

SUPREME COURT OF INDIA

TRF Ltd.

Vs.

Commnr.of Income Tax

C.A.No.5293 of 2003

(S.H. Kapadia and Aftab Alam JJ.)

09.02.2010

ORDER

1. Heard learned counsel on both sides.

2. In these appeals, we are concerned with Assessment Year 1990-1991 and Assessment Year 1993-1994. Prior to 1st April, 1989, every assessee had to establish, as a matter of fact, that the debt advanced by the assessee had, in fact, become irrecoverable. That position got altered by deletion of the word "established", which earlier existed in *Section 36(1)(vii) of the Income Tax Act, 1961* [*Act', for short*].

3. For the sake of clarity, we re-produce hereinbelow provisions of Section 36(1)(vii) of the Act, both prior to 1st April, 1989 and post-1st April, 1989:

“Pre-1st April, 1989:

Other deductions.

36.(1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28-- (i) to (vi) xxxx xxxx xxxx (vii) subject to the provisions of sub-section (2), the amount of any debt, or part thereof, which is established to have become a bad debt in the previous year.

Post-1st April, 1989:

Other deductions.

36.(1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28-- (i) to (vi) xxxx xxxx xxxx (vii) subject to the provisions of sub-section

(2), the amount of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year.”

4. This position in law is well-settled. After 1st April, 1989, it is not necessary for the assessee to establish that the debt, in fact, has become irrecoverable. It is enough if the bad debt is written off as irrecoverable in the accounts of the assessee.

5. However, in the present case, the Assessing Officer has not examined whether the debt has, in fact, been written off in accounts of the assessee. When bad debt occurs, the bad debt account is debited and the customer's account is credited, thus, closing the account of the customer.

6. In the case of Companies, the provision is deducted from Sundry Debtors. As stated above, the Assessing Officer has not examined whether, in fact, the bad debt or part thereof is written off in the accounts of the assessee.

7. This exercise has not been undertaken by the Assessing Officer. Hence, the matter is remitted to the Assessing Officer for de novo consideration of the above-mentioned aspect only and that too only to the extent of the write off.

8. Subject to above, the civil appeals filed by the assessee are disposed of with no order as to costs.