

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

ITA No.760/PUN/2019

निर्धारण वर्ष / Assessment Year : 2014-15

M/s. Weikfield Products Corporation LLP 3A, 3 rd Floor, Vascon Weikfield Chambers, Shri Satpal Malhotra Marg, Nagar Road, Pune – 411014 PAN : AABFW2289C	Vs.	Pr.CIT-4, Pune
Appellant		Respondent

Assessee by Shri Sarvesh Khandelwal
Revenue by Shri Saradar Singh Meena

Date of hearing 12-07-2022
Date of pronouncement 21-07-2022

आदेश / ORDER

PER S.S. GODARA, JM :

This assessee's appeal for AY 2014-15 arises against the Pr.CIT-4, Pune's order dated 26-03-2019 passed in case No. PN/Pr.CIT-4/263/2018-19/3348 in proceedings under Section 263 of the Income Tax Act, 1961, in short 'the Act'.

Heard both the parties. Case file perused.

2. Coming to the assessee's sole substantive grievance that the PCIT herein has erred in law and on facts in exercising his section

263 revision jurisdiction thereby terming the corresponding regular assessment framed by the Assessing Officer as an erroneous one causing prejudice to the interest of the Revenue, we note at the outset that the former's impugned directions in issue read as under:

"2. On verification of P&L account, it is found that the assessee has claimed bad debts written off of Rs.1,18,60,119/-. During the assessment proceedings, it was explained that the bad debts are on account of amount receivable from Anand Rathi Commodities Ltd. towards business income of purchase and sale of commodities. The assessee firm has sold commodity on 25.06.2013 for Rs. 1,26,07,959/- out of which the firm has received Rs.7,47,485/- till 31.03.2014, balance amount of Rs. 1,18,60,604/- has not been received till date and hence balance amount is considered as bad debts. The Assessing Officer has allowed the claim of bad debts while completing the assessment order.

2.1 On further verification of assessment record, it is seen that the assessee has carried out trading of commodities on National Spot Exchange Ltd.(NSEL) through the broker, M/s Anand Rathi Commodities Ltd. The assessee had executed contracts of purchase and sale of commodities. The assessee claimed bad debts on account of default in payment of settlement of dues of Rs.1,18,60,119/- by NSEL. The bad debts were due to non-payment of dues on the forward contracts which were illegal as per the FMC. The assessee did not take delivery of the goods in any of the cases and also did not have any infrastructure to store the goods purchased.

The Honorable Bombay High Court has ruled this nature of trade carried out on NSEL as illegal trades. In this case the assessee is not a member of NSEL and has traded through the broker member, M/s Anand Rathi Commodities Ltd. and hence even if the transactions are considered as arbitrage transaction it is only a speculative transaction. The losses due to above transaction are to be considered from speculative business and are not allowed to be set off against the normal business income as per the provisions of Section 43(5) r.w.s. 73 of the IT. Act,1961. However, the assessing Officer has not verified the issue of speculation transaction. Without proper verification, the AO allowed the deduction of bad debts claimed by the assessee. Hence, the assessment order passed u/s 143(3) of the IT Act dated 03.12.2016 is erroneous and prejudicial to the interest of revenue.

3. Accordingly, a show cause notice u/s 263 of the Income Tax Act was issued to the assessee by this office on 31/01/2019, requesting the assessee to explain as to why the bad debts written off by the assessee should not be disallowed and the assessment order should not be revised u/s 263 of I.T. Act. In response to the show cause notice, the assessee vide its authorized representative, Shri R.G.Nahar, C.A. provided the reply on 12/02/2019. The reply of the assessee is reproduced as under:

“1. The claim of bad debts was duly enquired in the course of assessment and was replied by the assesses twice on 08/11/2016 as well as 09/03/2017 and it was explained that the amount receivable from Anand Rathi Commodity Ltd. towards business income of purchase and sales commodities is written off as bad debts.

The LLP was doing regular purchase sale transactions on National Spot Exchange Ltd through the broker namely, Anand Rathi Commodities Ltd. all transactions of purchase as well as sale are duly evidenced by the Spot Trade Confirmation document (purchase or sale as the case may be issued by Anand Rathi Commodities Ltd.). The payment made or received is through the regular banking channels.

The transactions started in FY 2012-13 related to AY 2013-14. The total commodity stock purchases in this year Rs 2,51,42,122/- whereas the sales effected were amounting to Rs 1,26,08,079/- there was closing stock of Rs 1,27,07,648/- all these figures are reflected in final accounts in P&L A/c (purchase and sales) and the final stock in balance sheet. The closing stock as on 31/03/2013 has been carried forward as opening stock amounting to Rs 1,27,07,648/-.

In AY 2014-15 further purchases vide invoice no. 8,17 and 27 from Anand Rathi's commodities Ltd. of Rs.3,75,70,633/- have been received and recorded in books as the purchases. There were also four sales invoices amounting to Rs 5,09,80,101/- these are also booked as sales in final accounts. Finally considering the amounts received/realized the final amount receivable, which is never, received amounting to Rs 1,18,60,119/- was written as bad debts.

2. It is well known fact that trading in their platform on National Spot Exchange Ltd. was stopped since 12/07/2014 and thousands and crores of rupees was the loss due to the fact of NSEL defaulted the settlement of the contracts. In the assessee's case the default arose in AY 2014-15 and on receipt of some insignificant amount the sum of Rs.1,18,60,119/- has become non recoverable. After the scam recovery process has been started by attachment of substantial assets by the

investigating agencies. The recovery process is been monitored by Hon'ble High Court Committee appointed by the Bombay High Court. On these facts the assessee wrote off the non recoverable amount of Rs.1,18,60,119/- as bad debt.

3. Similar case having identical facts came up before the Hon'ble ITAT C Bench Chennai in the case of Megh Sakariya International ltd. vs. DCIT in appeal no. 59/Chny/2018. Dt. 05/09/2018 for AY 2014-15. The assessee's AY proposed for revision is also AY 2014-15. In this case the Tribunal after considering the identical facts on account of loss arising due to default and stoppage of working by National Spot Exchange Ltd. arising to the assessee of Rs 2.02 crores, which was written off by the assessee was allowed as loss claimed due to bad debts, is in accordance with the provisions of the Act while deciding so the Hon'ble ITAT relied on the order of the Hon'ble Supreme Court in the case of TRF Ltd. Moreover CBDT circular bearing no. 12/2016 dt. 30/05/2016 also citing the Hon'ble Supreme Courts decision in the case of TRF Ltd. has stated in para no. 4 that "in view of above claim of any bad debts or part thereof in any previous year, shall be admissible u/s 36(1)(vii) of the Act. "

4. It may please, therefore, be noted that claim of the assessee of bad debts of Rs.1,18,60,119/- is made in accordance with the provisions of the Act, after having written off the non recoverable amount. The Hon'ble Chennai Tribunal also holds the similar view on similar facts. Therefore there is nothing "erroneous" in the order passed by the assessing officer u/s 143(3), neither it is prejudicial to the interest of revenue as the claim is covered by the provisions of sec. 36(1)(vii).

5. In paragraph no 4 of your showcause notice it is stated that losses arising out of trading on National Spot Exchange Ltd. is not allowable as the same has resulted from trading in contracts not authorized by forward market contracts. In this respect it may please be noted that National Spot Exchange Ltd. is a National level commodity spot exchange promoted by financial technologies India Ltd. (FTIL) and National Agricultural Co-operative Marketing Federation of India Ltd. (NAFED). Spot exchange is recognized by Ministry of Consumer Affairs, Food and Public distribution, Government of India. Spot exchange is also are having the licenses from various state governments to facilitate online delivery base trading in various agricultural commodities.

This is not forward market contract as is stated in your showcause notice. All contract on the exchange are compulsory delivery contracts

i.e. all the outstanding positions at the end of the day are marked for delivery, which implies that seller has to give delivery & buyer has to take delivery.

The spot exchange is also regulated by various laws of the land like companies Act 1956, Contract Act Stamp Act etc. It is also noteworthy that regulation 3(c) of the warehousing development and regulatory authority regulations, 2011 issued u/s 35 r.w.s 51 of the warehousing (development & regulation) Act 2007. As per this regulation no entity can organize trading in electronic warehouse receipts. unless it has obtained recognition as a spot exchange from these authorities. It is therefor emphasize that very word spot exchanges signifies that delivery is on spot when the transaction of purchase or sale is made on NSEL.

4. The above explanation of the assessee is considered.

4.1 It is contended that the claim of bad debts was duly inquired in the course of assessment and was replied by the assessee twice on 08.11.2016 as well as 9.03.2017. On verification of the assessment record, it is seen that the AO vide order sheet dated 25.10.2016 asked the assessee for the details of bad debts written off along with the other details.

In response to this, the assessee furnished written submission on 08.11.2016. It was submitted that, the bad debts are on account of amount receivable from M/s Anand Rathi Commodities Ltd. towards business income of purchase and sale of commodities. The amount of Rs. 1,18,60,604/- has not been received till date and hence, it is considered as bad debts. The submission dated 09.03.2017 claimed to have been submitted during the assessment proceedings is not submitted before the AO during the assessment proceedings as the assessment order was completed on 31.12.2016.

It is seen from the assessment records that, the AO has not carried out any further enquiries regarding the bad debts claim. The fact shows that the AO has called only the details of bad debts as a part of general enquiry and no specific enquiry regarding the allowability of bad debts has been carried out. The AO has also not verified whether the transaction is a regular business transaction or speculative transaction.

In view of the above facts, the contention of the assessee that the claim of bad debts was duly enquired during assessment

proceeding is factually incorrect and hence not acceptable.

4.2 Assessee further contended that the assessee has carried out regular business transaction and hence the loss is to be allowed as bad debts. The issue is discussed as under-

The assessee e-filed return of income on 29/09/2014 declaring income of Rs.1,17,21,860/-. In the P&L account, bad debts of Rs.1,18,60,119/- are debited on account of default in payment of the settlement dues by NSEL. The assessee has carried out contracts of buy and sale of commodities on NSEL through M/s Anand Rathi commodities Ltd. The bad debts were due to non-payment of dues on the forward contracts which are illegal as per the FMC. The assessee has not taken any delivery of the goods and also did not have any infrastructure to store the goods purchased

4.2.1 Department of Consumer Affairs(DCA) in exercise of powers conferred to it under section 27 of the Forward Contract (Regulation) Act, 1952(FCRA) vide notification No. S.O. 906(E) dated 5th June,2007 had exempted all forward contracts of one day duration for the sale and purchase of commodities traded on the NSEL, from operation of the provisions of the said Act subject to the following conditions, namely:-

- a. No short sale by members of the Exchange shall be allowed.
- b. All outstanding positions of the trade at the end of the day shall result in delivery;
- c. The National Spot Exchange Ltd (NSEL) Shall organize spot trading subject to regulation by the authorities regulating spot trade in the areas where such trading takes place;
- d. All information or returns relating to the trade as and when asked for shall be provided to the Central Government or its designated agency;
- e. The central Government reserves the right to impose additional conditions from time to time as it may deem necessary and
- f. In case of exigencies, the exemption will be withdrawn without assigning any reason in public interest.

4.2.2 Forward Market Commission(FMC) in its order No. 4/5/2013-MKT-I/B dated 17.12.2013 held that "NSEL was granted exemption under section 27 of the FRA to trade on one day forward contract in commodities; however, from the year 2009 onwards, with the approval of the Board, it started trading in paired contracts in commodities in such a manner that it would generate an assured return of 13% to 18% per annum, akin to financial transactions under the garb of

commodities trading. The paired trades were not backed by actual physical delivery of commodities. In fact, this was just like a financial transaction and no spot trading in commodities was done."

4.2.3 The Hon'ble Bombay High Court in the case of Jignesh Prakash Shah Vs. The State of Maharashtra (BA-1263-14 22.08.2014) observed that "any persons whose monies are lost, including the First Informant, are apparently, not the genuine trades for whom NSEL was supposed to provide a platform. The very fact that these persons are, as also the Investigating Agency is freely using the terms as the 'investors, ' borrowers', indicates that the transactions in question were not genuine transactions of sale or purchase was well known to the so-called buyers also, who now choose to describe themselves as 'investors'. It is clear that from their point of view, it was only an investment yielding high returns for their money. These investors are not middle class or lower class people, but are themselves businessmen. The transactions in question were being entered through brokers who had knowledge of the commercial market. Going by the broad probabilities of the case, it cannot be accepted that the persons who are now crying foul, were not aware of the fact that their transactions were not genuine. They were looking at these transactions clearly as investment of their monies yielding safe returns. Their estimate or belief about the safety of the transactions has been proved to be wrong and that is the reason for the uproar which is now being made by pointing out the illegalities in the transactions undertaken by NSEL. Undoubtedly, these wrongs appear to have taken place, and undoubtedly, it cannot be suggested that those who permitted such fictitious trading have not committed serious offences, still, the fact remains that the persons who are raising the grievance about such fictitious trading's were themselves not genuine traders, and had entered into the transactions purely as financial investments. There is very reason to believe that a sizeable number of so-called investors' whose transactions were being entered into through brokers, actually did not bother about the fictitious trades, and knowingly participated in such illegal activities, without raising any issue of illegality thereof. "

The Hon'ble Court has observed that the traders were aware of the illegal nature of the trades and the traders were aware that these were actually not genuine trades. The assessee was very well aware that such transactions are illegal but still carried out these illegal transactions.

