

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

Before Shri R.K. Panda, Vice-President
AND
Shri Laliet Kumar, Judicial Member

ITA No. 477/Hyd/2023		
Assessment Year: 2018-19		
M/s. Pennar Industries Ltd Hyderabad	Vs.	Dy. CIT Circle 5(1) Hyderabad
(Appellant) PAN:AAECP5982F		(Respondent)
Assessee by:	Shri Mohd.Afzal, Advocate	
Revenue by:	Shri CH V Gopinath, CIT(DR)	
Date of hearing:	09/11/2023	
Date of pronouncement:	22/11/2023	

ORDER

Per Laliet Kumar, J.M

This appeal filed by the assessee is directed against the order dated 07.08.2023 of the learned CIT (A)-NFAC, Delhi relating to A.Y.2018-19.

2. The effective grounds raised by the assessee read as under:

i) The learned Commissioner erred in confirming the order of the AO where a disallowance of Rs.26,00,00,000/- is made.

ii) The learned Commissioner ought to have appreciated that the deduction claimed as per the ICDS-IV, which is

recognized by the statute, therefore, erred in confirming the disallowance of Rs.26,00,00,000/-.

iii) The learned Commissioner ought to have appreciated that the NCLT approved liquidation of HDOL, the Principal Contractor, therefore, erred in confirming the disallowance made amounting to Rs.26,00,00,000/-.

iv) The learned Commissioner ought to have appreciated that the entries in the books of account are not determinative or conclusive in determining the total income, therefore, erred in confirming the disallowance of Rs.26,00,00,000/-.

V) The learned Commissioner ought to have appreciated that the real income theory and therefore erred in confirming the disallowance of Rs.26,00,00,000/-.”

3. The learned AR submitted that the order passed by the lower authorities is contrary to the law and facts. For the above said purposes, the AR submitted that the assessee has claimed unbilled revenue as deduction as per ICDS adjustment in the Tax Audit Report. However, during the 2nd computation of total income, the assessee had written off the amount of Rs.26 crores (unbilled revenue) before the Assessing Officer and for that purpose, the assessee had drawn our attention to the computation of the total income filed by the assessee which read as under:

Name of Assessee	PENNAR ENVIRO LIMITED
Address	Floor No: 3, DHFLVC, Silicon Towers, Kondapur, Hyderabad, TELANGANA, 500084
Status	Company (Domestic)
Residential Status	Resident
Assessment Year	2018-2019
Ward	(3)
Year Ended	31.3.2018
PAN	AAECP5982F
Incorporation Date	14/03/2008
Nature of Business	MANUFACTURING-Other manufacturing n.e.c.(04097)
A.O. Code	---
Bank Name	Axis Bank ,Begumpet ,MICR:500211046 ,A/C NO:913030024705765 ,Type: Cash Credit ,IFSC Code: UTIB0001634
Tele:	Mob:8008763737

Computation of Total Income

Income from Business or Profession (Chapter IV D)		90410526
Profit as per Profit and Loss a/c	338944006	
<u>Add:</u>		
Depreciation Debited in P&L A/c	1682252	
Bonus payable	501465	
Deferred Revenue Expenses	9990352	
PF Employee contribution (Delayed Payment)	1010139	
Loss on sale of property	957834	
Interest on TDS	175761	
ESI Employee contribution (Delayed Payment)	95344	
Total	<u>353357153</u>	
<u>Less:</u>		
Interest Income	1223503	
Unbilled Revenue	260000000	→
Bonus paid	516734	
Depreciation as per Chart u/s 32	<u>1206390</u>	
	<u>262946627</u>	
	<u>90410526</u>	
Income from Other Sources (Chapter IV F)		1223503
Interest from Bank	<u>1223503</u>	
Gross Total Income		<u>91634029</u>
Total Income		<u>91634029</u>
Round off u/s 288 A		91634030
Calculation for Mat		338944006
Profit as per part II of Schedule III	229665803	
<u>Add:</u>		

