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

\+ ITA 1498/2010

COMMISSIONER OF INCOME TAX ..... Appellant
Through: Ms. Prem Lata Bansal, Advocate

versus

VISTAR CONSTRUCTION PVT. LTD. ..... Respondent
Through: Mr. O.P. Sapra, Advocate with
Mr. Sandeep Sapra, Advocate.

% Date of Decision: 30th September, 2010

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see the judgment? No.
2. To be referred to the Reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

MANMOHAN, J

1. The present appeal has been filed under Section 260A of Income Tax Act, 1961 (for brevity "Act") challenging the order dated 24th July, 2009 passed by the Income Tax Appellate Tribunal (in short "Tribunal") in ITA No. 1630/Del/2009, for the Assessment Year 2004-2005.

2. Ms. Prem Lata Bansal, learned counsel for the revenue submitted that the Tribunal had erred in law in setting aside the order passed under Section 263 of the Act by the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"]. Ms. Bansal further submitted that the

Tribunal had also erred in law in writing off the debts with establishing that the same were bad, as prescribed in Section 36(1)(vii) of the Act.

3. It is pertinent to mention that the Tribunal in the present case had dismissed the revenue's appeal after observing as under:-

> *"4. …… As per our considered view, the provisions Section 36(1)(vii) as amended vide the Finance Act, 1987 obviate the requirement of establishment of debt as "bad" and that as per the amended law the only requirement is to write off the debt, and that the AO is precluded from looking into the fact whether the debt is "bad" or not. The issue is squarely covered by the decision of Hon'ble Jurisdictional High Court in the case of CIT Vs. Morgan Securities & Credits Pvt. Ltd. 292 ITR 339 and CIT Vs. Autometers Limited 292 ITR 345. CBDT Circular No.551 dated 23.01.1990 also supports the assessee's claim……*
>
> *xxx xxx xxx*
>
> *……. Later Philip Holzman has filed a winding up petition against Holzman Videocon Engineers Ltd. u/s 433(f) read with 439 of the Company Act, 1956 inter alia alleging that there is a dead lock in the management of the company. Accordingly, the assessee M/s Vistar Constructions Pvt. Ltd. had filed an application before Delhi High Court for claim of Rs.82.49 lakhs including interest @ 18%. Since the assessee has been unable to realize such payment despite great efforts in this regard, therefore, during the year under consideration bad debts of Rs.53.76 lakhs have been written off. We have also verified the ledger account in the case of Holzman Videocon Engineers and found that by passing entry in the books of account, the assessee has credited the account of Holzman Videocon Engineers by debiting the bad debts written off. All the conditions stipulated u/s 36(1)(vii) have been complied with……"*

4. In our considered opinion, the issue raised in the present appeal is no longer res integra as the same is settled not only by the decision of this Court in ***CIT Vs. Morgan Securities & Credits Pvt. Ltd. 292 ITR***

339 as held by the Tribunal but also by the orders of the Supreme Co

in ***Civil Appeal No.5293 of 2003 (T.R.F. Limited Vs. Commissioner of Income Tax, Ranchi***). The order of the supreme Court is reproduced herein below:-

> *"Heard learned counsel on both sides. In these appeals, we are concerned with Assessment Year 1990-1991 and Assessment Year 1993-1994. Prior to 1st April, 1989, every assessee had to establish, as a matter of fact, that the debt advanced by the assessee had, in fact, become irrecoverable.* ***That position got altered by deletion of the word "established", which earlier existed in Section 36(1)(vii) of the Income Tax Act, 1961 ['Act', for short]****.*
>
> *For the sake of clarity, we re-produce hereinbelow provisions of Section 36(1)(vii) of the Act, both prior to 1st April, 1989 and post 1st April, 1989:*
>
> > *"Pre-1st April, 1989:*
> >
> > *Other deductions.*
> >
> > *36.(1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in Section 28—*
>
> *(i) to (vi) xxx xxx xxx*
>
> *(vii) subject to the provisions of sub-section (2), the amount of any debt, or part thereof, which is established to have become a bad debt in the previous year.*
>
> *Post-1st April, 1989:*
>
> *Other deductions.*
>
> *36.(1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28—*
>
> *(i) to (vi) xxx xxx xxx*
>
> *(vii) subject to the provisions of sub-section (2), the*

amount of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year."

This position in law is well settled. After 1st April, 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 accounts of the assessee.

However, in the present case, the Assessing Officer has not examined whether the debt has, in fact, been written off in accounts of the assessee. When bad debt occurs, the bad debt account is debited and the customer's account is credited, thus, closing the account of the customer. In the case of Companies, the provision is deducted from Sundry Debtors. As stated above, the Assessing Officer has not examined whether, in fact, the bad debt or part thereof is written off in the accounts of the assessee. This exercise has not been undertaken by the Assessing Officer. Hence, the matter is remitted to the Assessing Officer for de novo consideration of the above mentioned aspect only and that too only to the extent of the write off.

Subject to above, the civil appeals filed by the assessee are disposed of with no order as to costs".

5. Keeping in view the aforesaid clear exposition of law, the present appeal is dismissed *in limine*.

MANMOHAN, J

CHIEF JUSTICE

SEPTEMBER 30, 2010
ms/js