

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री मंजुनाथा. जी, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.: **1417 & 1418/Chny/2023**
निर्धारण वर्ष / Assessment Years: 2020-21 & 2021-22

Shri. Moolchand Kiran Kumar
Jain,
No. 123, Usman Road,
T. Nagar, Chennai – 600 017.

Deputy Commissioner of
v. Income-tax,
Central Circle 1(4),
Chennai – 600 034.

[PAN: ACHPM-2247-E]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. D. Anand, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri. V. Nandakumar, CIT

सुनवाई की तारीख/Date of Hearing

: 26.03.2024

घोषणा की तारीख/Date of Pronouncement

: 09.04.2024

आदेश /ORDER

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

These two appeals filed by the assessee are directed against common order passed by the learned Commissioner of Income Tax (Appeals)-18, Chennai, dated 31.10.2023 and pertains to assessment years 2020-21 & 2021-22. Since facts and identical and issues are common, for the sake of convenience, these appeals were heard together and are being disposed off, by this consolidated order.

2. The assessee has more or less raised common grounds of appeal for both assessment years. Therefore, for the sake of brevity, grounds of appeal filed for the assessment year 2020-21 are reproduced as under:

"1. The order passed by the learned Commissioner of Income Tax (Appeals)-18 in so far as confirming the addition made in the assessment order is erroneous in law and opposed to facts and circumstances of the case.

2. The learned Commissioner of Income Tax (Appeals)-18 ought to have seen that there is no incriminating material found or seized at the time of search justifying the initiation of proceedings under section 153A. Therefore, the very assessment order suffers on account of lack of jurisdiction and is liable to be quashed.

3. The learned CIT(A) has erred in sustaining the addition of Rs. 6,69,57,085/- pertaining to interest charges under section 36(i)(iii) of the IT Act, 1961.

4. The learned CIT(A) while sustaining the disallowance to the tune of Rs. 6,69,57,085/- failed to take into consider the commercial expediency of the investments made and from the view point of prudent business creating a nexus between investments made and purpose of business.

5. The learned CIT(A)-18 while sustaining the disallowance to the tune of Rs. 6,69,57,085/- by invoking section 36(1)(iii) failed to appreciate the nature of the appellants business, the credit cycle involved and the requirement of creditworthiness in the appellants line of business while considering the nexus between the investments made and purpose of business. In doing so the learned CIT(A) failed to give due consideration to the principles laid down by the Apex court in S.A.Builders Case as well as principles laid down by the Delhi High Court in the case of Dalmia Cements.

6. The learned CIT(A)-18 while sustaining the disallowance to the tune of Rs. 6,69,57,085/- by invoking section 36(1)(iii) miserably failed to distinguish the investments made out of own funds and borrowed funds.

7. The learned CIT(A) while disallowing the appellants claim of bad debt failed to see that the said amounts were advanced during normal course of appellant business and that the same has been written off since the aforesaid advances could not be recovered.

8. The learned CIT(A)-18 erred in confirming the disallowance of bad debt claimed by the appellant. The learned CIT(A) ought to have seen that the appellant has clearly demonstrated that the impugned bad debt has been written off as per the requirement of section 36(1)(vii) and the write off fulfils the requirement of section 36(1)(vii) read with section 36(2) of the Act.

9. The learned CIT(A)-18 ought to have seen that once the appellant has lent money and offered the interest to tax as business income, then the activity of the appellant of lending money is a business activity. Therefore, the debt qualifies for deduction under Section 36(1)(vii) read with Section 36(2) of the Income Tax Act, 1961.

10. The learned CIT(A) ought to have seen even if the condition laid down u/s. 36(1)(vii) r.w.s. 36(2) of the IT Act are not satisfied the said amount written off shall qualify to be allowed u/s. 37(1) of the IT Act, as business loss u/s. 28 r.w. section 37 of the Act.

For these and other grounds that may be rendered at the time of hearing it is most humbly prayed that the Hon'ble Tribunal may be pleased to allow the appellants appeal and thus render justice."

3. The brief facts of the case are that, the appellant is a proprietor of M/s. A K Exports and also Promoter of M/s. Lalitha Jewellery Mart Private Ltd. The appellant has filed its

return of income for the assessment year 2020-21 on 13.01.2021, declaring total income of Rs. 37,910/- and claimed current year loss of Rs. 55,85,04,251/-. The appellant had also filed return of income for the assessment year 2021-22 on 09.02.2022, declaring total income of Rs. 1,87,79,210/-. A search and seizure operation u/s. 132 of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), was conducted in group case of M/s. Lalitha Jewellery Mart Private Ltd on 04.03.2021, and in the said search proceedings, the residential premises of the appellant was also covered. During the course of search operations, no incriminating documents or materials was found with regard to the appellant. Consequent to search proceedings, notice u/s 153A of the Act, dated 22.12.2021 was issued and served on the assessee. In response to notice, the assessee filed return of income declaring total income of Rs. 37,910/- and current year loss of Rs. 55,85,04,251/-, which was the same income as declared in the return of income filed for the relevant assessment year u/s. 139(1) of the Act.

