

IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH "H", MUMBAI
BEFORE SHRI R.C. SHARMA ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH JUDICIAL MEMBER
ITA No. 3300/Mum/2011-(Assessment year: 2007-08)

Khandwala Securities Ltd, Ground Floor, Vikas Building, Green Street, Fort, Mumbai-400020 PAN : AAACK 2214 P	Vs	ITO 4(3)(2), Aayakar Bhawan, M.K.Road, Mumbai-400 020
APPELLANT		RESPONDEDNT

ITA No. 4608/Mum/2011-(Assessment year: 2007-08)

ITO 4(3)(2), Aayakar Bhawan, M.K.Road, Mumbai-400 020	Vs	Khandwala Securities Ltd, Ground Floor, Vikas Building, Green Street, Fort, Mumbai-400020 PAN : AAACK 2214 P
APPELLANT		RESPONDEDNT

Assessee by	None
Revenue by	Shri Manoj Kumar Singh Sr-DR
Date of hearing	26 .08.2019
Date of pronouncement	09 .09.2019

Order under section 254(1) of Income tax Act
Per Pawan Singh, Judicial Member:

1. These Cross appeals are directed against the order of the Commissioner of Income-tax (Appeals)-10 ["CIT(A)"] Mumbai dated 17.03.2011 for assessment year ("AY") 2007-08. The assessee has raised following grounds of appeal:
 - (1) The learned CIT(A) erred in confirming the disallowance of write back of loan of ₹ 15.00 lakhs as the income of assessee.
 - (2) The ld. CIT-(A) erred in confirming that the disallowance of bad debts of ₹ 2.10 lakhs.
 - (3) The ld. CIT-(A) erred in confirming the addition of ₹ 1,84,957/-to the book profits under section 115 JB.

- (4) The Id. CIT(A) erred in confirming the charges of interest under section 234B.
2. The revenue in its cross appeal has raised following grounds of appeal :-
- (1) On the facts and in the circumstances of the case learned CIT-(A) erred in deleting the disallowance made by AO under section 14A amounting to ₹1,84,957/-.
- (2) On the facts and in circumstances of the case in law, learned CIT-(A) has erred in deleting the addition on bad debts amounting to ₹ 9,51,925/-
- (3) On the facts and in the circumstances of the case until, learned CIT-A erred in deleting the disallowance of ₹7,89,087/- being transaction charges and Rs.2,20,000/- being VSAT charges made under section 40(a)(ia) paid to the stock exchange, without appreciating the facts that these were composite charges for professional and technical services rendered by the stock exchange to its member and the assessee has failed to deduct TDS thereon.
3. Facts in brief as extracted from the order of lower authorities are the assessee is a company engaged in the business of merchant banking, advisory services, PMS and share broking. The assessee filed its return of income for assessment year 2007-08 on 29 October 2007 declaring gross total income at Rs. Nil. The return of income was selected for scrutiny and after serving statutory notices the assessment was completed under section 143(3) on 26th November 2009. The assessing officer while passing the assessment order made various additions /disallowances including of write back of loan of ₹ 15.00 lakhs, disallowance on account of bad debts, disallowance under section 14A and disallowance under section 40(a)(ia). On appeal before Commissioner

(Appeals), the disallowance of write back of loan of ₹ 15 lakhs was confirmed, disallowance on account of bad debts was restricted to Rs.2.10 lakhs, and disallowance under section 40(a)(ia) was deleted. Hence, aggrieved by the order of Commissioner (Appeals) both the parties are filed their respective appeal raising the various grounds of appeal, which we have recorded above.

4. None appeared on behalf of his despite the repeated call and even after passing over. We have noted that these appeals pertain to assessment year 2007-08 and are old appeals. Therefore, we left no option except to hear the submission of learned DR for the revenue and to decide the appeals on the basis of material available on record.
5. At the outset of hearing the learned DR for the revenue submits that tax effect involve in revenue's appeal is less than the monetary limit of ₹ 50 lakhs as fixed by CBDT in its Circular No.17 of 2019 dated 8th August 2019. We are perused the grounds of appeal and find that the tax effect involve in revenue's appeal is below the monetary limit of ₹ 50 lakhs, fixed by CBDT for filing appeal by revenue before tribunal. Therefore, considering submission of learned DR for the revenue, the appeal of revenue is dismissed.
6. However, the revenue is given liberty to get the appeal revive in case it is discovered a later stage that the grounds of appeal raised by revenue is covered by any exception clause of the Circular of CBDT.

7. In the appeal of assessee the learned DR for the revenue supported the order of lower authorities. For the ground No. 1, which relates to confirming the addition/disallowance of write back of loan of ₹ 15 lakhs, the learned DR for the revenue submits that in Schedule N to the tax audit report the assessee has shown loan and advances interest written back and other income. The assessee has reduced an amount of Rs.15.00 lakhs under the head written back. The assessee was asked to explain the circumstances of write back of loan. On show cause notice by the assessing officer, the assessee submitted that the assessee received a lump-sum of ₹ 15.00 lakhs on account of one-time settlement from its debtor. The assessee failed to substantiate his contention with documentary evidence either before the assessing officer or before Commissioner (Appeals) about the alleged one time settlement. Therefore, the addition/disallowance is liable to be sustained. The learned DR further submits that similar addition was sustained by tribunal in assessee's appeal for assessment year 2006-07 in ITA No. 3100/Mum/2011 dated 3rd August 2018.
8. We have considered the submission of learned representative for the revenue and perused the material available on record. Before us neither the assessee has filed any documentary evidence or any written submission to substantiate its contention. Moreover we have noted that on similar set of facts in appeal for assessment year 2006-07 the tribunal in assessee's case confirmed the similar

disallowances. Therefore we do not find any reason to interfere with the finding of learned CIT(A). Hence, ground No. 1 of the appeal is dismissed.

9. Ground No. 2 relates to confirming the disallowance of bad debts of Rs.2,10,621/-. The learned AR for the revenue supported the order of assessing officer as well as first appellate authority.

10. We have considered the submission of learned DR for the revenue and perused the material of available on record. During the assessment the assessing officer made disallowance of bad debts of ₹ 9,51,925/- pertaining to share broking segment by holding that only brokerage, which is only a part of total debt, is taken into account for computing the income of the share broker, only that part of bad debts satisfy the condition laid down under section 36(2). The assessing officer also disallowed the alternate claim as business loss. However, on appeal the learned CIT(A) after considering the submission that debts was considered in the computation of income of the assessee in earlier years, satisfied the condition of section 36(2). The ld CIT(A) further observed that the assessee furnished the list of parties, consisting of the parties which did share trading with the assessee wherein certain clients incurred losses in their trading business and failed to pay the dues, which were written off as bad debts and claimed as allowable under section 36(1)(vii). After considering submission of assessee the learned CIT (A) concluded that the assessee claimed deduction on

account of bad debts arising on account of brokerage business as the amounts could not be recovered from the clients defaulted on payments, which were accounted as a brokerage income in its books; therefore, debts was incurred at the normal business incident of the assessee. However, the write off in respect of Kiran Khera, Urmila Kedia, Patel DE, and Chowla Goldie are not related to bed debts nor it was incurred during the course of business. Therefore, the learned CIT(A) confirmed the disallowance to the extent of Rs. 2,10,621/- and remaining disallowance was delete. Before us no contrary facts or law is brought to our notice to take other view; hence, the ground of appeal raised by assessee is dismissed.

11. Ground No. 3 relates to confirming the addition to the book profit under section 115JB. The learned DR for the revenue supported the orders of lower authorities. We have considered the submission of learned DR for the revenue. We have noted that after passing the assessment order, the assessing officer rectified the assessment order as recorded by Id CIT(A) in its order and restricted/ considered the addition of disallowance under section 14A while computing the book profit. The Special Bench of the Delhi Tribunal in ACIT versus Vireet Investment (P) Ltd (2017) 82 taxmann.com 415 (Del SB) held that computation under clause (f) of Explanation 1 to section 115JB(2), is to be made without resorting to computation as contemplated under section 14A read

with Rule 8D. Therefore, we direct the assessing officer to make the computation under section 115JB by following the decision of tribunal in ACIT versus Vireet Investment (P) Ltd. In the result this ground of appeal is allowed.

12. Ground No. 4 relates to charging the interest under section 234B of the Act.

The charging of interest under section 234B is consequential and need no specific adjudication.

13. In the result appeal of the assessee is partly allowed.

Order pronounced in the open court on 9th September 2019.

Sd/-

Sd/-

(R.C. Sharma)	(Pawan Singh)
Accountant Member	Judicial Member

Mumbai, Date : 9th September, 2019

PS:Sk

Copy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Asstt. Registrar, ITAT, Mumbai