

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.135/Bang/2018
Assessment year : 2014-15

M/s Flight Raja Travels Pvt. Ltd., Block B, Level 04, Magnolia Outer Ring Road, Manyata Embassy Business Park, Nagawara, Bengaluru-560 045.  PAN – AABCF 0520 E	Vs.	The Asst. Commissioner of Income- tax, Circle-3(1)(1), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Smt. Sheethal, Advocate
Respondent by	:	Shri Priyadarshi Mishra, Addl.CIT(DR)

Date of hearing	:	04.10.2021
Date of Pronouncement	:	11.10.2021

**ORDER**

**Per Chandra Poojari, Accountant Member**

This appeal by the assessee is directed against the order of the CIT(A)-3, dated 27.11.2017 for the assessment year 2014-2015.

2. The assessee raised following grounds :-

- “1. The learned CIT (A) erred in passing the order in the manner he did*
- 2. The learned CIT(A) passed the order without giving proper Opportunity to the Appellant to submit the details.*
- 3. The learned CIT (A) ought to have allowed the advances written off to the extent of Rs. 5,54,09,33 1 as bad debts or in alternative business loss, since the same had arisen during the course of business incidental to business of the appellant.*
- 4. The learned CIT (A) erred in confirming the addition of Rs. 1,28,30 1 U/S 41 of the Act.*
- 5. The learned CIT (A) ought to have appreciated that merely because trading liability is being known by Appellant in his book of Accounts for years and further merely because Assessee is unable to provide confirmation, section 41 is not attracted as long as the liability is not written off in books of Assessee or there is any benefit derived by Assessee by cessation of liability*
- 6. The learned CIT (A) ought to have appreciated the case law relied by the Appellant and ought to have deleted the same.*
- 7. The CIT (A) erred in confirming levying of the interest u/s 244A of the Act.*
- 8. For these and such other grounds that may be urged at time of hearing, the Appellant prays that the appeal may be allowed.”*

3. The first ground for our consideration is with regard to allowability of sum of Rs.5 crores advanced to Blue Ocean Cruises Lines Pvt. Ltd., for the purpose of getting 30% shareholding in a joint venture to be set up between

assessee-company and Mr.Oneil Raina for investing into M/s Blue Ocean Crusies Lines Pvt. Ltd.

4. The contention of the learned AR is that the said amount has been invested in M/s Blue Ocean Crusies Lines Pvt. Ltd. for allotment of 30% shares in the company vide MOU dated 27/8/2010 entered with triparte agreement between Oneil Raina Khosa and M/s Blue Ocean Crusies Lines Pvt. Ltd. As per this agreement, assessee has to invest Rs.5 crores in that company i.e M/s Blue Ocean Cruises Lines Pvt. Ltd. for the purpose of allotment of 4,286 equity shares and invested the said amount. The Cruise owned by M/s Blue Ocean Crusies Lines Pvt. Ltd. met with an accident and consequently the company was shutdown. No shares were allowed to the assessee company. Hence the said amount became irrecoverable and written off in the books of account of the assessee, therefore, the same has to be allowed as 'business loss' incurred by the assessee.

5. The ld.DR submitted that it is a 'capital loss' on account of 'loss of investment' and cannot be allowed as 'business loss'. He supported the order of CIT(A).

6. The Id.AR relied on the judgment of Hon'ble Karnataka High Court in ITA No.184 of 2013 dated 9/9/2020 in the case of M/s ACE Designers Ltd., wherein held that

*The Bombay High Court dealt with the issue viz., where an assessee made an investment in its 1000/0 subsidiary for business purpose, the loss on sale of investment would be treated as business loss. The aforesaid issue was answered in the affirmative by the Bombay High Court in COMMISSIONER OF INCOME-TAX VS. COLGATE PALM OLIVE (INDIA) LTD. supra and it was held that investment was made for commercial expediency. The aforesaid decision has been upheld by the Supreme Court as has been noted by Income Tax Appellate Tribunal, New Delhi Bench in its order dated 31.12.2018 in COSMOS INDUSTRIES LTD vs. DCIT. In PATNAIK & CO. LTD. supra, it was held that the assessee did not hold on the investment the loan indefinitely and there was no enduring advantage and the investment did not bring in an asset of a capital in nature and the loss suffered by the assessee was a revenue loss and not a capital loss. In INVESEA INDUSTRIAL CORPORATION LTD., supra, the division Bench of the High court dealt with a question whether the finances made by the assessee to manage the company were part of or incidental to carrying on a business by the assessee and since, the managed company went into liquidation the advances became irrecoverable, the loss sustained by the assessee shall be regarded as trading loss.*

7. In the backdrop of aforesaid well settled legal position, the facts of the case in hand may be adverted to. From the perusal of the note annexed to the income filed before the assessing officer, it is evident that assessee had set up an establishment in USA during Financial Year 1992-93 for the exclusive purpose of marketing assessee's products and for promoting its business in US and Latin America. It has further been stated in the note that looking to the stringent norms of product liability in US market, the assessee decided to have a separate Wholly Owned Entity in the US having limited liability. The approval for aforesaid purpose was obtained from the Reserve Bank of India. The assessee therefore, invested funds in equity for meeting the revenue expenses of Wholly Owned Subsidiary Company's balance sheet. However, WOS could not perform upto company's expectations and therefore, it was decided to wind up WOS operations in USA. While granting approval for closure of WOS, RBI permitted the company to write off the whole of investment made in WOS and unrealized export receivables. The assessee therefore, made a claim to write off the loss of Rs.3,41,23,200/- as revenue expenses allowable under the provisions of the Act.

8. Thus, from perusal of the aforesaid facts, it is evident that the issue involved in this appeal is covered by decision of Bombay High Court in Colgate Palm Olive (India) Ltd. supra, which has been upheld by the Supreme Court. The ratio of aforesaid decision is where the assessee makes investment in its 100% subsidiary for business purpose, loss or sale of

*investment has to be treated as business loss of the assessee. In the instant case, the assessee made investment in the shares of WOS for the business purpose i.e., for the enhancement of business activity of the assessee in global market which primarily related to business operation of the assessee. The WOS suffered losses and therefore the assessee wrote off the assessment of Rs.3,41,23200/- as business loss. The investment was made for the purpose of extension of business activity and not with a view to creating capital asset in the form of holding shares. It is also pertinent to note that the assessee never acquired any capital asset or expenditure of enduring benefits to WOS and there is no relinquishment or transfer of capital asset to any third party.*

*In view of preceding analysis, the first substantial question of law is answered in the negative and in favour of the assessee. It is not necessary for us to answer the remaining substantial question of law in view of our answer to the first substantial question of law. In the result, the order of the Tribunal dated 14.12.2012 to the extent of the findings contained against the assessee is quashed.*

*Accordingly, the appeal is allowed.*

7. We have heard both the parties and perused the material on record and have also gone through the judgment of the Hon'ble Karnataka High Court (supra). In that case the amount invested by ACE International Inc.,

was allowed as a 'business loss' on account that amount was invested for the enhancement of business activity of the assessee in global market which primarily related to business exigencies of the assessee and it was wholly owned subsidiary of assessee company, which had suffered loss, therefore, the assessee treated the amount as business loss. The investment was made for the purpose of expansion of business activity of the assessee and not with a view to creating 'capital asset' in the form of holding shares. However, in the present case, the facts shows that assessee made investment of Rs.5 crore by the shares of M/s Blue Ocean Cruises Lines Pvt. Ltd. and written off the claim as loss. The present facts of the assessee's case shows that the investment was made not for the purpose of expansion of business activity but it was made with a view to creating capital asset in the form of holding shares. Being so, the judgment relied on by the ld.Counsel of the assessee supported the case of revenue rather than assessee's case.

8. We also find that in the case of CIT(A) Vs. United Breweries Ltd., 321 ITR 546 wherein, Hon'ble Karnatka judicial high court held as follows:-

*"Even on the accepted legal principles, a 'debt' is an expression well-known in legal parlance and is an amount*

*which is a legal obligation which if not discharged will give rise to a claim in favour of the creditor. An amount which is said to be simply advanced for helping a business associate definitely cannot constitute a debt when the assessee had not placed any material to indicate that the business associate or any associate of the subsidiary of the assessee had a legal obligation for repayment of the amount. The amount advanced is more towards the issue of shares in future if a company is to be brought into existence and in the hope of getting shares allotted in the company. An expenditure incurred for securing shares per se is a 'capital expenditure' and never 'revenue expenditure' and therefore the amount never qualifies for deduction either under s. 36 or S. 37. An expenditure in the nature of 'capital expenditure' straightaway goes out of the purview of s. 37 unless the amount fully qualifies in terms of the other statutory provisions and in the instant case, in terms of s. 36 (1)(vii) there is no question of 'written off irrecoverable debts' which claim inevitably fails and the matter does not warrant interference even for a remand for recording a finding on nonexistent material and therefore this claim is rejected."*

9. Being so, fact of the present case is as similar to one considered by the jurisdictional High Court as above. Accordingly, We are of the opinion that the claim of assessee cannot be held as 'business loss' rather it is a 'capital loss'. Accordingly, this ground of the assessee is dismissed.

