

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC"
(Virtual Court Hearing), BENCH KOLKATA

Before Sri Sanjay Garg, Judicial Member

I.T.A. Nos.1598 & 1599/KOL/2019
Assessment Years: 2013-14 & 2014-15

M/s Inter State Oil Carrier Ltd.....Appellant
5th Floor, South Wing,
Poddar Point, 113, Park Street,
Kolkata - 700016.
[PAN : AAACI6037J]

DCIT, Circle-8(1), Kolkata.....Respondent

Appearances by:

Shri Arihant Jain, FCA, appeared on behalf of the appellant.
Smt. Ranu Biswas, Addl. CIT, Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : January 07, 2021

Date of pronouncing the order : January 07, 2021

Hearing through Video Conferencing
ORDER

The present appeals for assessment years 2013-14 & 2014-15 have been preferred by the assessee against the orders of the Commissioner of Income Tax(Appeals)-3 (hereinafter referred to as the 'CIT(A)') dated 25.04.2019 & 26.04.2019.

2. The assessee in these appeals has contested the additions made by the Assessing Officer on account of unexplained unsecured loan. The Assessing Officer has made the impugned additions u/s 68 read with section 115BBE of the Income Tax Act.

3. The assessee has raised the following grounds of appeal in ITA No.1598/Kol/2019 for assessment year 2013-14:

"1. For that based on the facts and circumstances of the case as well as in law, the learned CIT-(A) was not justified in upholding the addition made u/s 68 by the learned AO by treating the loan received by the assessee of Rs. 25 lacs and the consequential interest of Rs. 2.55 lacs paid thereon to one M/s Captain Traders Pvt. Ltd. in spite of the fact that all the documents evidencing the identity and

creditworthiness of the said loan creditor and the genuineness of the transaction with the said loan creditor were submitted to the ld. Assessing Officer.

2. *Without prejudice to anything mentioned in ground number 1 above, for that based on the facts and circumstances of the case as well as in law, the learned CIT-(A) was not justified in upholding the above addition made u/s 68 by the learned AO merely on the basis of some information received from DDIT(Investigation) Kolkata and some report of Departmental Inspector, which were never provided to the assessee or its AR neither at the time of assessment proceedings nor at the time of appellate proceedings thereby denying the right to controvert such findings and hence, violating the principles of natural justice and is thus, liable to be deleted.*

3. *Without prejudice to anything mentioned in ground number 1 & 2 above, for that based on the facts and circumstances of the case as well as in law, the learned AO was not justified in not allowing to set off the unabsorbed depreciation/business loss of the assessee incurred during the year and/or brought forward from previous years with the addition made u/s 68 of Rs. 27.55 lacs as discussed above.*

4. *The appellant assessee craves leave to add, alter, modify and/or submit further or more ground(s) of appeal either before or at any time during the hearing of the appeal.*

4. The assessee has raised the following grounds of appeal in ITA No.1599/Kol/2019 for assessment year 2014-15:

“1. *For that based on the facts and circumstances of the case as well as in law, the learned CIT-(A) was not justified in upholding the disallowance of interest paid of Rs. 3,00,000/- to one M/s Captain Traders Pvt. Ltd. merely on the basis that the corresponding loan taken on which such interest was paid has been considered as bogus and added u/s 68 in the preceding previous year.*

2. *Without prejudice to anything mentioned in ground number 1 above, for that based on the facts and circumstances of the case as well as in law, the learned AO was not justified in not allowing to set off the unabsorbed depreciation/business loss of the assessee incurred during the year and/or brought forward from previous years with the addition made u/s 68 of Rs. 3 lacs as discussed above.*

3. *The appellant assessee craves leave to add, alter, modify and/or submit further or more ground(s) of appeal either before or at any time during the hearing of the appeal.”*

4. The ld. counsel for the assessee at the outset has stated at the Bar that as per instruction of his client, he does not press Ground Nos.1 & 2 of in ITA No.1598/Kol/2019 for the assessment year 2013-14 and Ground No.1 of in ITA No.1599/Kol/2019 for the assessment year 2014-15. These grounds are accordingly dismissed as not pressed.

5. So far as the Ground Nos.3 & 4 in ITA No.1598/Kol/2019 for the assessment year 2013-14 and Ground No.2 in ITA No.1599/Kol/2019 for the assessment year 2014-15 are concerned, the ld. counsel for the assessee has relied upon CBDT Circular No.11/2019 dated 19.06.2019. For the sake of convenience, the CBDT Circular No.11/2019 is reproduced hereinbelow:

Circular No. 1.1 /2019 North-Block,

Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

North-Block, New Delhi, dated the 19th of June, 2019

Subject: Clarification regarding non-allowability of set-off of losses against the deemed income under section 115BBE of the Income-tax Act, 1961 prior to assessment-year 2017-18-reg.

With effect from 01.04.2017, sub-section (2) of section 115BBE of the Income-tax Act, 1961 (Act) provides that where total income of an assessee includes any income referred to in section(s) 68/69/69A/69B/69C/69D of the Act, no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provisions of the Act in computing the income referred to in section 115BBE(1) of the Act.

2. In this regard, it has been brought to the notice of the Central Board of Direct Taxes (the Board) that in assessments prior to assessment year 2017-18, while some of the Assessing Officers have allowed set off of losses against the additions made by them under Section(s) 68/69/69A/69B/69C/69D, in some cases, set off of losses against the additions made under Section 115BBE(1) of the Act have not been allowed. As the amendment inserting the words 'or set off of any loss' is applicable with effect from 1st of April, 2017 and applies from assessment year 2017-18 onwards, conflicting views have been taken by the Assessing Officers in assessments for years prior to assessment year 2017-18. The matter has been referred to the Board so that a consistent approach is adopted by the Assessing Officers while applying provision of section 115BBE in assessments for period prior to the assessment year 2017-18.

3. The Board has examined the matter. The Circular No. 3/2017 of the Board dated 20th January, 2017 which contains Explanatory notes to the provisions of the Finance Act, 2016, at para 46.2, regarding amendment made in section 115BBE(2) of the Act mentions that currently there is uncertainty on the issue of set-off of losses against income referred to in section 115BBE. It also further mentions that the pre-amended provision of section 115BBE of the Act did not convey the intention that losses shall not be allowed to be set-off against income referred to in section 115BBE of the Act and hence, the amendment was made vide the Finance Act, 2016.

4. Thus keeping the legislative intent behind amendment in section 115BBE(2) vide the Finance Act, 2016 to remove any ambiguity of interpretation, the Board is of the view that since the term 'or set off of any loss' was specifically inserted only vide the Finance Act 2016, w.e.f. 01.04.2017, an assessee is entitled to claim set-off of loss against income determined under section 115BBE of the Act till the assessment year 2016-17.

5. The contents of this Circular may be circulated widely for information of all stakeholders and departmental officers. The pending assessments and litigations on this issue may be handled accordingly.

6. Hindi version to follow.

Sd/-
(Rajarajeswari R.)
Under Secretary-ITA.II, CBDT

6. The ld. counsel in the light of above CBDT's Circular has submitted that as per the Circular, the assessee is entitled to set off of unabsorbed losses against the income determined section 68 r.w.s. 115BBE for assessment years prior to assessment year 2017-18. The ld. counsel for the assessee therefore has submitted that in the light of

the above Circular, the assessee may be given benefit of set off of income determined u/s 68 of the Act against unabsorbed loss as the assessment years involved in these appeals are 2013-14 and 2014-15 which are prior to assessment year 2017-18. The Id. Departmental Representative has also fairly agreed that the assessee is entitled to the set off of income against losses as per the above CBDT Circular.

6. In view of the above, these grounds of the appeals of the assessee are hereby allowed and the Assessing Officer is directed to give the benefit of set off of losses against income determined for the assessment year under consideration as per the aforesaid CBDT Circular. Both the appeals of the assessee are treated as partly allowed.

7. In the result, the appeals of the assessee are partly allowed.

Kolkata, the 7th January, 2021.

Sd/-
[Sanjay Garg]
Judicial Member

Dated : 07.01.2021
RS

Copy of the order forwarded to:

1. *M/s Inter State Oil Carrier Ltd*
2. *DCIT, Circle-8(1), Kolkata*
3. *CIT(A)-*
4. *CIT- ,*
5. *CIT(DR),*

True copy

By order

Assistant Registrar , Kolkata Benches