4. It was submitted that on the basis of the above once the assessee had written off the unbilled revenue in the total income, then the “said unbilled revenue” cannot be considered as the income of the assessee and for that purpose, the learned AR drew our attention to section 36(vii) of the Act. It was submitted that

once the assessee has fulfilled the prerequisite of the written off while computing the income of the assessee, then the Assessing Officer was left with no option but to allow the same. It was further submitted that the reliance of the Assessing Officer on the judgment of the Hon'ble Bombay High Court in the case of Taparia Tools Ltd reported on 8.1.2003 was of no help, as the Hon'ble Supreme Court while hearing the appeal against Taparia Tools Ltd reported in the case of Taparia Tools Ltd v. Jt. CIT reported in 372 ITR 0606 has decided the issue against the revenue.

5. Per contra, the learned DR relied upon the decision of the lower authorities. However, in the written submission it was mentioned as under:

“Thus, the written submission does not throw any fresh light on the issue under consideration. The appellant computed income by relying on ICDS where unbilled revenue was deducted from taxable income. But while considering tax working under MAT provision, this was included as income. However, the element of Rs.26,00,00,000/- (not recognized as revenue) has not achieved finality.

A petition of liquidation is pending before the liquidator. Thus, unbilled revenue has not reached the finality as non-receipt. The application of Taparia Tools of Bombay High Court (TR 372 0605) is adopted only to the extent of revenue recognition under mercantile system of accounting.

The judgment of Hon'ble Supreme Court in the case of Keshav Mills vs CIT (23 ITR 230) postulates the existence of tax in so far as monies due and payable by the parties to whom they are debited. The appellant here has adopted the unbilled revenue as sales while finalizing the account at the time of tax audit and contradicting the same while adopting ICDS scheme. Hence, per se this is a case of write off of bad debts. The condition for which are prescribed under section 36(1) (vii) of IT Act.

- a. The debts have to be actually in written off of the books of the accounts*
- b. It has to be part of the revenue in the earlier years.*

c. A provision for bad debts has to be created in the books.

In the above case none of these three conditions were satisfied.

1. Reliance can be placed on the Apex Court Judgment in the case of Rajesh Jhaveri Stock Broker Pvt. Ltd. Vs. ACIT (161 Taxman 316).

2. In the instant case, the judgment of Taparia Tools Ltd. (ITR 372 0605) is distinguished.

The provisions of ICDS are towards accounting treatment and cannot take the provisions of the IT Act.”

6. He had also drew our attention to the following Paras of the Assessing Officer and the learned CIT (A):

6.1 In the assessment order, it was held by the Assessing Officer as under:

3.1 All the above replies of the assessee company have been considered carefully but are not found acceptable due to following reasons:-

From the above discussion, it emerges that at the time of preparing the books of accounts, the assessee company has taken into consideration the above referred amount of unbilled revenue of Rs.26 Cr. in the sales. However, at the time of Tax Audit, the assessee company requested the Auditor to claim the deduction in the computation of income taking support of newly introduced ICDS scheme, which is evident from the extract reproduced Supra. The assessee company, in the garb of adjustment under ICDS IV claimed the said amount of deduction in the computation of income. In the first place, this adjustments cannot be categorized as part of revenue recognition and thus it cannot be part of ICDS Adjustments.

In fact, this is a simple case of writing off the debts prematurely. As discussed above, the assessee stated that its principle contractor M/s Hindustan Doroliver Ltd. went into liquidation as per the order of the NCLT and therefore the assessee company opined that their dues outstanding with the said company cannot be recovered and there was no certainty of any recovery whatsoever. However, it appears that this is a premature thinking on the part of assessee company to treated this amount as irrecoverable, for the very fact that the aforesaid order of the NCLT was challenged before the appellate authority and the NCALT at the very latest stage somewhere in the year 2019, confirmed the order of the NCLT. The assessee, therefore,

had made this claim in hurried manner and taking support of ICDS Revenue Recognition policy claimed the deduction and reduced the tax liability of the assessee company.

3.2 As stated above, this is the case of writing off of bad-debts. The concept of writing off the bad-debts falls under the provisions of section 36(1)(vii) of the Act. The assessee, however, in the initial stage denies that this amount partakes the nature of bad-debts. However, as seen from the above submission in the subsequent letters, the assessee company itself mentioned that it has written off the same from the books of account in the A.Y.2020-21 and 2021-22 and the same has been added back in the computation of income of the merged company M/s Pennar Industries Ltd. Thus, it is affirmed by the assessee company that this is bad debts written off. As per the provisions of above section, there is following important and specific condition required to be satisfied for the bad-debts to be written off:-

1. The assessee is required to actually write off the debts in the books of accounts then and only then the bad-debts qualify for claiming for deduction u/s 36(1)(vii) of the I T Act.

As discussed above, the assessee in this case, has not written off these bad debts from the books. It only claimed the deduction in the computation of income under the so-called revenue recognition adjustment under ICDS. The ICDS policy is a new scheme for the tax payers as well as the department. There are too many grey areas as to which transactions actually are covered under this ICDS policy. As said earlier the abovementioned adjustment to the income as has been claimed by the assessee cannot be part of ICDS in support of this it is pertinent to mention that in the clarifications by the Board on ICDS the following points have been emphasized:-

A. It is applicable to all taxpayer (corporate/non-corporate or resident/non-resident) irrespective of the turnover or income

B. It will not have any impact on the minimum alternate tax (MAT) for corporate assesseees as it will be based on the book profits to be determined as per the current applicable AS. It will only be applicable for computation of income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" C. It is applicable only on the computation of the income and not for maintenance of the books. If there is any conflict, then the Income Tax Act will prevail over ICDS

D. Income Tax Authorities have the power to assess the income on best judgment basis on non-compliance of ICDS

E. All ICDS (except VII relating to Securities) contains transitional provisions which in general provide for recognition of outstanding contracts and transactions as on 1st April, 2015 in accordance with it after taking into account income/expenditure/loss already incurred in the past. There is no 'grandfathering' for outstanding contracts or transactions as on 31st March, 2015

F. It does not provide any explanations or illustrations like AS. It only lays down the principles to be adopted for computing Income

G. Revenue or Expenses on which there is no ICDS will continue to be governed by existing AS.

As can be seen from the above that " if there is any conflict, then the Income Tax Act will prevail over ICDS. Therefore in this case, the provisions of section 36(i)(vii) shall prevail over the assessee's claim of ICDS claim of adjustments. Having said that it is undoubtedly clear that the assessee's claim of deduction of Rs.26 Cr is not admissible and accordingly the same is hereby disallowed. Therefore, amount of Rs.26 Cr is disallowed and added to the total income of the assessee. Penalty proceedings u/s 270A of the act is being initiated separately.

4) Subject to the above the total income of the assessee company assessed as under:-

<i>Amount (in Rs) Total Income as per Return</i>	<i>91634030</i>
<i>Add:- Disallowance of as per para 3</i>	<i>260000000</i>
<i>Assessed Income</i>	<i>351634030</i>

5. Income of the assessee company is assessed u/s 143(3) of the Income Tax Act, 1961 on total income of Rs.351634030/- Charge interest accordingly. Issue demand notice and challan etc. Penalty proceedings u/s 270A is initiated separately as per Law."

6.2 The learned CIT (A) in the appeal order observed as under:

- 5.5** The submissions of the assessee and the averments made in the assessment order have been carefully considered. The assessee company is in the business of executing sub contractor work in respect of laying power lines, in addition to manufacturing operations. The issue in dispute relates to the recognition of revenue from the sub-contract executed by the appellant company for M/s HDOL. Though the revenue has been recognised in the books of accounts and the profit and loss account credited with such revenue, it is not offered for taxation. The appellant has taken the plea that the revenue is uncertain for collection and therefore, in accordance with ICDS IV is not required to be offered for tax. The relevant portion of ICDS IV relating to recognition of revenue is reproduced hereunder for easy reference:

“Sale of Goods

3. In a transaction involving the sale of goods, the revenue shall be recognised when the seller of goods has transferred to the buyer the property in the goods for a price or all significant risks and rewards of ownership have been transferred to the buyer and the seller retains no effective control of the goods transferred to a degree usually associated with ownership. In a situation, where transfer of property in goods does not coincide with the transfer of significant risks and rewards of ownership, revenue in such a situation shall be recognised at the time of transfer of significant risks and rewards of ownership to the buyer.

4. Revenue shall be recognised when there is reasonable certainty of its ultimate collection.

5. Where the ability to assess the ultimate collection with reasonable certainty is lacking at the time of raising any claim for escalation of price and export incentives, revenue recognition in respect of such claim shall be postponed to the extent of uncertainty involved.

Rendering of Services

6. Subject to Para 7, revenue from service transactions shall be recognised by the percentage completion method. Under this method, revenue from service transactions is matched with the service transaction costs incurred in reaching the stage of completion, resulting in the determination of revenue, expenses and profit which can be attributed to the proportion of work completed. Income Computation and Disclosure Standard on construction contract also requires the recognition of revenue on this basis. The requirements of that Standard shall mutatis mutandis apply to the recognition of revenue and the associated expenses for a service transaction. However, when services are provided by an indeterminate number of acts over a specific period of time, revenue may be recognised on a straight line basis over the specific period.

7. Revenue from service contracts with duration of not more than ninety days

may be recognised when the rendering of services under that contract is completed or substantially completed."

5.6 In the above case, the revenue in dispute relates to the service component in proportion to the supplies made to the M/s. HDOL. Since the revenue relates to the service component of the contract, provisions of para 06 of ICDS IV would be applicable to the instant case. Paragraph 06 of the ICDS IV mandates the recognition of revenue on a percentage completion method, wherein revenue from service transactions is to be matched with the cost incurred in reaching the stage of completion. It is clear in the case of the appellant that costs have been incurred already in respect of the sub-contract with M/s. HDOL and therefore, the revenue relatable to such proportion of service already rendered is to be recognised.

5.7 Further paragraph 04 of ICDS IV mandates that revenue shall be recognised when there is a reasonable certainty of its ultimate collection. However, this exercise of recognition of revenue is to be carried out at the close of the financial year. What is required to be considered is whether there is reasonable certainty of collection of revenue **as on the last day of the financial year**. Any subsequent happening influencing the collection of revenue would be irrelevant at this stage.

5.8 In the case of the appellant, the revenue representing the service portion in proportionate to the value of supplies made has been recognised as revenue in the books of accounts as on 31-03-2018. In this connection, it is worth mentioning at this stage that the assessee being a company is required to follow Accounting Standard AS-9 as notified by the Ministry of Corporate Affairs which is very similar to ICDS IV. Complying with this Accounting Standard, the books of accounts have been finalised by the appellant. The fact that the revenue of 26 crores from the Sub-contract has been recognised in the books of accounts and credited to profit and loss account goes to show that there is reasonable certainty in realisation of such revenue **as at the end of the financial year**. The Financial statements were approved by the Board of Directors on 10-05-2018. Upto this date, it can be reasonably presumed that there was no uncertainty around the realisation of revenue. Only on 02-07-2018, when the company M/s. HDOL filed for liquidation, the issue of uncertainty arose. Therefore, as on the last date of financial year viz. 31-03-2018 even applying the ICDS IV Standards, there was no uncertainty in the realisation of revenue. Accordingly, there is no justification in the claim of deduction over and above the claims made in the books of accounts. The income from sub-contract is a contractual receipt which can be enforced in the court of law. The fact remains that services in proportion to the revenue of Rs. 26 crores have already been rendered and the expenses corresponding to them have been claimed as expenditure in the profit and loss account. The Matching concept of accountancy and the principle of parity demands

that the revenue corresponding to the expenditure claimed be recognised in the same period to determine the true (profits or loss) results of the transactions.

