(2011) 04 DEL CK 0280

Delhi High Court

Case No: ITA No. 311 of 2011

Dy. Commissioner of Income Tax		APPELLANT
	Vs	
Insilco Ltd.		RESPONDENT

Date of Decision: April 29, 2011

Acts Referred:

- Income Tax Act, 1961 - Section 10, 10(2), 260A, 263, 28

Citation: (2011) 201 TAXMAN 21

Hon'ble Judges: M.L. Mehta, J; A.K. Sikri, J

Bench: Division Bench

Advocate: Kamal Sawhney, for the Appellant; V.P. Gupta and Basant Kumar, for the Respondent

Judgement

M.L. Mehta, J.

C.M. No. 2894/2011 (exemption)

Exemption allowed, subject to all just exceptions. Accordingly, the application stands disposed of.

ITA No. 311/2011 & CM No. 2894/2011

1. With the consent of the counsel for the parties, we have heard the matter finally.

2. This is an appeal preferred by the Revenue u/s 260A of the Income Tax Act, 1961 (for short "the Act") against the order of the Income Tax Appellate Tribunal (for short "the Tribunal") dated 13th November, 2009 for the assessment year 2004-05.

3. The Assessee had claimed bad debts to the extent of Rs. 1,48,51,364/- in the return filed for the relevant assessment year. The Assessing Officer vide his assessment order dated 22.12.2006 allowed the deduction of the bad debts claimed. The CIT(A) observed the assessment order to be erroneous and prejudicial to interest of Revenue. The CIT(A) further observed that AO has allowed the claim of

deduction of bad debt written off during the year without any enquiry and investigation and without even ascertaining as to whether the condition as laid down in Section 36(1)(vii) & Section 36(2) are satisfied or not. Accordingly, he proceeded to revise the assessment order and issued a show-cause notice u/s 263 of the Income Tax Act (for short "the Act") to the Assessee. In reply thereto, Assessee submitted that the Assessing Officer had asked for the details of the bad debts written off vide questionnaire dated 24.08.2006 and the same were submitted to the Assessing Officer vide letter dated 09.11.2006. The Assessee also submitted that the issues which had been proposed to be reconsidered by the CIT(A) in its order passed u/s 263 of the Act were already considered by the Assessing Officer during the assessment proceedings. However, the CIT(A) allowed the plea of the Revenue vide order dated 27.03.2009 observing that the order of the Assessing Officer was erroneous and prejudicial to the interest of Revenue and set aside the same on the issue of allowability of claim of deduction of bad debts written off during the year. The Assessing Officer was also directed to verify and examine the claim of the Assessee and make a fresh assessment according to law with an opportunity of being heard to the Assessee.

4. Aggrieved by the order of the CIT(A), the Assessee filed an appeal before the Tribunal. The Assessee contended that there was no error in the assessment order and the order passed u/s 263 of the Act by the CIT(A) is liable to set aside. The Revenue contended before the Tribunal that the amount in question were in respect of inter-corporate deposits given by the Assessee and the amount written off did not have any connection with the business of the Assessee. It was also contended that the provisions of Section 36(2) were not complied with as the Assessee did not show the above-stated amount as income during the years preceding to the assessment year. The Assessee had conceded that though the amounts written off in respect of some persons were on account of inter-corporate deposits, the same had been given in the course of business. The Assessee further submitted before the Tribunal that he had specifically brought this fact to the notice of the CIT(A) in an alternate prayer that the deduction of the same was allowable to the Assessee company as a business loss u/s 37 and the CIT(A) did not consider the same.

5. The Tribunal considered the rival contentions and took note of the fact that reply of the Assessee to the show cause notice of the CIT(A) showed that the Assessee had categorically brought the fact that the details of the bad debt had been produced before the assessing authority during the assessment proceedings and the same had been considered by the Assessing Officer.

6. It is against this order of the Tribunal that the Revenue is in appeal before us. The submissions made by the learned Counsel for the Revenue are the same as were raised before the CIT(A) and also the Tribunal. The main submission of the learned Counsel for the Revenue is that the amounts which were sought to be claimed as bad debts by the Assessee were in fact inter-corporate deposits and that the

Assessee could not claim deduction u/s 36(1)(vii) since the pre-requisite of Section 36(2) was not complied with. The learned Counsel for the Revenue also submitted that since the claim u/s 36(1)(vii) was not allowable, neither Section 37 nor Section 28 of the Act was applicable. The learned Counsel submitted that the order passed by the CIT(A) was maintainable whereas that of the Tribunal was erroneous and liable to be set aside.

7. On the other hand, learned Counsel appearing for the Assessee submitted that the amounts were irrecoverable and so the Assessee was entitled to claim deductions as bad debts. Learned Counsel also submitted that all the details in this regard were presented before the AO, who had considered the same in detail and even had gave a questionnaire to the Assessee which was duly replied with the details as required.

8. We have heard the learned Counsel for the parties. We may note that the Tribunal in the impugned order has gone into the details of the reply and also the documents furnished by the Assessee before the AO and also in response to the notice u/s 263 of the CIT(A). Some of the observations, which the Tribunal made are noted hereafter. The Assessee had also filed the copies of the documents in respect of the legal cases against each of the parties for recovery of the amounts to justify its claim for bad debts before the Assessing Officer. The Assessee had filed party-wise details on 09.11.2006. The record also shows that there has been discussion on various dates thereafter and on 21.11.2006 there was a further reference to the issue of bad debts. The AO also maintained order sheets which showed that he had taken the detailed notes of the discussion that took place before finalizing the assessment with regard to the claim of bad debts. In the circumstances, it should not be said that there was lack of inquiry conducted by the Assessing Officer. The Assessee had made an alternate prayer also in respect of claim of business loss in the event the CIT(A) felt that the claim was not allowable u/s 36(1)(vii) of the Act. However, the CIT(A) rejected the contentions of the Assessee only on the ground that the Assessing Officer had not properly examined the details furnished. The non-recording of all these details and the detailed discussion which has taken place in the course of assessment proceedings cannot be faulted on the Assessee nor can it be said that the assessing authority has not applied his mind on the details filed and held that it did not give occasion to the CIT(A) for invoking the powers u/s 263 of the Act.

9. The Tribunal further observed that the decision of the AO was based on the decision of Coordinate Bench in the case of Singnode India Limited reported in 110 TTJ 170, which is to the effect that in respect of inter-corporate deposits, the amount is capable of being treated as a bad debt and allowable as such. Thus, the view of the AO is also supported by the decision of their Coordinate Bench. The Tribunal also observed that it cannot be said that there is an error, much less an error prejudicial to the interest of the revenue, in the assessment order and thus set aside

the order of the CIT(A) passed u/s 263 of the Act.

10. In the case of The Commissioner of Income Tax Vs. The Mysore Sugar Co., Ltd., the corresponding sections of the Income Tax 1922 were for interpretations before the Hon''ble Supreme Court. This case related to claim of bad debts under the said Act of 1922. The Assessee company was changing its case regarding claim of bad debt from one Section to another from time to time. In that context, the Hon''ble Supreme Court observed that they did not wish to emphasise the nature of the question posed, because the central point to decide is whether the money which was given up represented a loss of capital, or must be treated as revenue expenditure. The Supreme Court held as under:

The tax under the head "Business" is payable u/s 10 of the income tax Act. That section provides by Sub-section (1) that the tax shall be payable by an Assessee under the head "profits and gains of business, etc." in respect of the profits or gains of any business, etc., carried on by him. Under Sub-section (2), these profits or gains are computed after making certain allowances. Clause (xi) allows deduction of bad and doubtful business debts. It provides that when the Assessee''s accounts in respect of any part of his business are not kept on the cash basis, such sum, in respect of bad and doubtful debts, due to the Assessee in respect of that part of the his business is deductible but not exceeding the amount actually written off as irrecoverable in the books of the Assessee. Clause (xv) allows any expenditure not included in Clauses (i) to (xiv), which is not in the nature of capital expenditure or personal expenses of the Assessee, to be deducted, if laid out or expanded wholly and exclusively for the purpose of such business, etc. The clauses expressly provide what can be deducted; but the general scheme of the section is that profits or gains must be calculated after deducting outgoings reasonably attributable as business expenditure but so as not to deduct any portion of an expenditure of a capital nature. If an expenditure comes within any of the enumerated classes of allowances, the case can be considered under the appropriate class; but there may be an expenditure which, though not exactly covered by any of the enumerated classes, may have to be considered in finding out the true assessable profits or gains. This was laid down by the Privy Council in Commissioner of income tax v. Chitnavis, (1932) L.R. 59 IA 290 and has been accepted by this Court. In other words, Section 10(2) does not deal exhaustively with the deductions, which must be made to arrive at the true profits and gains.

To find out whether an expenditure is on the capital account or on revenue, one must consider the expenditure in relation to the business. Since all payments reduce capital in the ultimate analysis, one is apt to consider a loss as amounting to a loss of capital. But this is not true of all losses, because losses in the running of the business cannot be said to be of capital. The questions to consider in this connection are: for that was the money laid out ? Was it to acquire an asset of an enduring nature for the benefit of the business, or was it an outgoing in the doing of the

business? If money be lost in the first circumstances, it is a loss of capital, but if lost in the second circumstances, it is a revenue loss. In the first, it bears the character of an investment, but in the second, to use a commonly understood phrase, it bears the character of current expenses.

11. In the present case, we have seen that the Tribunal has rightly observed that the Assessee had given all the details to the AO regarding the debts and also the steps taken for recovery of those amounts and ultimately failing to recover the same.

12. In view of our discussions as above, we do not find that any substantial question of law arises. Consequently, the appeal is dismissed.