

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "E", MUMBAI**

**BEFORE SHRI SHAMIM YAHYA (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 5581/MUM/2016  
Assessment Year: 2009-10**

Vahanvati Consultants Private Limited, (Ultimately Successor of ECD Electronics & Electrolysis Private Limited), Office No. 2, 3 <sup>rd</sup> Floor, Crescent Chamber, 56, Tamrind Lane, Fort, Mumbai -400023 PAN: AAACE1894P	<b>Vs.</b>	The Asst. Commissioner of Income Tax, Circle 2(1)(2), Room No. 575, Aayakar Bhawan, Mumbai
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Shri Praveen Jain (AR)

Revenue by : Shri Vijaykumar Menon (DR)

Date of Hearing: 04/01/2021  
Date of Pronouncement: 06/01/2021

**ORDER**

**PER RAM LAL NEGI, JM**

The Appellant/assessee has filed the present appeal against the order dated 17.06.2016 passed by the Commissioner of Income Tax (Appeals)-4 (for short 'the CIT(A), Mumbai, for the assessment year 2009-10, whereby the Ld. CIT(A) has dismissed the appeal filed by the assessee against the assessment order passed u/s 143 (3) r.w.s. 147 of the Income Tax Act, 1961 (for short the 'Act').

2. The assessee has challenged the impugned order passed by the Ld. CIT (A) on the following effective ground:-

1. Ground – I Re-opening proceedings u/s 147 of the Act are bad in law

1 On the facts and circumstances of the case and in law, the Hon'ble Commissioner of Income Tax (Appeals) [“the CIT (A)”] erred in upholding the action of the Assessing Officer (“the AO”) in re-opening the assessment and passing an order u/s 143 (3) read with section 147 of the Income Tax Act, 1961 (“The Act”) without there being there being any valid reason for re-opening.

2. The Appellant therefore prays that the order passed by the AO u/s 143 (3) r.w.s. 147 of the Act be quashed, as being void and bad in law..

Ground – II: Set off of loss from trading in shares against interest income

1. On the facts and circumstances of the case and in law, the CIT (A) erred in upholding the action of the AO in treating the loss, arising from sale of shares held as stock-in-trade as speculation loss by invoking Explanation to section 73 of the Act and not allowing to set off the same against the interest income from business of lending.

2. The Appellant, therefore prays that the aforesaid loss on sale of shares is a non-speculative business loss, hence be allowed to set-off against the interest from business of lending .

Without prejudice to ground – II:

Ground-III: Allocation of finance cost to share trading activity on proportionate basis.

1. On the facts and circumstances of the case and in law, the CIT (A) erred in upholding the action of the AO in allocating the finance cost to the trading activity of the Appellant, without appreciating the fact that the borrowed funds are deployed in granting loans and advances and other current assets (other than stock)

2. Without prejudice to the above, if finance cost is held to be allocated, the Appellant prays that the same be allocated on the basis of total assets and not merely Loans and Advances and stock in trade.

3. The Appellant, therefore, prays that the finance cost not be allocated to the trading activity or the allocation appropriately modified.”

3. The assessee raised the following additional grounds during pendency of the present appeal:

1. *On the facts & circumstances of the case, the CIT (A) erred in enhancing the income by treating income earned from money lending business as income from other sources instead of Business Income without issuing notice u/s 251 (2)*

2. *The Appellant humbly prays that the aforesaid enhancement be deleted.*

*Without prejudice to the additional ground No. 1*

*Additional Ground No. 2: Treatment of Business income as income from other sources*

1. *On the facts & circumstances of the case, the Ld. CIT (A) erred treating income earned from money lending business as income from other sources.*

2. *The Appellant humbly prays that interest earned from money lending business be treated as business income of the Appellant.”*

3. At the outset, the Ld. counsel for the appellant/assessee submitted that assessee has filed an application dated 26.10.2020 for adjournment for the reason that it has opted to settle the dispute under Vivad se Vishwas Act, 2020, therefore the appeal may be kept in abeyance.

4. The Ld. departmental representative did not oppose the aforesaid submissions made by the Ld. counsel.

5. In the case of *M/s. Nannusamy Mohan (HUF) vs. ACIT, TCA No 372 of 2020*, the Hon'ble Madras High Court has dismissed the appeal of the assessee as withdrawn in which the counsel had made the similar submissions before the Hon'ble Court. The observations of the Hon'ble High Court are as under:-

*“3. The learned counsel for the appellant / assessee, on instructions, submitted that the appellant / assessee intends to avail the benefit of Vivad Se Vishwas Scheme ('VVS Scheme' for brevity) and in this regard, the assessee is taking steps to file the application / declaration in Form No. I.*

*4. It may not be necessary for this Court to decide the Substantial Questions of Law framed for consideration on account of certain*

*subsequent developments. The Government of India enacted the Direct Tax Vivad Se Vishwas Act, 2020 (Act 3 of 2020) to provide for resolution of disputed tax and for matters connected therewith or incidental thereto. The Act of the Parliament received the assent of the President on 17<sup>th</sup> March 2020 and published in the Gazette of India on 17<sup>th</sup> March 2020.*

- 5. In terms of the said Act, the assessee has been given an option to put an end to the tax disputes, which may be pending at different levels either before the First Appellate Authority or before the Tribunal or before the High Court or before the Hon'ble Supreme Court of India. Under Section 2(j) "disputed tax" has been defined. In terms of Section 3, where a declarant means a person, who files a declaration under Section 4 on or before the last date files a declaration to the designated authority in accordance with the provisions of Section 4 in respect of tax arrears, then, notwithstanding anything contained in the Income Tax Act or any other law for the time being in force, the amount payable by the declarant shall be determined in terms of Section 3(a-c) thereunder.*
- 6. The First Proviso to Section 3 states that in case, where an Appeal or Writ Petition or Special Leave Petition is filed by the Income Tax authority on any issue before the Appellate Forum, the amount payable shall be one-half of the amount in the table stipulated in Section 3 calculated on such issue, in such a manner as may be prescribed. The second proviso deals with the cases, where the matter is before the Commissioner (Appeals) or before the Dispute Resolution Panel. The third proviso deals with cases, where the issue is pending before the Income Tax Appellate Tribunal. The filing of the declaration is as per Section 4 of the Act and the particulars to be furnished are also mentioned in the Sub Sections of Section 4. Section 5 of the Act deals with the time and manner of the payment and Section 6 deals with Immunity from initiation of proceedings in respect of offence and imposition of penalty in certain cases. Section 9 of the Act deals with cases, where the Act 3 of 2020 will not be applicable.*
- 7. As observed, the assessee is given liberty to restore this appeal in the event the ultimate decision to be taken on the declaration to be filed by the assessee under Section 4 of the said Act is not in favour of the assessee. If such a prayer is made, the Registry shall entertain the prayer without insisting upon any application to be filed for condonation of delay in restoration of the appeal and on such request made by the assessee by filing*

*a Miscellaneous Petition for Restoration, the Registry shall place such petition before the Division Bench for orders.*

8. *In the light of the above, We direct the appellant / assessee to file the Form No.I on or before 20.11.2020 and the competent authority shall process the application / declaration in accordance with the Act and pass appropriate orders as expeditiously as possible preferably within a period of six (6) weeks from the date on which the declaration is filed in the proper form.”*

6. In the light of the said judgment, the Ld. counsel further submitted that the present appeal may be disposed of in terms of the decision of the Hon'ble High Court. Hence, respectfully following the decision of the Hon'ble Madras High Court in the case of *M/s. Nannusamy Mohan (HUF) vs. ACIT (supra)*, we dismiss the present appeal as withdrawn. However, the appellant/assessee is at liberty to file miscellaneous application for restoration of appeal as discussed by the Hon'ble Madras High Court in paragraph 7 of the judgment.

In the result, appeal filed by the assessee for assessment year 2009-2010 is dismissed.

Order pronounced on 6<sup>th</sup> January, 2021 under rule 34 (4) of the Income Tax Appellate Tribunal Rules, 1963.

Sd/-  
(SHAMIM YAHYA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 06/01/2021

Sd/-  
(RAM LAL NEGI)  
JUDICIAL MEMBER

Alindra, PS

**आदेश प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**