
(2007) 03 DEL CK 0214
In the Delhi High Court
Case No : IT Appeal No. 466 of 2006

Commissioner of Income Tax	Vs	APPELLANT
Autometers Ltd.		RESPONDENT

Date of Decision : 02-03-2007

Acts Referred:

Income Tax Act, 1961 — Section 28, 28(2), 36(1), 41(1)

Citation : (2007) 210 CTR 339 : (2007) 292 ITR 345 : (2008) 167 TAXMAN 286

Hon'ble Judges : Vidya Bhushan Gupta, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : Prem Lata Bansal, for the Appellant; Rakesh Gupta and Jitender Saini, for the Respondent

Final Decision : Dismissed

Judgement

1. The Revenue is aggrieved by an order dt. 11th Aug., 2005 passed by the Tribunal, Delhi Bench "F", in ITA No. 3994/Del/1997 relevant for the asst. yr. 1994-95.

2. The assessed had written off some amount that was due to it as irrecoverable in its books of account. This was in the financial year 1993-94.

The AO was of the view that these debts were shown as good debts till 31st March, 1993 and the assessed was not able to produce any documentary evidence to show that any efforts were made to recover the amount and, Therefore, the debts had become bad.

3. Feeling aggrieved by the view taken by the AO, the assessed preferred an appeal before the CIT(A) who took the view that in terms of Section 36(1)(vii) of the IT Act, 1961, all that the assessed had to do is to write off a bad debt as irrecoverable, and that had been done in the present case and, Therefore, the order of the AO requiring the assessed to prove that the debts have become bad was not correct.

4. The view taken by the CIT(A) was upheld by the Tribunal and that is why the Revenue is before us in appeal under s. 260A of the Act.

5. Section 36(1)(vii), as it stands w.e.f. 1st April, 1989, reads as follows:

36. Other deductions.--(1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in Section 28--

(i)--(iv) xxxxxx

(vii) subject to the provisions of Sub-section (2), the amount of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessed for the previous year:

Provided xxxx

Explanation: xxxx

Prior to 1st April, 1989, the above provision read as follows:

Subject to the provisions of Sub-section (2), the amount of any debt, or part thereof, which is established to have become a bad debt in the previous year.

6. We find that there is a significant difference between the provision as it stood prior to 1st April, 1989, and the provision as stands today. Prior to 1st April, 1989, it was necessary for the assessed to establish that the debt had become bad, whereas now for the debt to be classified as bad, the assessed has only to write it off as irrecoverable in its accounts.

7. While making the amendment as above, the CBDT issued a circular bearing No. 551, dt. 23rd Jan., 1990, wherein it is stated in paras 6.6 and 6.7 that the earlier provision generated a considerable amount of litigation on the issue whether the assessed had been able to establish that the debt had become bad. It was to overcome this that the amendment was made resulting in a bad debt "now being straightaway allowed in the year of write off".

8. The interpretation of Section 36(1)(vii) of the Act was considered by this Court in CIT v. Morgan Securities & Credits (P) Ltd. in IT Appeal No. 1442 of 2006 decided on 7th Dec, 2006 [reported at Commissioner of Income Tax Vs. Morgan Securities and Credits (P) Ltd., . In that case, this Court referred to the circular as well as another decision of the Gujarat High Court being Dy. CIT v. Patidar Dinning & Pressing Co. (1999) 157 CTR 177 (Del) and came to the conclusion that no substantial question of law arises for consideration.

9. We are of the view that there is no error in the view taken by the Tribunal. The amendment made to Section 36(1)(vii) of the Act was a conscious decision taken to eliminate litigation with regard to establishing what is bad debt.

10. It has also been brought to our notice by learned Counsel for the respondent that if an assessed writes off a debt as a bad debt without giving any reason, he

will not get any benefit from this. This is for the reason that by virtue of Section 41(4) of the Act, where a deduction has been allowed in respect of a bad debt which is irrecoverable and if the amount or a part thereof is subsequently recovered, then that amount shall be deemed to be profits and gains of business or profession of that relevant previous year.

11. Learned Counsel for the Revenue submits that the 1989 amendment incorporates only the year of allow ability but it does not dispense with the requirement of the assessed to prove that the debt has become a bad debt. We cannot agree with this interpretation as it would take the situation to what was prevailing pre-1st April, 1989.

12. Taking all these factors into consideration, we are of the opinion that no substantial question of law arises for our consideration. The appeal is dismissed.