10. The assessee also raised additional ground with the petition for the admission of the same, which read as follows:-

*“ 1. The learned A.O. has erred in law by disallowing the assessee business loss u/S.37(1) to the Appellant.  
2. The learned A.O. failed to appreciate that the advances made were in the nature of trade and not for earning dividend, and since the same was done in the course of business, it would result in a business loss and the same would be allowable as a Business Loss u/S.37(1) of the Act.  
3. The learned A.O. ought to have appreciated that Section 37(1) of the Act governs the claim of expenditure incurred wholly and exclusively for the purpose of business and hence it is submitted that the loss arising from expenditure being an expenditure made by the appellant wholly and exclusively for the purpose of business is entitled for write off u/S.37(1) of the Act.  
4. Without prejudice, the addition made is bad in law and ought to be deleted in toto.”*

11. We have carefully gone through the additional ground raised by the assessee and also petition filed along with this additional ground. In our opinion, there is a good and sufficient reason in not raising this ground on earlier occasion. Accordingly relying on the judgment of Hon'ble Supreme Court in the case of NTPC 229 ITR 383, we admit the additional grounds, as there is no question of investigation of fresh facts on this issue. Accordingly additional ground is admitted.

12. The additional ground in this appeal is with regard to treatment of investment in shares, lee deposits – MDLR airlines and miscellaneous deposits as 'business loss'.

With regard to investment in shares as 'business loss', we have already held in earlier paragraph that it is a 'capital loss' and hence there is no question of adjudicating this ground on this issue by way of additional ground. Accordingly, with regard to the treatment of loss of investment is a 'capital loss', therefore, additional ground related to this issue is dismissed.

13. With regard to treatment of loss of Lee deposits and miscellaneous deposits, we will adjudicate this issue along with the main ground of appeal.

14. Next ground is with regard to treating below mentioned amount as capital loss.

- 1) Lee deposits - MDLR Airlines - Rs.29,35,650/-
- 2) Miscellaneous deposits - Rs.24,73,681/-

15. An amount of Rs.29,35,650/- was given to MDLR Airlines as a deposit for ticket booking. According to assessee, the said amount became irrecoverable on account of shutdown of airline operation and the same has claimed as bad debt. Similarly, miscellaneous deposit of Rs.24,73,681/- given as deposit to various service providers and business of those people were

shutdown and same is claimed as bad debt u/s 37(1) of the Act.

16. We have heard this issue and perused the material on record. Before the lower authorities, the assessee claimed bad debt u/s 36(2) of the Act which was disallowed on the reason it has not satisfied on decisions laid down in sec. 36(2) of the Act. However, before us, the assessee claimed it as deduction u/s 37 of the Act and which was not examined by the lower authorities. Hence, in the interest of justice, we remit the issue to the files of AO for fresh consideration. The assessee has to place necessary evidences viz., name and address of the parties concerned. With these observations, these two issues are remitted to the files of AO for fresh consideration.

17. Next ground is with regard to confirmation of Rs.1,28,301/- u/s 41(1) of the Income-tax Act.

18. The assessee has shown the above amount as outstanding from 5 parties and no confirmation was filed by the assessee from those 5 parties. Hence, the above amount was considered as cessation of liability u/s 41(1)

of the Act. Before us also assessee was not able to produce any evidence to suggest that the said amount was actually outstanding on the date of balance sheet. Hence, lower authorities justified in treating it as a cessational liability by invoking the provisions of sec. 41(1) of the Act.

19. In the result, the assessee's appeal is partly allowed for statistical purposes.

Order pronounced in the open court on 11<sup>th</sup> Oct, 2021.

Sd/-

Sd/-

**(BEENA PILLAI)**

**( CHANDRA POOJARI)**

Judicial Member

Accountant Member

Bangalore,

Dated, Oct, 2021

/ vms /

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore.

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2. Date on which the typed draft is placed  
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3. Date on which the approved draft comes to Sr.P.S  
.....
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before the dictating Member .....
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