आयकर अपीलीय अधिकरण "एच" न्यायपीठ मुंबई में।

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

श्री आय.पी. बंसल, न्यायिक सदस्य **एवं** श्री संजय अरोड़ा, लेखा सदस्य के समक्ष ।

BEFORE SHRI I. P. BANSAL, JM AND SHRI SANJAY ARORA, AM

आयकर अपील सं./I.T.A. No. 1606/Mum/2011

(**निर्धारण वर्ष /** Assessment Year: 2007-08)

Stock Holding Corporation of India Ltd. C/o. Kalyaniwalla & Mistry, Army & Navy Building, 3rd Floor, 148, M. G. Road, Fort, Mumbai-400 001	**बनाम**/ Vs.	Dy. CIT-3(3), Aayakar Bhavan, M. K. Marg, Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AABCS 1429 B		
(अपीलार्थी /**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

अपीलार्थी की ओर से / **Appellant by**	:	Shri M. M. Golvala & Shri Vijay Kumar Tiyadi
प्रत्यर्थी की ओर से/**Respondent by**	:	Shri Tushar Dhawal Singh

सुनवाई की तारीख / **Date of Hearing**	:	20.08.2014
घोषणा की तारीख / **Date of Pronouncement**	:	22.08.2014

आदेश / ORDER

Per Sanjay Arora, A. M.:

This is an Appeal by the Assessee directed against the Order by the Commissioner of Income Tax (Appeals)-7, Mumbai ('CIT(A)' for short) dated 13.12.2010, partly allowing the assessee's appeal contesting its assessment u/s.143(3) of the Income Tax Act, 1961 ('the Act' hereinafter) for the assessment year (A.Y.) 2007-08.

2. The dispute in the instant case concerns the maintainability in law of the assessee's claim for bad debts write-off in accounts, in the facts and circumstances of its case. The brief facts are that the assessee providing, among others, custodial and

depository services to institutional and retail investors, wrote off the impugned amount of Rs.1.03 crores due from its customers in its accounts for the relevant year as irrecoverable. The law in the matter stands since settled by the apex court per its decision in the case of *T.R.F. Ltd. vs. CIT* [2010] 323 ITR 397 (SC), so that the write-off in accounts is itself sufficient for the purpose of a claim for bad debt u/s.36(1)(vii) of the Act and, further, also conclusive of the year of it's becoming bad, so that the claim shall arise for the year of the write-off. There is also no charge of the claim being not genuine in the instant case, which, where shown to be so, shall preclude deduction (refer: *DIT (IT) vs. Oman International Bank SAOG* [2009] 313 ITR 128 (Bom)). The bone of contention between the parties is that the resolution of the Board of Directors ('Board' hereinafter) sanctioning the said write-off is dated <u>25.07.2007</u>, so that the same, in the opinion of the Revenue, could only be validly written off in accounts on or after the said date, i.e., 25.07.2007. The claim is thus not valid for the current year, and would arise only for the following year, i.e., A.Y. 2008-09. The resolution did not sanction back dating the write-off, which has been so done only with a view to reduce the income for the current year. The assessee, on the other hand, claims that the decision by the Board, though taken during f.y. 2007-08, would relate back to 31.03.2007, i.e., the date at which the accounts were actually written-off in accounts by a corresponding debit to the profit and loss account (PB pg. 15). There is no bar in law for passing an entry in accounts after the close of the relevant year. In fact, different statutes allow time for closing of the accounts, and filing the returns, based thereon.

3. We have heard the parties, and perused the material on record.

3.1 We shall proceed by reproducing the relevant resolution, as under:

> 'This is to certify that the Board at its meeting held on **<u>July 25, 2007</u>** considered the Memorandum No. 87/2007 dated July, 19, 2007 with respect to Audited Accounts for the year ended March 31, 2007 interalia containing the following:
>
> "RESOLVED THAT an amount of Rs.103 lakh be and is hereby written off as bad debts".'

The resolution passed on 25.07.2007, clearly sanctions the write-off in accounts for the year ending 31.03.2007, debts for an aggregate amount of Rs.103 lacs, outstanding as on 31.03.2007, as bad. The same is, thus, in the nature of a *post facto* approval.

There is further nothing on record to show or exhibit that the accounting entry in respect of the impugned write off was not passed on 31.03.2007 itself. *Is it necessary, one may ask, that a separate resolution is required to be passed by the Board for passing every accounting entry*? The passing of an accounting entry does not require prior sanction of the Board, and it is fully within the power of the operational management, vested in the managing/whole-time director or the director (finance), though would definitely require ratification by the Board in-as-much as it is only it which is competent to authenticate the accounts in law (section 215 of the Companies Act, 1956), and which has been the case.

