ITA No. 128 of 2006

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

C.I.T. KOLKATA I
Versus
M/S. VIVEK ENGINEERING & CASTING LTD.

BEFORE:

The Hon'ble JUSTICE GIRISH CHANDRA GUPTA
And
The Hon'ble JUSTICE ASHA ARORA

Date : 11th January, 2016

Appearance
Ms. Asha G. Gutgutia, Adv.
...Appellant

Mr. J.P. Khaitan, Sr. Adv.
Mr. Ananda Sen, Adv.
Mr. Biswajit Mal, Adv.
...Respondent

The Court : The appeal was admitted on 16th May, 2006. The questions proposed by the appellant and admitted are as follows:-

"1. Whether, on the facts and in the circumstances of the case, the ld. Tribunal has erred in upholding the order of the Commissioner of Income-tax (Appeals) without considering that the conduct of the assessee towards claiming bad debt was not bonafide and honest as the amount shown as bad debt was never shown as income in the preceeding years and the money was not held as stock

in trade as the assessee was not engaged in the business of money lending ?

2. Whether on the facts and in the circumstances of the case, the ld. Tribunal has erred in deleting the disallowance made by the Assessing Officer without considering the conditions stipulated under section 36(i)(vii) read with section 36(2) of the Income-tax Act and only concentrating on the fact that the loan has become irrecoverable irrespective of the basis of legal requirement for allowing any debt as bad debt ?"

The assessee had shown and/or claimed bad debt in a sum of Rs.2,74,58,660/- out of which Rs.2,70,00,000/- related to the principal amount of loan advanced to one M/s. Dinesh Kumar Singhania and Company. The balance amount of Rs.4,58,660/- was on account of interest. The assessing officer allowed the claim for bad debt insofar as the interest part was concerned amounting to a sum of Rs.4,58,660/- but the claim with regard to bad debt for the principal sum of Rs.2.70 crores was not allowed for the following reasons:-

"(a) The amount of Rs.2,70,00,000/- was not shown as income earlier or even the relevant previous year.

(b) As pointed out earlier the business of the assessee is manufacturing and export goods of cast iron products, C.I. boring. The assessee company is not a banking company and it is also not

engaged in the money lending business where the money is held as stock-in-trade."

The assessee took up the matter before the C.I.T., Appeal. The appeal was allowed by the C.I.T.(A) holding, inter alia, as follows:-

"11. As per Section 36(1)(vii) read with Section 36(2), bad debt is allowable as deduction if the four conditions therein are fulfilled (i) the debt or loan should be in respect of business carried on by the assessee, (ii) the debt should represent money lent in the Ordinary course of money lending or banking or should have been taken into account in computing the income of the assessee of the accounting year or of an earlier accounting year, (iii) the amount of debt or loan should have become bad and (iv) the amount should be written off as irrecoverable in the accounts of the assessee for that accounting year in which the claim for deduction is made. Considering the facts of the case, I find the appellant company has fulfilled all the conditions laid down in the aforesaid sections. In fact, the A.O. has allowed the interest portion on such loan amounting to Rs.458660/- as bad debt during the relevant previous year. From the Audited accounts of the year it is apparently clear and evident that the appellant company has been carrying on the business of lending and investment and has also earned huge interest on such money lending business as indicated in the above figures. The amendment of Section 36(1)(vii)

by Finance Act w.e.f. 01-04-89, the assessee is not required to establish that the debt has become bad in the previous year and mere written off of the bad debt in the accounts is sufficient as held by Gujarat High Court in the case of Girish Bhagwat Prasad reported in 256 ITR 770. . .”

The Revenue took the matter to the Tribunal unsuccessfully. The learned Tribunal in dismissing the appeal preferred by the Revenue held, inter alia, as follows:-

“. . .From the details placed at page 38 that more than 50% of the fund is invested in money lending business in all the years right from 1996 – 97 to 2003 – 04. On perusal of papers filed in the paper book at pages 41 to 96, we find that the assessee has received interest and the same has been declared in the return from assessment years 1997 – 98 to 2003 – 04 and the same has been assessed as business income. Thus, it is clear from the facts brought on record that the assessee was also doing money lending business apart from business of manufacturing of iron and steel items. Thus, the basic reason on which the Assessing Officer has disallowed the claim of bad debt fails.

11. Regarding the observation of the Assessing Officer that the debt was already bad in earlier year. We agree with the submission of the Ld. Counsel on this issue that this is not relevant for allowing the

claim after the amendment of section in the provisions of the Act with effect from 01-04-89. Hon'ble Gujarat High Court in the case of CIT – Vs – Girish Bhagwatprasad (2002) 256 ITR 772 (Guj.) has held that "Under the provisions of section 36(1)(vii) as in force from April, 1989, all that the assessee had to show was that the bad debt was written off as irrecoverable. It is upto the assessee to be satisfied that the debt is not recoverable and once such satisfaction is reached and the amount is written off in the account, the same is to be allowed. Hon'ble Calcutta High Court in the case of CIT –Vs – Coates of India Ltd. (1998) 232 ITR 324 (Cal.) has held that "In order to claim deduction under Section 36(1)(vii) of the Income Tax Act, 1961, as it stood at the relevant time, the assessee is required to show that, on the facts and circumstances pertaining to a particular debt, he has taken an honest judgment that the said debt has become a bad debt. If the judgment is an honest judgment and not a convenient judgment, then the Department would not be able to insist on demonstrative or infallible proof."

Challenging the order of the learned Tribunal, the aforesaid appeal was preferred.

Mrs. Gutgutia, learned Advocate appearing for the Revenue submitted that there is nothing on the record to show that the assessee is a banking company.

Alternatively, she submitted that the assessee has not disclosed any money lending licence.

Lastly she submitted that the conditions were not fulfilled by the assessee in order to claim deduction under Section 36(1)(vii) which reads as follows:-

> "36.(1)(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].

This submission is incorrect because without such writing off in the previous year, the matter could not have come up before the assessing officer. She then submitted that the amount remained unrecovered during the years prior to the previous year. At that time the assessee did not treat it as bad debt. To that, the answer is that the assessee is entitled not to treat the amount as bad debt so long as he entertains a belief that the money can be recovered. Law does not require him to treat any amount as bad debt once he becomes apprehensive about recovery thereof. This Court held in Coates of India (Supra) that it has to be an honest judgment of the assessee and not a convenient one.

The next submission advanced by her is that the money could not have been written off unless the money represents the money lent in the ordinary course of business of banking or money lending which is carried on by the assessee. She submitted that the assessee has not disclosed any money lending

licence or any document to show that the assessee is engaged in the business of banking.

The assessee, according to her, has also not shown that money lending is carried on by the assessee. This submission made by Mrs. Gutgutia is altogether unmeritorious because the learned Tribunal as the last fact finding authority has come to the conclusion that more than 50% of the capital of the assessee is deployed in money lending. Therefore, the fact that the assessee is in the money lending business cannot be doubted. All the points advanced by Mrs. Gutgutia have thus been rejected. In the result, the questions formulated at the time of admission of the appeal are both answered in the negative.

(GIRISH CHANDRA GUPTA, J.)

(ASHA ARORA, J.)

sg.