4. The case was selected for scrutiny and during the course of assessment proceedings, the Assessing Officer on analysis

of financial statements of the assessee noticed that, the assessee has borrowed loans and advances from banks on which interest expenditure has been debited to profit and loss account and at the same time advanced interest free loans to various group companies, without charging any interest/adequate interest. Therefore, called upon the assessee to submit explanation as to why interest expenditure should not be disallowed u/s. 36(1)(iii) of the Act. The Assessing Officer, further noticed that the assessee has claimed bad debt written off of Rs. 71,14,31,320/- and thus, called upon the assessee to file necessary evidences to claim deduction towards bad debts. In response, the assessee submitted that various loans and advances given to group concerns are for the purpose of business and thus, interest paid on loan borrowed from banks and financial institutions cannot be disallowed u/s. 36(1)(iii) of the Act. The assessee further contended that, it has advanced loans and advances to M/s. Dilip Chabbria Designs Pvt Ltd, and said loan became bad and doubtful and accordingly, it has write off debts in books of accounts and claimed as deduction. The assessee further contended that, interest income received from said loans and advances has been offered to tax in earlier assessment years

and thus, when said loan becomes bad, obviously same should be allowed as bad debts in terms of section 36(1)(vii) r.w.s. 36(2) of the Act. The Assessing Officer, however was not convinced with the explanation furnished by the assessee and according to the Assessing Officer, the assessee has borrowed huge loans from banks and financial institutions and paid interest. The assessee had also advanced interest free loans to various group companies without charging any interest. Therefore, rejected arguments of the assessee and disallowed proportionate interest u/s. 36(1)(iii) of the Act, for both assessment years and added back to total income. The Assessing Officer, had also disallowed deduction claimed towards bad debts written off on the ground that, the assessee could not establish nexus between advances given to a particular debtor and business connection with said party. Further, the assessee cannot claim write off of bad debts, because it has not satisfied the conditions prescribed u/s. 36(1)(vii) r.w.s. 36(2) of the Act. Therefore, rejected arguments of the assessee and disallowed deduction claimed towards bad debts for assessment year 2020-21 and added back to total income.

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee has challenged validity of assessment order passed by the Assessing Officer u/s. 143(3) r.w.s. 153A of the Act, in light of certain judicial precedents and argued that in absence of any incriminating material, no addition can be made in the assessments, which are unabated/completed as on the date of search. The assessee had also challenged additions made towards disallowance of proportionate interest u/s. 36(1)(iii) of the Act and further, agitated disallowance of bad debts written off, on the ground that when the assessee has written off bad debts in the books of accounts and debited to profit and loss account, then the assessee no need to prove that said debt is bad debt. The Id. CIT(A), after considering relevant submissions of the assessee and also taken note of various facts rejected legal grounds taken by the assessee, on the ground that the assessment for the impugned assessment year is abated as on the date of search and thus, the Assessing Officer shall have the power to assess or re-assess total income of an assessee including undisclosed income, if any found as a result of search. The Id. CIT(A), had allowed partial relief in respect of disallowance of interest u/s.

36(1)(iii) of the Act, by considering additional evidences submitted by the assessee including details of own funds available with the assessee to explain source for interest free loans given to various parties. However, sustained additions made by the Assessing Officer towards disallowance of bad debts, on the ground that what was written off and debited to profit and loss account is not a bad debt arisen in the course of a normal business of the assessee and further, the assessee has not satisfied the conditions prescribed u/s. 36(1)(vii) r.w.s. 36(2) of the Act. Aggrieved by the Id. CIT(A) order, the assessee is in appeal before us.

6. The first issue that came up for our consideration from ground no. 1 & 2 of assessee appeal for both assessment years is addition towards disallowance of interest u/s. 36(1)(iii) of the Act and disallowance of bad debt u/s. 36(1)(vii) of the Act, without any reference to incriminating material found or seized at the time of search.

6.1 The Id. Counsel for the assessee, Shri. D. Anand, Advocate, referring to grounds of appeal filed by the assessee on this issue submitted that, the Assessing Officer is erred in

making additions towards interest disallowance and disallowance on bad debt, without any reference to incriminating material found as a result of search.

6.2 The Id. DR, Shri. V. Nandakumar, CIT, on the other hand supporting the order of the Id. CIT(A) submitted that, the assessment for the assessment year is abated as on the date of search, which is evident from the date of search in the case of the assessee and time limit for issue of notice u/s. 143(2) of the Act for the impugned assessment year, which was ended up on 30.09.2021. The Id. CIT(A), after considering relevant facts has rightly rejected grounds taken by the assessee and their order should be upheld.

6.3 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. A search and seizure operation u/s. 132 of the Act, was conducted in the group case of the assessee on 04.03.2021. The assessment for the impugned assessment year is abated as on the date of search, because the time limit for issue of notice u/s. 143(2) of the Act, was expired on 30.09.2021 for assessment year 2020-21 and 30.09.2022 for

assessment year 2021-22, which is much later than the date of search. Once, the assessment is abated as on the date of search, then the Assessing Officer shall have the power to assess or re-assess total income, including undisclosed income, if any found as a result of search, as held by various Courts and Tribunals. Therefore, we are of the considered view that, there is no merit in legal ground taken by the assessee challenging validity of additions made towards interest disallowance and disallowance of bad debts and thus, we are inclined to uphold the findings of the Id. CIT(A) and reject grounds taken by the assessee for both the assessment years.

7. The next issue that came up for our consideration from ground no. 3 to 6 of assessee appeal for both assessment years is disallowance of interest paid on loan borrowed for the purpose of business u/s. 36(1)(iii) of the Act, for diversion of interest bearing funds to sister concerns for non-business purpose. The facts with regard to impugned dispute are that, the assessee is a proprietor of M/s. A K Exports and Managing Director of M/s. Lalitha Jewellery Mart Private Ltd, has made various investments in shares and securities of group concerns

and also given loans and advances to various parties. The assessee has not charged any interest on loans and advances given to various sister concerns. The assessee had also borrowed loans from banks and financial institutions and paid interest for both assessment years. The Assessing Officer, had tabulated various investments, loans and advances to group concerns and interest expenditure debited by the assessee for both assessment years in his assessment order. According to the Assessing Officer, the assessee has borrowed loans from banks and paid interest, but diverted interest bearing funds for non-business purposes like making investment in mutual funds, insurance policies, shares in private limited companies, capital account in partnership firms etc. Therefore, the Assessing Officer opined that interest paid on loans borrowed for the purpose of business cannot be allowed in terms of section 36(1)(iii) of the Act, if such borrowed funds has been utilized for non-business purpose and accordingly, disallowed proportionate interest u/s. 36(1)(iii) of the Act, for both assessment years. On appeal, the Id. CIT(A) has allowed partial relief to the assessee on the ground that, investments in share capital of M/s. Lalitha Jewellery Mart Private Ltd, is for business purpose and all other investments are made out of

borrowed funds. Therefore, directed the Assessing Officer to disallow proportionate interest relatable to all investments, except investments in M/s. Lalitha Jewellery Mart Private Ltd.

7.1 The Ld. Counsel for the assessee, Shri. D. Anand, Advocate, submitted that the Id. CIT(A) erred in sustaining additions of Rs. 6,69,57,085/- and Rs. 6,34,97,796/- for assessment years 2020-21 & 2021-22, respectively u/s. 36(1)(iii) of the Act, without appreciating fact that investment made in share capital of M/s. Lalitha Jewellery Mart Private Ltd is out of commercial expediency and the appellant has derived business advantage. The Ld. Counsel for the assessee, further submitted that the Id. CIT(A) failed to appreciate the nexus between the investment made and purpose of business. Further, the Id. CIT(A) has also failed to consider availability of own funds for both assessment years, even though the return of income filed by the assessee clearly shows that interest bearing funds is not utilized for making investments in other group companies and mutual funds. The Ld. Counsel for the assessee, has filed a chart explaining total investments in group companies and others and availability of own funds for both assessment years and argued that, to the extent of own

funds available with the assessee, interest expenditure cannot be disallowed u/s. 36(1)(iii) of the Act.

7.2 The Ld. DR, Shri. V. Nandakumar, CIT, on the other hand supporting the order of the Id. CIT(A) submitted that, the Id. CIT(A) has analyzed the financials of the assessee company and noticed that, the current assets and fixed assets value is much lesser than the current liability and capital, which means the assessee has utilized his business liability for other investments which are not related to business. The Id. CIT-DR, further submitted that, on verification of balance sheet, it was noticed that the assessee has paid huge interest on borrowed capital and at the same time made investments in various other investments which are not related to his business activity. The Assessing Officer, after considering relevant facts has rightly disallowed interest expenditure and their order should be upheld. In this regard, the Id. DR has filed detailed written submissions on the issue which has been extracted as under:

- 1. The assessee owns entity in the name of M/s AK Exports as a proprietorship concern. AK Exports is doing the business of purchase of bullion, gold and diamond ornaments and sells the same to M/s Lalitha Jewellery Mart Pvt. Ltd.*

2. *On analysis of the financials, it was noticed that the current assets and fixed assets value is much lesser than the current liability and capital. This means that the assessee has utilized his business liabilities for other investments which are not related to the business. Similarly, the secured and unsecured loans were also seen utilized for making long term investments and loans and advances to other companies. It is seen from the P&L account that the assessee has debited huge interest payments from the gross profit of the concern as reported in the AO order (AY 2020-21) **Pg 3-24** & (AY 2021-22) **Pg 3-23**.*

3. *On verification of the Balance sheet for the FYs 2016-17 to 2020-21 it was noticed that the assessee had utilized the borrowed funds for the investments not related to the business of the AK Exports. The assessee had not disclosed any interest income or any other income from these investments. The assessee has not disclosed any interest income or any other income from the above investments also. The assessee has invested the borrowed capital for making investments in other business entities with **no connection with the business of the assessee**. According to the provisions of the section 36(1)(iii) of the IT Act only the amount of interest paid in respect of capital borrowed for the purposes of the business or profession will be allowed as business expenditure.*

4. *The sub section has three important words or phrases that are core to understanding of this Section i.e. (i) Interest, (i) Borrowed and. (iii) For the purpose of Business or Profession.*
 - (i) **Meaning of "Interest"** — *The definition of "interest" in Section 2(28A) means "interest payable in any manner in respect of any moneys borrowed or debt incurred". But, for Section 36(1)(iii), "interest" is restricted to that on money borrowed and not on debt incurred. In simple words, the essence of interest is that it is a payment which because the creditor has not had his money at his disposal. It may be regarded either as representing the profit he might have made if he had, had the use of his money, or conversely, the loss he suffered because he had not that use.*

 - (ii) **Concept of "borrowed"** — *Provisions of Section 36(1)(iii) concern capital borrowed and not other debts or liability. A loan of money undoubtedly results in a debt, but every debt does not involve a loan. Liability to*

pay a debt may arise from diverse sources and a loan is one of such sources. The legislature has, under this clause, permitted as an allowance interest paid on capital borrowed for the purposes of the business; and the capital, in this context, means money and not any other asset purchased on credit.

