

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA. No. 575/JP/2018
निर्धारण वर्ष / Assessment Years : 2014-15

M/s Navjeevan Trade & Commodities Pvt. Ltd. B-92, Kukarkhera Anaj Mandi, Sikar Road, Jaipur.	बनाम Vs.	The ITO, Ward-4(2), Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AACCN 0172 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.R. Sharma (C.A) &
Shri R.K. Bhatra (C.A.)
राजस्व की ओर से / Revenue by : Shri J.C. Kulhari (JCIT)

सुनवाई की तारीख / Date of Hearing : 02/08/2018
उदघोषणा की तारीख / Date of Pronouncement : 03/08/2018

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-2, Udaipur dated 12.02.2018 for the Assessment Year 2014-15 wherein the assessee has taken the following grounds of appeal as under:-

"1. That on the facts and in the circumstances of the case, the Ld. CIT(A), is wrong, unjust and has erred in law in confirming finding recorded by the assessing officer that commission income of Rs.38,09,900/- from M/s. Proactive In and Out Advertising Ltd is not genuine and thereby confirming the addition of said

amount to the income of the appellant as unexplained cash credit u/s 68 of the I.T. Act, 1961

2. That on the facts and in the circumstances of the case, the Ld. CIT(A), is wrong, unjust and has erred in law in confirming finding recorded by the assessing officer that leasing commission of Rs. 40,62,000/- from M/s. Pacific Development Corporation Ltd. is not genuine and thereby confirming the addition of said amount to the income of the appellant as unexplained cash credit u/s 68 of the I.T. Act, 1961.

3. That without Prejudice to the ground No. (1) & (2) above, the Ld. CIT(A) is also wrong and has erred in law in confirming the action of the Assessing Officer in assessing above said income of Rs.78,71,000/- u/s 115BBE of the I.T. Act, 1961 and in further upholding finding recorded by the assessing officer that current year loss will not be set off against income assessed u/s 115BBE even though relevant provisions disallowing set off has come into force w.e.f. 1-4-2017."

2. Briefly, the facts of the case are that during the year under consideration, the assessee has declared income from commission and brokerage at Rs. 78,71,900/- in its profit and loss account and offered the same to tax under the head "profit and gain of business/profession". The Assessing Officer, however, observed that the commission receipt of Rs. 78,71,000/- is in the nature of unexplained cash credit and brought the same to tax U/s 68 r.w.s. 115BBE of the I.T. Act.

3. The Id. AR has contended that the Assessing Officer has also not allowed current year loss including the current year depreciation against the income assessed U/s 68 of the Act. It was submitted that the

current year business loss including current depreciation being part of current business loss is to be allowed set off against income from other sources and assessed U/s 68 of the Act. It was submitted that Section 115BBE(2) does not bar set off of loss in other head of income allowable U/s 71 of the IT Act from the income referred to in Section 115BBE of the Act. It is submitted that it is only from assessment year 2017-18 by virtue of an amendment by which words "or set off of any loss" were inserted in sub-section 115BBE that such set off of loss will be inadmissible.

4. In support, reliance was placed by the Id AR on the CBDT Circular No. 3/2017 dated 20.01.2017 explaining the effect of amendment brought in by the Finance Act, 2016 which reads as under:-

"46. Clarification regarding set off of losses against deemed undisclosed income.

46.1 Section 115BBE of the Income-tax Act inter alia provides that the income relating to section 68 or section 69 or section 69A or section 69B or section 69C or section 69D is taxable at the rate of thirty per cent and further provides that no deduction in respect of any expenditure or allowances in relation to income referred to in the said sections shall be allowable.

46.2 Currently, there is uncertainty on the issue of set-off of losses against income referred to in section 115BBE of the Income-tax Act. The matter has been carried to judicial forums and courts in some cases has taken a view that losses shall not be allowed to be set - off against income referred to in section 115BBE. However, the current language of section 115BBE of the Income-tax Act does not convey the desired intention and as

a result the matter is litigated. In order to avoid unnecessary litigation, the provision of subsection (2) of section 115BBE of the Income-tax Act has been amended as to expressly provide that no set off of any loss shall be allowable in respect of income under the sections 68 or section 69 or section 69A or section 69B or section 69C or section 69D.

46.3 Applicability: This amendment takes effect from 1st of April, 2017 and will, accordingly, apply from assessment year 2017-18 and subsequent assessment years."

5. It was accordingly submitted by the Id AR that the action of the Assessing Officer is grossly wrong and bad in law in not allowing set off of the current year business loss including current year depreciation against the income charged to tax U/s 115BBE of the Act. In support reliance was also placed on the Coordinate Bench decisions in case of ACIT vs. Girdhar Associates (ITA No. 1043/JP/2016 dated 04.08.2017), ACIT vs. Sanjay Bairathi Gems Ltd. (2017) 84 Taxmann.com 138 and M/s Pitamber Commodity Futures Pvt. Ltd. vs. ACIT (ITA No. 863/JP/2017 dated 21.03.2018).

6. The Id. D/R is heard who has relied on the finding of the lower authorities.

7. We have heard the rival contentions and perused the material available on record. By virtue an amendment has been brought in by the Finance Act, 2016 in Section 115BBE(2) of the IT Act, the words "or set off of any loss" were inserted w.e.f. 01.04.2017. The said amendment has been made w.e.f. assessment year 2017-18 as also clarified by the CBDT Circular No. 3/2017 dated 20-01-2017. Further, in case of M/s Pitamber Commodity Futures Pvt. Ltd. vs. ACIT (supra), speaking through one of us wherein we had an occasion to examine the said issue, we have held the said amendment is prospective in nature. The relevant findings in M/s Pitamber Commodity Futures Pvt. Ltd. are reproduced as under:-

"8 In light of above discussions, it is clear that the amendment brought in Section 115BBE wherein no set off of losses against surrendered income brought to tax is prospective in nature and does not apply for the assessment year under consideration. The decisions relied upon by the Revenue have also been examined and does not support its case. For the year under consideration, there is no bar for set off of current year business loss U/s 71 against income brought to tax under the head "income from other sources". We are therefore of the view that the assessee will be eligible for set off of current year business loss of Rs. 7,67,768/- against the undisclosed investment of Rs. 36,00,000/- towards purchase of plot of land which has been surrendered during the course of search, and subsequently offered and brought to tax under section 69 read with section 115BBE of the Act. In the result, sole ground taken by the assessee is allowed."

8. In the instant case, it is not disputed by the Revenue that the assessee has current year business losses including current year depreciation excluding a part of the business income declared as commission income which has been reclassified by the Assessing Officer and brought to tax under the head "income from other sources". In our view, the assessee is eligible to claim set off of current year business loss including current year depreciation against current year income assessed under the head "income from other sources" under section 71 of the Act. The amendment brought by the Finance Act, 2016 in section 115BBE(2) is effective from assessment year 2017-18 and is not applicable for the impugned assessment year.

9. In light of above discussions and following the decision referred (supra), ground No. 3 of the assessee's appeal is partly allowed to the extent of setting off of current year business loss including current year depreciation against income assessed under section 115BBE.

10. Ground Nos. 1 and 2 and remaining ground no. 3 have thus become academic in nature and we do not deem it appropriate to adjudicate the same. In the result the same are treated as infructuous.

In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 03/08/2018.

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member
जयपुर / Jaipur

दिनांक / Dated:- 03/08/2018.

***Santosh**

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

1. अपीलार्थी / The Appellant- M/s Navjeevan Trade & Commodities Pvt. Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward- 4(2), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 575/JP/2018 }

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar