(2011) 02 GUJ CK 0071

In the Gujarat High Court

Case No : Tax Appeal No. 20 of 2000

Assistant Commissioner of Income Tax — APPELLANT

Vs

Pullen Pump Industries — RESPONDENT

Date of Decision : 25-02-2011

Acts Referred:
Income Tax Act, 1961 — Section 260A, 28, 36, 36(1), 36(2)

Citation : (2011) 337 ITR 294

Hon'ble Judges : Harsha Devani, J;H.B. Antani, J

Bench : Division Bench

Advocate : Maund M. Bhatt, for the Appellant; Kirtikant Thaker, for the Respondent

Final Decision : Dismissed

Judgement

Ms. Harsha Devani, J.—By this appeal u/s 260A of the income tax Act; 1961 (the Act), the appellant-Revenue has challenged the order dated August 20, 1999, made by the income tax Appellate Tribunal ("the Tribunal"). While admitting the appeal on November 13, 2000, the court had for mulated the following substantial questions of law :

1. Whether the Appellate Tribunal is right in law and on facts in allowing the assessees claim of bad debt of Rs. 2,70,656 merely on the entry in the account books and on the basis of the provisions con''tained in section 36(1)(vii) read with section 36(2)(iii) of the income tax Act, 1961 ?

2. Whether the aforesaid provisions of section 36(1) (vii) read with section 36(2) (iii) would exclude completely and obviate any enquiry with regard to an entry in the account books in respect of bad debt ?

3. The assessment year is 1989-90 and the relevant accounting period is the year ended on March 31,1989. The controversy relates to disallowance of bad debt of Rs. 2,70,656. The assessee claimed bad debt of Rs. 5,67,362. The Assessing Officer disallowed the claim of bad debt to the extent of Rs. 2,70,656

on the ground that two of the claims were not admissible for the reason that they pertained to the assessment year 1989-90 itself. The claims amounting to Rs. 1,80,791 were disallowed on the ground that the assessee had received certain amount during the year under consideration and it was not ascertainable as to whether the amount so received was against bad debt claims. Being aggrieved, the assessee went in appeal to the Commissioner (Appeals). Before the Commissioner (Appeals), it was contended on behalf of the assessee that payments during the year were received from the said parties in respect of the recent supplies while no payments had been received i against the old outstanding balance of the earlier years. It was pointed out that till date, not a single amount had been received from any of the said parties. The Commissioner (Appeals) observed that from the list of debtors, it was obvious that they were mostly Government departments or public undertakings and that the assessee was receiving payments from the said departments regularly even at that stage. In view of the aforesaid facts, the Commissioner (Appeals) held that the claim of the assessee for writing off the said amount as bad debts could not be accepted and confirmed the addition.

4. The assessee carried the matter in second appeal before the Tribunal. The learned counsel for the assessee drew the attention of the Tribunal to the amendments made by the Direct Tax Laws (Amendment Act), 1987, with effect from April 1,1987, in the provisions relating to deduction of bad debts, viz., section 36(1)(vii) and 36(2)(iii) to submit that for claiming deduction of bad debts, two conditions were required to be satisfied. Firstly, the amount of bad debt had to be written off in the accounts of the assessee for the previous year; and, secondly, the debt should have been taken into account in computing the income of the assessee of the previous year in which the amount was written off or an earlier previous year. The Tribunal upon appreciation of the evidence on record noted that the fact that the assessee had written off the debts in question in the books of account during the previous year was not disputed. According to the Tri''bunal, once the assessee had posted entries in the profit and loss account and corresponding entries were posted in the debt reserve account that would be a sufficient compliance with the provisions of the statutory requirements of writing off as irrecoverable, the concerned debt in the books of account. The Tribunal found as a matter of fact that the first condition regarding write off in the books of account was fulfilled and that the second condition that the debt should have been taken into account in computing the income of the assessee for the accounting year or for an earlier year had also been fulfilled. In the light of the aforesaid findings recorded by it, the Tribunal held that the requisite statutory conditions for claiming deduction of bad debts as contained in section 36(1) (vii) as well as section 36(2) (iii) were fully satisfied and as such, there was no reason for disallowing the claim of bad debts made by the assessee.

