IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 25.02.2025

\+ **ITA 184/2022**

PRINCIPAL COMMISSIONER OF INCOME TAX-7 ..... Appellant

Versus

WGF FINANCIAL SERVICES PVT. LTD. ..... Respondent

Advocates who appeared in this case:

For the Appellant :Mr. Puneet Rai, Mr. Ashvini Kumar & Mr. Rishabh Nangia, Advs.

For the Respondent : Ms. Shreya Jain and Mr. Gaurav Tanwar, Advocates

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HON'BLE MR JUSTICE VIBHU BAKHRU
HON'BLE MS JUSTICE SWARANA KANTA SHARMA

JUDGMENT

VIBHU BAKHRU, J.

1. The Revenue has filed the present appeal impugning an order dated 10.03.2021 passed by the learned Income Tax Appellate Tribunal (hereafter **the ITAT**) in ITA No.8218/Del/2019 captioned ***WGF Financial Services Pvt. Ltd. v. ACIT***. The said appeal was filed by the respondent (hereafter **the Assessee)** assailing an order dated 30.08.2019

passed by the Commissioner of Income Tax (Appeal) [hereafter **the CIT(A)**] in respect of the assessment year (AY) 2015-16.

2. The Assessee had filed its return of income for the AY 2015-16 on 29.09.2015 declaring a loss of ₹43,61,059/-. However, thereafter, the Assessee filed a revised return on 29.03.2017 declaring a loss of ₹27,43,23,324/-. The Assessee's return was picked up for scrutiny and the assessment proceedings culminated in an assessment order dated 29.12.2017 passed under Section 143(3) of the Income Tax Act, 1961 (hereafter **the Act**). The Assessing Officer (AO) assessed the Assessee's income at ₹28,08,43,048/- by making the following additions:

(a) ₹27,38,96,372/- on account of long-term capital gains from sale of property;

(b) disallowance of bad debts amounting to ₹27,76,90,000/-; and

(c) disallowance of legal charges amounting to ₹35,80,000/-.

3. Aggrieved by the same, the Assessee preferred an appeal before the learned CIT(A). The learned CIT(A) did not interfere with the additions made by the AO towards long term capital gains amounting to ₹27,38,96,372/-, and disallowance of bad debts amounting to ₹27,76,90,000/-. However, insofar as disallowance of legal charges is concerned, the learned CIT(A) restricted the same to ₹28,60,000/-.

4. Aggrieved by the said decision, the Assessee preferred an appeal before the learned ITAT. As noted above, the Assessee's grievance before the learned ITAT was on three fronts: (a) addition of ₹27,38,96,372/- on account of long-term capital gains; (b) addition of ₹27,76,90,000/- on account of bad debts; and, (c) addition of ₹28,60,000/- towards legal expenses.

5. The learned ITAT did not interfere with the addition of ₹27,38,96,372/- on account of long-term capital gains and ₹28,60,000/- on account of disallowance of legal expenses. However, the learned ITAT set aside the addition made on account of disallowance of bad debts amounting to ₹27,76,90,000/-.

6. The Revenue's present appeal is confined to the deletion of disallowance of bad debts.

QUESTIONS OF LAW

7. The Revenue has projected the following questions of law for consideration of this court:

> "A. Whether on the facts and the circumstances of the case and in law, as Hon'ble ITAT has erred while allowing the discharge of guarantee obligation as business loss where the Assessee company has not recognized guarantee commission as business income?
>
> B. Whether on the facts and circumstances of the case and in law, amount of Rs 27,76,92,000/- claimed as business loss, is allowable under Sec 36(2)(i) of the Income Tax Act ?

C. Whether on the facts and circumstances of the case and in law, the order of the Hon'ble ITAT is perverse, as it has considered the transaction as prudent act instead of colourable device, despite the facts clearly showing that the third party (IBFSL) has simply vanished soon after the guarantee obligation was discharged by the assessee ?"

8. Briefly stated, the controversy in regard to the disallowance of bad debts arises in the following context.

8.1 Seven entities (referred to as **the Borrowers**) had availed loans from Indiabulls Financial Services Ltd. (hereafter **the Lender**) to finance their operations. The Borrowers were unable to meet their financial commitments and to service the loans as agreed. In the aforesaid context, the Borrowers negotiated a settlement with the Lender for a sum of ₹2,32,50,00,000/-. However, the Lender required the said amount to be fully secured. In the aforesaid context, the Assessee along with three other companies (referred to as **Guarantors**) agreed to guarantee repayment of the settled amount. In the said context, the Borrowers and the Guarantors entered into a Commitment Agreement dated 18.11.2009 (hereafter *the* **Commitment Agreement**).

8.2 The recitals of the Commitment Agreement indicate that the Borrowers had also pledged shares of certain companies with the Lender for securing the loan. However, the Lender had demanded an additional security by way of farmland owned by Guarantors, which could potentially be developed into residential dwellings. In terms of the Commitment Agreement, the Guarantors agreed to fully indemnify

the Lender and provide the additional security as required. In consideration for the same, the Borrowers agreed to pay a commission of ₹20 crores, which would accrue after the expiry of three years from the date of the Commitment Agreement or expiry of the guarantee obligations. It was also agreed that in the event, the guarantees were invoked and the Guarantors were required to repay the loan amount to the Lender, they would also be entitled to a further sum of ₹20 crores as damages. It was also agreed that if the Borrowers are unable to repay the consideration, the Guarantors would also be entitled to recover any loss suffered by them due to default on the part of the Borrowers and the parties would mutually negotiate the terms on which the Borrowers would compensate or indemnify the Guarantors.

8.3 The Borrowers defaulted in the repayment obligations to the Lender. It was also stated that the shares pledged by the Borrowers with the Lender, which were to serve as security for the Guarantors if they were required to pay the Lender, were sold by the Lender and the sale proceeds were adjusted from the amount due from the Borrowers. Consequently, the pledged shares could not be released by the Lender. However, the Guarantors had to pay the remaining unrecovered amount to the Lender.

8.4 It is stated that thereafter, the Guarantors pursued the Borrowers for recovery of the amounts due including commission and damages. However, some of the Borrowers could pay only a part of the amounts due but were unable to pay the balance amount.

8.5 It is stated that in the aforesaid context, the Assessee and one M/s M/s Carissa Investment Private Limited (hereafter **CIPL**) entered into a Settlement Agreement dated 16.03.2015. The said agreement records that in order to avoid any litigation between the said parties, CIPL, which was one of the Borrowers, has offered to pay a sum of ₹36,50,00,000/- as full and final settlement of all claims against it. The Settlement Agreement also indicates that the amount due from the said Borrower at the material time was ₹64,26,92,000/-. In view of the Settlement Agreement, the Assessee wrote off the balance amount of ₹27,76,90,000/- in its profit and loss account for the FY 2014-15.

8.6 It is the Assessee's case that CIPL had become financially sick on account of heavy losses and therefore, it was not feasible to recover any further amount from the said company. However, if any amount is recovered from the said company, the same would be credited in the books of accounts and would be chargeable to tax by virtue of Section 41(1) of the Act.

ASSESSMENT – CONFIRMED BY CIT(A)

9. The AO disallowed the deduction on account of bad debts written off for several reasons. First, that the Assessee had not received any guarantee commission and he did not accept that the Borrowers obligations were guaranteed in ordinary course of business. Second, that the CIPL had not claimed the amount of bad debt written off in its books of accounts as income, but had treated it as a capital receipt. Third, that giving a guarantee was not one of the main objects of the

Assessee company. Fourth, that the Assessee had not initiated any legal proceedings for recovery of the amounts due and the accounts of CIPL reflected that it had given a donation of ₹10 crores during the FY 2014-15 and therefore, had the resources to repay the amounts due to the Assessee. And lastly, it was a colorable device to reduce tax liability by setting it off against capital gains. As noted above, the learned CIT(A) confirmed the said addition.

IMPUGNED ORDER

10. The learned ITAT set aside the deletion of bad debts as it found that the Assessee was engaged in the business of lending and advancing money and therefore, furnishing a guarantee to the Lender fell within the scope of its business. The learned ITAT accepted the Assessee's explanation that it was unable to recover the guarantee commission as CIPL was not in the financial condition to pay the same. The learned ITAT also rejected the contention that the entire transaction was a colorable device. The relevant extracts of the learned ITAT's decision is set out below:

> "21. As mentioned elsewhere, the assessee is engaged in the business of financing which included lending, advancing money, standing guarantor etc. and in its ordinary course of business, the assessee gave guarantee to the borrowings made by CIPL. As per the Agreement, CIPL was supposed to transfer shares held by it in the listed companies after repayment of its loan from IBFSL. Since IBFSL sold the shares held by it as security, CIPL was not in a position to transfer the shares to the assessee. CIPL was in debt to the assessee to the tune of Rs.64.26 crores and since CIPL defaulted in its obligation, the assessee had to settle the quarrel

by way of Memorandum Deed dated 16.03.2015 and could recover only Rs.36.50 crores. The assessee was left with no choice but to write off the balance Rs.27,76,92,000/-.

