

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1115/Mds/2015

निर्धारण वर्ष / Assessment Year : 2010-11

M/s Somayajulu & Co. Ltd.,
II floor, Mookambika Complex,
4-Lady Desikachary Road,
Mylapore, Chennai - 600 004.

v. The Assistant Commissioner of
Income Tax,
Company Circle – VI(3),
Chennai.

PAN : AAACS 7053 G

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. T. Banusekar, CA

प्रत्यर्थी की ओर से/Respondent by : Sh. V. Nanda Kumar, JCIT

सुनवाई की तारीख/Date of Hearing : 17.08.2016

घोषणा की तारीख/Date of Pronouncement : 07.10.2016

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) – 15, Chennai, dated 20.02.2015 and pertains to assessment year 2010-11.

2. Sh. T. Banusekar, the Ld. representative for the assessee, submitted that the assessee has claimed bad debts to the extent of

₹1,35,77,266/-. The Assessing Officer, however, disallowed the claim of the assessee. On appeal by the assessee, the CIT(Appeals) found that to the extent of ₹32,68,147/-, the assessee could not produce the ledger extract to substantiate the existence of debt. Even before the CIT(Appeals), the assessee could not produce any evidence to establish the existence of debt. Since the existence of debt is not established, the CIT(Appeals) found that the debt written off is not genuine, therefore, he confirmed the order of the Assessing Officer. According to the Ld. representative, the commitment made by the assessee to the Stock Exchange needs to be fulfilled irrespective of the fulfillment of commitment by the respective customers of the assessee. The assessee, in fact, produced the ledger to the extent of bad debt of ₹1,03,09,119/-. Therefore, according to the Ld. representative, the existence of debt was established. The assessee written off the amount of ₹1,03,09,119/-, therefore, it is not correct to say that the assessee has not established the existence of debt. According to the Ld. representative, It is not in dispute that the assessee has written off the bad debt. Once it is established that the bad debt was written off, according to the Ld. representative, the CIT(Appeals) ought to have deleted the disallowance made by the Assessing Officer.

3. The Ld. representative for the assessee further submitted that there was difference between the share trader and share broker. According to the Ld. representative, a trader trades in shares by purchasing and selling the shares on his own behalf. If a trader fails to recover the share proceeds of the shares, it becomes debt and the trader can claim the same as bad debt on writing it off the same as bad debt in the books of account. In the case of share broker, he is concerned only with brokerage accrued. Transaction of sale or purchase of shares is arranged by him on behalf of his clients. Since the transaction of sale or purchase is arranged, the right to receive the brokerage accrues to the assessee. The liability to make the payment does not accrue to the assessee at all. Both the authorities below have mixed up both the transactions. Therefore, the CIT(Appeals) ought to have examined the issue in the light of the transaction entered into by the assessee. The assessee, in fact, traded in shares and also acted as broker. The Ld. representative further submitted that the CIT(Appeals) without examining facts correctly, confirmed the order of the Assessing Officer.

4. Shri V. Nanda Kumar, the Ld. Departmental Representative, submitted that the CIT(Appeals), appreciating the facts and relevant material available on record, found that the bad debts were not really written off in the books maintained by the assessee. On verification of the ledger, the CIT(Appeals) found that the amounts were still outstanding and it was not written off as claimed by the assessee. Moreover, the assessee could not produce any material including the ledger to substantiate the existence of debt to the extent of ₹32,68,147/-. In the Profit & Loss account produced before the CIT(Appeals), the total bad debts were said to be ₹1,35,77,266/-. The 18 parties ledger account, which was produced before the CIT(Appeals), shows that the amount was not written off. In those circumstances, the CIT(Appeals) has rightly found that the claim of the assessee that the bad debts written off is not correct. In some of the parties, the very existence of debts are not substantiated. Therefore, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the order of the Assessing Officer.

5. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee

claimed bad debts of ₹1,35,77,266/-. The assessee could not produce any ledger extract to substantiate the existence of bad debts to the extent of ₹32,68,147/-. Therefore, the Assessing Officer disallowed the claim of the assessee. For the remaining ₹1,03,09,119/-, the assessee produced ledger account before the Assessing Officer. The Assessing Officer in the assessment order observed that the assessee-company has written off to the extent of ₹1,03,09,119/-. The Assessing Officer has also observed that the bad debts arose to the assessee due to non-payment of dues by the clients. This Tribunal is of the considered opinion that when the assessee was in the business of share trading, either as trader or as broker, the bad debt claimed by the assessee has to be examined in the light of the provisions of law. In view of the voluminous transaction entered into by the assessee, there may be a little difficulty in producing necessary material before the Assessing Officer. However, when the assessee claims that there was debt, and bad debt was written off due to difficulty in recovering the same, the same has to be allowed especially when the Assessing Officer himself admits that the assessee has written off the debt to the extent of ₹1,03,09,119/-. This Tribunal is of the considered opinion that the existence of debt and its written off in

the books was established to the extent of ₹1,03,09,119/-. However, the existence of debt to the extent of ₹32,68,147/- was not substantiated. Accordingly, while confirming the disallowance of ₹32,68,147/-, the disallowance made to the extent of ₹1,03,09,119/- is deleted.

6. The next ground of appeal is with regard to allowance of staff advances to the extent of ₹4,06,844/-.

7. Sh. T. Banusekar, the Ld. representative for the assessee, submitted that the advances made to staff to the extent of ₹4,06,844/- was also claimed as bad debt and also claimed to be written off in the books of account. The CIT(Appeals) disallowed the claim of the assessee on the ground that staff advances written off cannot be allowed under Section 36(1)(vii) or 36(2) of the Act.

8. Having heard the Ld. Departmental Representative also, this Tribunal is of the considered opinion that in the absence of the nature of advance given to the employees, the Assessing Officer shall re-examine the matter afresh. Accordingly, the orders of the lower authorities are set aside, the disallowance of ₹ 4,06,844/- is remitted back to the file of the Assessing Officer.

9. The next issue arises for consideration is disallowance of brought forward business loss of ₹20,89,939/- and unabsorbed depreciation loss of ₹10,34,056/-.

10. Sh. T. Banusekar, the Ld. representative for the assessee, submitted that the unabsorbed loss and depreciation pertaining to assessment year 2009-10 were not set off against the income of the assessee during the year under consideration. The Ld. representative submitted that this was not pressed before the CIT(Appeals). According to the Ld. representative, even though it was not pressed before the CIT(Appeals), the same has to be set off against the income of the assessee.

11. We have heard Shri V. Nanda Kumar, the Ld. Departmental Representative also. The CIT(Appeals) disallowed the claim of the assessee on the ground that the assessee has not furnished any details with regard to unabsorbed business loss and unabsorbed depreciation. For the purpose of setting off of brought forward business loss and unabsorbed depreciation, it is for the assessee to furnish necessary details before the authorities below. Even before this Tribunal, the assessee has not furnished any details. In the

absence of any details, this Tribunal is of the considered opinion that the CIT(Appeals) has rightly disallowed the claim of the assessee. Moreover, the assessee itself has not pressed the issue before the CIT(Appeals). Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

12. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on 7th October, 2016 at Chennai.

sd/-
(ए. मोहन अलंकामणी)
(A. Mohan Alankamony)
लेखा सदस्य/Accountant Member

sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 7th October, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-15, Chennai-34
4. आयकर आयुक्त/CIT-6, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.