

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

INCOME TAX APPEAL NO. 1265 OF 2017
WITH
INCOME TAX APPEAL NO. 1469 OF 2017

Pr. Commissioner of Income Tax -10 .. Appellant

Versus

Hybrid Financial Services Ltd
(Formerly known as Mafatlal Finance Co Ltd) .. Respondent

-
- Mr. Akhileshwar Sharma for the Appellant
 - Mr. Nitesh Joshi i/by R.V. Pillai for the Respondent
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CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.

DATE : FEBRUARY 11, 2020.

ORAL ORDER [PER UJJAL BHUYAN, J.]:

- 1.** This order will dispose of both Income Tax Appeal Nos. 1265 of 2017 and 1469 of 2017.
- 2.** Heard learned counsel for the parties.
- 3.** Assessee in both the appeals is the same. While Income Tax Appeal No. 1265 of 2017 relates to assessment year 2001-02, Income Tax Appeal No. 1469 of 2017 relates to assessment year 2003-04.

4. However, for the sake of convenience, we may refer to the facts in Income Tax Appeal No. 1265 of 2017.

5. This appeal under Section 260A of the Income Tax Act, 1961 ("**the Act**" for short) is preferred by the revenue against the order dated 26.8.2016 passed by the Income Tax Appellate Tribunal, Mumbai "H" Bench, Mumbai ("**Tribunal**" for short) in Income Tax Appeal No. 7175/Mum/2010 for the assessment year 2001-02.

5.1. As already noted, Income Tax Appeal No. 1469 of 2017 assails the same order but arising out of Income Tax Appeal No. 7176/Mum/2010 for the assessment year 2003-04.

6. Revenue has preferred this appeal projecting the following two questions as substantial questions of law:-

- (i) Whether on the facts and in the circumstances of the case and in law, the order of the Tribunal for AY 2001-2002 and 2003-2004 is perverse as it is not based on the facts, relevant to the assessment year?
- (ii) Whether on the facts and in the circumstances of the case and in law, Tribunal has erred in law to allow bad debts on account

of inter corporate debt and advances in contravention of Section 36(1)(vii) read with Section 36(2) of the Act inspite of the fact that the assessee company is not a banking company or engaged in the business of money lending?

7. Basically, the two questions center around allowance of the claim of the respondent - assessee of bad debts by the Tribunal by deleting the additions made by the Assessing Officer as affirmed by the first appellate authority.

8. For proper appreciation of the aforementioned two questions, it may be apposite to deal with the orders passed by the authorities below.

9. Respondent is an assessee under the Act and subject to assessment jurisdiction of the Assessing Officer, Assistant Commissioner of Income Tax, Range-10(1)(1), Mumbai. Respondent - assessee is a company engaged in the business of providing finance in the field of lease and higher purchase transaction, management consultancy services etc. During the assessment proceedings for the assessment year 2001-02, Assessing Officer noticed that assessee had claimed bad debts of Rs. 13,01,04,359.00. While in three cases, assessee had written off inter corporate

deposits, in respect of four cases, the written off of bad debts pertains to advances given either for purchase of vehicles or plant and machinery. Referring to Section 36(1)(vii) of the Act, Assessing Officer took the view that unless there was an admitted debt it could not be allowed as bad debt when it is written off. Besides, the debt must be incidental to the business or profession of the assessee. Taking such view, Assessing Officer issued notice to the assessee to show cause as to why the amounts covered by the bad debts should not be added to the income of the assessee. Assessee in its reply stated that writing off any debt as irrecoverable in the accounts was sufficient compliance to Section 36(1)(vii) of the Act. However, by the assessment order dated 19.2.2004 passed under Section 143(3) of the Act, Assessing Officer did not accept the reply submitted by the assessee. Assessing Officer held that a debt is allowable only when it is a debt arising out of and is incidental to the trade carried out by the assessee. Therefore, Assessing Officer held that claim of the assessee for writing off all the dues could not be entertained.

10. Aggrieved by the assessment order, assessee preferred appeal before the Commissioner of Income Tax (Appeals) -22, Mumbai (also referred as "**first appellate authority**"). By the appellate order dated 4.8.2010, the first appellate authority considered the rival submissions and relying on the decision of this Court in **Director of Income Tax (International Taxation) Vs. M/s. Oman International Bank SAOG**¹ held that apart from writing off the debts as bad debts, action of the assessee has to be bonafide and such decision must be based on some material in possession of the assessee. Mere reversal of income in its books of accounts did not entitle the assessee to claim deduction. Affirming the view taken by the Assessing Officer, first appellate authority rejected the claim of bad debts made by the assessee.