- (iii) The phrase "for the purpose of business"** - This phrase is the most important yardstick for the allowability of deduction under Section 36(1)(iii) of Income Tax Act, 1961. While explaining the meaning of this phrase the **Hon'ble Supreme Court in the case of S.A. Builders Ltd. Vs. CIT(A), Chandigarh reported in 288 ITR 1** has used the word "**commercial expediency**". By using this phrase Hon'ble Supreme Court has given a new dimension and clarified the concept further. In the judgment the Supreme Court has defined commercial expediency as "an expression of wide import and includes such expenditure as a prudent businessman incurs for the purpose of business. The expenditure may not have been incurred under any legal obligation, but yet it is allowable as a business expenditure, if it was incurred on grounds of commercial expediency". Further, following this judgment the **High Court of Delhi, in the case of Punjab Stainless Steel Inds. Vs. CIT 324 ITR 396**, has further elaborated "The commercial expediency would include such purpose as is expected by the assessee to advance its business interest and may include measures taken for preservation, protection or advancement of its business interests, which has to be distinguished from the personal interest of its directors or partners, as the case may be. In other words, **there has to be a nexus between the advancing of funds and business interest of the assessee-firm**. The appropriate test in such a case would be as to whether a -reasonable person stepping into the shoes of the directors/partners of the assessee-firm and working solely in the interest of the assessee-firm/company, would have extended such interest free advances. Some business objective should be sought to have been achieved by extending such interest free advances when the assessee-firm/company itself is borrowing funds for running its business".

5. The phrase "commercial expediency" has following important traits as established by case laws cited supra:
- (a) Such purpose as is expected by the assessee to advance its business interest.
 - (b) May include measures taken for preservation, protection or advancement of its business interests,
 - (c) To be distinguished from the personal interest of its directors or partners, as the case may be.
 - (d) There has to be a nexus between the advancing of funds and business interest of the assessee. Some business objective should be sought to have been achieved by extending such interest free advances when the assessee firm/company itself is borrowing funds for running its business.
6. It could be observed from the Table **(AO Pg 24-29)** that the assessee has invested the borrowed capital for making investments in other business entities with no connection with the business activities of the assessee. The assessee has merely stated that the source for the year for all the investment was from own capital accommodated secured loans, unsecured loans, interest free loans and interest free rental advance received towards rental properties. Towards secured and unsecured loans your assessee have made interest payments and same is claimed as expenditure in profit and loss account. The assessee has not brought out any nexus between the interest bearing capital borrowed vis-a-vis the utilization of the funds there for the purposes of the business of the assessee. In the absence of the same and unsubstantiated statements of the assessee, no credence can be attached thereto.
7. It was clearly spelt out in the show-cause notice regarding the mandated requirements of the provisions of Section 36(1)(iii) of the Income Tax Act, 1961 in order that the claim of the assessee to be entertained and allowed. The assessee has not provided any concrete details with supporting material evidences. In the absence of the same the total interest paid is disallowed u/s 36(1)(iii) of the Act and added back to the total income of the assessee.
8. Assessee has not made out any case as to how they were helpful for the purpose of business of the assessee. No business relationship has been established by the assessee in respect of these investments. Many of the entities to whom the

interest bearing monies were advanced or invested are into real estate business, renting service, manufacture of body of motor vehicle, insurance business, media, software, etc and thus, it can be seen there is no business expediency in them. Even where some entities are in the same jewellery business, the assessee has not established any business expediency with them, as the assessee has business relationship only with WMPL alone. In view of the foregoing reasons, the interest paid in respect of these investments are not to be allowed as business expenditure of the assessee u/s 36(1)(iii).

9. Further Reliance placed on **[2016] 75 taxmann.com 13 (SC) SUPREME COURT OF INDIA Jalan Distributors (P.) Ltd. v. Commissioner of Income-tax, Kolkata** Assessee was engaged in business of film production, distribution and exhibition - It stated that business premises was taken on rent from landlord after making a security deposit and accordingly claimed deduction under section 36(1)(iii) of interest expenditure incurred in connection with security deposit. Assessing Officer disallowed interest expenditure - Tribunal upheld disallowance holding that assessee could not submit any evidence to prove that said premises was used for its business purposes - High Court held that as facts were dealt with in detail by Tribunal and no cogent evidence could be produced by assessee in support of its claim, in view of judgment of Calcutta High Court rendered in case of Tirupati Trading Co. v. CIT [2000] 242 ITR 13/108 Taxman 75, order of Tribunal deserved to be upheld - Whether SLP filed against order of High Court was to be dismissed - Held, yes [Para 2] [In favour of revenue]
10. Hence, it is prayed that as per the above submission Disallowance of Interest on Borrowed Capital is sustained, CIT(A) Order has to be upheld."

7.3 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The Assessing Officer, has disallowed proportionate interest debited to profit and loss account, on the ground that

the assessee has diverted interest bearing funds for non-business purpose like investment in mutual funds, insurance policies, capital in partnership firm and share capital in various private limited companies. The Id. CIT(A), has allowed partial relief to the assessee to the extent of interest relatable to investments made in share capital of M/s. Lalitha Jewellery Mart Private Ltd for both assessment years, on the ground that there is a direct nexus between investment in share capital of company and business connection with appellant firm and partnership entities. The said findings of the Id. CIT(A) is not challenged by the revenue. In other words, the deletion of addition made towards interest relatable to investments in group company, M/s. Lalitha Jewellery Mart Private Ltd has been accepted by the revenue, on the ground that said investment is having nexus with commercial expediency and business connection. In so far as other investments like investment in mutual funds, insurance policies, capital accounts in partnership firm and share capital of other private limited companies, the Id. CIT(A) sustained additions made towards disallowance of interest, on the ground that the assessee could not establish nexus between investments and business expediency or commercial expediency. Even before

us, the assessee could not establish nexus between investments and commercial expediency or business connection to allow interest paid on borrowed capital u/s. 36(1)(iii) of the Act.

7.4 But, fact remains that the alternate argument of the assessee that investments made in share capital of various group companies is out of own funds and thus, same should be excluded for the purpose of computing disallowance of interest u/s. 36(1)(iii) of the Act. In our considered view, if the assessee is able to explain source for investment in group companies, without charging interest out of own funds or interest free funds, then to the extent of availability of own funds, interest expenses cannot be disallowed for diversion of funds to non-business purpose as held by various Courts and Tribunals. In the present case, the assessee has filed a chart explaining investment details and availability of own funds for both assessment years. For the assessment year 2020-21, the assessee claims that other investments was at Rs. 98,14,64,800/-, whereas own funds and interest free funds available with the assessee was at Rs. 68,10,05,561/-. If the claim of the assessee is correct, that it has own funds and

interest free funds of Rs. 68,10,05,561/-, then investments in other investments to the extent of Rs. 68,10,05,561/- should be treated as, out of own funds and interest free funds and further, to this extent the Assessing Officer cannot disallow interest u/s. 36(1)(iii) of the Act. The assessee had also filed details of own funds and details of interest free funds for the assessment year 2021-22. Similarly, the assessee has filed a chart explaining total investments, in M/s. Lalitha Jewellery Mart Private Ltd for assessment year 2021-22, on which the Id. CIT(A) allowed relief to the assessee and other investments which is out of own funds and interest free funds. As per details filed by the assessee, other investments was at Rs. 1,00,48,25,479/-, whereas own funds and interest free funds was at Rs. 71,94,60,138/- for assessment year 2021-22. The assessee had also filed details of own funds of Rs. 71,94,6,138/-, which is source for investment in other investments, and thus, in our view interest expenses cannot be disallowed u/s. 36(1)(iii) of the Act, to the extent of own funds. Therefore, we set aside this issue to the file of the Assessing Officer and direct the Assessing Officer to verify the claim of the assessee with reference to details of investment and details of own funds and interest free borrowings available

with the assessee and in case the claim of the assessee is correct, then the interest expenses relatable to the extent of own funds and interest free borrowings, which is source for other investments for both assessment years cannot be disallowed u/s. 36(1)(iii) of the Act. Thus, we direct the Assessing Officer to verify and allow relief to the assessee to the extent of proportionate interest relatable to other investments out of own funds and interest free borrowings for both assessment years.

8. The next issue that came up for our consideration from ground no. 7 to 10 of assessee appeal for assessment year 2020-21 is disallowance of bad debts written off amounting to Rs. 71,14,31,320/- u/s. 36(1)(vii) r.w.s. 36(2) of the Act. The fact with regard to the impugned dispute are that, the Assessing Officer, on analysis of ITR for assessment year 2020-21 noticed that, the assessee has debited a sum of Rs. 71.14 crores as bad debts written off in respect of amount lent to M/s. Dilip Chabbria Designs Pvt Ltd. The assessee has given loan to M/s. Dilip Chabbria Designs Pvt Ltd, from the financial year 2014-15 to financial year 2019-20, aggregating to Rs. 71,14,31,320/-. The year wise loans and advances

given to M/s. Dilip Chabbria Designs Pvt Ltd, has given in Para 4.4 of Id. CIT(A) order. The assessee had also offered interest received on said loans to tax for the assessment years 2015-16 to 2017-18 and details of such interest income offered to tax has been provided in Para 4.4 of Id. CIT(A) order. The assessee has not received or accounted interest on loans for the assessment years 2018-19 & 2019-20 and thus, no interest income has been offered to tax for assessment years 2019-20 and 2020-21. The assessee has written off loans and advances given to M/s. Dilip Chabbria Designs Pvt Ltd, as irrecoverable bad debts and debited to profit and loss account. The Assessing Officer, disallowed bad debts written off and debited to profit and loss account in respect of loans given to M/s. Dilip Chabbria Designs Pvt Ltd, on the ground that the assessee is not into money lending business and thus, advances given in the ordinary course of business cannot be treated as loans and advances for the purpose of section 36(1)(vii) of the Act and further, the assessee did not satisfy the conditions prescribed u/s. 36(1)(vii) r.w.s. 36(2) of the Act, to claim deduction towards bad debts written off. On appeal, the Id. CIT(A) sustained additions made by the Assessing Officer towards bad debts written off.

8.1 The Ld. Counsel for the assessee, Shri. D. Anand, Advocate, submitted that the Id. CIT(A) is erred in sustaining the disallowance of bad debts written off u/s. 36(1)(vii) r.w.s. 36(2) of the Act, without appreciating fact that the appellant has clearly demonstrated that the impugned loans given to M/s. Dilip Chabbria Designs Pvt Ltd, became bad debts and the same has been written off in books of accounts as per the requirement of section 36(1)(vii) r.w.s. 36(2) of the Act. The Ld. Counsel for the assessee, further submitted that the Id. CIT(A) ought to have seen that once the appellant has lent money in the ordinary course of its business and offered the interest income to tax as business income, then the activity of the appellant of lending money is a business activity and thus, the debt is qualified for deduction u/s. 36(1)(vii) of the Act. The Ld. Counsel for the assessee, referring to ITR filed for assessment years 2016-17, 2017-18 and 2018-19, submitted that the assessee has received interest from M/s. Dilip Chabbria Designs Pvt Ltd, for three assessment years and offered to tax. The assessee has not received interest for subsequent two assessment years, because the debtor neither paid interest nor repaid loans given by the assessee. Therefore, the appellant has written off loans given to above

party as bad debt and claimed deduction in terms of section 36(1)(vii) of the Act. The assessee has satisfied conditions prescribed u/s. 36(2) of the Act. The Assessing Officer and Id. CIT(A), without appreciating relevant facts simply sustained additions made by the Assessing Officer. In this regard, he relied upon the decision of Hon'ble Supreme Court in the case of TRF Limited vs CIT [2010] 323 ITR 397. The appellant has also relied upon the decision of ITAT Bangalore Benches in the case of Pranava Electronics Pvt Ltd vs DCIT in ITA No. 415/Bang/2015. The Ld. Counsel for the assessee, further submitted that the write off of bad debts pertains to loans and advances given to M/s. Dilip Chabbria Designs Pvt Ltd, shall qualify to be allowed as deduction u/s. 37(1) of the Act as business loss, because the assessee has given loans and advances to said company for the purpose of acquiring controlling interest and said activities of the assessee comes under commercial expediency or business expediency.

8.2 The Id. DR, Shri. V. Nandakumar, CIT, on the other hand supporting the order of the Id. CIT(A) submitted that, in order to claim deduction towards bad debts u/s. 36(1)(vii) of the Act, four conditions should be satisfied. There must be a debt

and said debt must be incidental to the business or profession of the assessee. Further, debt must have been taken into account in computing assessable income and debt must have been written off in the books of accounts of the assessee. In the present case, the assessee has given loans and advances to M/s. Dilip Chabbria Designs Pvt Ltd and said company was in different line of business, which is nothing to do with the business activity of the assessee. Therefore, it cannot be said that loans and advances given by the assessee is incidental to the business or profession of the assessee. The Id. CIT(A), after considering relevant facts has rightly sustained additions made by the Assessing Officer and their order should be upheld. In this regard, he has filed a detailed written submission, which is extracted as under:

12. "In order to claim deduction under section 36(1)(vii), the following points are to be satisfied:

- ❖ There must be a Debt.*
- ❖ Debt must be Incidental to the Business or Profession of the Assessee.*
- ❖ Debt must have been taken into account in computing assessable Income.*
- ❖ Debt must have been written off in the Books of Account of the Assessee.*

*13. Debt in this connection was laid down by Rowlatt J. in **Courtis v. J & G Oilfield Ltd. (1925) 9 Tax cas 319 (At page 330)** as follows:*

"When the rule speaks of a bad debt it means a debt which is a debt that would have come into the balance sheet as a

trading debt in the trade that is in question and that it is bad. It does not really mean any bad debt which, when it was a good debt, would not have come in to swell the profits".

In the section 10(2)(xi) of 1922 Act, a debt means something, more than a mere advance, It means something which is related to business or results from it. To be claimable as a bad doubtful debt it must first be shown as a proper debt. [A. V. Thomas & Co. Ltd. v. CIT (1963) 48 ITR 67 (SC)].

- 14. In this case the debt shown as bad debt and written off in the accounts is not a debt related to the business of the assessee. The assessee, Shri.Kiran Kumar has invested money in M/S. DilipChabbria Designs Private Limited, which cannot be accepted as a business debt neither was it incidental to the business of the assessee nor the debt of Rs.71,14,31,320/- has been taken into account while computing the assessable income of the assessee. Therefore the assessee cannot claim the investments in M/s.DilipChabbria Designs Private Limited as a bad debt.*
- 15. On an analysis of the nature of activities on the basis of transactions reported it could be noted that the assessee has advanced loans mainly to his group and connected entities. It is of significance that no interest therefrom has been shown. The ledger extract furnished by the assessee in regard to the transaction with M/S DilipChhabria Design Pvt Ltd show that the interest income offered is on an accrual basis. Transaction with M/s DilipChhabria Design Pvt Ltd is an instance of one-off transaction. On conspectus of such a factual position of solitary instance, the same cannot lead to determination of the nature of activity in regard to the amounts given to M/s DilipChhabria Design Pvt Ltd. The same cannot therefore be categorized and colored as a money-lending.*
- 16. The main activity and business of the assessee is manufacture and sale of gold jewellery and as such the loan extended to M/s DilipChhabria Design Pvt Ltd does not relate to the assessee's business or profession. The provision of Section 36(2) of the Act applies to money lent in the ordinary course of the business of banking or money lending which is carried on by the assessee. It is therefore that viewed and weighed in such perspective, the amount*

of debt written off is not an allowable item of expenditure in the hands of the assessee.

17. In the computation of total income furnished by the assessee for the AY 2020-21, the assessee stated his **"Nature of Business or Profession" as "WHOLESALE OF OTHER PRODUCTS N.E.C - 09027"** and has not stated as money lending business. Thus, it is clear that he is not in money lending business. The screenshot of the relevant portion of the return is reproduced below:

Nature of business/profession, if more than one business/profession indicate the three main activities/Products (OTHER THAN THOSE DECLARING INCOME UNDER SECTIONS 44AD, 44ADA AND 44AE)				
Sl.No.	Nature of Business	Trade name of the proprietorship, if any	Trade name of the proprietorship, if any	Trade name of the proprietorship, if any
1	09027-Wholesale of other products n.e.c	A K EXPORTS		

18. The Auditor in his tax audit report in Form 3CD at column 10(1) "Nature of business or profession" has not certified that the assessee has been carrying on any money lending business in any of the AYs including the impugned AY. In Column 40 of the Audit report in Form 3CD, the Auditor has ratios for the jewellery business only and not lending business. All the above clearly go to prove that the assessee has been only in jewellery business not been in any money lending business.
19. The sworn statement given by the assessee u/ s 132(4) at the time of Search has been perused thoroughly and nowhere the assessee stated that he is in lending business. Thus, the assessee's claim that he is into money lending business is only an after-thought devoid of any evidence. In fact, all the evidences as mentioned above are against his claim. It is obvious that this after-thought is only to claim the amount advanced as bad debt, which is not allowable under law.
20. It is seen that the assessee has made investments in shares of M/S. Dilip Chhabria Designs Private Limited to the extent of Rs.29,22,27,711/-. Thus, it is clear that it is the related concern of the assessee. Rs.71,14,31,320/- is simply a loan advanced to this related concern and if the loan is not returned and written off in the profit and loss account, it is capital loss and cannot come under revenue account, as the assessee is not in money lending business.

21. As per Hon'ble Mumbai Bench NCLT order in cp 1877/17B/NCLT/MAH/2018 dated 14.12.2018 which is available in public domain, one Minda Capital Private Ltd had gone against Dilip Chhabria Designs P. Ltd. initiating Corporate Insolvency Resolution Process (CIRP) as early as in August 2015 itself. Dilip Chhabria Designs P. Ltd being the related concern, knowing fully well on the CIRP proceedings as early as August 2015 itself, the assessee advanced loan claiming it as its money lending business now, only to write off the loans, thereby reducing the taxable income of the assessee, which clearly shows that the claim of money lending business is a colourable device. When the CIRP proceedings are on, showing interest on accrual basis and claiming it as interest received under money lending business is clearly to make write off of the huge principal itself later to reduce the taxable income of the assessee. At the best, it can be that the money was pumped in by the assessee to save the concern from CIRP proceedings, and in that case, how such pumping in money could be treated as money lending business."

8.3 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that, the appellant has given loans and advances to M/s. Dilip Chabbria Designs Pvt Ltd from assessment years 2015-16 to 2019-20 aggregating to Rs. 71.14 crores. It is also not in dispute that the assessee has received interest income from said loans for the assessment years 2016-17 and 2017-18 and said interest income has been offered to tax. These are undisputed facts relates to write off of bad debts u/s. 36(1)(vii) r.w.s. 36(2) of the Act. The provisions of section 36(1)(vii) deals with

deduction towards bad debts. As per said provision, in order to claim deduction towards write off of bad debts, four conditions must be satisfied. The first and foremost condition is there must be a debt and further, said debt must be incidental to the business or profession of the assessee. Secondly, debt must have been taken into account in computing assessable income and further, debt must have been written off in the books of accounts of the assessee. In the present case, there is no dispute with regard to the fact that there was a debt on account of loans given to M/s. Dilip Chabbria Designs Pvt Ltd. Whether loan given to M/s. Dilip Chabbria Designs Pvt Ltd, is incidental to the business or profession of the assessee should be decided from nature of activities carried out for the relevant period. Admittedly, the assessee is into the business of trading in gold jewellery and bullion. The assessee is also into business of money lending, which is evident from the financial statements filed by the assessee, where in addition to jewellery and bullion business, the assessee is into money lending business. In fact, the department has accepted the case of the assessee that he was into money lending business, which is evident from interest income offered by the assessee under the head income from

business, interest on loans given to above period. The Assessing Officer, never disputed the fact that the assessee was into money lending business, but, rejected the claim of the assessee for the simple reason that the assessee does not possess money lending license to carry out money lending business. In our considered view, if the assessee carried out money lending business as ancillary or incidental to attainment of its main business activity, then merely for the reason that there is no license to carry out said business, the genuine business activity carried out by the assessee cannot be doubted. Further, the Assessing Officer made one more observation that, except to a single solitary instance of loans and advances given to M/s. Dilip Chabbria Designs Pvt Ltd, the assessee has not filed any evidences to prove that it has given loans to other parties as a money lending activity. In our considered view, there is no merit in reasons given by the Assessing Officer, for the simple reasons that even a solitary instance of loans given to single party can be considered as adventure in the nature of trade, commerce or business, if the intention of the assessee is to carry out such business. In the present case, there is no dispute with regard to the fact that, the assessee had given loans to above company in the

ordinary course of its business and also received interest income and offered to tax. Therefore, from the conduct of the assessee, it is undisputedly clear that the assessee is into money lending business and same has been carried out for many years. Therefore, in our considered view, the assessee has also satisfied second condition prescribed u/s 36(1)(vii) of the Act.

8.4 The third condition to be satisfied for claiming bad debts is, debt must have been taken into account in computing assessable income. In the present case, the assessee has satisfied above condition, which is evident from the fact that interest income relatable to said loans has been offered to tax for earlier two assessment years. Further, in the money lending business, advances given in the course of business is nothing but stock in trade and reduction in value of said stock in trade can be claimed as expenditure. Since, the assessee has offered income relatable to said loans for tax in earlier assessment years, in our considered view, the assessee has satisfied the third condition prescribed for claiming deduction towards bad debts. The last condition for claiming deduction towards bad debts u/s. 36(1)(vii) of the Act, is debt must have

been written off in the books of accounts of the assessee. In the present case, the assessee has satisfied the last condition, which is evident from the fact that debt has been actually write off in the books of accounts of the assessee by debiting to profit and loss account and crediting to respective party accounts in the books of accounts maintained by the assessee. In so far as, the arguments of the Assessing Officer that, the assessee has not proved the fact that said debt is bad or not, in our considered view, as per the decision of M/s. TRF Limited vs CIT [2010] 323 ITR 397, once the assessee has written off bad debts by debiting to profit and loss account and crediting to parties account in the books of accounts, then the conditions prescribed for claiming deduction towards bad debts written off are satisfied and the assessee is not required to prove to the Assessing Officer that said debt is bad debt or not. Therefore, in our considered view, the assessee has also satisfied other conditions prescribed for claiming bad debt.

