



IN THE INCOME TAX APPELLATE TRIBUNAL "J", BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM

&

SHRI RAM LAL NEGI, JM

ITA No.2550/Mum/2018

(Assessment Year :2007-08)

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|---|-----|---|
| M/s. Flender Limited (now merged with Siemens Limited)(through their successor Siemens Limited) Birla Aurora Towers, Level 21, Plot No.1080, Dr. Annie Besant Road Worli, Mumbai – 400 030 | Vs. | The Dy. Commissioner of Income Tax, Circle 8(2)(1) Aayakar Bhavan M.K.Road, Mumbai – 400 020 |
| PAN/GIR No. AAACF4154D | | |
| (Appellant) | .. | (Respondent) |

| | |
|------------------------------|---------------------|
| Assessee by | Shri Priyesh Bhatt |
| Revenue by | Shri Rajiv Gubgotra |
| Date of Hearing | 25/06/2019 |
| Date of Pronouncement | 26/06/2019 |
| | |

आदेश / O R D E R

PER R.C.SHARMA (A.M):

This appeal filed by the assessee is against the order of CIT(A)-14, Mumbai dated 02/01/2018 for A.Y.2007-08 in the matter of order passed u/s.143(3) of the Income Tax Act, 1961.

2. In this appeal, assessee is aggrieved for disallowance of bad debts written off amounting to Rs.80,09,923/-.

3. Rival contentions have been heard and record perused. From the record we found that assessee has claimed 'bad debts written off

amounting to Rs. 80,09,923/- in Profit & Loss A/c. Vide notice u/s. 142(1) dated 24.08.2010, assessee was asked to furnish party-wise details of bad debts/advances written off along with recovery measures taken for collection. It was also asked whether the assessee has presently any business relation with them. In response, the name, amount and the year of sale was submitted by assessee on 15.12.2010. AO declined the claim of bad debts by observing that the assessee has not able to prove as to how the said debts have become 'bad debt'. Onus was on the assessee to prove the 'debts' had become 'bad debts'. AO concluded that since the assessee has failed to substantiate its claim with any document whatsoever, it cannot be allowed. Merely treating debt as a "bad debt" without any rhyme or reason cannot be accepted. There has to be a basis for such claim, which was required to be substantiated and explained during the course of the assessment proceedings. As the assessee has failed to discharge the onus cast on it, its claim of "bad debts" is disallowed and the amount of Rs. 80,09,923/- is disallowed and added to total income of me assessee.

4. By the impugned order, CIT(A) confirmed the action of the AO against which assessee is in further appeal before us.

5. We have considered rival contentions and carefully gone through the orders of the authorities below. The assessee is a company engaged in the business of manufacture and sale of gear boxes, couplings etc. and during the relevant year also had an undertaking located at Chennai engaged in development of software i.e. Computer Aided Design ('CAD'). The assessee maintains separate sets of accounts with respect to its said two businesses. During the course of scrutiny assessment, AO found that the assessee debited an aggregate amount of Rs. 80,09,923 in its profit & loss a/c. towards bad debts written off. During the course of the assessment proceedings as desired by the Assessing Officer the assessee duly furnished details of the aforesaid amounts written off in its profit & loss a/c. for the subject year *inter alia* containing names of the party, amount written off and the particulars of the years in which the debts so written off were considered as income in the books and also furnished necessary explanation in this regard as desired by the Assessing Officer. It was explained to the Assessing Officer that subsequent to the amendment by the Direct Tax Laws (Amendment) Act, 1987 with effect from 1st April, 1989 the pre-conditions for allowance of a bad debts written off as per section 36(1)(vii) read with section 36(2) namely, (a) the bad debt in question must be written off as irrecoverable in the accounts of the assessee for the relevant previous year; and (b) the amount of bad debt must have been taken into account in computing the income of the

assessee at any time prior to its write off in the accounts, have been satisfied in the case of the assessee. There is no condition of proving that debt has become bad during the relevant assessment year. However, for disallowing the amount, AO has relied on the judicial pronouncements which pertain to the period prior to the amendment. Thus, without appreciating the legal position in this regard, the Assessing Officer has disallowed the entire aforesaid amount of Rs.80,09,923/- on the allegation that the assessee has not been able to prove how the debts have become 'bad debt'. Notwithstanding the fact that no such documents were required to be furnished by him, the Assessing Officer alleged that the assessee failed to substantiate its claim with any document whatsoever and it cannot be allowed. The aforesaid action of the Assessing Officer in summarily disallowing the entire amount of Rs.80,09,923/- is against the position in law. Thus, we do not find any merit in the action of the lower authorities. Accordingly, we direct the AO to delete the disallowance of Rs.80,09,923/-.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on this 26/06/2019

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 26/06/2019
Karuna Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai