

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "B", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND  
SHRI N.K. PRADHAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NO.799/MUM/2018 (A.Y: 2014-15)**

M/s. Melaila Resorts Pvt. Ltd.,  
Bharat Insurance Building,  
3<sup>rd</sup> Floor, 15-A,  
Horniman Circle, Fort,  
Mumbai – 400 001

v.

Prl. Commissioner of Income-tax-2  
Room No.344, 3<sup>rd</sup> Floor,  
Aayakar Bhavan, M.K. Road,  
Mumbai-400 020

**PAN: AAECM 9152 E**

**(Appellant)**

**(Respondent)**

**Assessee by**

**: Dr. P. Daniel**

**Department by**

**: Shri V. Sreekar**

**Date of Hearing**

**: 04.06.2018**

**Date of Pronouncement**

**: 27.08.2018**

**ORDER**

**PER C.N. PRASAD (JM)**

1. This appeal is filed by the assessee against the order of the Principal Commissioner of Income-tax-2, Mumbai dated 16.01.2018 passed u/s.263 of the Act.

2. Briefly stated the facts are that, the assessee is engaged in the business of construction and development filed return of income on 20.09.2014 declaring income of ₹.7,22,870/-. Assessment was completed

u/s. 143(3) of the Act on 31.12.2016 determining the income of ₹.18,94,640/-. Subsequently, the Prl. Commissioner issued show cause notice u/s. 263 of the Act on 13.12.2017 and proposed to revise the Assessment Order as erroneous in so far as it is prejudicial to the interest of the revenue observing that, the bad debts claimed by the assessee are not admissible since provisions of section 36(2)(i) of the Act are not satisfied. Assessee furnished submissions before the Ld. Prl. Commissioner of Income-tax stating that Assessing Officer had already enquired and applied his mind and allowed the claim for bad debts. Assessee earned major income by way of interest and therefore it is not correct to say assessee is not carrying any money lending business. It was contended that substantial amount of ₹.5.69 Crores were advanced as loans and earned interest on such income. It was contended that the money advanced to Mr. Suresh Jain and Mrs. Vijaya Jain was given in normal course of business to earn interest, as money lending is also a part of the business activity of the company. Most satisfied with the submissions of the assessee the Ld. Prl. Commissioner of Income-tax held that, since the assessee was not in the business of money lending assessee is not entitled to allowance of bad debts as the conditions of Section 36(2)(i) in respect of 50% of the amount of loans advanced to Mr. Suresh Jain and Mrs. Vijaya Jain in December 2011. But assessee is

entitled to claim bad debts if the loans given to the aforesaid persons included any interest which was taken into computation of income for any previous years. Thus, the Assessing Officer was directed to allow only the proportionate interest amount included in bad debts written off to the extent which has already been taken into computation of income during the previous years after verification.

3. Before us, Ld. Counsel for the assessee invited our attention to the Memorandum of Association and the objects incidental and ancillary to the main object, submitted that Clause 55 of Memorandum of Association specifically provide for doing money lending business and therefore the observation of the Ld. Prl. Commissioner of Income-tax that the assessee is not into the money lending business is not correct. He also invited our attention to the notice u/s. 143(2) dated 14.06.2016 issued by the Assessing Officer in the course of original Assessment Proceedings wherein the Assessing Officer required the assessee to provide the details of bad debts written off and the reply dated 08.08.2016 wherein details of bad debts written off were furnished to the Assessing Officer. The Ld. Counsel for the assessee before us submitted that the Assessing Officer called for the details and examined the details and allowed the claim for bad debts and therefore he has taken one of the views possible and thus

the order passed by the Assessing Officer is neither erroneous nor prejudicial to the interest of the revenue.

4. Ld. Counsel for the assessee placed reliance on the following decisions: -

- a. *CIT v. Max India Ltd., [295 ITR 282 (SC)]*
- b. *Malabar Industrial Co. Ltd., v. CIT [243 ITR 83 (SC)]*
- c. *Grasim Industries Ltd., v. CIT [321 ITR 92 (Bom.)]*
- d. *CIT. v. Gabriel India Ltd., [203 ITR 108 (Bom.)]*
- e. *M/s. Real Trade Technologies v. Prl. CIT in ITA.No. 2929/Mum/2016 dated 22.07.2016.*

5. On the other hand, Ld. DR submitted that no proper inquiries were made by the Assessing Officer and nothing has been dealt with by the Assessing Officer in the Assessment Order. Ld. DR also submitted that main object of the assessee does not provide for money lending business.

6. We have heard the rival submissions, perused the orders of the authorities below and the case laws relied on. The Ld. Prl. Commissioner of Income-tax passed order u/s 263 of the Act holding that assessee is not in the business of money lending and therefore the debts written off in the cases of Mr. Suresh Jain and Mrs. Vijaya Jain cannot be allowed as deduction as the provisions of section 36(2)(i) were not satisfied by the assessee, as the assessee has not offered income from such debt to tax in earlier years. However, we see that at the same time the Ld. Prl. Commissioner directed the Assessing Officer to allow only proportionate interest amount included in bad debts written off which has already been

taken into computation as income after verification. We find from the Memorandum of Association and the ancillary objects provided therein that the assessee is permitted to do money lending business. On a perusal of the Profit and Loss Account at the year ended 31<sup>st</sup> March, 2014 the assessee earned Revenue of ₹.53,74,964/- out of which "Revenue from operation" is ₹.15,45,985/- and "other income" is ₹.38,28,979/-. Schedule 14 & 15 to Profit and Loss Account specify the nature of "Revenue operations" as sale of shares, similarly the "other income" is interest income of ₹.38,27,617/- and interest on IT refund of ₹.1,362/-. In this Assessment Year i.e., 2014-15 the major income earned by the assessee is from interest on money lending, therefore it cannot be said that the assessee is not in the business of money lending during the Assessment Year 2014-15.

7. We also find that in the course of Assessment Proceedings the Assessing Officer called for the details of bad debts written off and the assessee has provided details of bad debts written off. The Assessing Officer has considered the details of bad debts filed by the assessee and taken one of the possible views and allowed the claim of the assessee. Thus, in our view the order passed by the Assessing Officer is neither erroneous nor prejudicial to the interest of the revenue, in view of the decisions of the Hon'ble Supreme Court in the case of CIT v. Max India

Ltd., (supra) and Malabar Industrial Co. Ltd., v. CIT (supra). Thus, we set-aside the order dated 16.01.2018 of the Ld. Prl. Commissioner of Income-tax passed u/s. 263 of the Act.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on the 27<sup>th</sup> August, 2018

Sd/-  
**(N.K. PRADHAN)**  
**ACCOUNTANT MEMBER**  
Mumbai / Dated 27/08/2018  
Giridhar, Sr.PS

Sd/-  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**