5. Mrs. Mauna Bhatt, learned senior standing counsel appearing on behalf of the appellant submitted that the Tribunal had erred in holding that allowing the assessees claim for bad debts of Rs. 2,70,656 as merely writing off in the books

was not sufficient and what had to be written off should actually have been a bad debt. Attention was invited to the provisions of section 36(2)(iii) of the Act, to submit that the requirements of the said provision have not been fulfilled in the present case inasmuch as the assessee has not established as a matter of fact that the debt in question had becomeibad.

6. This court has" also heard Mr. Kirtikant Thaker, learned advocate for the respondent-assessee who has supported the impugned order passed by the Tribunal.

7. Section 36 of the Act provides that in computing the income referred to in section 28, deductions provided for the clauses thereunder shall be allowed in respect of the matters dealt with thereunder. Clause (vii) thereof provides for deduction of the amount of any bad debt or part thereof which is written off asirrecoverable in the accounts of the assessee for the previous year, subject to the provisions of sub-section (2). Sub-section (2) of section 36 in so far as the same is relevant for the present purpose reads thus : 0

(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

(iii) any such debt or part of debt may be deducted if it has already been written off as irrecoverable in the accounts of an earlier previous year (being a previous year relevant to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year), but the Assessing Officer had not allowed it to be deducted on the ground that it had not been established to have become a bad debt in that year.

8. Thus, in the light of the provisions of clause (vii) of sub-section (1) of section 36, the assessee is entitled to deduction of the amount of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year. In view of the provisions of clause (i) of sub-section (2) of section 36, 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 until the amount of such debt and part thereof is written off Or of an earlier previous year or represents money lent in the ordinary course of banking or money-lending which is carried on by the assessee. In the facts of the present case, the Tribunal has recorded a finding of fact to the effect that the requirements of clause (vii) of sub-section (1) of section 36 as well as the requirement of section 36(2) of the Act have been duly fulfilled in the present case. On behalf of the Revenue, reliance has been placed upon clause (iii) of sub-section (2) of section 36 to contend that the assessee is required to establish that a debt has become bad in that year. On a plain reading of clause (iii) of sub-section (2) of section 36, it is apparent that the same would be attracted in a

case where a debt or part of such a debt is written off as irrecoverable in the accounts of an earlier previous year being a previous year relating to the assessment year commencing on April 1, 1988, or any earlier assessment year, but the Assessing Officer had not allowed it to be deducted on the ground that it had not been established that it had become a bad debt in that year. The said provision would come into play provided on an earlier occasion, the Assessing Officer had not allowed the debt written off as irrecoverable in the accounts of an earlier year on the ground that it had not been established that the same has become a bad debt. It appears that the said provision was necessitated because, prior to the amendment to the provisions of section 36 by the Direct Tax Laws (Amendment) Act, 1987, with effect from 1st April, 1989, deduction provided under clause (vii) of sub-section (1) of section 36 of the Act was in respect of the amount of any debt or part thereof which is established to have become a bad debt in the previous year, subject to the provisions of sub-section (2). In the light of the amendment in clause (vii) of sub-section (1) of section 36, the requirement of establishing that the debt has become a bad debt has been done away with. Thus, clause (iii) of sub-section (2) of section 36 of the Act appears to have been inserted to take care of the situation where on an earlier occasion a claim for deduction in respect of a bad debt has been disallowed on the ground that the assessee had not established that it had become a bad debt. In the facts and circumstances of the present case, clause (iii) of sub-section (2) of section 36 would, therefore, not be attracted. In the light of the aforesaid discussion, it is not possible to state that there is any infirmity in the view taken by the Tribunal. The appeal is, accordingly, dismissed. The questions stand answered accordingly, in favour of the assessee.