4.2.4 Section 43(5) defines Speculation transaction as "transaction in which contract for the purchase and sale of any commodity including

stock and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips.

Proviso(c) is an exception to a contract entered into by a member of forward market or a stock exchange in the course of any transaction in the nature of jobbing or arbitrage to guard against loss which may arise in the ordinary course of his business, as such, contract entered into by a member will not be held to be speculative. It is clear from the above that the arbitrage carried out by the member of the stock exchange alone would be considered as non speculative and such transactions in the nature of arbitrage or jobbing carried out by the client of the member would be considered as speculative in nature.

In view of the above discussion, the transactions carried out by the assessee on NSEL are speculative transactions.

4.3 Without prejudice, as per the proviso to Section 43(5) only arbitrages conducted by member of the exchange are considered as non-speculative in nature, in this case the assessee is not a member of NSEL and has traded through the broker member, M/s. Anand Rathi Commodities. Ltd. and hence even if the transactions are considered as arbitrage transactions, it still is a speculative transaction. Hence, the losses due to bad debt should have been considered to be from speculative business and should not have been allowed to be set off against normal business income of the assessee.

4.4 Assessee relied on the decision of Hon'ble ITAT C-Bench, Chennai in the case of Megh Sakariya International Ltd. Vs. DCIT. I have gone through this judgment. In this case, the Hon'ble ITAT has decided the issue of allowability of bad debts u/s 36(1)(ii) of the I.T. Act. The Hon'ble ITAT has not decided regarding the nature of transaction carried out on NSEL as this issue was not raised before the ITAT. Hence, the decision of Hon'ble ITAT is not applicable in this case.

5. In view of above discussion, the transactions carried out on in NSEL through Anand Rathi Commodities Ltd. are speculation transactions. As per provisions of Section 73 of IT Act, any loss computed in respect of a speculation business carried on by the assessee shall not be set off except against profits and gains, if any, of another speculation business. Therefore, the loss arising on account of non-payment by NSEL of Rs.1,18,60,604/- cannot be set off against the business income of the assessee,

6. As already discussed above, the AO without proper verification of the facts and issue involved has allowed the above loss against the business income. Hence, the assessment order passed by the AO u/s

143(3) dated 31.12.2016 is erroneous and prejudicial to the interest of the revenue. Accordingly, this assessment order is set aside. The Assessing Officer is directed to do the assessment afresh after conducting detailed enquiries and detailed verifications of the relevant documents, after giving the assessee reasonable opportunity of being heard, and as per law.

3. Learned authorized representative vehemently reiterated the assessee's pleadings as well as stand that the Assessing Officer had indeed carried out all the details enquiries during the course of scrutiny regarding its bad debts claim. We find no merit since the case records speak otherwise. First of all comes the assessee's corresponding ledger account regarding M/s. Anand Rathi Sundry Debtors at page 69, wherein there is no actual write off forming a mandatory condition as per TRF Ltd vs. CIT (2010) 323 ITR 397 (SC). This is indeed coupled with the fact that the Revenue has successfully invited our attention to the assessee's paper book page(s) 61 onwards wherein the corresponding contract notes; both purchases and sales, are dated 25.06.2013 not involving actual delivery of the commodity(ies) concerned. Mr. Meena next took us to page 71 in the assessee's paper book wherein there are again some discrepancies found regarding the contract notes and purchase details which had nowhere been examined specifically by

the Assessing Officer during the course of scrutiny. Faced with this situation, we reject assessee's arguments and conclude that the PCIT herein has rightly exercised his section 263 revision jurisdiction on account of Assessing Officer's failure in carrying out his details enquiries in light of Explanation 2 to section 263 of the Act. We further quote *Malabar Industrial Co. Ltd. vs. CIT* (2000) 243 ITR 83 (SC) has settled the law long back that such a failure on the Assessing Officer's part renders an assessment both erroneous as well as causing prejudice to the interest of Revenue; simultaneously. The assessee fails in its instant sole substantive grievance, therefore.

4. This assessee's appeal is dismissed in above terms.

Order pronounced in the Open Court on 21st July, 2022.

Sd/-
(DIPAK P. RIPOTE)
ACCOUNTANT MEMBER
पुणे Pune; दिनांक Dated : 21st July, 2022
GCVSR

Sd/-
(S.S. GODARA)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "B" /
DR 'B', ITAT, Pune
4. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	12-07-2022	Sr.PS
2.	Draft placed before author	14-07-2022	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		