



* **THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on : 28.08.2008

+ **ITA No. 329/2007**

THE COMMISSIONER OF
INCOME TAX-V.

.... Appellant

-versus-

REALEST BUILDERS &
SERVICES LTD

.... Respondent

Advocates who appeared in this case:

For the Appellant	:	Ms Rashmi Chopra
For the Respondent	:	Mr Prem Nath Monga with Mr Manu Monga

CORAM :-

**HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE RAJIV SHAKDHER**

1. Whether the Reporters of local papers may be allowed to see the judgment ?
2. To be referred to Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

BADAR DURREZ AHMED, J (ORAL)

1. This appeal filed by the Revenue pertains to the assessment year 2001-02 and arises out of the order dated 22.06.2006 passed by the Income Tax Appellate Tribunal (hereinafter referred to the Tribunal) in ITA No. 1516/Del/2004.



The Revenue's appeal before the Tribunal involved the question whether the Commissioner of Income-tax (Appeals) had erred in deleting the addition of Rs 32,90,820/- made by the Assessing Officer after disallowing the deductions claimed in respect of bad debts to the said extent written off by the assessee in the year in question.

2. The facts are that the assessee had given a sum of Rs 50.00 lacs to Sahni Silk Mills Pvt. Ltd, New Delhi. The interest accrued on such an advance was assessed to tax as business income in the assessment years 1997-98 to 1999-00. The debtor company suffered a heavy loss due to a fire which broke out in its factory premises in March, 2000. The financial position of the debtor company deteriorated to such an extent that even the cheques issued by them towards repayment of the loan and interest payments were repeatedly returned unpaid on the ground of insufficiency of funds. Thereafter, the Board of Directors of the assessee company took a prudent business decision and passed a resolution on 02.03.2001 to negotiate the issue with the debtor company and to write off the amount, to the extent it was irrecoverable. A compromise deed dated 14.05.2001 was also executed between the assessee company



and the said Sahini Silk Mills Pvt. Ltd. It is a result of this compromise that the sum of Rs. 32,90,820/- was written off as bad debts in the books of the assessee company in the relevant year. Out of this amount of Rs 32,90,820/-, the principal amount was Rs 17,50,000/- and interest was an amount of Rs 15,40,820/-.

3. The addition made by the Assessing Officer was deleted by the Commissioner of Income-tax (Appeals). While doing so, he recorded, inter-alia, the findings as under :-

- “iii) As the appellant is in the business of money lending there is no question of the principal amount written off to be treated as capital in nature.
- iv) As the appellant has in fact written off the amount in the books of accounts during the relevant previous year, the compromise deed was only a formality for write off. The decision of Income-tax Officer v. Anil H. Rastogi, reported in 86 TD 193(Mum)(TM), is squarely applicable in the appellant’s case.”

4. Before the Tribunal, as recorded in paragraph 5 of the impugned order, these findings recorded by the Commissioner of Income-tax (Appeals) had not been controverted by the departmental representative during the course of hearing. The Tribunal came to the conclusion that there was no infirmity in the order of



Commissioner of Income-tax (Appeals) whereunder the bad debt written off in the books of account of the assessee had been allowed as deductions under Section 36 (1) (vii) of the Income Tax Act, 1961.

5. It is a settled position of law that the assessee does not have to establish the bad debt and he has merely to indicate that the bad debt was written off in his books in the year in question. That has already been done.

6. A contention was sought to be raised before this Court by the learned counsel for the appellant that the principal amount of Rs 17.50 lacs which had been written off as bad debt represented a capital loss, in as much as, the assessee was not in the business of money lending. However, such a plea cannot be raised at this stage, particularly, when the Commissioner of Income-tax (Appeals) has returned a clear finding that the assessee was in the business of money lending and there was no question of treating the principal amount written off as capital in nature. The Commissioner of Income-tax (Appeals) had also noted that the interest received by the assessee from the said Sahni Silk Mills Pvt. Ltd had been taxed as business income in the assessment years 1997-98 to 1999-00. As a



consequence, there is no doubt that the assessee was engaged in the business of money lending.

7. Consequently, we find no infirmity with the impugned order. No substantial question of law arises for our consideration. The appeal is dismissed.

BADAR DURREZ AHMED, J

RAJIV SHAKDHER, J

August 28, 2008

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