

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO.3554 OF 2007

KERALA STATE INDUSTRIAL DEVT.CORPN,LTD. Appellant (s)

VERSUS

COMMISSIONER OF INCOME TAX Respondent(s)

(With prayer for interim relief and office report)

Date: 18/09/2012 This Appeal was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MADAN B. LOKUR

For Appellant(s) Mr. S. Ganesh,Sr.Adv.
Mr. S. Sukumaran,Adv.
Mr. Anand Sukumar,Adv.
Mr. Bhupesh Kumar Pathak,Adv.
Mr. K. Rajeev,Adv.

For Respondent(s) Mr. Rajiv Dutta,Sr.Adv.
Mr. Rahul Kaushik,Adv.
Ms. Sadhana Sandhu,Adv.
Ms. Anil Katiyar,Adv.
for Mr. B.V. Balaram Das,Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard learned counsel on both sides.

The civil appeal is allowed.

No order as to costs.

[Alka Dudeja]
A.R.-cum-P.S.

[Indu Satija]
Court Master

[Signed order is placed on the file.]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Kerala State Industrial Dev. Corpn. Ltd.

...Appellant(s)

Versus

Commissioner of Income Tax

...Respondent(s)

O R D E R

Heard learned counsel on both sides.

This civil appeal filed by the assessee pertains to the Assessment Year 1988-1989. This case pertains to the period prior to 1st April, 1989.

The assessee is a State Public Sector Undertaking. It claimed deduction for bad debt under Section 36(1)(vii) of the Income Tax Act, 1961 [for short, 'the Act'], which required two conditions to be satisfied at the relevant time, namely, that (a) bad debt must be established to have become bad in that year; and (b) bad debt should have been written off in the books of account of that year.

The question before us is, whether the claim of the assessee satisfies both the afore-stated conditions.

The assessee is a State Industrial Development Corporation Limited, Trivandrum. It had advanced loans/credit facilities to M/s. Vanchinad Leathers Limited, a joint sector Company promoted by the appellant for processing hides and skins. M/s. Vanchinad Leathers Limited was set up sometime in the year 1974. Though M/s. Vanchinad Leathers Limited started commercial production in the year 1977, it closed in

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- 2 -

the year 1980 due to poor performance. It was re-opened in September, 1982, and again closed down in January, 1983. The Company had huge liabilities by end of December, 1986, running into Rs.362.80 lakhs as against its assets worth Rs.106.80 lakhs. In February, 1988, M/s. Vanchinad Leathers Limited moved a Reference Application for declaration that it was a sick Company under BIFR. On inquiry, a declaration was made by BIFR vide Order dated February 22, 1988, that M/s. Vanchinad Leathers Limited, was a sick Company. In the circumstances, suit and recovery proceedings were not adopted by the appellant. The Tribunal seems to be proceeding on the basis that because such suit/recovery proceedings were not instituted by the appellant, the appellant had failed to establish that debt had become bad in the Accounting Year ending 31st March, 1988, corresponding to Assessment Year 1988-1989. In appeal, the High Court has proceeded on the basis that the second condition under Section 36(2)(i)(b) of the Act [identical to Section 36(1)(vii) of the Act] was not satisfied and consequently, the High Court disallowed the deduction for bad debt. The High Court did not examine the merits so far as the first condition is concerned.

We are of the view that the appellant satisfied both the conditions for claiming deduction for bad debt under Section 36(1)(vii)

read with Section 36(2)(i)(b). Firstly, the appellant is a State Public Sector Undertaking; and secondly, the appellant was the promoter of M/s. Vanchinad Leathers Limited. This aspect has not been considered by the Tribunal. The assessee was in the business of promoting industrial development in the State of Kerala. In the course of the business of the assessee, it had promoted M/s. Vanchinad Leathers Limited. As a promoter, it was in a position to find out whether M/s. Vanchinad Leathers Limited

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- 3 -

was in a position to carry on business in future. Thirdly, M/s. Vanchinad Leathers Limited was a Joint Sector Company. It was a typical Public/Private partnership. None of these aspects have been considered by the Tribunal as well as by the High Court. Lastly, as stated above, the Reference Application was made in February, 1988; declaration was made in February, 1988, by BIFR that M/s. Vanchinad Leathers Limited has become a sick Company. Till the end, the Company could not even be revived. It has been wound up. In the circumstances, applying the commercial test and business exigency test, we are of the view that both the conditions under Section 36(1)(vii) read with Section 36(2)(i)(b) of the Act are satisfied.

Before concluding, we are of the view that at the relevant time, prior to 1st April, 1989, two distinct approaches were available to the assessee in the matter of write off of bad debt. This has been examined by the Gujarat High Court in the case of Vithaldas H. Dhanjibhai Bardanwala vs. Commissioner of Income-Tax, Gujarat-V, reported in [1981] 130 ITR 95, against which we are informed that Department has not filed a special leave petition. Moreover, in the case of Southern Technologies Limited vs. Joint Commissioner of Income Tax, Coimbatore, [2010] 2 SCC 548, in Paragraph 36, this Court has observed as under:

"Prior to 1-4-1989, the law, as it then stood, took the view that even in cases in which the assessee(s) makes only a provision in its accounts for bad debts and interest thereon and even though the amount is not actually written off by debiting the P&L account of the assessee and crediting the amount to the account of

- 4 -

the debtor, the assessee was still entitled to deduction under Section 36(1)(vii). (See CIT v. Jwala Prasad Tiwari [1953] 24 ITR 537 (Bom) and Vithaldas H. Danjibhai Bardanwala [1981] 130 ITR 95 (Guj)). Such state of law prevailed up to and including Assessment Year 1988-1989. However, by insertion (w.e.f. 1-4-1989) of a new Explanation to Section 36(1)(vii), it has been clarified that any bad debt written off as irrecoverable in the account of the assessee will not include any provision for bad and doubtful debt made in the accounts of the assessee. The said amendment indicates that before 1-4-1989, even a provision could be treated as a write-off. However, after 1-4-1989, a distinct dichotomy is brought in by way of the said Explanation to Section 36(1)(vii). Consequently, after 1-4-1989, a mere provision for bad debt would not be entitled to deduction under Section 36(1)(vii)."

In the circumstances, we see no reason to deny to the appellant the claim for deduction of bad debt under Section 36(1)(vii) read with Section 36(2)(i)(b) of the Act. We have decided this case on the facts of this matter.

The civil appeal is, accordingly, allowed.

No order as to costs.

.....CJI.
[S.H. KAPADIA]

.....J.
[MADAN B. LOKUR]

New Delhi,
September 18, 2012.
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