



IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI RAJESH KUMAR, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.2370/Mum/2019
(निर्धारण वर्ष / Assessment Years: 2014-15)

White Waves Capital LLP A-305, Phoneix House, 462, Senapati Bapat Marg, Worli, Mumbai-400013.	बनाम/ Vs.	Pr. CIT-21 Piramal Chambers, Lalbaug, Parel, Mumbai- 400012.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABFW2593F		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Ms. Vasanti B. Patel
Revenue by:	Shri Awungshi Gimson (DR)

सुनवाई की तारीख / Date of Hearing: 09/12/2019
घोषणा की तारीख /Date of Pronouncement: 02/03/2020

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 05.03.2019 passed by the Principal Commissioner of Income Tax-21, Mumbai [hereinafter referred to as the "PCIT"] relevant to the A.Y.2014-15 in which the Principal Commissioner of Income Tax-21 has invoked the provisions u/s 263 of the I.T. Act, 1961.

2. The assessee has raised the following grounds of appeal: -

- “1. The Pr. Comm. Of Income tax-21, Mumbai CIT erred in invoking and passing an order under section 263 of the Act for the said year.
2. The CIT erred in stating in the said order that reply filed by the appellant is not acceptable as there is no merits therein without passing a speaking order.
3. The CIT erred in failing to appreciate that the issue of claim for bad debts of Rs.65,68,044/- on account of default in payment of settlement dues by NSEL were duly examined by the AO in scrutiny assessment proceedings by calling for relevant details and allowed the same after due application of mind.”



3. The brief facts of the case are that the assessee filed its return of income on 13.10.2014 declaring total income to the tune of Rs.19,92,780/-. The case was selected for scrutiny under CASS. The assessment was completed u/s 143(3) of the I. T. Act, 1961 dated 13.12.2016 assessing total income to the tune of Rs.19,92,780/-. The assessee was engaged in the finance business services. On appraisal of the record, it was found that the assessee has claimed the bad debts for the default in payment of the settlement dues of Rs.65,68,044/- by NSEL during the A.Y.2014-15 and the same was set off against business income. The assessee was not a member of NSEL and had traded through the broker member i.e. M/s. Philip Commodities India Ltd. and M/s. Indianiviesh Commodity Pvt. Ltd.

4. As per proviso C of Section 43(5) of the I. T. Act, 1961 contract entered into by a member of forward market or a stock exchange in the course of any transaction in the nature of jobbing or arbitrage to guard against loss which may arise in the ordinary course of his business, as such member will not be held to be speculative. It makes absolutely clear that the arbitrage carried out by the member of the stock exchange alone would be considered as non-speculative and such transactions in the nature of arbitrage or jobbing carried out by the client of the member would be considered as speculative in nature.

5. Department of Consumer Affairs in exercise of power conferred on it u/s 27 of the Forward Contract (Regulation) Act, 1952 vide notification no. S. O. 906(E) dt. 5th June, 2007 had exempted all forward contracts of one day duration for the sale and purchase of commodities trade on the NSEL from operation of the provisions of the said Act subject to the following conditions.:-

- “(a) No short sales by members of the Exchange shall be allowed.*
- (b) All outstanding positions of the trade at the end of the day shall result in delivery.*
- (c) The NSEL shall organize spot trading subject to regulation by the authorities regulating spot trade in the areas where such trading takes place.*



- (d) All information or return relating to the trade as and when asked for shall be provided to the Central Government or its designated agency;
- (e) The Central Government reserves the right to impose additional conditions from time to time as it may deem necessary and
- (f) In case of exigencies, the exemption will be withdrawn without assigning any reason in public interest.”

6. On seeing the said facts and circumstances, the Pr. CIT issued the notice and after the reply of the notice, the order u/s 263 of the Act was passed.

7. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. The Pr. CIT has given the following reasons to invoke the provisions u/s 263 of the Act.:-

“From the perusal of the case records, it is noticed that the assessee had claimed bad debts for the default in payment of the settlement dues of Rs.65,68,044/- by NSEL during the A.Y. 2014-15 and the same was set off against business income. However, as the assessee is not a member of NSEL and had traded through the broker members i.e. M/s. Phillip Commodities India Ltd. and M/s. Indianivesh Commodity Pvt. Ltd., hence, the losses due to bad debts should have been considered to be from speculative business and should not have been allowed to written off as bad debts against normal business income of the assessee.”

8. The Ld. Representative of the assessee has argued that the AO has already examined the issue and in this regard the reply has been given vide letter dated 25.10.2016, therefore, in the said circumstances, the issue has been examined and a possible view has been taken, therefore, the order passed u/s 263 of the Act is not liable to be sustainable in the eyes of law. In support of these contention, the Ld. Representative of the assessee has placed reliance upon the decision of the **Visakhapatnam Bench in the case of G.V.R Associates Vs. ITO and Sadhana Stocks & Securities P. Ltd. Vs. Pr. CIT.** It is also argued that the PCIT did not give categorically finding in connection with the issue, therefore, the order u/s 263 of the Act is not liable to be sustainable and in this regard, the Ld. Representative of the assessee has placed reliance upon the decision of the **Vardhman Industries Ltd. Vs. DCIT.** However, on the other hand, the Ld. Representative of the Department has refuted the said contention and



argued that the issue was not examined by the AO and if the AO raised the query than the AO did not inquiry further, hence, the CIT has rightly passed the order u/s 263 of the Act and in this regard the Ld. Representative of the DR has placed reliance upon the decision in the case of **CIT Vs. Ballarpur Industries Ltd., Jeevan Investment & Finance P. Ltd. CIT**. Taking into account all the facts and circumstances and perusing the record. We find that the CIT(A) has invoked the power u/s 263 of the Act on the following grounds.:-

“From the perusal of the case records, it is noticed that the assessee had claimed bad debts for the default in payment of the settlement dues of Rs.65,68,044/- by NSEL during the A.Y. 2014-15 and the same was set off against business income. However, as the assessee is not a member of NSEL and had traded through the broker members i.e. M/s. Phillip Commodities India Ltd. and M/s. Indianivesh Commodity Pvt. Ltd., hence, the losses due to bad debts should have been considered to be from speculative business and should not have been allowed to written off as bad debts against normal business income of the assessee.”

9. The Ld. Representative of the assessee has specifically replied on dated 25.10.2016 lies at page no. 5 of the paper book column no. 8. On appraisal of the above mentioned reply, we find that the AO nowhere discussed the issue and conducted the further inquiry in pursuance of the reply if any. Further we noticed that the latter in which the query was raised by the AO is not on record. The PCIT has given the categorically finding in connection with the issue of bad debts which was not examined. Therefore, no doubt in the circumstances, the law relied by the Ld. Representative of the assessee has placed reliance upon the decision in the case of **Vardhman Industries Ltd. Vs. DCIT** is not applicable to the facts of the present case. However, the Ld. Representative of the assessee has placed reliance upon the decision in the case of **G.V.R Associates Vs. ITO and CIT Vs. Maharashtra Hybrid Seeds Co. Ltd.** which speaks about the verification of the issue but it is not a case of verification and examination of the issue on record. The order passed by AO dated 13.12.2016 is silent on this issue.



It nowhere discussed the issue and gave the categorically finding for acceptance of the claim. By relying upon the decision in the case of **CIT Vs. Ballarpur Industries Ltd., Jeevan Investment & Finance P. Ltd.** **CIT**, we are of the view that the CIT has rightly invoked the power u/s 263 of the Act. Hence, we dismissed the appeal of the assessee.

10. In the result, the appeal of the assessee is hereby ordered to be allowed.

Order pronounced in the open court on this 02/03/2020

Sd/-

Sd

(RAJESH KUMAR)
ACCOUNTANT MEMBER

(AMARJIT SINGH)
JUDICIAL MEMBER

Mumbai; Dated 02/03/2020

Vijay Pal Singh/Sr. PS

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.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai