

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

**ITA No.1350 of 2006**

Judgment reserved on: 23rd May, 2007

Judgment delivered on: 30th May, 2007

**Commissioner of Income Tax Delhi-IV, New Delhi** ..... Appellant

Through: Ms.P.L. Bansal, Adv.

Vs.

**M/s. Global Capital Limited**

C-1, Panchsheel Vihar,  
Khirki Extension, Malviya Nagar,  
New Delhi-110017. .... Respondent

Through: Mr. Anoop Sharma with  
Mr. M.K. Giri, Adv.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR  
HON'BLE MR. JUSTICE V.B. GUPTA

V.B. GUPTA, J.

Admit.

2. In the present appeal, Revenue has raised two issues for our consideration. The first issue is as to whether the Income Tax Appellate Tribunal (for short as 'Tribunal') rightly allowed deduction of Rs.10,92,750/- to the Assessee on account of bad debts under Section 36(1)(vii) of the Income Tax Act, 1961 (for short as 'Act').

3. The second issue is as to whether the Tribunal was correct in law in allowing deduction of remuneration of Rs.4,52,833/- paid by the Assessee to Shri. Neeraj Kanwar despite the fact that Assessee had not established rendering of services by Shri. Neeraj Kanwar for the purposes of business of the Assessee company.

4. The Assessee in the present case filed return declaring income at Rs.4,77,330/- which was subsequently revised to Rs.9,64,840/-. During the assessment proceedings, the Assessing Officer noticed that Assessee had

claimed bad debts amounting to Rs.10,92,750/-. The Assessee was required by the Assessing Officer to prove that the debt had become actually bad and there was no hope to recover the same at the time of writing it off. No satisfactory explanation was given by the Assessee and such the Assessing Officer held that the debts of Rs.10,92,750/- was not bad at all and the Assessee company had deliberately credited fictitious bad debts and debited to the Profit and Loss A/c to reduce its tax liability and disallowed the same.

5. During the course of the assessment proceedings it was also found by the Assessing Officer that Assessee has paid Rs.4,52,833/- as remuneration to Shri. Neeraj Kanwar which was claimed as deduction. The Assessee was asked to produce Shri. Neeraj Kanwar and establish genuineness/ reasonableness of its claim. However, the Assessee did not produce Shri. Neeraj Kanwar nor adduced any evidence in support of its claim and accordingly the Assessing Officer disallowed the claim of the Assessee and added Rs.4,52,833/- to its income.

6. Aggrieved by the order of the Assessing Officer, Assessee filed an appeal before Commissioner of Income Tax (Appeal) who allowed the claim of the Assessee holding that amount of Rs.10,92,750/- is allowable under Section 36(1)(vii) of the Act as bad debt and also allowed the claim of the Assessee with respect to remuneration of Rs.4,52,833/- paid to Shri. Neeraj Kanwar holding that looking to the educational profile of Shri. Neeraj Kanwar, it was adequately explained as justifiable.

7. The Revenue challenged the order passed by Commissioner of Income Tax (Appeal) before the Tribunal and the Tribunal vide impugned order dated 30th December, 2005 upheld the order of Commissioner of Income Tax (Appeal) on both the issues.

8. Now, the Revenue has challenged the impugned order of the Tribunal by way of present appeal under Section 260A of the Act before this Court.

9. It has been contended by learned counsel for the Revenue that though there was a debt due to the Assessee but the same had not become bad as the Assessee had actually not written off the amount from its accounts book.

10. On the other hand, it has been argued by learned counsel for the Assessee that in the ledger account as on 30th September, 1995 the amount was shown as recoverable from the concerned parties. While preparing the final accounts as on 31st March, 1996, the Assessee wrote these debts as bad and consequently debited the Profit and Loss Account and reduced the debtors account by the equivalent amounts, which is clear from the balance sheet.

Thus, this amount was bad debt in terms of Section 36(1)(vii) of the Act which is allowable as business expenditure.

11. As per provisions of Section 36(1)(vii) of the Act, as amended w.e.f. 1st April, 1989, the Assessee was not required to establish that the concerned debt has actually become bad in the relevant year for the purpose of claiming

deduction under the Section and the only requirement for claiming this deduction is that the Assessee has to write off the relevant debts in its books of accounts treating the same as bad. In the present case, the Assessee had written off the relevant bad debts amounting to Rs.10,92,750/- in its books of account by debiting the Profit and Loss Account and reducing the equivalent amount from the total debtors.

12. Under these circumstances, we hold that the Assessee company was duly entitled for deduction of sum of Rs.10,92,750/- on account of bad debts and we do not find any infirmity in the reasoning given by the Tribunal on this point and as such no substantial question of law with regard to this issue arises for our consideration and appeal filed by the Revenue on this ground stand dismissed.

13. With regard to the issue of allowing deduction of remuneration of Rs.4,52,833/- paid by the Assessee to Shri. Neeraj Kanwar, is concerned we are of the opinion that the following substantial question of law arises for our consideration:-

“(1) Whether the Tribunal was justified in law in allowing deduction of remuneration of Rs.4,52,833/- paid by the Assessee to Shri. Neeraj Kanwar despite the fact that the Assessee had not established rendering of services by Shri. Neeraj Kanwar for the purposes of business of the Assessee company”

14. Paper books be filed in accordance with the High Court Rules.

15. List the matter in due course.

(V. B. GUPTA)  
(MADAN B. LOKUR)

JUDGE

May 30, 2007