

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

SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 1949/MUM/2018  
(ASSESSMENT YEAR: 2007-08)

Income Tax Officer-3(3)(4), Mumbai,  
Room No. 672, 6<sup>th</sup> Floor,  
Aayakar Bhavan, M.K. Road,  
Mumbai - 400020

..... Appellant

Vs

M/s Venktesh Securities Ltd.,  
1010, Maker Chamber-V,  
Nariman Point,  
Mumbai - 400020  
[PAN: AACV5479K]

..... Respondent

Appearances

For the Appellant/Department : Shri S N Kabra  
For the Respondent/Assessee : Shri A K Tribrewal

Date of conclusion of hearing : 16.03.2022  
Date of pronouncement of order : 14.06.2022

**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. The present appeal was filed by the Appellant/Revenue against the order dated 17.01.2018, passed by the Ld. Commissioner of Income Tax (Appeals)-4, Mumbai [hereinafter referred to as 'the CIT(A)'] in appeal [CIT(A)-8/744/14-15] for the Assessment Year 2007-08, whereby the Ld. CIT(A) had allowed the appeal filed by the Assessee against the Assessment Order dated 17.03.2015 under section 143(3) read with Section 147 and Section 263 of the Income Tax Act, 1961 [hereinafter referred to as 'the Act']. The present appeal was disposed off by the

Tribunal vide order, dated 27.08.2019, however, pursuant to the miscellaneous applications filed by the Appellant/Revenue (MA No. 126/Mum/2020), the order dated 27.08.2019 was recalled, vide order dated 02.12.2021, for the limited purpose of adjudication of Ground No. 3 pertaining to set off of losses under various heads of income against income under Section 68 of the Act. Accordingly, the solitary ground of appeal before us is as under:

*“3. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has not appreciated the fact that as per provision of Section 71 of the IT Act, the income ascertained u/s 68 of the IT Act cannot be set off against the income assessed under various heads of income prescribed u/s 14 of the IT Act and failed to appreciate the spirit behind the insertion of the words [for set off of any loss] by the Finance Act 2016 to section 115BBE of the IT Act”.*

2. Brief facts relevant for adjudication of the above ground are that the Assessee filed its return of income on 19.10.2007 declaring total loss of INR 68,76,439/-. Vide order dated 31.01.2013 assessment was completed upon the Assessee under Section 143(3) read with Section 147 of the Act at total income of INR 1,37,00,679/-. Thereafter, vide order dated 31.03.2014 passed under Section 263 of the Act, the aforesaid assessment order dated 31.01.2013 was set aside. During the assessment proceedings which followed, the Assessing Officer completed the assessment at total income of INR 2,39,28,000/- vide order dated 17.03.2015 passed under Section 143(3) read with Section 147 and 263 of the Act. The Assessing Officer made an addition of INR 6,34,500/- on account of cash deposits

and an addition of INR 33,38,000/- on account of unexplained credits under Section 68 of the Act. Further, the Assessing Officer did not permit the Appellant to set off business losses of INR 41,52,061/- against the aforesaid additions. The relevant findings of the Assessing Officer are as under:

*“6.2.23. A combined reading of Sections 14, 66 and 71 amply make it clear that set off of business loss (one of the heads of income specified in Section 14) is not permissible against deemed income being unexplained cash credit within the meaning of Section 68, as the same does not fall under any heads of income as specified in Section 14. Hence, it is clear that set off of business loss is not permissible against unexplained cash credits.*

*6.2.24. The above proposition finds full support in the judicial pronouncements of the Honourable Punjab and Haryana High Court, in the cases of Dulari Digital Photo Services Private Limited vs. CIT (2013) 94 DTR 259, as also of the Gujarat High Court, in the cases of Fakir Mohmed Haji Hasan Vs. CIT (2001) 247 ITR 290. It has been held in both of these cases that where income is not relatable to any known or any bona fide source, such income cannot be classified under any other heads of income specified in Section 14 and therefore the benefit of set off of losses under any other heads of income against the income chargeable to tax by virtue of deeming provisions of Sections 68, 69, 69A, 69B, 69C & 69D would not be available to the assessee.*

*6.2.25. As regards the reliance placed by the assessee on the judgement of the Hon'ble Madras High Court in the case of CIT Vs. Chensingh Ventures (Supra), it is most respectfully stated that this judgement of the Hon'ble Madras High Court is delivered prior to the judgement of*

*the Hon'ble Punjab & Haryana High Court delivered in the case of Dulari Digital Photo Services Private Limited vs. CIT (Supra). In view of the same also, the reliance of the assessee on the judgement in the case of CIT Vs. Chensingh Ventures does not help the cause of the assessee.*

*6.2.26. In the light of the above, it is held that the business loss of the assessee for the assessment year under consideration, being not allowable to be set off against the income assessed as unexplained cash credit/Income, from undisclosed sources, U/s 68, the set off is denied.”*

3. Being aggrieved, the Assessee preferred an appeal before the CIT(A). The CIT(A) deleted the additions made by the Assessing Officer on account of unexplained credits and cash deposits. Further, the CIT(A) also allowed the ground relating to set off under Section 71 of the Act without dealing with the reasoning provided by the Assessing Officer for disallowing the set-off or the submission of the Assessee holding as under:

*“3.4.1 During the course of appellate proceedings, the authorised representative of the appellant discussed the grounds and subsequently made the written submissions dated 04.01.2018. The relevant extract of the same corresponding to the above ground is reproduced at para 3.1.1. hence is not reproduced here for the sake of brevity.*

*3.4.2 This ground relates to denial of set off of carry forward/brought forward losses pertaining to earlier years against the current year income. The assessing officer is directed to compute and allow the same after verification,*

*in accordance with the law. This ground is allowed for statistical purposes.”*

4. Being aggrieved, the Revenue filed appeal before the Tribunal challenging the order of CIT(A) permitting set off as well as deletion of additions on account of cash deposits and unexplained credits. Vide order, dated 17.01.2018, passed by the Tribunal has confirmed the order of the CIT(A) and dismissed the grounds of the Revenue against order of CIT(A) deleting the addition of INR 6,34,500/- on account of cash deposits and an addition of INR 33,38,000/- on account of unexplained credits under Section 68 of the Act. However, Ground No. 3 pertaining to set off was not adjudicated upon as per Revenue and therefore, the same is before us as per order, dated 02.12.2021, passed in MA No. 126/Mum/2020.
5. We note that Co-ordinate Bench of the Tribunal had, in the case of the Assessee for the Assessment Year 2008-09 (ITA No. 1950/Mum/2018, decided on 14.10.2019) disposed of identical issue as under:

*“ 10. The next issue raised by Revenue is as regards to set off of losses against income assessed under various heads. For this Revenue has raised the following ground No. 3:-*

*“3. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has not appreciated the fact that as per provisions of Section 71 of the Act, the income ascertained under Section 68 of the IT Act cannot be set off against the income assessed*

*under various heads of income prescribed under section 14 of the IT Act and failed to appreciate the spirit behind the insertion of the words or set off of by the Finance Act 2016 to section 115BBE of the IT Act?"*

*11. We noted that the main issues and additions deleted by CIT(A) have been affirmed and hence, the addition is not surviving, there is no question of applicability of provisions of section 71 of the Act. Hence, this ground has become infructuous and dismissed."*

6. In the present case also the additions were deleted by CIT(A) and the order of CIT(A) has been affirmed by the Tribunal vide order dated 27.08.2019 and therefore, there is no question of applicability of provisions of Section 71 of the Act in the facts and circumstances of the present case. Ground No. 3 is, accordingly, dismissed as being infructuous.

In view of the above and the order dated 17.01.2018 passed by the Tribunal, the appeal of the Revenue is dismissed.

Order pronounced on 14.06.2022.

*Sd/-*

(Om Prakash Kant)  
Accountant Member

*Sd/-*

(Rahul Chaudhary)  
Judicial Member

मुंबई Mumbai; दिनांक Dated : 14.06.2022  
*Alindra, PS*

**आदेश की 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