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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision*: *21st May, 2012*

\+ **ITA 261/2012**

CIT ..... Appellant

Through: Mr. Sanjeev Sabharwal, Sr. Standing Counsel

versus

ESCONET SERVICES LTD ..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.V. EASWAR

R. V. EASWAR, J: (ORAL)

This appeal filed by the Revenue relates to the assessment year 2003-04. The assessee is the Esconet Services Ltd. and in the return of income it claimed deduction on account of write off of bad debts of ₹1,52,28,630/- under Section 36(i)(vii) read with Section 36(2)i) of the Income Tax Act, 1961.

2. The Assessing Officer disallowed the entire amount on the ground that the assessee did not make sufficient efforts to recover the money and that the entire transaction was only a paper transaction.

3. On appeal the CIT(Appeals) examined the matter in great detail and found that the assessee has been debiting the sister concern M/s. Escolife

IT Services P. Ltd. in respect of services rendered to it and these amounts have been shown as the assessee's income as service charges in the earlier assessment year 2002-03 and the current year. He therefore, held that the amount written off is entitled to be allowed as a bad debt and that the Assessing Officer was not justified in examining the question whether the debt became bad in the relevant previous year.

4. The Revenue carried the matter in appeal before the Income Tax Appellate Tribunal ('Tribunal', for short). From the ledger account of the sister concern filed before the Tribunal it was found that the total debit of service charges amounting to ₹2,48,87,291/- included an amount of ₹92,27,630/- charged on 27.1.2003 and this entry was reversed as amount written off in the ledger account itself. The Tribunal therefore, held that the assessee was able to show that an amount of ₹92,27,630/- had earlier been taken into account as income earned by the assessee and was written off from the account of the sister concern and the same was therefore allowable as bad debt. As regards the balance of amount of ₹60,10,000/- the assessee was not able to show that this amount was earlier assessed or taken into account as the assessee's income. Accordingly, the Tribunal sustained the disallowance of ₹60,10,000/-.

5. The discussion above shows that the entire matter is one of fact and the question as to whether the amounts were actually written off in the books of accounts by the assessee is a factual finding arrived at by the Tribunal on a perusal of the ledger account of the debtor in the books of the assessee. Once the factual position is admitted/ accepted, the

challenge by the Revenue must fail in view of the decision of the Supreme Court in ***T.R.F. Limited v. CIT***, (2010) 323 ITR 397 (SC). We do not think under the above circumstances, that any question of law arises for consideration. The appeal is accordingly, dismissed with no order as to costs.

R.V.EASWAR, J

SANJIV KHANNA, J

MAY 21, 2012
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