
(2010) 04 DEL CK 0042

In the Delhi High Court

Case No : Income Tax A. No. 1308 of 2007

Commissioner of Income Tax

APPELLANT

Vs

Modi Telecommunication Ltd.

RESPONDENT

Date of Decision : 12-04-2010

Acts Referred:

Income Tax Act, 1961 — Section 36(1)

Citation : (2010) 325 ITR 291 : (2010) 195 TAXMAN 284

Hon'ble Judges : V.K. Jain, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Sonia Mathur and Sumit Kr. Singh, for the Appellant; K.R. Manjani, for the Respondent

Judgement

Badar Durrez Ahmed, J.—This appeal by the Revenue is directed against the order dated March 23, 2007, passed in I.T.A. No. 1463/Del/2003 in respect of the assessment year 1998-99.

2. The assessee had written off an amount of Rs. 81,28,269 during the year in question on account of bad debts. The assessee had sold certain pagers to individual customers on instalments. Later on the pager prices crashed and were available at a much lower price in the market. The customers did not make their further payments. It is on this account that the amount payable became outstanding and ultimately turned into bad debts. The assessee had tried legal means also but the said amounts could not be recovered. Consequently, the assessee wrote off the bad debts in its books of account and claimed a deduction in respect thereof.

3. The Assessing Officer, however, did not accept the contention of the assessee and made an addition of Rs. 81,28,269.

4. Being aggrieved by the said assessment order, an appeal was filed by the assessee before the Commissioner of Income Tax (Appeals) where it was specifically contended by the assessee that both the conditions laid down u/s

36(1)(vii) of the Income Tax Act, 1961 for allowability of any bad debt or part thereof were clearly fulfilled. The two conditions being that the debts had been taken into account in computing the income of the assessee of the previous year or of an earlier previous year and that the same had been written off as irrecoverable in the accounts of the assessee. According to the assessee, both these conditions had been complied with and, therefore, there was no reason as to why the deduction on account of the bad debts written off ought not to be allowed.

5. The Commissioner of Income Tax (Appeals), however, did not accept the contention of the assessee on the ground that the bad debts were not verifiable and identifiable and, therefore, disallowed the same confirming the order of the Assessing Officer. It may be pointed out at this juncture that the Commissioner of Income Tax (Appeals) did not make any adverse comment or did not dispute the assessee's contention that debts had been taken into account in computing the income of the assessee of the previous year or of an earlier previous year. The Commissioner of Income Tax (Appeals) only focused on the verifiability and identifiability of the customers and the bad debts.

6. Being aggrieved by the order passed by the Commissioner of Income Tax (Appeals), the assessee preferred an appeal before the Tribunal on the ground that the Commissioner of Income Tax (Appeals) had erred in law as also on the facts and circumstances of the case in upholding the addition of Rs. 81,28,269 on account of bad debts and in confirming the addition made by the Assessing Officer.

7. The Tribunal agreed with the assessee and allowed the appeal. The Tribunal took the view that once the assessee had written off the outstanding amounts as irrecoverable in its books of account, it was sufficient compliance with the provisions indicated above and, therefore, the Assessing Officer ought not to have disallowed the deduction on account of bad debts written off by the assessee. The Tribunal also noted that after the amendment (with effect from April 1, 1989) in the provisions of Section 36(1)(vii), it was no longer necessary on the part of the assessee to prove that the amount written off had, in fact, become a bad debt. The writing off of the bad debt was prima facie evidence on the part of the assessee and it was sufficient compliance with the amended provisions.

8. It is a well-settled position in law that after April 1, 1989, it is not necessary for the assessee to establish that the debt, in fact, has become irrecoverable. It is enough if the bad debt is written off as irrecoverable in the account of the assessee in view of the decision of the Supreme Court in TRF (T.R.F.) Limited Vs. Commissioner of Income Tax, Ranchi, .

9. We may point out that the learned Counsel for the Revenue had placed reliance on TRF (T.R.F.) Limited Vs. Commissioner of Income Tax, Ranchi, seeking remand of the matter to the Assessing Officer to verify as to whether the

assessee was entitled to the said deduction. However, we note that the decision in TRF (T.R.F.) Limited Vs. Commissioner of Income Tax, Ranchi, stood on a different footing on the facts. In that case, it was not clear as to whether the bad debts had, in fact, been written off in the account of the assessee or not and it is for that purpose alone that the matter was remitted to the Assessing Officer for a de novo consideration on this aspect only and, that too, only to the extent of the write off.

10. In the present case, the situation is entirely different. Here, it is an admitted position that the assessee had, in fact, written off the said bad debts in its books of account and had shown them as irrecoverable. Therefore, no question arises of remitting the matter to the Assessing Officer for consideration on this aspect which already stands admitted.

11. In so far as the plea taken by the learned Counsel for the Revenue that the matter may be remitted to the Assessing Officer to determine as to whether bad debts or part thereof had, in fact, been taken into account in computing the income of the assessee of the previous year or of an earlier previous year, the same does not arise for consideration before us inasmuch as the plea taken by the assessee before the Commissioner of Income Tax (Appeals) that the debts had been taken into account in computing the income of the assessee of the previous year or of an earlier previous year had not been controverted by the Commissioner of Income Tax (Appeals) or by the Assessing Officer. Nor was it an issue before the Income Tax Appellate Tribunal.

12. For all these reasons, we find that no interference with the Tribunal's order is called for and, in any event, no substantial question of law arises for our consideration.

13. The appeal is dismissed.