

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1590 OF 2013

The Commissioner of Income Tax-V, Pune .. Appellant.
V/s.
Pudumjee Pulp & Paper Mills Ltd. .. Respondent.

Mr. Tejveer Singh, for the Appellant.
Mr. R. Murlidharan i/b. Mr. B. Damodar i/b. M/s. Kanga & Co., for the Respondent.

**CORAM: M.S.SANKLECHA, &
N.M.JAMDAR, JJ.
DATE : 5th AUGUST, 2015.**

PC:-

This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 27th February, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal) for the Assessment Year 2004-05.

2 Mr. Tejveer Singh, learned Counsel for the Revenue urges the following questions of law for our consideration:-

“(a) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in deleting the disallowance of Rs.34,82,546/- being the amount written off by the assessee on account of bad inter-corporate deposits (ICD) given, by ignoring the fact that the assessee is neither in the business of banking or money-lending de hors the provisions of Sec. 36(1)(vii) of the I. T. Act?

(b) Whether on the facts and in the circumstances of the case and in law, the order passed by the Tribunal on the basis of

erroneous assumptions, without appraising and evaluating the relevant facts and evidences, and also without applying the correct law as laid down in section 36(2)(i) nor perverse?”

3 The Respondent-Assessee is mainly engaged in the business of manufacture and sale of paper. During the Assessment Year 1995-96, the Respondent had made an inter-corporate deposit of Rs.1 Crore with M/s. GSB Capital Markets Ltd. Thereafter, during the subsequent Assessment Years, the interest of Rs.42.65 lakh was received and offered for tax. The amount of Rs.49.82 lakhs being the aggregate of the principal amount as well as the interest was treated as doubtful debts from the Assessment Year 1998-99 onwards. However, in the subject Assessment Year, a settlement was arrived at between M/s. GSB Capital Market Ltd. and the Respondent-Assessee whereby an amount of Rs.15 lakhs was paid to the Respondent-Assessee and the balance amount of Rs.34.82 lakh were written off by the Respondent-Assessee as bad debts.

4 During the subject Assessment Year, the Respondent-Assessee claimed the deduction on account of bad debts of Rs.34.82 lakhs being the debts written off out of an inter-corporate deposit given to one M/s. GSB Capital Markets Ltd. The Assessing Officer in its Assessment Order dated 29th November, 2006 did not accept the Respondent's contention and disallowed the claim for bad debts. This disallowance was on the ground that the condition of Sections 36(1)(vi) read with Section 36 36(2)(i) of the Act were not satisfied inasmuch as :-

- (a) the Respondent-Assessee does not carry on business of money lending; and
- (b) the amount of Rs.34.82 lakhs being claimed as bad debts was not the income offered to tax either in the relevant Assessment Year

or in the earlier Assessment Years.

5 Being aggrieved, the Respondent-Assessee filed an Appeal to the Commissioner of Income Tax (Appeals) [CIT(A)]. By the order dated 26th August, 2011, the CIT(A) held that the amount of Rs.34.82 lakhs sought to be disallowed as bad debts was the balance of the inter corporate deposit and the interest accrued thereon receivable from M/s. GSB Capital Market Ltd. It was held that this amount was lent in the ordinary course of business of money lending and that the amount of Rs.42.55 lakhs of interest received on the inter-corporate deposit was offered to tax. Thus, the claim for deduction of Rs.34.82 lakhs was allowed under Section 36(1)(vii) read with Section 36(2)(i) of the Act.

6 On further Appeal by the Revenue, the Tribunal by the impugned order upheld the finding of the CIT(A). It held that the interest income on the deposit had been offered to tax in earlier Assessment Years. Thus, the claim for deduction was allowable. Moreover, it was held that the Respondent was engaged in money lending business. Therefore, it held that deduction under Section 36(1)(vii) read with Section 36(2)(i) of the Act was allowable. Accordingly, the Revenue's appeal was dismissed.

7 Mr. Tejveer Singh, learned Counsel appearing for the Appellant submits that the activity of the Respondent-Assessee is of carrying on manufacturing and sale of paper. Consequently, the Respondent-Assessee cannot be said to be engaged in the activity of the money lending or business of banking. Consequently, deduction of bad debts is hit by Section 36(2)(i) of the Act. Thus, the impugned order calls for interference.

8 Mr. Murlidahan, learned Counsel appearing for the Respondent-Assessee points out that the issue arising in the present facts is covered in favour of the Respondent-Assessee by the decision of this Court in *CIT v/s. Shreyas S. Morakhia*¹. It is further submitted that the Respondent-Assessee is entitled to the benefit of Section 36(2)(i) of the Act – on the ground that the interest income was offered to tax earlier and that the Assessee was engaged in the business of lending money. In the above view, it is submitted that the order of the Tribunal calls for no interference.

