

(2009) 02 CAL CK 0110
In the Calcutta High Court

Commissioner of Income Tax

APPELLANT

Vs

Potential Management Services Ltd.

RESPONDENT

Date of Decision : 11-02-2009

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, 36

Citation : (2009) 02 CAL CK 0110

Hon'ble Judges : Sankar Prasad Mitra, J; Pinaki Chandra Ghose, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal has been filed by the revenue on the question that the deletion of an addition of Rs. 14,00,000 representing the bad debts written off without giving any specific finding regarding nature of loan as to whether the same was in any way connected with the business of the assessee and whether any income therefrom was ever shown in the past. An appeal was filed before the Tribunal on the said question being aggrieved by an order so passed by the Commissioner (Appeals) dated 3-1-2008 for the assessment year 2005-06. It appears that the assessee carries on business amongst other a money lending business during the relevant previous year. It also appears from the facts that as per audited note No. 7(c) an amount of Rs. 14 lakhs was outstanding in the account of M/s Super Tex (India) was written off as unrecoverable during the previous year. On enquiry made by the assessing officer, it was submitted by the assessee, the respondent herein, that the said sum of Rs. 14 lakhs was given to the said M/s Super Tex (India) as a loan on 27-7-2001. It further appears that a cheque bearing No. 032781 dated 26-11-2001 drawn on Central Bank of India, Brabourne Road Branch, Kolkata was received by the assessee as repayment of the said loan from the said borrower and the said cheque was deposited for encashment which was returned through the appellants banker as unpaid by the borrowers banker under their memo dated 27-11-2001 quoting a reason "exceeds arrangement". A criminal case was also lodged u/s 138 of the Negotiable Instrument Act, in the court of Chief Metropolitan Magistrate against the said borrower by the assessee.

The arrest warrant was also issued against the borrower by the court which could not be executed by the Police Department.

2. It further appears that the Central Bank of India being the banker of the said borrower and through which the said borrower used to enjoy cash credit facilities and bank advanced money to the said borrower and finally also the said Central Bank of India could not recover the amount as a result whereof the banker had to recourse for the auction of the properties mortgaged to the bank by the said borrower, i.e., M/s Super Tax (India). In this connection, it was submitted that from these facts it would be evident that there is no chance of recovery of the amount so lent to the said borrower by the assessee. On the said facts the assessee had to write off the amount in the books of accounts and treat the same as bad debt.

3. It appears from Section 36(1)(vii) that the conditions mentioned in the said section have been fulfilled to claim such bad debt by the assessee in its return of income for the assessment year 2005-06. It further appears that the said fact was also placed and were explained before the assessing officer including the evidences were produced with regard thereto. However, the assessing officer disallowed such claim of bad debt on the ground that the certified copy of the order of the Metropolitan Magistrate was not furnished by the assessee. It appears from Section 36(1)(vii) read with Section 36(2) bad debt is allowed as deduction if the criteria and/or conditions are fulfilled as mentioned by the assessee which are as follows:

1. The debt or loan should be in respect of business carried on by the assessee.
2. The debt should represent money lent in the ordinary course of business of money or banking or should have been taken into account in computing the income of the assessee of the accounting year.
3. The amount of debt or loan should have become bad.
4. The amount should be written off as irrecoverable in the accounts of the assessee for that accounting year in which the claim for a deduction is made.
4. The Commissioner (Appeals) after considering the facts and the conditions as laid down in the said section came to the conclusion that those conditions have been fulfilled by the assessee for claiming the said sum of Rs. 14 lacs as bad debt. Accordingly, the Commissioner (Appeals) accepted the said position and allowed the said amount as bad debt and deduction was also allowed to that effect.
5. It appears from the facts further that the assessing officer has also accepted the position that the assessee was carrying on business of money lending and as such there cannot be any dispute on this account. It is also held by the Madhya Pradesh High Court in the case of (2004) 265 ITR 1 where the court held that after amendment of Section 36 it is not necessary to claim the bad debt in the year in which it has become bad. It can be claimed in any later year in which the

debt has been written off in the books of accounts. The said position has also been clarified by the CBDT in the circular issued by them bearing No. 551 dated 23-1-1990 ((1990) 82 CTR (ST) 325).

6. In the facts and circumstances of this case it appears to us that the loan was given in the ordinary course of business of money lending by the assessee and there is no doubt that the debt became bad was written off during the relevant previous year.

7. The Hon''ble Supreme Court in the case of COMMISSIONER OF Income Tax, BIHAR and ORISSA Vs. PANDIT LAKSHMI KANT JHA AND OTHERS., specifically held that in money lending business, amount not recoverable and written off by the assessee is allowable as a bad debt.

8. Therefore, considering all these aspects of the matter we do not find that there is any irregularity or any substantial question of law is involved in this matter to admit this appeal.

9. Accordingly, we dismiss this appeal.