



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

% Judgment delivered on: 08.02.2010

+ **ITA 164/2007**

**COMMISSIONER OF INCOME TAX DELHI-II** ... Appellant

- versus -

**KHAITAN CHEMICALS & FERTILIZERS LTD** ... Respondent

**Advocates who appeared in this case:-**

For the Appellant : Mr Sanjeev Sabharwal

For the Respondent : Mr Satyen Sethi with Mr Johnson Bara

**CORAM:**

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

**HON'BLE MR JUSTICE SIDDHARTH MRIDUL**

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

**BADAR DURREZ AHMED, J (ORAL)**

1. This appeal filed by the revenue is directed against the order dated 05.05.2006 passed by the Income Tax Appellate Tribunal in ITA 5314/D/1996 pertaining to the assessment year 1990-1991.

2. The learned counsel for the revenue contended that the Tribunal's findings are incorrect on two grounds. The first ground of challenge is that the Tribunal has erred in holding that the amount of Rs 14.79 lacs claimed by the assessee was allowable as a bad debt under Section 36(1)(vii) of the Income Tax Act, 1961 (hereinafter referred to as 'the said Act'). Secondly,



wrong in holding that even if the said amount was not to be treated as a bad debt, it would still be an expenditure under Section 37(1) of the said Act incurred for the purposes of the business of the assessee and was, therefore, allowable as a deduction.

3. The facts are that in the year in question, the assessee had written off an amount of Rs 14.79 lacs by way of subsidy not received, which had been shown in the earlier year as a receivable, as per the mercantile system of accounting followed by it. The assessee claimed this amount as a bad debt under Section 36(1)(vii) of the said Act.

4. The Assessing Officer did not agree with the view taken by the assessee and came to the conclusion that the said amount did not fall within the purview of Section 36(1)(vii) of the said Act inasmuch as it did not amount to a bad debt. The Assessing Officer took the view that the assessee did not have a legal right to claim the subsidy and, therefore, could not take the matter to court by way of a suit to claim the same. As such, it was not a bad debt in the terms described in Section 36(1)(vii) of the said Act. Consequently, the Assessing Officer disallowed the claim of deduction by the assessee.

5. The Commissioner of Income Tax (Appeals) confirmed the view taken by the Assessing Officer. However, the Income Tax Appellate Tribunal, in the appeal preferred by the assessee, came to the conclusion that



definite finding as to whether the said amount represented a bad debt or not inasmuch as the Tribunal came to the conclusion that even if it were not to be a bad debt, it would amount to an expenditure under Section 37(1) of the said Act, incurred by the assessee for the purposes of its business and which would be allowable to the assessee.

6. We find that insofar as the question of the said amount representing a bad debt is concerned, the contention of the learned counsel for the revenue is correct that it cannot be termed as a bad debt. The subsidy that was to be received from the government by the assessee was not a matter of right. There was no debtor-creditor relationship established and, therefore, the same cannot be treated as a debt and, consequently, as a bad debt.

7. It is true that the subsidy was given by the government to the assessee, who was in the business of selling fertilizers so that fertilizers were available at a lower price to the farmers. The assessee had calculated the subsidy in the earlier year provisionally on the basis of the claim made. However, when the final rates of the subsidy were communicated by the Fertilizer Industry Coordination Committee (FICC), the same were sought to be adjusted as subsidy not received. We agree with the learned counsel for the appellant/ revenue that the assessee had wrongly claimed it as a bad debt under Section 36(1)(vii) of the said Act. However, we find that the Tribunal has examined the matter in the correct light and allowed the same as an expenditure under Section 37(1) of the said Act. A plea was raised by the learned counsel for the revenue that the Tribunal ought not to have done this



as to whether the claim was allowable under Section 37(1) of the said Act or not. However, we find that the decisions cited by the learned counsel for the assessee, namely, *CIT v. Mahalaxmi Textile Mills Ltd: 66 ITR 710* and *CIT v. Rose Services Apartment India Pvt. Ltd: ITA 777/2008* decided on 20.02.2009, give a clear indication that the Tribunal was empowered to deal with the issue of allowability of the said amount of Rs 14.79 lacs and as to whether the assessee was entitled to claim it as a bad debt or as an expenditure under Section 37(1).

8. We see no reason to disagree with the view taken by the Tribunal. In any event, no substantial question of law arises for our consideration.

The appeal is dismissed.

**BADAR DURREZ AHMED, J**

**SIDDHARTH MRIDUL, J**

**FEBRUARY 08, 2010**  
**SR**