(2007) 01 DEL CK 0172

In the Delhi High Court

Commissioner of Income Tax APPELLANT

Vs

D.C.M. Ltd. RESPONDENT

Date of Decision : 10-01-2007

Acts Referred:

Citation : (2008) 167 TAXMAN 160

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The revenue is aggrieved by an order dated 24-2-2006 passed by the Income Tax Appellate Tribunal, Delhi Bench ''G'' in Income Tax Appeal No. 4872/ Delhi/2002 relevant for the assessment year 1995-96.

2.The only question that has arisen before us is about the writing off of a bad debt by the assessee.

Section 36(l)(vii) of the Income Tax Act, 1961 reads as follows:

36. Other deductions.--(1) The deduction 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)to(vi)....

(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 assessee for the previous year.

3. Admittedly, the assessee had written off the debt as irrecoverable in the relevant previous year.

4. The contention of learned Counsel for the revenue is that there must be some evidence to show that the debt was bad before it could be written off as irrecoverable.

5.We are of the view that no prudent businessman would write off a debt which he has a hope of recovering. If at all a prudent businessman was to do so, it would be for a collateral reason but that is not an allegation against the assessee in the present case. Insofar as the assessee is concerned, the debt was written off as irrecoverable and must be presumed, unless the contrary is shown, to be a bad debt.

6.We may note that another Division Bench of this Court in CIT v, Morgan Securities & Credits (P.) Ltd. (IT Appeal No. 1442/2006, dated 7-12-2006), concluded, on a reading of Circular No. 551, dated 23-1-1990 issued by the Central Board of Direct Taxes that there is no scope for debate that the provision of law that existed earlier had generated tremendous litigation on the question of allowability of a bad debt in a particular year. The Circular, the relevant paragraphs of which are 6.6 and 6.7, clearly indicates the intention of the Legislature to amend the statute so as to enable the assessee to write off a debt as irrecoverable and claim deduction thereon and thereby eliminate litigation on this score.

7. No substantial question of law arises for our consideration. Dismissed.