11. In further appeal before the Tribunal, reliance was placed in the case of **T.R.F. Ltd Vs. CIT**² wherein Supreme Court held that after 1.4.1989, it was not necessary for the assessee to establish that the debt in fact has become

1 [2009] 313 ITR 218

2 [2010] 323 ITR 397 (SC)

irrecoverable. It was enough if the bad debt is written off as irrecoverable in the accounts of the assessee. Noticing that assessee had written off all the debts in question as irrecoverable in its accounts, Tribunal set aside the findings of the first appellate authority affirming the view of the Assessing Officer and allowed the claim of the assessee. Aggrieved, revenue is in appeal before us raising the above two questions for consideration.

12. Submissions made have been duly considered.

13. Chapter IV of the Act deals with computation of total income. Heads of income are mentioned in Section 14. Profits and gains of business or profession is one of the heads of income. Section 28 of the Act deals with computation of income under the head 'profits and gains of business or profession'.

13.1 Section 36 deals with other deductions. As per sub-section (1), the deductions provided therein shall be allowed in respect of the matters dealt with therein, in

computing the income referred to in Section 28. Clause (vii) deals with the amounts of bad debt or part thereof which should be written off as irrecoverable in the accounts of the assessee for the relevant previous year.

14. In Oman International Bank (*supra*), this Court dealt with the question as to whether it was obligatory on the part of the assessee to prove that the debt written off by the assessee is recorded as a bad debt for the purpose of allowance under Section 36(1)(vii). This court opined that to treat a debt as a bad debt, it has to be a commercial or business decision of the assessee. Once assessee records a debt as bad debt in his books of accounts that would *prima facie* establish that it is a bad debt unless the Assessing Officer for good reasons holds otherwise. However, a caveat was put in to the effect that writing off a debt as bad debt in the accounts has to be bonafide.

15. However, this question was specifically dealt with by the Supreme Court in T.R.F. Ltd (*supra*). Supreme Court noted the difference in the language of Section 36(1)(vii)

prior to 1.4.1989 and after the amendment, post 1.4.1989. Since this aspect is relevant, Section 36(1)(vii) as it existed prior to 1.4.1989 and after 1.4.1989 are extracted hereunder:-

"Pre-1st April, 1989:

36. Other deductions -(1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28--

(vii) subject to the provisions of sub-section (2), the amount of any debt, or part thereof, which is established to have become a bad debt in the previous year.

Post-1st April, 1989:

36. Other deductions-(1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28--

(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."

15.1. Comparing the provision of Section 36(1)(vii), pre 1.4.1989 and post 1.4.1989, Supreme Court held that the position in law has become well settled. After 1.4.1989, 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.

16. This Court in **CIT Vs. Shreyas S. Morakhia**³ also considered a claim of share broker assessee to deduction by way of bad debts under Section 36(1)(vii). This Court referred to the decision of the Supreme Court in T.R.F. Ltd (supra) and held that under Section 36(1)(vii) of the Act, the amount of any bad debt or any part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year is to be allowed as deduction in computing income under Section 28 of the Act.

17. Thus, it is a settled position in law that after 1.4.1989, it is not necessary for the assessee to establish or prove that the debt has in fact become irrecoverable but it would be sufficient if the bad debt is written off as irrecoverable in the accounts of the assessee. This is because, as held by this Court, decision to treat a debt as a bad debt is a commercial or business decision of the assessee. Recording of a debt as a bad debt in his books of accounts by the assessee *prima facie* establishes that it is a bad debt. If the Assessing Officer disputes that the onus would be on him to prove otherwise.

³ [2012] 342 ITR 285 (Bom)

18. Adverting to the facts of the present case, Tribunal recorded from the materials on record that admittedly, the debt in question had been written off as irrecoverable in the accounts of the assessee.

19. If that be the position, then there is compliance to the requirement of Section 36(1)(vii) of the Act and the amount covered by the bad debts would be entitled to be deducted vide computing income under Section 28 of the Act. Further, it is not necessary, rather there is no requirement under the Act that the bad debt has to accrue out of income under the same head i.e 'income from business or profession' to be eligible for deduction. This is not a requirement of law. All that is required is that the debt in question must be written off by the assessee in its books of accounts as irrecoverable.

20. In the light of the above, we do not find any error or infirmity in the view taken by the Tribunal. No question of law arises from the order of the Tribunal. Consequently, appeal filed at the instance of the revenue fails and is

accordingly dismissed. However, there shall be no order as to costs.

21. In view of the above, Income Tax Appeal No. 1469 of 2017 would also stand dismissed.

[MILIND N. JADHAV, J.]

[UJJAL BHUYAN, J.]