8.5 The assessee has relied upon the decision of ITAT Bangalore Benches, in the case of Pranava Electronics Pvt Ltd vs DCIT in ITA No. 415/Bang/2015, order dated 06.04.2022. The coordinate bench of ITAT, under identical set of facts has

considered the issue of write off of bad debts in respect of loans given and after considering relevant facts and also by following the decision of Hon'ble Supreme Court in the case of M/s. TRF Limited vs CIT, (supra) held that the only condition required to be seen while allowing deduction towards bad debts written off, is whether the assessee has satisfied the conditions prescribed u/s. 36(1)(vii) r.w.s. 36(2) of the Act and further, said debt has been given in the ordinary course of business or not. The relevant findings of the Tribunal are as under:

"11. We have heard both the parties and perused the material on record. In the present case, the assessee advanced loan to various persons wherein the opening balance was Rs.11,14,75,485 and closing balance was Rs.5,22,09,369 as seen from Schedule VII to the balance sheet. The above loan also includes loan advanced to Pie Education Ltd. at Rs.4,03,17,086. This was written off in the books of account. The assessee claimed this amount as bad debt in terms of [section 36\(1\)\(vii\)](#) of the Act. The same was disallowed by the lower authorities on the reason that this was not advanced in the ordinary course of money lending business of assessee and also no income has gone into the computation of income under the head income from business' as the assessee has not charged any interest on the said loan. More so, the assessee is not in money lending business to advance the money to the said party. However, the admitted facts are that the assessee is carrying on money lending business and has been taxed so under the head business for the last 9 years which has been overlooked by the authorities. However, if the assessee is not in money lending business it cannot lead to the conclusion that when money advanced by the assessee becomes bad, it cannot be written off. Even if the assessee advanced money without money lending business, if the advance becomes bad, it should be allowed as a bad debt in terms of [s. 36\(1\)\(vii\)](#) r.w. 36(2)(i)

of the Act. For the purpose of Income- tax Act, for grant of claim of assessee as bad debt, holding the money lending business is irrelevant consideration. We have to look into the issue from the point of view of the assessee, whether assessee has advanced money and it became bad debt and same was written off in the books of accounts as bad debt. In the present case, assessee has advanced money in the ordinary course of carrying on business of the assessee and income earned from money lending business was offered to tax from year to year. Due to circumstances beyond the control of assessee, assessee was not able to recognize interest income on the impugned advance made to Pie Education Ltd. As per the decision of Supreme Court in the case of [TRF Ltd. v. CIT](#), 323 ITR 397, it is enough if the irrecoverable debt has been written off in the books of accounts of assessee which is advanced in the ordinary course of business of assessee. The main argument of the Id. DR is that income from these advances made to Pie Education Ltd. has not gone into the computation of income in any assessment year. This has been explained by the assessee that due to circumstances beyond the control of assessee, the debt being non-performing asset, no interest income is recognized on this count which cannot be the reason to disallow the claim of bad debt. For this purpose, we rely on the judgment of Andhra Pradesh High Court in the case of [CIT v. T. Veerabhadra Rao, K. Koteswara Rao & Co](#) , 102 ITR 604 (AP). In our opinion, the advance made by the assessee in the ordinary course of business which is stock in trade is to be valued at cost or market price, whichever is less. In the present case, the debt has become bad and it being stock in trade the value is NIL. Therefore, it has to be considered as business loss and allowed. We find merit in this claim of the assessee. The debt written off by the assessee in the books of account is to be allowed as bad debts and accordingly we allow the grounds taken by the assessee. However, as we have already held that it is to be allowed as bad debt, the alternative argument of the Id. AR that it should be allowed as business loss becomes academic.”

8.6 In this view of the matter and considering facts and circumstances of the case and also by following the decision of coordinate bench of ITAT Bangalore Benches, we are of the

considered view that the assessee has satisfied conditions prescribed u/s. 36(1)(vii) r.w.s. 36(2) of the Act, for claiming deduction towards bad debts written off in respect of loans given to M/s. Dilip Chabbria Designs Pvt Ltd. The Id. CIT(A), without considering relevant facts simply sustained additions made by the Assessing Officer towards disallowance of bad debts. Thus, we reverse the findings of the Id. CIT(A) on this issue and direct the Assessing Officer to delete additions made toward disallowance of bad debts written off u/s. 36(1)(vii) r.w.s. 36(2) of the Act.

9. In the result, appeal filed by the assessee for assessment years 2020-21 & 2021-22 are partly allowed for statistical purposes.

Order pronounced in the court on 09th April, 2024 at Chennai.

Sd/-

(वी दुर्गा राव)

(V. DURGA RAO)

न्यायिकसदस्य/Judicial Member

Sd/-

(मंजुनाथा. जी)

(MANJUNATHA. G)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 09th April, 2024

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त/CIT

:-36:-

ITA. No: 511/Chny/2022

4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF