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\*IN THE HIGH COURT OF DELHI AT NEW DELHI

+ INCOME TAX APPEAL NO. 452/2011

Date of order: 16<sup>th</sup> November, 2011

CIT ..... Appellant  
Through Mr. Kamal Sawhney, Sr.  
Standing Counsel.

Versus

SIR SHADI LAL ENTERPRISES LTD. .... Respondent  
Through Mr. Ajay Vohra, Ms. Kavita  
Jha & Mr. Amit Sachdeva, Advocates.

**CORAM:**  
**HON'BLE MR. JUSTICE SANJIV KHANNA**  
**HON'BLE MR. JUSTICE R.V.EASWAR**

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 the Digest?

**SANJIV KHANNA, J.:**

The present appeal by the Revenue under Section 260A of the Income Tax Act, 1961 (Act, for short) impugns the order dated 4<sup>th</sup> June, 2010 passed by the Income Tax Appellate Tribunal (Tribunal, for short) in ITA No. 145(Del)/2007 by which the penalty under Section 271(1)(c) has been deleted.



2. The assessment year involved is 2001-02. The respondent-assessee, a company, had filed their return of income on 30<sup>th</sup> October, 2001 in which a sum of Rs.57,70,743/- was debited on account of provision for doubtful debts and advances in Schedule IV of the audited account. The Assessing Officer disallowed the said deduction and to this extent the issue stands concluded and decided against the respondent-assessee in the quantum proceedings.

3. By order dated 28<sup>th</sup> March, 2006 the Assessing Officer imposed penalty for concealment under Section 271(1)(c) of the Act on the said aspect, recording as under:-

**"1. Provision for doubtful debts**  
**52,47,553/-**

The assessing officer while framing the assessment observed that the value of debts in the books of accounts had been reduced from the debtors in the balance sheet. But the same has not been written back in the books of account. In response to the queries raised by the A.O. the assessee submitted its reply. The A.O. being not satisfied with the assessee's reply and explanation made an addition of Rs.52,47,553/- as per the provision of section 36(1)(VII) relying upon the decision of Hon'ble Mumbai High Court in the case of ABB Ltd. (258 ITR 407) which supports the view that the provision for bad and doubtful debts is not allowed as a deduction after the amendment of Income Tax Act w.e.f. 1.4.1989. The assessee's appeal against



the order of the A.O. was dismissed on this ground.

The penalty levied for assessment year 2000-01 has also been upheld by the CIT(A). Since the disallowance of Rs.52,47,553/- has been confirmed by Ld. CIT(A) on account of provision for doubtful debts and hence is liable to be penalized u/s 271(1)(c)/274 of the Income Tax Act.”

4. The assessee being unsuccessful in the first appeal, approached the tribunal and by the impugned order, the tribunal has deleted the penalty relying upon ***Commissioner of Income Tax versus Reliance Petroproducts Private Limited***, (2010) 322 ITR 158 (SC). The explanation given by the assessee was considered and accepted by the tribunal as sufficient for discharging the onus. The tribunal has, inter alia, recorded as under:-

“16.5 In order to support this contention, reliance is placed on the decision of Hon'ble Supreme Court in the case of CIT Vs. Reliance Petroproducts (P) Ltd., (2010) 322 ITR 158. While deciding this case, the Hon'ble Court inter-alia considered the decision in the case of Dilip N. Shroff Vs. Joint CIT (2007) 291 ITR 519(SC) and Union of India Vs. Dharmendra Textile Processors (2008) 306 ITR 277 (SC). It is mentioned that for levy of penalty, the circumstances mentioned in section 271(1)(c) and the Explanations appended thereto must exist. It has been further held that “furnishing inaccurate particulars of income” mean



furnishing particulars which are not accurate, exact, correct, not according to truth, erroneous, an inaccurate statement, copy or transcript. It has also been held that the "particulars" mean that the details filed in support of the claim in the return of income. In view of the aforesaid, it has been held that the aforesaid expression means not merely making a wrong claim or a claim which may subsequently turn out to be inadmissible, but to furnish the details which are false in support of the claim. Seen in this context, it is clear that the claims were duly disclosed in the accounts, in the profit and loss and balance-sheet. There has been considerable confusion as to what would amount to "writing off a debt" in the books of account. There did exist case law to the effect that when a provision is made and the corresponding amount is deducted from the assets, the same amounts to writing off of the debt. This confusion was sought to be cleared by insertion of the Explanation in section 36(1)(vii), retrospectively with effect from 1.4.1989. It appears that the assessee did not comprehend the import of this explanation fully at the time of filing of the return of income. The controversy has been set at rest by the decision of Hon'ble Supreme Court in the case of Vijaya Bank (supra), in which it has been held that the provision is applicable not only in case of a banking company but in case of any assessee. This decision has been rendered on 15.4.2010, much after the date of filing the return of income. It is also true that the decision in the case of ABB Ltd., relied upon by the revenue, had been rendered prior to filing the return of income, but that is not the decision of jurisdictional High Court. Otherwise, the particulars have been fully disclosed in the return of income. In this view of the matter, we hold that the



assessee did not furnish inaccurate particulars of income when such a claim was made in the return filed prior to rendering the decision in the case of Vijaya Bank (supra).”

5. Learned counsel for the Revenue has submitted that an Explanation was added to Section 36(1)(vii) by the Finance Act, 2001, which had received assent of the President on 11<sup>th</sup> May, 2001 and this amendment was with retrospective effect from 1<sup>st</sup> April, 1989 and, therefore, there was no dispute or ambiguity and it is a case of deliberate and willful attempt to evade tax and furnishing inaccurate particulars of income.

6. We have examined the said contention but are not inclined to admit the present appeal. The accounting treatment to claim deduction on account of doubtful debts and advances has been a subject matter of considerable controversy and divergent judicial pronouncements. Judgment of the Gujarat High Court in **Vithaldas H. Dhanjibhai Bardanwala versus Commissioner of Income Tax**, (1981) 130 ITR 95 (Gujarat) was clearly in favour of the assessee. Thereafter there were two decisions of Bombay High Court in **CIT versus General Insurance Corporation**, (2002) 2 ITR 204 (Bom.) and **CIT versus M/s Asea Limited**, (2002) 258 ITR 407 (Bom.) which as per the assessee support their stand. In view of the varied/ divergent




decisions, it is apparent that there was some ambiguity and doubt about the interpretation and the procedure and accounting practice, which the assessee has to follow to claim benefit under Section 36(1)(vii) of the Act. The issue relates to account and recording of entries in the books. In these circumstances, we do not think the decision of the tribunal accepting the explanation of the assessee is wanting and justifies admission on a substantial question of law. The assessment year in question, i.e. 2001- 02, is the year in which the amendment was made and an Explanation was added with retrospective effect. The return was filed within 4 months of the amendment. It is not that the tribunal has shown latitude or sympathy but examined the legal issue and objectively assessed the plea and the explanation given by the respondent. The tribunal has observed that the respondent assessee had failed to comprehend the full import and effect of the amendment. Even after the amendment by the Finance Act, 2001, the matter was considered and decided by the Supreme Court in ***Vijaya Bank versus CIT and Another***, (2010) 323 ITR 166 (SC). This decision is dated 15<sup>th</sup> April, 2010. The Supreme Court in paragraph 2 of their decision specifically referred to the question raised and has elucidated the legal principles after relying and referring to several judgments.



judgments. The provision has been held to be applicable not only to banking companies but to any assessee.

7. Keeping in view the aforesaid facts, we do not find any merit in the present appeal and the same is accordingly dismissed. No order as to costs.

  
SANJIV KHANNA, J.

  
R.V. EASWAR, J.

NOVEMBER 16, 2011  
VKR