

## Commissioner of Income Tax Vs Bata Steels Pvt. Ltd.

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Nov. 1, 2010

**Acts Referred:** Income Tax Act, 1961 " Section 260A, 271(1), 36(1)

**Hon'ble Judges:** Rakesh Kumar Jain, J; A.K. Goel, J

**Bench:** Division Bench

**Final Decision:** Dismissed

### Judgement

Adarsh Kumar Goel, J.

This appeal has been preferred by the revenue u/s 260-A of the Income Tax Act, 1961 (for short, "the Act")

against the order dated 9.9.2009 of the Income Tax Appellate Tribunal, Chandigarh in I.T.A. No. 465/CHANDI/2009 for the assessment year

2005-06 proposing to raise following substantial questions of law:

Whether on the facts and circumstances of the case, the Hon'ble ITAT is justified in law in deleting the penalty imposed u/s 271(1)(c) of the

Income Tax Act, 1961 amounting to Rs. 5,79,673/-ignoring the fact that the Assessee had furnished inaccurate particulars of its income and had

failed to substantiate its claim of bad debts written off.?

2. The Assessing Officer made addition to the declared income of the Assessee by not accepting the entry of writing off of bad debts. It was

observed that the Assessee could not furnish justification for writing off the bad debts. Apart from the addition on that account, the penalty was

also imposed. On appeal, the penalty was set aside with the observations that writing off of bad debt was not to evade tax. Full particulars of the

bad debts were disclosed by the Assessee. The said finding has been affirmed by the Tribunal. It was observed:

9.... It is a case where a claim made by the Assessee has been rejected and we may further say that the claim made by the Assessee cannot be

termed as patently erroneous or in complete ignorance of the relevant provisions of law. The Assessee had made a claim in terms of Section 36(1)

(vii) and this Section, as understood by the Special Bench of the Tribunal in the case of Oman International Bank (supra), provides that in order to

claim deduction, it would be sufficient if Assessee chooses to write off the debt as irrecoverable in the book of account. It is further observed by

the Special Bench that the requirement of proving the debt having become bad to the hilt, has been done away by the amended provisions of

Section 36(1)(vii) w.e.f. 01.04.1989. Notably, the said decision of the Tribunal stands affirmed by the Hon"ble Bombay High Court in the case

reported at 223 CTR 382 (Bom). Therefore, testing the claim of the Assessee on the anvil of such position of law, in so far as it is relevant for our

present purpose, it is safe to deduce that the claim of the Assessee cannot be said to be patently erroneous in the eyes of law. In fact, no falsity in

claim of the Assessee has been found even during the assessment proceedings. The disallowance is based on a mere view adopted by the

Assessing Officer. The claim made in the return cannot be said to be bereft of bonafides. Considering the entire facts and circumstances of the

case, we find ample force in the conclusion drawn by the CIT(Appeals) that the Assessing Officer was not justified in imposing penalty u/s 271(1)

(c) of the Act.

3. We have heard learned Counsel for the revenue.

4. It is not disputed that in view of judgment of the Hon"ble Supreme Court in TRF (T.R.F.) Limited Vs. Commissioner of Income Tax, Ranchi, , it

is not necessary for the Assessee to establish that the debt had already become irrecoverable. If the Assessee takes a bonafide decision that it was

necessary to write off the bad debts, the writing off may be justified. In any case, for levy of penalty, it has to be shown that the Assessee had

made concealment or had given wrong information to evade tax.

5. In view of concurrent finding of the CIT(A) and the Tribunal that there was no intention to evade tax, we are unable to hold that any substantial

question of law arises.

6. The appeal is dismissed.