Id.Sr.DR submitted that under the facts of the present case, the judgement of Hon'ble Apex Court rendered in the case of TRF Limited vs. CIT reported at (2010) 323 ITR 397 (SC) is not applicable.

4. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below. We find that the AO in paras-4 & 4.1 of the assessment order has observed as under:-

“4. Disallowance of claim of bad debt - Rs.1,14,366/-

During the course of assessment proceedings on verification of claim of various expenses, it was found that there was claim of bad debt of Rs.1,32,797/- which includes amount written off of Rs.1,14,366/- in the case of Bil Metal Industries Ltd. Vide notice u/s 142(1) dated 20.11.2009, assessee was requested to justify how the claim of bad debt is allowable in the case of Bil Metal Industries specially when the business of Bil Metal is running & during the year the business of the assessee was continued with the said company. In reply, the assessee filed written submission stating that the firm has claimed bad debt as Bil Metal Industries Ltd has not paid due amount during preceding years as a result of which the assessee has written off the due amount. On verification of ledger account of Bil Metal Industries for the F.Y.2006-07 relevant to A.Y.2007-08 from the books of account of the assessee it was found that there was opening balance of Rs.1,63,819/-, during the year as against the due balance of Rs.1,63,819/-, Rs.63,788/- was paid by Bil Metal on 22.04.2006. During the year goods worth Rs.1,02,592/- was sold by the assessee and further payment of Rs.40,000/- was received by the assessee on 24.03.2007.

4.1. From the above stated facts, it is very clear that the business transactions of the assessee were continued during the F.Y.2006-07 with Bil Metal Industries Ltd. Bil Metal ind. Ltd. was found purchaser from the assessee and towards purchases payments were also made. Thus lit was running account. Considering these facts, assessee's claim for bad debt of Rs,1,14,366/- is found premature. Vide order sheet entry dated 16.11.2009, these facts also brought to the notice of the A.R. of the assessee & disallowances on account of claim of bad debts of Rs.1,14,366/- was proposed for which A.R. of the assessee was agreed. Therefore, the claim of the assessee for bad debt of Rs.1,14,366/- is rejected and the amount is added to the income of the assessee. The assessee has furnished inaccurate particulars of income and concealed the particulars of income and therefore penalty proceedings u/s.271(1)(c) of the I T Act is initiated.”

4.1. The Id.CIT(A) has confirmed the finding of the AO by observing as under:-

“5.2 I have considered the facts of the case as well as the observation of the AO and the arguments advanced by the AR. From the facts mentioned by the AO and documents submitted by the appellant during the course of proceedings before the undersigned it is very clear that the appellant was continuing business with Bil Metal Ind. Ltd during the previous year under consideration and it was regularly making sales to that party. It has also received payment of Rs.40000/- on 24.03.2007. Problem, if any, was in relation to bills amounting to Rs.114366/-, in respect of which the appellant has not submitted any documentary evidence of dispute. It is also very clear from the submission of the appellant that amount of Rs.1,14,366/- is not recoverable because of some kind of dispute between the appellant and Bil Metal Ind. Ltd and not because the financial position of Bil Metal Ind. Ltd has become so bad that the recovery of the amount is doubtful. It has been held in the case of Devi Film Pvt Ltd V CIT (Mad) 75 ITR 301 that action of the assessee waving a portion of amount due from the debtor does not amount to bad debt rather it is a trading loss. A similar inference can be drawn from the finding of honorable Calcutta High Court in case of CIT V Coates of India Ltd (1998) 232 ITR 324 (Cal). Therefore, claim of the appellant for allowing deduction of amount of Rs.114366/- as a bad debt is not sustainable. Now it has to be seen whether the same can be allowed as a trading loss. It is seen from the assessment order that the appellant has not furnished any evidence to show that which are the bills in respect of whom payment is being received from Bil Metal Ind Ltd and which are the bills under dispute. Appellant has also not furnished any evidence/ detail showing the nature of dispute and extent of amount under dispute. It is also not proved that the business loss pertains to the previous year under consideration. In absence of any details the appellant cannot be given benefit of allowing deduction of amount of Rs.114366/- as trading loss incurred during the year. In view of the above claim of bad debt by the appellant in respect of amount of Rs.114366/- is rejected and disallowance made by the AO in this regard is upheld.”

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4.2. The Id.counsel for the assessee has placed reliance on the judgement of the Hon'ble Apex Court in the case of TRF Limited vs. CIT reported at (2010) 323 ITR 397 (SC) in support of his contention that the claim of the assessee with regard to bad debt is allowable. We do not see any force in the contention of the Id.counsel for the assessee as in the present case the AO has demonstrated that the assessee has continued business transactions with the concerned party. It is also not disputed that the assessee has received payments from the concerned party. Moreover, assessee through its Authorized Representative agreed to the disallowance of bad debt and addition of the same. The judgement of Hon'ble Apex Court in the case of TRF Limited vs. CIT(supra) relied upon by the Id.counsel for the assessee will not help to the assessee. Therefore, ground raised in the Assessee's appeal is rejected.

5. In the result, Assessee's appeal stands dismissed.

**Order pronounced in the Court on Friday, the 5th day of June, 2015
at Ahmedabad.**

Sd/-
(जी.डी.अग्रवाल)
उपाध्यक्ष(अहम. क्षेत्र)
(G.D. AGARWAL)
VICE PRESIDENT (AZ)

Sd/-
(कुल भारत)
न्यायिक सदस्य
(KUL BHARAT)
JUDICIAL MEMBER

Ahmedabad; Dated 5/ 06 /2015

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-V, Baroda
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad