

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. No. 192/Asr/2018
Assessment Year: 2014-15

M/s. Amarnath Aggarwal Vs. Deputy Commissioner of Income
Builders Pvt. Ltd., Guru Kashi Tax, Circle-1, Bathinda
Marg, Bathinda

[PAN: AAECA 2413L]

(Appellant)

(Respondent)

Appellant by : Sh. Sudhir Sehgal &
Sh. P. N. Arora, Adv.

Respondent by: Sh. S. M. Surendranath, Sr. DR

Date of Hearing: 07.07.2022

Date of Pronouncement: 11.08.2022

ORDER

Per Anikesh Banerjee, JM:

The instant appeal was filed by the assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), Bathinda [in brevity the CIT(A)], bearing Appeal No. 247-IT/16-17, order dated 08.02.2018, passed u/s 250(6) of the Income Tax Act, 1961 [in brevity the Act], in respect of Assessment Year 2014-15. The impugned order was generated from the order of the Id. Deputy

Commissioner of Income Tax, Circle-1, Bathinda [in brevity the DCIT] passed u/s 143(3) of the Act, dated 26.12.2016.

2. The assessee has raised the following grounds of appeal:

- “1. *On the facts & in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs. 1,10,00,000/- on account of bad debts claimed u/s 36(2)(i) of the Income Tax Act, whereas as per the explanations furnished and material placed on record, the addition so confirmed is unjustified and uncalled for. The same be deleted.*
2. *On the facts & in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs. 1,10,00,000/- on account of bad debts claimed u/s 36(2)(i) of the Income Tax Act by holding that the amount which has been passed through the profit and loss account could only be eligible for claim under section 36(2)(i) of the Income Tax Act.*
3. *That the appellant craves leave to add or amend any grounds of appeal before the appeal is finally heard or disposed of.”*

3. Brief fact of the case is that the assessment was completed u/s 143(3) of the Act. The assessee is a company incorporated under the Companies Act, 1956 and doing business promoting and development and the housing project. During the assessment proceedings, it was noticed that the assessee has debited Rs.1,10,00,000/- under the head ‘**Amount written off paid against advance of land.**’ The Revenue asked to explain the nature of expenses which was debited, As per the statement of the assessee that the assessee along with other two other entities entered into an agreement dated 30.09.2005 with Sh. Nasib Singh, Man Singh, Rustam Singh, Harbhajan Singh, Gurdev Singh, Daulat Singh and Balwant

Singh and certain other persons of village Kundi Tehsil & Distt. Panchkula for purchasing land measuring 98 Kanals 8 Marlas. It was also stated that the assessee and other two entities paid Rs. 1,10,00,000/- out of which the assessee's share is Rs.80 lacs, as earnest money against purchase of said land. Further, an amount of Rs.30 lacs was paid by the assessee-company to the Haryana Government for fee and etc. At the time of entering into agreement, the said land was under litigation between farmers and Haryana Government and the case was pending before the Hon'ablr Punjab & Haryana High Court. The assessee filed a copy of agreement (APB pg. no. **68 to 78**) dated 30.09.2005 and a copy of judgment of Hon'ble Punjab & Haryana High Court dated 12.11.2009 inter- alia containing decision in respect of Civil Writ Petition No. 3673 of 1983, **APB page 73-122**. The matter was taken-up by the seller of the land before the Hon'ble Punjab & Haryana High Court, where in, the case was again decided against the seller on 24.08.2017. Since the appeal filed before the Hon'ble Punjab & Haryana High Court was dismissed, the assessee has debited the amount of Rs.1,10,00,000/- in the assessment 2014-15 under the head 'Amount written off paid against advance of land'. The tax audit report with financial statement are with the paper book from page no. **1 to 59** of the assessee's paper book (in brevity APB). The said claim of loss was made in ITR, **APB page-12, coloumn no-39**. The ld. Revenue authorities treated this account as per provisions of section 36(2)(i) no deduction of bad

doubtful debts. The assessee's contention is that the assessee wanted to purchase the land in anticipation for financial gain in Panchkula and paid the amount accordingly. The assessee denied that he never claimed this amount u/s 36(2) of the Act as a bad and doubtful debt. This payment is related to loss from business which was adjusted in this assessment year. The ld. AO rejected the contention of the assessee and disallowed the claim of deduction. The amount was added back with the total income of the assessee. Aggrieved, the assessee filed an appeal before the ld. CIT(A). The ld. appellate authority adjudicated the issue against the assessee. Being aggrieved, the assessee filed an appeal before us for further adjudication.

4. The ld. counsel of the assessee Mr. Sudhir Sehgal vehemently argued and relied on the written submission filed before the Bench which is kept in record. Mr. Sehgal first argued and mentioned that the loss of investment of the land is a nature of business loss. The assessee is a promoter and dealing with the land. The purchase of land was stock in trade. The ld. counsel has drawn our attention in paper book **pg. 45 of the APB**. In the audit report & the financial statement, the amount or Rs.1,10,00,000/- is adjusted in the head expenses 'under the head amount written of paid against advance of land'.

5. The Id. counsel further argued with the same question was raised during the assessment proceedings in the notice u/s 142(1) of the Act, in point no. 10C which is extracted as follows: -

“please furnish the details of that amount written off against advance of land’ amounting to Rs.1,10,00,000/- under the head of other expenses and P & L account explain the steps taken to recovery demand.”

The answer is mentioned in **page no. 63 of APB** point no. 10 which is extracted as follows:-

‘A sum of Rs. 1.10 Crore has been given as advance to the landowners and paid fee to Town Country Planner as scrutiny, but the permission has not been granted for the project. Accordingly, amount has been written off in the books of accounts.’

5.1. Mr. Sehgal further argued, the extract from his submission is as follows: -

- a). *That the assessee is engaged into business of “Real Estate” for the past few years and the business of the assessee is to buy the land and developed the same into a colony for that purpose, the assessee entered into an agreement to purchase the land on 30th of September 2005 on the outskirts of Panchkula with various farmers and as per the agreement, the assessee paid a sum of Rs. 1,10,00,000/- as advance to the land owner, which included the fee to the Town Planner as security but the permission had not been for the project.*
- b). *At the time of entering into the agreement, the said land was under litigation between the farmers and Haryana Govt, and the case was pending before the Hon’ble Punjab & Haryana High Court.*

- c). *That the Hon'ble Punjab & Haryana High Court decided the case against the seller of the land vide order, dated 12.11.2009 as per copy placed in the Paper Book at pages 73 to 122 and the matter was taken up by the Seller of the land before the Hon'ble Apex Court, wherein, the case was again decided against the Seller on 24.08.2017.*
- d). *The took a calculated risk of entering into agreement to purchase the land and had the case would have been won by the Land Owner, it would have resulted into huge benefit to the assessee.*
- e). *However, since the land owner lost the case before the Hon'ble Punjab & Haryana High Court, in the year 2009, the assessee could not purchase the land from the parties and, therefore, the amount was written off as bad debt.*
- f). *The following evidences in the paper book may, please, be considered: -*
- i). *At page 12 of the Paper Book on Form No.39, were the said claim of Rs. 1,10,00,000/- has been mentioned.*
- ii). *At page 35, in the report of the Auditor, it has been mentioned that the amount has become bad.*
- iii). *At page 39, under the head other expenses, for which, the detail is there at page 45, the amount of Rs. 1,10,00,000/- has been written off.*
- iv). *The Assessing Officer raises a query during assessment proceedings as per pages 60 to 61 of the paper book and at page 61, para 10, the said query had been raised.*
- v). *The assessee has replied as per the copy of the letter placed at pages 62 to 63 of the Paper Book and at page 62, in para 2, the business of the assessee company has been stated and at page 63, the reason for claiming the bad debit has been mentioned therein.*
- vi). *Again, further clarification has been given at pages 64 to 66 of the Paper Book alongwith copy of account, and the amount has been written off at page 67 of the Paper Book.*
- vii). *Copy of the agreement to purchase of land with the land owner, dated 13.09.2005 is at pages 68 to 72 of the Paper Book, where the detail of the payments have been mentioned and not doubted by the department.*

- viii). *The Judgment of Hon'ble Punjab Et Haryana High Court dismissing the appeal of the land owner is there at pages 73 to 122 vide order, dated 12.11.2009.*
- ix). *The facts as given to the CIT(A) are there at pages 124 to 126 and at page 127 of the Paper Book.*
2. *From the above details, it is very clear that it was not the capital expenditure but the amount advanced for business expediency and for the purpose of expending the business, the said amount had been given and, thus, it was bad debt. It is submitted that the assessee was not made a party before the Hon'ble Apex Court as per facts mentioned at page 127 of the Paper Book and as soon as, the assessee came to know, the amount was written off during the year under consideration.*
3. *The Ld. Assessing Officer and CIT(A) have not doubted the genuineness of expenditure, but it has been disallowed as it has not been shown income in the previous year and further has stated that since the Hon'ble Punjab St Haryana High Court vide order, dated 12.11.2009 had decided the case against the Seller, it should have been claimed in that year.*
4. *It is submitted that the assessee was in touch with the Land Owner and they had stated that they have filed an appeal before the Apex Court and, accordingly, the assessee did not right off the amount but has submitted to CIT(A) as per evidence placed at page 127 of the Paper Book that the assessee came to know that he has not been made a party before the Hon'ble Apex Court in the appeal filed by the land owner and the land owner had revolted on the ground that the payment had not been made as per conditions mentioned in the agreement and, therefore, the amount was written off as bad debt. Thus, either assessee could have claimed such loss in the Asstt. Year 2010-11 but since there was a hope and the assessee is into the "Real Estate" business, the said loss was an allowable loss and, thus, the amount was not written off."*

5.2. Mr. Sehgal also relied on the judgment of **Hon'ble ITAT Kolkata Bench** in the case of **IMC Ltd vs DCIT, Cir-11, ITA Nos. 813 & 781/Kol/2009** dated **18.01.2017**, the extract of the order is as follows:

“13. We have heard the rival submissions made by both the sides and order of the lower authorities as well as materials available on record. In the present case the AO has disallowed the claim of the assessee for the advance written off for Rs. 10,13,245.00 in the profit and loss account on the ground that the assessee failed to furnish necessary details at the time of assessment. However, the learned CIT(A) partly allowed the relief to the assessee for those advances which were in the nature of bad debts and routed through profit and loss account in the past amounting to Rs. 4,52,908.00. The Id. CIT(A) confirmed the disallowances for Rs. 5,60,337.00 on the ground that none of the advances was routed through the profit and loss account and also the advances were not made to obtain any current assets of the business.”

He also relied in the order of the Hon'ble Supreme Court in the case of **CIT v. Mysore Sugar Co. Ltd. [1962] 46 ITR 0649 (SC)**, in this case we respectfully observe that the advance was given to the farmer for harvesting the sugarcane, the some amount was irrecoverable. This particular amount was not in investment. The irrecoverable amount being Revenue loss deductible in computing business of the assessee. He further relied on the order of **CIT v. Woodcraft Products Ltd. (1996) 217 ITR 0862 (Kol)**.

6. The Id. Sr. DR vehemently argued and mentioned that the nomenclature of the loss is a bad debt. He further mentioned that in the return of the assessee in page no. **12 of APB in column no. 39**, the amount is declared as back date. So, the entire amount is treated u/s 36(2) as bad and doubtful debts. On the other hand, this amount is not related to origination of Revenue, so it is not covered the sale proceed. So, this particular amount is not acceptable as bad & doubtful debt & as business class.

6.1. The Id. Sr. DR further relied on the order of CIT(A) in page no. 6 which is extracted as under:

*“In the context above, it is to be noted that in pursuance to the aforesaid agreement the amount was advanced for the purposes of business. It is not a case where the appellant wanted to make purchase of capital asset but there exist a special circumstance that the appellant is a developer of real estate, therefore the purpose of purchasing land from the farmers was with an intention of developing/colonization of the same for **business purposes**. This can be treated as business advance in ordinary course of business and therefore any loss/non realization of such advance is a business loss of revenue nature because any advance made for purchase of business asset is a revenue payment. Even otherwise until & unless the asset is acquired, the payment of advance does not become capital payment. However, I do agree ' with the Assessing Officer that the aforesaid advance is not a debt in the terms of claim of bad debt as an expenditure as enshrined u/s 36(1)(vi) of Income Tax Act. The concept of bad debt allowable as business expenditure under these provisions has been further explained in 36(2)(i) by explaining that such debt must have been taken into account in computing of the income of the assessee at one point of time. This limitation would render advance in the nature of business as above not being the eligible debt. The contention of the appellant that these advances have been made out of the tax paid income, therefore it has passed through the profit and loss account is fallacious because even the capital advances could have been made out of the tax paid income. The source of payment of advance does not change the nature of advance because it has to be seen on its own merits. The bad debt eligible for deduction as an expenditure are only those debts which have already passed through income generating apparatus of the assessee but now some of it has become bad debt for non - realisation. This can be exemplified in the form that when an assessee makes sales to person ‘A’ and this sale is part of the trading account but later on any part of the sale amount was not realised. This becomes bad debt. On the contrary, in case an assessee makes payment for making purchases in the form of advance but does not receive the goods, this is a business loss in strict sense because It does not comply to requirement of 36(2)(i) Income Tax Act.*

The only difference between claim of expenditure of bad debt and claim of business loss is about the eligible financial year. In the case of bad debt written off the eligibility is in the year in which such bad debt has been written off. However the business loss can be claimed only in the year then the same has been ascertained and has become final.”

7. Mr. Sehgal further argued that the Revenue Authority once it is accepted that it is for business purpose but on other hand it is taken as capital advance. The Revenue Authorities is distorted our view from normal business loss to bad debt. The assessee never claimed that this particular amount is a bad debt. But in the return the amount was mentioned in the column bad debt due to the reason that there is no other column was allocated for the other business loss. The assessee filed tax audit report and balance sheet with the return of income, and the claim was clearly mentioned in the audit report & profit and loss account. On the other hand, the question of the Id. CIT(A) was that on the claim was not made in 2009 on which the judgment of the Hon'ble Punjab & Haryana High Court was delivered. The counsel argued that the assessee was first not aware about unfavorable conditions. Later on, the assessee entered in the civil suit. Further the assessee filed a petition before the Hon'able Supreme Court against the order of Hon'able Punjab & Haryana High Court and is waiting for the order.

8. We heard the rival submissions and relied on the documents available in the record. The assessee is a real estate developer. The amount was invested for stock in trade related to his business. The loss was incurred for non utilization of the property and the payment would not be realized in this expectation. The assessee took the amounts of Rs. 1,10,00,000/- in the profit and loss account as loss. In the observation of the CIT(A), the expenditure is taken as a business income and

treated the loss as a bad and doubtful debts u/s 36(2) of the Act. There is change of nature of investment was done by the Revenue authorities which is not accepted in the law. There is no question about the genuinity of the transaction of the assessee. As per accounting policy and general business practice any nature of loss is booked in books of accounts under specific head. But in IT Return the area of declaration is specific which was compelled the assessee to mention the business loss in bad & doubtful coloumn. But the nature of loss cannot be changed which is supported by basic evidence, books of accounts. The catena of judgments which are mentioned above are in favour of the assessee. Considering our above discussion, it is clear that this particular loss is a business loss and assessee is allowable to claim the loss in profit and loss account. Accordingly, the addition amount of Rs. 1,10,00,000/- is to be deleted.

9. In the result, the appeal of the assessee in **ITA No. 192/Asr/2018** is allowed.

Order pronounced in the open court on 11.08.2022

Sd/-
(Dr. M. L. Meena)
Accountant Member

Sd/-
(Anikesh Banerjee)
Judicial Member

GP/Sr. PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(A),
- (4) The CIT concerned

- (5) The Sr. DR, I.T.A.T
- (6) The Guard File

True Copy
By Order