

(2012) 02 DEL CK 0214
In the Delhi High Court
Case No : ITA 219 of 2011

CIT

APPELLANT

Vs

Prasad and Co.

RESPONDENT

Date of Decision : 02-02-2012

Acts Referred:

Income Tax Act, 1961 — Section 131, 260A, 36(1), 36(2), 37

Citation : (2012) 341 ITR 480

Hon'ble Judges : Sanjiv Khanna, J;R.V. Easwar, J

Bench : Division Bench

Advocate : Kamal Sawhney, for the Appellant; Piyush Kaushik, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal by Revenue u/s 260A of the Income Tax Act, 1961 (Act, for short) impugns the order dated 31st March, 2010 passed by the Income Tax Appellate Tribunal (for short, the tribunal) in the case of Prasad and Company Pvt. Ltd. The appeal pertains to the assessment year 2000-01.

2. The following two issues have been raised by the Revenue:-

(i) Disallowance of bad debt of Rs.1,62,96,953/- made by the Assessing Officer, which has been deleted by the tribunal. It is submitted that the bad debt was not incurred.

(ii) Disallowance of Rs.1,99,856/- paid by the respondent-assessee to the National Stock Exchange and Delhi Stock Exchange (NSE and DSE, respectively), which again has been deleted by the tribunal. Case of the Revenue is that this payment was in nature of penalty for violation of law and, therefore, is not allowable as an expenditure u/s 37 of the Act.

First Issue

3. Learned counsel for the Revenue submits that the assessee had failed to file

relevant contract notes and establish the loss/bad debt in the transactions for sale/purchase of shares. Our attention is drawn to the order of the CIT (Appeals), who had recorded that the respondent company had failed to file any documentary evidence in support of its claim in spite of specific opportunities provided by the Assessing Officer.

4. Learned counsel for the appellant-Revenue is trying to make out a new case in the present appeal, which was not their stand before the tribunal and is not reflected or mentioned in the order passed by the Assessing Officer. The Assessing Officer on examination of the profit and loss account noticed that the respondent-assessee had debited an amount of Rs. 1,62,96,953/- under the head "bad debt written off". Thereafter, vide order sheet entries dated 11th March, 2003, 18th March, 2003 and 24th March, 2003, the assessee was asked to justify the claim of bad debt shown in the name of Brijender Ahuja. The assessee was asked to give justification and file a detailed note. The Assessing Officer noticed that against the name Brijender Ahuja, "Nil" amount was shown in the earlier assessment year. For the sake of convenience, we are reproducing the relevant portion of the assessment order:-

.....Vide order sheet entries dt. 11.03.03, 18.03.03 and 24.03.03, the A.R. of the assessee was asked to file the details of bad debts of Rs.16296953/- showing the name of Shri Brijender Ahuja, with justification and detailed note on claim of this bad debt during the year as against Nil amount showing in earlier years. He was also asked to justify that how this bad debt is acceptable when the regular transaction in his a/cs as appearing in the books of accounts of the assessee company have been carried out since beginning to the end of the year. He was further asked to file photocopies of client agreement/ember and constituent notices duly signed by Shri Berjinder Ahuja, and steps taken for recovery against turn any other documentary evidence to substantiate the claim of bad debt that Shri Berjinder Ahuja was entered into share transactions with the assessee company in his individual capacity but the assessee company has failed to file any documentary evidence in this respect till the proceedings were closed.

5. It is clear from the aforesaid paragraph that what was doubted and debated by the Assessing Officer, was whether the transaction resulting in bad debt were undertaken in the individual capacity of Berjinder Ahuja or on behalf of the company employing him. The Assessing Officer did not doubt that the transactions were undertaken and sale/purchase of shares had taken place. There is clear distinction between the two. This becomes apparent when we examine the next paragraph of the assessment order, which for the sake of convenience is reproduced below:-

During the course of assessment proceedings, summons u/s 131 were issued to Shri Brijender Ahuja and in his statement recorded u/s 131 on oath, he categorically denied having entered into any share transactions with M/s Prasad and Co. (P) Ltd. in his individual capital. He was also shown the copies of ledger

a/cs appearing in the boosk of M/s Prasad & Co. (P) Ltd. showing a bad debt of Rs.46296953/- in his name which he told to be totally false and fictitious, stating that these did not pertain to him to all. He has also stated that all the shares transactions were entered with M/s Prasad & Co. (P) Ltd. on behalf of M/s First Capital-(India) Ltd.,s he was woking as Vice President of the company. Summons u/s 131 were also issued to M/s First Capital (India) Ltd., the employer company of Shri Brijender Ahuja, who vide their letter dated 24.03.2003 confirmed that all the transactions related with M/s Prasad & Co. (P) Ltd. have been done under the approval and supervision of Shri Brijender Ahuja, Vice President, only for the period 01.04.98 to 31.03.01 on behalf of the company M/s First Capital (India) Ltd. and not in his individual capacity.

6. Therefore, the question, which had arisen and was examined by the Assessing Officer, was whether the bad debt, which was shown in the name of Berjinder Ahuja, was genuine or not i.e. whether the transactions were undertaken by Berjinder Ahuja or were undertaken by First Capital (India) Ltd. The assessment order further records that statement of Rohit Prasad, one of the directors of the respondent-assessee, was recorded u/s 131 of the Act. In the said statement, he had stated that Berjinder Ahuja was, Vice President of First Capital (India) Ltd. and used to give orders for transactions on behalf of the employer as well as for transactions in his own name. The relevant part of the assessment order in this regard reads as under:-

Summon u/s 131 were issued to Shri Rohit Prasad, Director, and his statement was also recorded on oath in which he has admitted that Shri Berjinder Ahuja, as the Vice President of M/s First Capital (I) Ltd. used to give orders for the transactions of the employer as well as his own transactions. The transactions appearing in the account of Shri Brijender Ahuja were entered into by him in his personal capacity. He was asked vide question No.10 of his statement to file any documentary evidence in the shape of client agreement/contract, notes/bills, periodicals settlement a/cs bills and any other paper signed by Shri Berjinder Ahuja showing that he had entered into any share trading transaction with M/s Prasad & Co. (P) Ltd. in his individual capacity but he replied in "Negative". He could also not file any evidence of assigning any cheques to Shri Brijender Ahuja in respect of profit earned him and cheques received from Shri Ahuja on account of losses suffered by him relating to share trading transactions entered by him in his individual capacity with M/s Prasad & Co. (P) Ltd. He was also asked to file any documentary evidence relating to steps taken for recovery of the bad debt against Shri Brijender Ahuja like court case filed against him, any correspondence and efforts made for arbitration etc but he could not file the same. It is simply stated that he has made an effort to recover money from him by going to him personally and requesting him to pay whatever he could simply saying that personal efforts were made to recover the bad debt is not sufficient evidence to substantial the claim of the bad debt.

7. The Revenue along with this appeal has not filed the questionnaire/order sheet

entries raised by the Assessing Officer and the reply and documents, which were submitted by the respondent-assessee. It is, therefore, clear that the contention of the learned counsel for the Revenue is different from the contention raised by the Revenue before the tribunal and even the findings/reasons recorded in the assessment order. The Revenue had not doubted that the transactions were reflected in the stock exchanges in question. It appears that the Assessing Officer did not doubt that the transactions itself had taken place, but had doubted and made observations whether the transactions had been correctly recorded in the name of Berjinder Ahuja.

8. On the question whether or not the amount should be allowed as bad debt, the tribunal has held that there was a dispute between the respondent-assessee and Berjinder Ahuja, who was denying his liability to pay the same. The respondent-assessee in view of the aforesaid facts had written off the said amount in their books of accounts. Referring to these factors, the tribunal has allowed the claim/contention of the respondent/assessee. The tribunal has inter alia held as under:-

11. We have heard the rival submission and have gone through the material available on record. We find that the details of the amount in dispute is as under as given by the assessee in written submissions:-

Transaction Date

Settlement No.

Settlement Date

Client Commitment Report

Amt. paid to SE

Amount received from SE

13.03.2000

1999052

27.03.2000

DSE

501,38,172

23.03.2000

1999053

23.03.2000

DSE

216,27,320

21.03.2000

2000012

31.03.2000

NSE

39,99,352

24.03.2000

2000013

06.04.2000

NSE

269,41,496

28.03.2000

2000001

06.04.2000

DSE

107,28,245

Balance

1,62,96,953

This is not the case of the assessing officer that the above transactions have not taken place. This is also not the case of the assessing officer that these transactions and consequent loss is on account of own transactions of the assessee. Because if that had been the case, the assessing officer should have allowed that loss to the assessee as speculation loss of the assessee. We find that the only objection of the Assessing Officer is that as per the statement of Shri Berjinder Ahuja, this outstanding amount of Rs.162.96 lakhs is not on account of any share purchase transaction entered into by Shri Berjinder Ahuja in his individual capacity. It is not the case of the Assessing Officer that no such share transaction was entered into at all. Even if it is held that these share transactions for which there is outstanding amount of Rs.162.96 lakhs were entered by the assessee company on behalf of M/s First Capital India Ltd. and not for Shri Berjinder Ahuja, deduction has to be allowed on account of write off of bad debts because the bad debts are in fact written off by the assessee company in the present year. It is also not the case of the Assessing Officer that brokerage income on account of these transactions are not accounted for by the assessee in its books of accounts. Hence, as per the judgment of Hon'ble Delhi High Court being the jurisdictional High Court rendered in the case of CIT v. Bonanza Portfolio Pvt. Ltd. (supra), in the case of share broker where the share broker is

purchasing share for his clients and paying money against purchase and money is receivable from clients, if becomes bad and written off by the assessee as bad debts, deduction is allowable as bad debts written off because the conditions stipulated in section 36(1)(vii) and 36(2) are satisfied. It is so held on the basis that since the brokerage payable by the clients is a part of debt and that debt has been taken into account in the computation of income, the conditions stipulated in sub section (2) of section 36 read with section 36(1)(vii) stands satisfied. In the present case also, this is not the case of the Assessing Officer that brokerage income was not declared by the assessee company on account of these share transactions. Once the brokerage income has been declared by the assessee company on account of these share transactions, the deduction on account of bad debt is allowable as per this judgment of Hon"ble Delhi High Court. In the present case also, the only objection of the Assessing Officer is that as per Shri Brijender Ahuja, there was no share transaction carried out in his individual capacity but even if these share transactions are to be considered as transactions belonging to First Capital India Ltd., the deduction has to be allowed to the assessee company u/s(1)(vii) because these debts have been written off by the assess company in the present year and this is not in the case of the Assessing Officer that the assessee has received this amount from Shri Brijender Ahuja or from M/s First Capital India Ltd. Hence, we allow deduction to the assessee on this account u/s 36(1)(vii). Ground No.1 of the assessee is allowed.

9. It is not disputed by the Revenue that the aforesaid amount has been written off in the books of account of the respondent-assessee.

10. The Supreme Court in TRF (T.R.F.) Limited Vs. Commissioner of Income Tax, Ranchi, , has held that after 1st April, 1989, it is not necessary for the assessee to establish that the debt, in fact, has become irrecoverable. It has been held that it is enough if the bad debit is written off in the books of accounts of the assessee.

Second Issue

11. The Assessing Officer while making the disallowance of Rs.1,99,856/- had recorded as under:-

On examining the tax audit report, it is noticed that penalty of Rs.196916/- has been paid to NSE and DSE. However, on examining the details filed, it is seen that amount of penalty paid is Rs.199856/-. It is not an admissible expenditure, hence disallowed.

[Addition Rs.199856]

12. The CIT (Appeals) confirmed the aforesaid disallowance without giving details or specific reasoning.

13. The tribunal, on the other hand, referred to the details furnished by the assessee and has recorded as under:-

We have considered the rival submission. The details of this penalty payment is available on pages 121 to 123 of the paper book. As per the same these penalties are paid for late deposits of Margin money and other violations of timely delivery etc. In the case of Master Capital (Supra), it was held by the tribunal that amount paid by the assessee, a share broker to NSE for violation of trading beyond exposor limit, late submission of margin certificate and delay in making deliveries of shares due to deficiencies were deductible as a business expenditure, as the amount was paid during the course of business of assessee's business and these was no infraction of law. In the present case also, the facts are similar and hence by respectfully following this tribunal decision, we hold that the disallowance is not justified. The additional ground No.2 is allowed.

14. Learned counsel for the appellant-Revenue has not been able to show why and how the aforesaid findings are wrong and incorrect and the payment was, in fact, in nature of penalty and not normal interest on delayed payment.

15. In view of the aforesaid discussion, we do not think that any substantial question of law arise in this appeal. Accordingly, the appeal is dismissed without any order as to costs.