9 The CIT(A) as well the Tribunal have considered Sections 36(1)(vii) and 36 (2)(i) of the Act which for the purpose of convenience are reproduced hereunder and read thus:-

“Section 36:-

Section (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 -

(i) to (vi)

(vii) subject to the provisions of sub-section (2), the amount of any bad debts 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 (vii) 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,

Explanation – 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

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debts made in the accounts of the assessee.

(viii)to (xvii)

(2) In making any deduction for a bad debt or part thereof, the following provisions shall apply -

(i) no such deduction shall be allowed unless 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 is written off or of an earlier previous year, or represents money lent in the ordinary course of the business of banking or money-lending which is carried on by the assessee.”

10 So far as Section 36(1)(vii) of the Act is concerned, it is a settled position in law that after 1st April, 1989, it is not necessary that the debt itself must be proved to be irrecoverable. The only requirement is that the amounts claimed as bad debts should be written off as irrecoverable in the account of the Assessee (see TKF Ltd. v/s. CIT – 323 ITR 397). The satisfaction of the above provision is not disputed by the Revenue. The hub of the controversy is whether the requirement of Section 36(2)(i) of the Act is satisfied.

11 It is noticed that Section 36(2)(i) of the Act allows deduction on account of satisfaction of any of one of the two conditions as under:-

- (a) bad debts or part thereof taken into account in computing the income of the assessee for an earlier Assessment Year before such debt or part thereof is written off; or
- (b) the debt represents money lent in the ordinary course of business of banking or money-lending which is carried on by the assessee.

Therefore, even if one of the two conditions of Section 36(2)(i) of the Act is satisfied, then bad debts claimed under Section 36(1)(vii) of the Act has to be allowed.

12 So far as first part of Section 36(2)(i) of the Act is concerned, i.e. (a) above, we find that the Respondent-Assessee had during the earlier Assessment Years offered to tax an amount of Rs.42.65 lakhs received as interest on the deposit made with M/s. GSB Capital Market Ltd. The Appellant had since Assessment Year 1998-99 claimed an amount of Rs.49.82 lakhs as doubtful debts from M/s. GSB Capital Market Ltd. This consisted of the aggregate of principal and interest payable by M/s. GSB Capital Market Ltd. It was in the subject Assessment Year that a settlement was arrived at between the parties and the Respondent-Assessee received Rs.15 lakhs from M/s. GSB Capital Market Ltd. and the balance amount of Rs.34.82 lakhs being non-recoverable was being claimed as bad debts by writing off the same in its books of account. It would thus be noticed the amount of Rs.34.82 lakhs which constitutes partly the principal amount of the inter-corporate deposits and partly the interest which is unpaid on the principal debt. The Assessing Officer's contention that amount of Rs.34.82 lakhs was not offered to tax earlier and, therefore, deduction under Section 36(2)(i) of the Act is not available, is no longer re-integra. This very issue came up for consideration before this Court in Shreyas S. Morakhia (supra) wherein the assessee was a stock broker and engaged in the business of sale and purchase of shares. The brokerage payable by the client was offered for tax. Subsequently, it was found that the principal amount which was to be received from its clients would not be received. The assessee sought to claim as bad debts not only the brokerage amounts not received but the aggregate of principal and brokerage amounts not received in respect of the shares transacted. This Court held that the debt comprises not only the brokerage which was offered to tax but also principal value of shares which was not received.

Therefore, even if a part of debt is offered to tax, Section 36(2)(i) of the Act, stands satisfied. The test under the first part of Section 36(2)(i) of the Act is that where the debt or a part thereof has been taken into account for computing the profits for earlier Assessment Year, it would satisfy a claim to deduction under Section 36(1)(vii) read with Section 36(2)(i) of the Act. In fact, the Revenue also does not dispute the above provisions as no submission in that regard were made during the course of hearing before us.

13 Therefore in view of the above self evident position in Section 36(2)(i) of the Act as well as decision of this Court in Shreyas Morakhia (supra), no substantial question of law arises for our consideration.

14 It is clarified that in view of the Respondent-Assessee being entitled to deduction on bad debts in view of first part of Section 36(2)(i) of the Act, we have not opined on the second part thereof viz: whether or not the Assessee was engaged in the business of money lending and/or banking. This is so as in the present facts it becomes academic.

15 Accordingly, **Appeal dismissed.** No order as to costs.

(N.M.JAMDAR,J.)

(M.S.SANKLECHA,J.)