

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL NO. 324 of 2016**

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PRINCIPAL COMMISSIONER OF INCOME TAX....Appellant(s)

Versus

RJD IMPEX PVT LTD....Opponent(s)

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Appearance:

MRS MAUNA M BHATT, SENIOR STANDING COUNSEL for the Appellant

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CORAM: **HONOURABLE MS.JUSTICE HARSHA DEVANI**
and
HONOURABLE MR.JUSTICE G.R.UDHWANI

Date : 04/04/2016

ORAL ORDER

(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)

1. The appellant – revenue in this appeal under section 260A of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) has challenged the order dated 29.09.2015 passed by the Income Tax Appellate Tribunal, “C” Bench, Ahmedabad (hereinafter referred to as “the Tribunal”) in ITA No.416/Ahd/2012, proposing the following question, stated to be substantial question of law:

“Whether the Income Tax Appellate Tribunal has substantially erred in law and on facts in confirming CIT (A)’s order by allowing the claim as bad debts, the advances for other than regular business of the assessee whose corresponding income or sales were not offered in the previous year?”

2. The assessment year is 2008-09 and the relevant

accounting period is the previous year 2007-08. The assessee was engaged in the trading of gold jewellery, land and shares for the year under consideration and claimed bad debts amounting to Rs.5,24,59,472/-. The Assessing Officer allowed the bad debts in respect of A. P. Sayona Trade Association amounting to Rs.9,06,980/- and the balance amount of Rs.5,15,52,492/- was added to the total income observing that they were not incidental to the regular business activity of the company as the assessee's regular business was of purchase and sale of land, gold and shares. The assessee carried the matter in appeal before the Commissioner of Income Tax (Appeals), who by order dated 22.11.2011, partly allowed the appeal and granted relief to the extent of Rs.4,95,02,105/-. The revenue carried the matter in appeal before the Tribunal, but did not succeed.

3. Mrs. Mauna Bhatt, learned Senior Standing Counsel for the appellant, submitted that in the present case, the assessee had claimed bad debts with respect to various edible items, like, dehydrated onion flakes, onion powder, potato powder and sesame seeds, which is not the regular business of the assessee for the year under consideration. That the main business of the assessee is sale and purchase of land, gold and shares. It was submitted that trading of goods for which the debts are stated to be incurred is not even covered in the main objects of the company to be pursued by it on its incorporation. It was further submitted that bad debts are admissible as deduction, only if they are taken into account in computing the total income of the assessee of the previous year in which it is written off. During the assessment proceedings, it is found that most of the amount claimed as

bad debts were claimed as advances given to different concerns which were not taken for computing income of the assessee for the relevant year. It was submitted that therefore, the claim of assessee for applicability of section 36(1)(vii) of the Act is not satisfied and the assessee failed to prove the same as trading loss. It was, accordingly, urged that the Tribunal was not justified in confirming the order passed by the Commissioner (Appeals) and that the appeal requires consideration on the question as proposed or as may be formulated by the court.

4. The facts as emerging from the record reveal that the respondent assessee had claimed that certain debts had become bad in respect of seven parties. The Assessing Officer declined the claim in respect of six parties and allowed the bad debt deduction in respect of A. P. Sayona Trade Association. In respect of two of the parties, namely, Sakar Overseas Pvt. Ltd. and Shree Ram Trading Co., the Assessing Officer noted that these advances were not debts which have been taken into account in the computation of income and that as the assessee had filed cases against these entities and as judgment on these court cases are yet to be delivered, bad debts were not allowed at that stage. It was also noted that the goods were not received and that the payments were made in advance and that therefore, these amounts could not be treated as bad debts. As regards the dues from Quality Foods and S.Y.P. Exporter, the Assessing Officer was of the view that the trade advances for purchases could not be treated as bad debts. As regards S.N. Das Freight Forwarders Pvt. Ltd., the Assessing Officer noted that the same represented excess payment made for forwarding expenses.

According to the Assessing Officer, there was nothing to show that the amounts have actually turned bad and he, accordingly, disallowed Rs.5,15,52,492/-.

5. In appeal, the assessee took the stand that without prejudice to its original claim of bad debts, the amount should be allowed as a business loss. The Commissioner (Appeals) called for a remand report from the Assessing Officer and concluded that to the extent the transactions in question were not disputed and the assessee had demonstrated that loss had actually been incurred, the same is to be allowed as deduction as business loss. It was also noted that the assessee had exported substantial quantities of agricultural processed goods, including dehydrated garlic flakes and white onion powder, and it was in this connection that the assessee bona fide and in the course of normal business, gave advances to S.Y.P. Exporter, Sakar Overseas Pvt. Ltd. and Shri Ram Trading Co. It was also noted that criminal cases were also instituted against the persons who were given these advances, who turned out to be fraudulent in their conduct. These advances were accordingly held to be business loss.

6. The Tribunal, after considering the material on record, found that it was an undisputed position that the assessee did in fact trade in processed agricultural produce, in connection with which the advances in question were made, and it was in the course of this trading that, the business loss of making unrecoverable advances was incurred. The Tribunal found, as a matter of fact, that the losses were wholly incidental to the business carried on by the assessee. It further noted that there may not be any trading transactions of these products in the

current year, but the business of the assessee has not come to a halt. No doubt, the criminal complaints filed by the assessee had not reached finality and the persons who allegedly and fraudulently obtained these advances were on bail granted by the High Court, however, the remote possibilities of recovery did not take away assessee's right to claim reasonably foreseeable business loss. The Tribunal noted that the Commissioner (Appeals) had given categorical and detailed findings about these advances having become actually bad and these findings remain uncontroverted and accordingly, confirmed the relief granted by the Commissioner (Appeals).

7. Thus, the Tribunal has recorded concurrent findings of fact to the effect that advances given by the assessee had become actually bad and such findings had remained uncontroverted. It is not the case of the appellant that the Tribunal has placed reliance upon any irrelevant material or that any relevant material has been ignored, nor is the learned counsel for the appellant in a position to point out any material to the contrary to dislodge the concurrent findings of fact recorded by the Tribunal. In the aforesaid premises, the conclusion arrived at by the Tribunal being based upon the findings of fact recorded by it upon appreciation of the evidence on record, does not give rise to any question of law, much less, a substantial question of law, warranting interference.

8. In the result, the appeal fails and is, accordingly, dismissed.

(HARSHA DEVANI, J.)

(G.R.UDHWANI, J.)

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