5.9 Under the above circumstances, there is no merit in the withdrawal of Rs. 26 crores from the taxable income by the appellant. Accordingly, the grounds of appeal raised by the appellant deserve to be dismissed.

6. In the result, the appeal of the appellant is **Dismissed**.

7. We have heard the rival arguments and perused the material available on record. Section 36(vii) provides as under:

“36(vii) subject to the provisions of sub-section (2), the amount of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year:

***Provided** that in the case of an assessee to which clause (viiia) applies, the amount of the deduction relating to any such debt or part thereof shall be limited to the amount by which such debt or part thereof exceeds the credit balance in the provision for bad and doubtful debts account made under that clause:*

***Provided further** that where the amount of such debt or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof becomes irrecoverable or of an earlier previous year on the basis of income computation and disclosure standards notified under sub-section (2) of [section 145](#) without recording the same in the accounts, then, such debt or part thereof shall be allowed in the previous year in which such debt or part thereof becomes irrecoverable and it shall be deemed that such debt or part thereof has been written off as irrecoverable in the accounts for the purposes of this clause.*

Explanation 1.—For the purposes of this clause, any bad debt or part thereof written off as irrecoverable in the accounts of the assessee shall not include any provision for bad and doubtful debts made in the accounts of the assessee;

Explanation 2.—For the removal of doubts, it is hereby clarified that for the purposes of the proviso to clause (vii) of this sub-section and clause (v) of sub-section (2), the account referred to therein shall be only one account in respect of provision for bad and doubtful debts under clause (viiia) and such account shall relate to all types of advances, including advances made by rural branches.” (emphasis supplied by us).

7. From a reading of section 36(vii) reproduced herein above, it is abundantly clear that once the assessee has written off any amount or part thereof while computing the income of the previous years in which the amount of such debt or part thereof has become irrecoverable without recording the same into account, then such debt or part thereof shall be allowable in such previous year. Undoubtedly, in the present case, the assessee has disallowed the unbilled amount while computing the total income of the assessee and being irrevocable, therefore, the provisions of section 36(vii) – 2nd proviso are squarely

applicable to the facts of the present case. The above said fact have not been disputed by the Revenue while filing their written submission and they have not given any comments with respect to the above facts. On the contrary, the learned DR relied upon the condition mentioned in section 36(vii) of the Act and has not made any comments with respect to the 2nd proviso of the Act which was brought to the statute w.e.f. 1.4.2016. However, the assessment year involved in the instant case is 2018-19 and therefore, the said 2nd proviso is squarely applicable. The reliance of the Assessing Officer in the case of the Hon'ble Bombay High Court in the case of Taparia Tools is of no help to the Revenue, firstly the Hon'ble Supreme Court had reversed the decision of the Hon'ble Bombay High Court and secondly the 2nd proviso to section 36(vii) was inserted in the statute books thereafter whereby permitting to "written off" of the amount in computation of income. In our view, once the proviso to the Act is applicable to the facts of the case which in fact is an exception to the main rule, then the same is required to be applied with full force. Accordingly, we have no hesitation in deleting the addition made by the Assessing Officer. Hence the appeal of the assessee is liable to be allowed and we allow the same.

8. In the result, appeal filed by the assessee is allowed.
Order pronounced in the Open Court on 22nd November, 2023.

Sd/- (R.K. PANDA) VICE-PRESIDENT	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 22nd November, 2023.

Vinodan/SPS

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4	DR, ITAT Hyderabad Benches
5	Guard File

By Order