

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

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.1873/M/2018  
Assessment Year: 2003-04**

M/s. Triumph Securities Ltd., Radha Bhuvan, 1 <sup>st</sup> Floor, 121, Nagindas Master Road, Fort, Mumbai – 400 023 <b>PAN: AAAC2152P</b>	Vs.	ACIT, Central Circle (40), Aayakar Bhavan, M.K. Marg, Mumbai - 400020
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Rajiv Khandelwal & Poojan Mehta  
Revenue by : Dr. P. Daniel, D.R.

Date of Hearing : 16.07.2021  
Date of Pronouncement : 08.10.2021

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal has been preferred by the assessee against the order dated 04.10.2017 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2003-04.

2. The issue raised in ground No.1 is against the ex-parte order passed by Ld. CIT(A) thereby not affording reasonable opportunity of hearing to the assessee. At the time of hearing, this ground is not pressed by the assessee and therefore the same is dismissed as not pressed.

3. The issue raised in ground No.2 is against the order of Ld. CIT(A) upholding the order of Assistant Commissioner of Income

Tax(hereinafter referred to as the ACIT) thereby affirming a sum of Rs.4,21,55,018/- being bad debts claimed under section 36(1)(vii) read with section 36(2) of the Act on the ground that assessee has not filed any details during the assessment and remand proceedings.

4. The facts in brief are that the assessment under section 143(3) of the Act was completed on 12.01.2006 assessing total loss of Rs.4,86,500/- as against the returned loss of Rs.9,06,77,713/- by making two disallowances one in respect of depreciation on BSE card Rs.10,28,320/- and second disallowance of bad debts of Rs.4,21,55,018/-. In the first round of litigation, the Tribunal set aside the issue to the file of the AO for fresh adjudication. Thereafter, the statutory notices were duly issued and served upon the assessee and even in set aside proceedings the AO disallowed by these items as disallowed in the first round. As regards the bad debt written off which is in dispute, the AO observed that assessee has not filed any confirmation from the parties in the set aside proceedings also and accordingly the same was added to the income of the assessee in the assessment framed under section 143(3) read with section 254 of the Act dated 27.12.2011.

5. In the appellate proceedings, the Ld. CIT(A) also dismissed the appeal of the assessee by observing and holding as under:

**“6.0.** The **Second Ground** of appeal is against the disallowance of Rs. 4,21,55,018/- being Bad Debts written off. The Hon'ble ITAT observed that the sum receivable by the share broker from the clients for transactions undertaken on their behalf is a trading debt and unrecovered part has to be allowed as deduction. The ITAT held that the appellant is entitled to deduction in respect of the amount becoming unrecoverable from its clients. However, the deduction has to be restricted to the amount determined after reducing the sum recoverable from sale proceeds of shares with the appellant. In view of the Hon'ble ITAT's directions,

the Assessing Officer wanted to examine the recoverable part of the debts. However, the appellant didn't comply. Vide letter dated 4th October, 2013 addressed to the CIT(A)-38 the appellant mentioned "The Tribunal by its order dated 10.08.2011 has remanded the matter back to the files of the Assessing Officer for a limited issue of reducing from debtors, the amount recoverable from sale proceeds of shares, if any, held by our clients of such debtors. We on behalf of our abovenamed clients submit that there are no securities held by our clients and hence, there could have been no adjustment from the debtors. Thus, the entire bad debt debited to the profit and loss account ought to be allowed as deduction." However, it is on the appellant to show that the debt have been offered as income in the previous years, identify the debtors and also prove that there are no securities held by the appellant on behalf of the clients which can be sold to recover the debts. The appellant has done nothing beyond submitting this letter. Even during the remand proceedings there was absolutely no compliance to the opportunities given by the Assessing Officer to examine this issue. In view of the utter non-compliance by the appellant to furnish the requisite details as per the directions of the Hon'ble ITAT, I am compelled to dismiss this ground of appeal.

It is noteworthy to mention that the appellant didn't file these details before the Assessing Officer during the assessment proceedings and during the remand proceedings in spite of the opportunities given as many as 20 times, the appellant has not complied. In view of this, it is presumed that the appellant has got nothing in its possession to defend its stand. This ground of appeal is dismissed."

6. After hearing the rival contentions of both the parties and perusing the material on record including the appellate order passed by Ld. CIT(A) we observe that the disallowance was confirmed on the ground that assessee has not filed any information before the AO for verification of these bad debts. The Ld. CIT(A) noted in the order that vide letter dated 04.10.2013 addressed to CIT(A)-38 the assessee mentioned that the Tribunal by its order dated 10.08.2011 has remanded matter back to the file of the AO for a limited issue for reducing from debtors amount receivable from sale proceeds of shares if any held by the assessee on behalf of such debtors. We find that the assessee submitted before ld CIT(A) that there were no security held and hence there is no question of adjustment of sale proceeds of shares from the debtors and thus the entire bad

debts debited to P&L account are to be allowed. The Ld. CIT(A) further observed that the assessee has not filed any evidences even during the course of set aside proceedings before the AO as well as before him despite the several opportunities being given to the assessee and accordingly assessee has nothing to defend itself and accordingly the appeal was dismissed. However, we find merit in the contention of the Ld. A.R. that when the assessee is not holding any share it has rightly filed a letter dated 04.10.2013 before the appellate authority claiming that there are security held by the assessee and hence there could not have been any adjustment from the debtors of any proceeds of sales of security/shares. In our opinion, the bare statement on the part of assessee is enough to strengthen its claim made towards claim of bad debts. The Ld. CIT(A) has not stated what type of evidences the assessee could have produced before the Ld. CIT(A) except mere mentioning by way of letter dated 04.10.2013 submitting therein that assessee is not holding any securities on behalf of its clients. In our opinion the claim of the assessee is as per the provisions of section 36(1)(vii) read with section 36(2) of the Act. Accordingly, ground No.2 is allowed.

7. The issue raised in ground No.3 is against the order of Ld. CIT(A) upholding the order of the AO in considering Rs.9,03,12,515/- purported to be as per order giving effect to the order of Tribunal.

8. The ld. A.R. of the assessee submitted before the Bench that the assessee has never been served the order of giving effect to the order of the Tribunal and therefore the amount of loss is not ascertainable. The Ld. A.R. therefore, prayed that the

matter may be restored to the file of the AO to look into the matter and to ascertain how this figure of loss of Rs.9,03,12,515/- has been arrived at.

9. The Ld. A.R. fairly agreed to the contention of the Ld. D.R. on the issue of restoring the ground No.3 to the file of the AO as to how this amount of loss has been arrived at.

10. After hearing both the parties and perusing the material on record, we are restoring the ground NO.3 to the file of the AO with the direction as to how this amount of loss has been arrived at. Needless to say that assessee is to be given a reasonable opportunity of hearing. Accordingly, the ground is allowed for statistical purposes.

11. In the result, appeal of the assessee is allowed.

**Order pronounced in the open court on 08.10.2021.**

**Sd/-**  
**(Pavan Kumar Gadale)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(Rajesh Kumar)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated: 08.10.2021.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.