22. In our considered view, the entire transaction cannot be considered as the colorable device as the same was never entered with any intent to defraud the Revenue. We find that all the transactions were undertaken with third parties through bank accounts or registered Mortgage Deeds etc. in the regular course of business and were duly recorded in the books of accounts. Nothing could be managed as the transactions were spread over a period of five years.

23. Due to mayhem in the stock market in the year 2008, the stocks of the listed companies nose-dived and the borrowers suffered huge losses, nothing was recoverable from them and there was no point in filing legal suit. It is true that no guarantee commission has been received by the assessee from CIPL but CIPL was not in a position to make any payment to the assessee. It is true that CIPL made certain donations but that cannot be considered against the assessee as the assessee could not be held responsible for the business module of CIPL. The assessee could recover only Rs.36.50 crores out of Rs.64.26 crores, the balance written off may not fulfill the condition of section 36(2) of the Act but definitely a business loss suffered by the assessee in carrying out its ordinary course of business. Considering the facts of the case in totality, the write off of Rs.27,76,92,000/- is definitely a business loss and deserve to be allowed. We accordingly direct the Assessing Officer to delete the addition of Rs.27,76,92,000/-, Ground No.2 is accordingly allowed."

11. The Revenue's contention that the bad debts suffered by the Assessee were not allowable under Section 36(2)(i) of the Act as the revenue from commission was not recognized as income, is unmerited.

12. In terms of the Commitment Agreement dated 18.11.2009, the income by way of commission would accrue after the expiry of three

years of the agreement. Thus, the Assessee could not account for the income by way of commission prior to the expiry of three years from the date of the Commitment Agreement. However, by that time, the Borrowers had defaulted in payment of the amounts due to the Lender and therefore, it is clearly doubtful whether the commission could be recovered. In the given circumstances, non-recording of income by way of commission on bank guarantees could not be a ground for rejecting the expense of bad debts suffered if the same was during the course of its business. We find no infirmity with the decision of the learned ITAT in not accepting the AO's decision that the bad debts were not allowable as expense as the Assessee had not recognized the commission receivable in respect of guarantees as income in the given facts.

13. The first question projected by the Revenue is not a substantial question of law in the given facts of this case.

14. The second issue to be considered is whether the amount of bad debts as claimed by the Assessee is allowable as an expense under Section 36(1)(vii) read with Section 36(2)(i) of the Act and whether the Assessee's claim for this allowance is a colorable device to reduce the tax liability.

15. In terms of Section 36(2)(i) of the Act, no deduction on account of bad or doubtful debts is allowed if the same was not accounted for in computing the income of the previous year or prior years, or represents money lent in the ordinary course of the business of banking or money lending.

16. It is thus important to consider whether the guarantee furnished by the Assessee in terms of the Commitment Agreement was in its ordinary course of business carried on by the Assessee. We consider it apposite to refer to the main objects of the Assessee company, which are reproduced below:

> "a) To manage investment, to undertake bills discounting business, to purchase, discount, re-discount bill of exchange, to act as a discount and acceptance house, to arrange acceptance or co-acceptance of bills, to borrow, to invest in the purchase or acquisition of rights in shares, stocks, debentures, debenture stock, bonds, mortgages, obligations and securities, to leasing or hire purchase or in any other manner, to raise or provide and to promote or all types of instruments, or to leasing or hire purchase or in any other manner, to raise or provide to promote promotion of joint stock companies, to invest in, to underwrite, to manage the issue of, and to trade in shares or other securities, to undertake portfolio management, advisory and counselling services, and assist industrial and other enterprises in India and abroad, to provide investments, computer programming and software services, television and communication software, development of financial-service supermarket, intercorporate bills and unit broking, import/export, consultancy assignment, factoring, consumer securities dealing.
>
> (b) To carry on the business of a leasing Company, hire purchase company, to undertake and/or arrange or syndicate all types of leasing and hire purchase business relating to all kinds of machinery, plant, equipment, ships, vehicles, aircraft, rolling stock, computers, storage tanks, toll roads, communication satellites and communication lines, factories, Immovable property, land, buildings real estate factories."

17. It is apparent from the main objects that carrying on the business of standing as a surety, is not one of the main objects of the Assessee company. Although the main object is couched in wide terms, it does not include standing as a guarantor to secure the lenders against defaults in repayment obligation by borrowers, for consideration/ commission. Furnishing of guarantees is a part of the objects, which are incidental or ancillary to the main objects and therefore, it is difficult to accept that the Assessee had furnished guarantees as a part of its ordinary course of business.

18. It was also found that the Assessee had not entered into any similar transaction whereby it had stood as a surety/guarantor for any other entity for a consideration. It is apparent that the Assessee had furnished a guarantee for the loan availed by the Borrowers (its group companies) as an isolated transaction. Plainly, the same was not a transaction that was entered into in its ordinary course of business. The learned ITAT had observed that the Assessee was engaged in the business of financing, which includes lending, advancing money, and standing guarantor. However, there is no material on record to substantiate that the Assessee was carrying on such activities in its ordinary course of business or on a regular basis. The main objects of the company are confined to the specific fields of financing such as managing investments, undertaking bill discounting, to purchase, discount, re-discount, bills of exchange, to invest etc. There is also no material on record to establish that it was engaged in the business of standing as a surety for consideration.

19. The finding that the Assessee had not stood as a guarantor in any other case was not effectively controverted. The learned ITAT was required to proceed on the basis that the transaction in question (the Commitment Agreement) was a one-off transaction. It could not be considered as an adventure in the nature of trade, as standing as a surety or guaranteeing loans is not the main object of the Assessee. The incidental and ancillary objects are only in aid of the main objects.

20. The learned CIT(A) had specifically noted that giving guarantees was not listed as the main object of the Assessee.

21. The learned ITAT also failed to note that CIPL was a group company of the Assessee.

22. The learned CIT(A) had also noted that it was undisputed that the Assessee and the Borrowers were a part of the same group and thus, were in control of same set of persons. As noted above, this fact was not effectively controverted by the Assessee. It was also not controverted that CIPL had during the same FY (2014-15) had made the donation of ₹10 crores – which the learned CIT(A) held was not a necessary expenditure – and at the same time, the Assessee had written off a large amount due from CIPL as unrecoverable without taking any steps for recovering the said amount. The relevant extract of the order passed by the learned CIT(A) in this regard is set out below:

> "4.6 Coming on to the first observation of the case, the AO has relied on the circumstantial situations and evidences, wherewith, the AO has argued that there did not arise any

situation or plausible explanation, wherewith, it could be proved that CIPL was unable to discharge the liability of "loan/debt" to the appellant company. For this, the AO has categorically relied upon a specific instance, wherein, the fact that the CIPL had made a donation of Rs 10 Cr., while in the prudence of the AO, the same could have been given to the appellant for repaying of its debt. However, it is the contention of the appellant that the books of the other company does not have any bearing on the appellant.

That being said, I do not find any support in the contention raised by the appellant. This is so because of the very essential fact that the appellant claimed to be the lender to CIPL, thereby making payment on its behalf to IBFSL. It is the appellant who has to recover its "so claimed" debt. Thereby, it is a basic element of human probability that a lender (as is claimed to be by the appellant) would obviously vouch in to control every component of financial statements/transactions of its borrowers (as is claimed to be by the appellant). Accordingly, in the present case, it is a bare and basic fact that the appellant would very much ensure that CIPL pays up the maximum, it can. The element of control remains a more specific prerequisite in the case of the applicant, especially because the appellant and CIPL are under the control of a common umbrella, controlled and operated by the common set of people or promoters or ultimate promoters, thereby granting control of the financial prudence or spending of its group companies.

It is not the fact of the appellant that the borrower company is directly related to the appellant, with the said fact has been accepted by the appellant as well in its submissions. Further, since the appellant held substantial amount of stake in the debt of CIPL, it cannot be denied the appellant possessed the necessary powers, authorities and responsibilities to intervene in CIPL, In light of the said derivable fact, if CIPL is paying of exorbitant amount of donations (which is obviously not a necessary expenditure), there arises no situation requiring a write off of debt. Rather, it fortifies the observation of the AO that the write off is sham and is barely to reduce the taxable income.

4.7 Further, the bare and basic fact that the appellant has also not filed any legal claim or has not undertaken any tangible or intangible effort to recover the debt receivable by it from CIPL, there arises a conclusive evidence as to the fact that the transaction of "bad debt" is merely a device to lower taxable income, rather than there being any genuineness in the claim.

It is a fact that the incurrence of the expenditure is the prerogative of the businessman. However, when it is apparent that the expenditure itself is a façade, barely to lower down the taxable income, the AO automatically subsumes and authority to make disallowance of the same. In the present case, the AO has been able to derive out the factual parameters, as also, specific infirmities leading to the claim of the appellant. The AO has clearly highlighted that the appellant has been unable to bring out any instance of their actually being a loss to it, rather, the bad debt is an attempt to create a smokescreen over the taxable income. Hence, the first assertion is answered in negative and against the appellant

Now, without prejudice to the above discussion, if one is to draw attention to the second side of addition, ie, eligibility of the deduction as a "bad debt", even there the appellant does not find any solace. For this, I refer to Sec 36(2), which prescribes the eligibility of claiming deduction as a bad debt as:

(2) In making any deduction for a bad debt or part thereof, the following provisions shall apply–

(i) no such deduction shall be allowed unless such debt or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof is written off or of an earlier previous year, or represents money lent in the ordinary course of the business of banking or money-lending which is carried on by the assessee;

With respect to the provisions laid down by the Sec 36(2)(i) quoted above, a write off may be called as a bad debt, only on fulfillment of either of the two pre-requisites:

i. When the said debt has already been considered as an income of the assessee, in the year or earlier years; or

ii. When the assessee is in the business of money lending

In the present case, the appellant claims to be under the second limb of Sec 36(2), it has been claimed by the appellant that the appellant is into the business of "lending, financing, investing and guaranteeing". To this effect, the appellant has also taken cognizance of its ancillary objects in the memorandum, wherewith, it has been claimed that the appellant is into the business of "money lending". However, the AO has noted that the activities of the appellant speak of otherwise than being into the business of money lending. The AO, as an example of this, has also supplied the reasoning that the appellant did not earn any commission on issuance of guarantee to CIPL."

23. It is material to note that the Assessee did not dispute that it had not taken any effective steps for recovery of the amounts from CIPL. It was the Assessee's case that the same was not considered prudent to do so since CIPL had suffered losses. However, the Assessee did not dispute that CIPL had during the same financial year made a donation of ₹10 crores. The Assessee had contended that it is only necessary to examine its books of accounts and not that of CIPL.

24. The learned ITAT had accepted the aforesaid contention and had made observations to the effect that while it was correct that CIPL had made a donation, but the same could not be held against the Assessee as it "*could not be held responsible for the business module of CIPL*".

25. In our view, the learned ITAT has misdirected itself. The issue flagged by the AO and learned CIT(A) was that the Assessee had deliberately refrained from taking any steps for recovering the dues

from CIPL as it was a group company. Further, the facts indicated that CIPL had the wherewithal to pay at least part of the funds. This was established by the fact that it had made a donation of ₹10 crores during the said financial year. The AO and the learned CIT(A) had found that the Assessee had arranged the affairs in a manner whereby it had reflected a loss on account of bad debts, which could be set off against its income. On the other hand, CIPL, which had suffered losses, would in any event not be liable to pay tax on account of writing off its liability. Thus, the arrangement in effect transfers the loss within the same group from a loss-making entity to a profit making entity and conversely profits resulting from remission of liability to a loss making entity.

26. In ***Madan Gopal Bagla v. Commissioner of Income Tax: (1956) 30 ITR 174***, the Supreme Court considered a case where the appellant (assessee), who was a timber merchant, had stood as a guarantor for a loan taken by one Mamraj Rambhagat from Imperial Bank of India. Mamraj Rambhagat had defaulted in repaying the said loan and the Imperial Bank of India had recovered a sum of ₹1,00,000/- along with interest of ₹626/- from the assessee. It was the assessee's case that he had also obtained loan from Bank of India, which was jointly secured by the appellant and Mamraj Rambhagat. The assessee contended that the bad debts were part of his business loss. The Supreme Court rejected the said contention and approved the decision of the Calcutta High Court in the following words:

"**13.** The following passage from the judgment of the learned C.J. under appeal correctly sums up, in our opinion, the whole position:

> "The debt must, therefore, be one which can properly be called a trading debt and a debt of the trade, the profits of which are being computed. Judged by that test, it is difficult to see how the debt in the present case can be said to be a debt in respect of the business of the assessee. The assessee is not a person carrying on a business of standing surety for other persons. Nor is he a moneylender. He is simply a timber-merchant. There seems to have been some evidence before the Appellate Assistant Commissioner that he had from time to time obtained finances for his business by procuring loans on the joint security of himself and some other person. But it is not established, nor does it seem to have been alleged, that he in his turn was in the habit of standing surety for other persons along with them for the purpose of securing loans for their use and benefit. Even if such had been the case, any loss suffered by reason of having to pay a debt borrowed for the benefit of another, would have been a capital loss to him and not a business loss at all."

27. It is also relevant to refer to the decision of the Supreme Court in ***Commissioner of Income Tax v. Birla House (P) Ltd.: (1970) 2 SCC 88***. In that case, the assessee was engaged in the business of banking and financing as well as acting as a managing agent. The assessee was a managing agent of a company, Starch Products Ltd., which had appointed U.P. Sales Corporation Ltd. as its selling agent. The assessee had stood a guarantor for a loan of ₹6,00,000/- which was advanced to U.P. Sales Corporation Ltd. by Gwalior Industrial Bank Ltd. U.P. Sales Corporation Ltd. failed to repay the amount and went in liquidation.

The assessee was called upon to repay the outstanding amount of ₹5,60,199/- which it paid. Since the said amount was not recovered from U.P. Sales Corporation Ltd., the assessee wrote off the said amounts in its books of accounts and claimed the same as an allowance under Section 10(2)(xi) of the Income Tax Act, 1922. The Income Tax Officer disallowed the said claim. The Appellate Assistant Commissioner upheld the said disallowance. However, the learned ITAT did not agree with the said findings of the Appellate Assistant Commissioner and held that bad debt written off was an admissible deduction. At the instance of the Commissioner of Income Tax, the learned ITAT made a reference to the Calcutta High Court, which concurred with the decision of the learned ITAT. However, the Supreme Court did not agree with the said decision and held as under:

> "**7.** In our judgments the facts relied upon by the Appellate Tribunal and the High Court are barely sufficient for bringing the allowance claimed under Section 10(2)(*xi*). It may be mentioned that the case of the assessee was confined to that provision and no reliance was placed on any other provision under which such an allowance could be claimed. There was no privity of contract or any legal relationship between the assessee and the selling agent. Neither under custom nor under any statutory provision or any contractual obligation was the assessee bound to guarantee the loan advanced by the Bank to the selling agent. It is difficult how it was in the interest of the assessee's business that the guarantee was given. There was even no material to establish that the managed company was under any legal obligation to finance the selling agent or to guarantee any loans advanced to the selling agent by a third party. It is incomprehensible in what manner the guaranteeing of the loan advanced to the selling agent

> indirectly facilitated the carrying on of the assessee's business. It is equally difficult to appreciate the observations of the High Court that it was in the larger interest of the assessee's business that the guarantee was given. In our opinion the view of the Appellate Tribunal was based on a complete misapprehension of the true legal position. The High Court also fell into the same error. The allowance which was claimed did not fall within Section 10(2)(*xi*). No attempt was made nor indeed it could be usefully made to claim any allowance under Section 10(2)(*xv*) of the Act."

28. The provisions of Section 10(2)(xi) are *pari materia* to the provisions of Section 36(1)(vii) read with Section 36(2)(i) of the Act. Clause (i) of Section 36(2) of the Act is set out below:

> "No such deduction shall be allowed unless such debt or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof is written off or of an earlier previous year, or represents money lent in the ordinary course of the business of banking or money-lending which is carried on by the assessee."

29. It is apparent from the above that the allowance in respect of bad debts[1] is allowable only if:

(a) the debt was taken into account for computing the income of the assessee in the previous year in which the amount is written of or prior previous years; or

(b) represents money lent in the ordinary course of business of banking or money lending.

[1] Under Section 36(1)(vii) of the Act

30. In the present case, we concur with the decision of the learned CIT (A) that none of the two conditions are satisfied.

31. In view of the above, the second and third questions are answered in favour of the Revenue and against the Assessee.

32. The appeal is allowed and the impugned order is set aside.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

FEBRUARY 25, 2025
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