

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF DECEMBER 2020

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD

I.T.A. NO.432 OF 2016

BETWEEN:

M/S. BIG BAGS INTERNATIONAL (P) LTD.,
REP. BY ITS MANAGING DIRECTOR
SMT. REKHA R KAMATH
NO.61, NADKEERAPPA INDUSTRIAL ESTATE
VISHWANEEDAM POST, PEENYA
BANGALORE-560091.

... APPELLANT

(BY SRI. V. CHANDRASHEKAR, ADV., FOR
SRI. M. LAVA, ADV.,)

AND:

THE DEPUTY COMMISSIONER OF INCOME-TAX
CIRCLE-1(1)(2), ROOM NO.242
2ND FLOOR, BMTC BUILDING
80 FEET ROAD, KORAMANGALA
BANGALORE-560095.

... RESPONDENT

(BY SRI. ARAVIND K.V. ADV.)

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THIS ITA IS FILED UNDER SECTION 260-A OF I.T. ACT,
1961 ARISING OUT OF ORDER DATED 06.05.2016 PASSED IN ITA
NO.1041/BANG/2014 (ANNEXURE-A) AND MISC. PETITION
NO.77/BANG/2016 DATED 26.08.2016 (ANNEXURE-B), FOR THE
ASSESSMENT YEAR 2010-2011, PRAYING TO:

(I) FORMULATE THE SUBSTANTIAL QUESTION OF LAW AS STATED ABOVE AND THE ANSWER THE SAME IN FAVOUR OF THE APPELLANT.

(II) ALLOW THE APPEAL AND SET ASIDE THE FINDINGS TO THE EXTENT WHICH IS AGAINST THE APPELLATE IN THE ORDER PASSED BY THE ITAT IN ITA NO.1041/BANG/2014 DATED 06.05.2016 (ANNEXURE-A) AND MISC. PETITION NO.77/BANG/2016 DATED 26.08.2016 (ANNEXURE-B) & ETC.

THIS ITA COMING ON FOR ADMISSION, THIS DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the Act for short) has been preferred by the assessee. The subject matter of the appeal pertains to the Assessment year 2010-11. The appeal was admitted by a bench of this Court vide order dated 02.11.2017 on the following substantial questions of law:

(i) Whether the Tribunal was justified in law in denying the benefit of deduction of bad debts of Rs.3,33,79,971/- and passed a perverse order on the facts and circumstance of the case?

(ii) Whether the Tribunal erred in law in denying the benefit of claim of Bad debts

when the amounts which has been claimed by the appellant as bad debts have been offered and assessed to tax in earlier assessment years and the claim is after fulfilling the conditions as envisaged under the provisions of section 36 (1)(vii) r.w.s. 36(2) of the Act and consequently passed a perverse finding on the facts under the facts and circumstances of the case?

(iii) Whether, the Tribunal was justified in law in holding there existed no debt in the books and thus the provisions of section 36(1)(vii) of the Act are not applicable when admittedly the amount written off as debt was offered as income and accepted by the department in the earlier years and consequently passed a perverse order on the facts and circumstance of the case?

(iv) Without prejudice whether the Tribunal erred in law in not granting deduction for bad debts of an amount of Rs.46,08,525/- and consequently passed a perverse order on the facts and circumstance of the case?

(v) Whether, the Tribunal erred in law in not following the co-ordinate bench decision of the Tribunal in the appellant's own case for the earlier assessment year 2009-10 wherein under similar circumstances and identical facts the Tribunal had allowed the claim of bad debts of the appellant?

(vi) Whether the Tribunal was correct in law in enlarging the scope of the issue arising for adjudication when the grounds of the department clearly mentioned that the order of the CIT(A) for the earlier year has not been accepted and the department is on further appeal and despite this fact the Tribunal transgressed beyond its scope and passed a perverse order under the facts and circumstances of the case?

(vii) Whether the Tribunal was correct in law and on facts in not affording the appellant a reasonable opportunity of hearing on grounds which was not argued by the department nor put to the appellant by the Tribunal at the time of hearing and

consequently passed a perverse order which is in grave violation of principles of natural justice under the facts and circumstances of the case?

(viii) Whether the Tribunal was correct in law and on facts in dismissing the Miscellaneous petition filed by the appellant under the provisions of section 254(2) of the Act, without properly appreciating and understanding the facts of the case of the appellant under the facts and circumstances of the case?

2. Facts leading to filing of this appeal briefly stated are that assessee is a private limited company and is engaged in the business of manufacture of PP-FIBC Bags. By a scheme of amalgamation, M/s Big Bags (India) Private Limited was merged with the assessee company with approval of this court with effect from 01.04.2009. The assessee filed its return of income on 15.02.2011 for the Assessment Year 2010-11 declaring a total income of Rs.1,55,05,270/-. The said return was

selected for scrutiny and after the return was processed under Section 143(1) of the Act and the assessment was completed under Section 143(3) of the Act by order dated 22.03.2013 and the Assessing Officer assessed the income of the assessee at Rs.13,22,67,166/-. The Assessing Officer made two additions while assessing the income of the assessee, firstly of Rs.8,33,81,925/- and secondly being disallowance of bad debts of Rs.3,33,079,971/- claimed by the assessee claimed under Section 36(1) (vii) of the Act.

3. The assessee thereupon filed an appeal. The Commissioner of Income Tax (Appeals) by an order dated 22.03.2014 deleted the aforesaid additions made by the Assessing Officer. The revenue, thereafter filed an appeal before Income Tax Appellate Tribunal (hereinafter referred to as the 'Tribunal' for short). The Tribunal by order dated 06.05.2016 partly allowed the appeal preferred by the revenue disallowing the claim of bad debts to the tune of Rs.3,33,79,791/-. The assessee

thereupon filed a miscellaneous petition before the Tribunal, which was dismissed by the Tribunal. In the aforesaid factual background, the assessee has filed this appeal.

4. Learned counsel for the assessee submitted that the assessee had exported bags to foreign customers in the past and had incurred unforeseen and additional costs on certain imported raw material in excess of what was anticipated while fixing the supply of bags to the foreign customers on account of severe fluctuations in foreign exchange rates. The assessee had raised debit notes to recover additional costs. However, foreign customers refused to make payments, therefore, the assessee had no option but to write off the same as bad debts. It is also pointed out that similar claim of bad debts for Assessment Year 2009-10 was accepted by the Commissioner of Income Tax (Appeals) as well as by the Tribunal and the revenue did not challenge the order of the Tribunal before this court and accepted the same. It

is also urged that the assessee has written off the bad debts of Rs.3,33,79,791/- in its books of account. It is also contended that the finding recorded by the Tribunal that the amount written off was never a debt due to the assessee is perverse and Tribunal erred in not following the order of the co-ordinate bench in assessee's own case. In support of aforesaid submissions reliance has been placed on decisions in **'TRF LTD. VS. CIT, 323, ITR 397 (SC), 'VIJAYA BANK VS. CIT 323 166 (SC), 'CIT VS. K.RAHEJA DEVELOPMENT CORPORATION', 195 TAXMAN 412 (KAR), 'CIT VS. KRONE COMMUNICATIONS LTD.', 333 ITR 497 (KAR), 'CIT VS. MILLENIA DEVELOPERS PVT LTD.', 266 TAXMAN 186 (SC), 'CIT VS. MILLENIA DEVELOPERS PVT LTD', 260 TAXMAN 142 (KAR), 'CIT VS. SAWHNEY EXPORTS', 303 ITR 93 (DEL), 'CIT VS. NILOFER I SINGH', 176 TAXMAN 252 (DEL), CBDT CIRCULAR NO.12/2016 DATED 30.05.2016, RBI LETTER DATED 12.03.2013**

5. On the other hand, the learned counsel for the revenue submitted that since the assessee did not comply with the conditions mentioned in Section 36(2) of the Act and therefore, the deduction under Section 36(1)(vii) of the Act was rightly disallowed. It is also submitted that a finding of fact has been recorded by the Tribunal that the pre-requisite conditions mentioned under Section 36(2) of the Act have not been complied with, therefore, no substantial question of law arises for consideration in this appeal. It is also urged that without prejudice to the aforesaid contention, even if it is to be assumed that debt existed, as the process of write off is not in terms of law laid down by the Supreme Court in the case of **VIJAYA BANK LTD. SUPRA**, the assessee is not entitled to write off of bad debt as deduction.

6. We have considered the submissions made by learned counsel for the parties and have perused the record. The assessee had exported bags to foreign

customers in the past and had incurred unforeseen additional costs on certain imported raw material. In order to recover the additional costs incurred, the assessee had raised debit notes on the foreign customers and credited the amount due from them, raised by way of debit notes as income in its books of accounts and had offered the same to tax in earlier years. The customers of the assessee refused to make payment and therefore, the assessee had written off the amount as not recoverable. It is pertinent to mention that Section 36(1)(vii) of the Act mandates that in order to claim bad debts, the assessee has to write off the same in its books of accounts and assessee is not required to prove that the debt as irrecoverable. In this connection, reference may be made to decision of the Supreme Court in **VIJAYA BANK LTD** and **TRF LTD. SUPRA.**

7. It is pertinent to mention here that similar claim of bad debts was made by the assessee for

Assessment Year 2009-10 arising out of the same set of circumstances and the Assessing Officer denied the same on similar grounds as has been done in this case. However, the Commissioner of Income Tax (Appeals) as well as the tribunal accepted the stand of the assessee and granted the relief to the assessee. The revenue did not challenge the order passed by the tribunal and accepted the view in favour of the assessee. Admittedly, in the instant case, the assessee had written off the bad debts to the tune of Rs.3,33,79,791/- in its books of accounts and has complied with the mandate contained in Section 36(2) of the Act. The Assessing Officer has not disputed the aforesaid aspect of the matter.

8. The Supreme Court in ***RADHASOAMI SATSANG Vs. COMMISSIONER OF INCOME-TAX'*** **(1992) 60 TAXMAN 248 (SC)** has held that even though principles of *res judicata* do not apply to income tax proceedings, but where a fundamental aspect permeating through the different Assessment Years has

been found as the fact one way or the other and the parties have allowed the position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in subsequent year. For this reason also, in the facts of the case, a different view cannot be taken. On literal construction of the provision of Section 80IB(10) of the Act it is evident that the aforesaid provisions do not suffer from any ambiguity, therefore, the decisions rendered by the Supreme Court in the case of DILIP KUMAR and RAMNATH & CO. supra have no application to the obtaining factual matrix of the case.

In view of preceding analysis, the substantial questions of law framed by a bench of this court are answered in favour of the assessee and against the revenue. In the result, the order of the tribunal to the extent it disallows the claim for deduction on account of bad debts is hereby quashed.

In the result, the appeal is allowed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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