Further, even assuming that the entry was actually passed subsequent to 31.03.2007, whether on or by 25.07.2007, the question is: Is there anything in law or accountancy to preclude the passing of an accounting entry after the date of the transaction or the event to which it pertains, i.e., *are the accounts to be prepared on real time basis*? Clearly, there is no such requirement either in law or in practice. As shown by the ld. Authorized Representative (AR), on being queried in the matter during hearing by the Bench, the accounts for the year stand adopted by the Board on 25.07.2007, on which date the accounts stand also certified and reported upon by the Auditors (PB pgs. 1-25). No doubt, no entry can be passed without management approval, with the Board being vested with the overall power of management. However, there is nothing to show that the said entry, passed either on or by 25.07.2007, was passed without the requisite approval of the concerned officer in the management hierarchy, even as the Board approval thereof stands duly taken. Even as clarified above, it is only the accounts, duly authenticated by the Board, that can be considered as valid, and as signifying/conveying its representation and/or statement of the state of affairs (as on a particular date). The accounts approved and adopted by the Board on 25.07.2007 are as on 31.03.2007, bearing the write-off in accounts on that date. The accounting entries, as long as they pertain to the period under reference, and purport to represent the state of affairs as on a particular date, could be passed validly subsequently. To the extent, therefore, the same is reflective and representative of the condition/s existing as on that date, viz. 31.03.2007, the entry cannot be said to be back-dated. Information comes to the knowledge of the Management after 31st March, pertaining to the state of affairs as on 31st March, i.e., having a bearing on the valuation of the assets/liabilities as on that date. Where the accounts stand not finalized, it shall be open; rather, obligatory on the part of the Management to record/factor the said information in the accounts as on 31st March. The Revenue's objection is misconceived. The assessee has rightly relied on the decision in the case of *CIT vs. United Bank of India* [1993] 115 CTR (Cal) 35, to which reference was made during hearing (copy on record). We derive support there-from, as well as from the decision in the case of *Shriram Asset Management Co. Ltd. vs. Dy. CIT* (in ITA No. 2351/Mum(E)/2012 dated 30.04.2013/copy on record), also relied upon.

3.2 We may next discuss the case law relied upon by the Revenue. The write-off in the case of *CIT vs. Heredilla Chemicals Ltd.* [1997] 225 ITR 532 (Bom) did not pertain to the write-off of a debt. There was nothing to show that the asset had become obsolete and, thus, the expenditure/loss had been incurred/suffered. Its write-off in accounts was therefore not considered as determinative of the fact of the loss having been incurred. It was under these circumstances that the hon'ble court held that the write-off shall not entitle the assessee to claim deduction. In fact, the write-off was of a plant, a capital asset, loss *qua* which on write-off would be on capital account, governed by depreciation provisions. The said decision is thus completely distinguishable on facts. The write-off in *Eastern Peripherals (P.) Ltd.* (in ITA No. 321/Mum/2007 dated 31.08.2007), was again of materials, scrap and consumables, so that the tribunal, following the decision in the case of *Heredilla Chemicals Ltd.* (supra), upheld the disallowance. The said decision is thus again on the facts of the case, on the premise that the write-off would not by itself signify a loss, while the present case is governed by the provision of section 36(1)(vii), the satisfaction of the conditions of which is not in dispute. The decision in the case of

Sampanna Kuries (P.) Ltd. vs. Dy. CIT [2012] 206 Taxman 57 (Ker)(Mag)/249 CTR 210 (Ker), is again distinguishable in-as-much as in that case the assessee's claim was *de hors* the write-off in accounts of the debt/s claimed as bad. The essential condition of write-off per section 36(1)(vii) being unsatisfied, the hon'ble court upheld the tribunal's order confirming the disallowance. The said decisions are, thus, distinguishable, and would be of no assistance to the Revenue.

3.3 In view of the foregoing, we find little merit in the Revenue's case. We, accordingly, setting aside the orders by the authorities below on the relevant issue, direct allowance of the assessee's impugned claim. We decide accordingly.

4. In the result, the assessee's appeal is allowed.
परिणामतः निर्धारिती की अपील स्वीकृत की जाती है ।

Order pronounced in the open court on August 22, 2014

Sd/-	Sd/-
(I. P. Bansal)	(Sanjay Arora)
न्यायिक सदस्य / Judicial Member	लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 22.08.2014

व.नि.स./Roshani, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai