

THE INCOME TAX APPELLATE TRIBUNAL  
"A" Bench, Mumbai  
Shri B.R. Baskaran (AM) & Smt. Kavitha Rajagopal (JM)

I.T.A. No. 687/Mum/2022 (A.Y. 2014-15)

Smt. Asha Devi Poddar 1001/1002, 10 <sup>th</sup> Floor Nepean House, 85/A Nepean Sea Road, Near Darya Mahal, Malabar Hill, Mumbai-400 006.  PAN : AACPP2358Q (Appellant)	Vs.	ACIT-19(1) Matru Mandir Room No. 203 Tardeo Road Mumbai-400 007.  (Respondent)
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Assessee by	Dr. K. Shivaram & Shri Rahul K. Hakani
Department by	Shri Manoj Kumar Singha
Date of Hearing	17.07.2022
Date of Pronouncement	05.08.2022

ORDER

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 30.3.2022 passed by learned CIT(A)-National Faceless Appeal Centre, Delhi and it relates to A.Y. 2014-15.

2. The grounds of appeal read as under :

1. The Learned CIT (A) has grossly erred in confirming the disallowance made by the Assessing Officer for claim of Bad Debts written off of Rs.1,79,73,982/- by the assessee disregarding Hon'ble Supreme Court Decision in TRF Ltd. and CBDT Circular No.12/2016 dated 30.05.2016 and the reasons assigned by him are totally wrong and are contrary to the provisions of Income Tax Act, 1961 and rules made there under.
2. The Learned CIT (A) has further grossly erred in confirming the alternate view taken by the Assessing Officer treating the claim of loss on account of non receipt of debtors of Rs.1,79,73,982/- "as loss on account of speculation trading and allowing the same to be carried forward and the reasons assigned by him are totally

wrong and are contrary to the provisions of Income Tax Act, 1961 and rules made there under.

3. Notwithstanding and without prejudice to Ground no.1 and 2 above, the CIT(A) has further grossly erred in confirming the action of Assessing Officer treating the non-receipt of sale consideration of commodities on commodity exchange "as Speculation Loss and allowing it to be carried forward" as stated in ground 2 above and at the same time not treating current assessment year income of Rs. 28,07,464/- from the same commodity business activity as speculation income and not setting off the same against alleged speculation loss of Rs.1,79,73,982/- and the reasons assigned by him in doing so are totally wrong and are contrary to the provisions of Income Tax Act, 1961 and rules made there under.
4. The Appellant craves leave to add and/or amend and/or delete and/or modify and/or alter the aforesaid grounds of appeal as and when the occasion demands.

3. The facts relating to the case are stated in brief. The assessee is an individual and she has derived income from salary, business and capital gain and income from other sources during the year under consideration. In her return of income, she had claimed bad debt of Rs.1,79,73,982/-. The AO disallowed the said claim and further held that the same is a speculation loss. The Ld CIT(A) confirmed the order so passed by the AO. Hence the assessee has filed this appeal before the Tribunal.

4. The first ground relates to disallowance of claim of bad debts of Rs. 1,79,73,982/-. The facts relating thereto are that the assessee has carried out trading in commodities in National Spot Exchange Ltd. (NSEL) through her broker M/s. Anand Rathi Commodities Ltd. The NSEL is a spot exchange for on the spot purchase and sale of commodities. Before the Assessing Officer the assessee submitted that it has purchased and sold commodities on delivery basis through its broker in NSEL Platform. However, the trading operations in NSEL was stopped from 31st July 2013 due to scam and payment crisis. The assessee submitted that she has not received the above mentioned sum of Rs.1,79,73,982/-, since the NSEL has stopped payments to

brokers/agents/clients etc., Hence the assessee has decided to write off the amount of Rs. 1,79,73,982/- as bad debts in the books of account.

5. The Assessing Officer examined the bad debts claim made by the assessee. He noticed that the assessee has sold basmati rice for a sum of Rs. 86,13,043/- and sugar for a sum of Rs. 1,06,05,953/- and amount written off formed part of the above said sales. He further noticed that both the sales have taken place in the month of August, 2013, i.e., after suspension of trading operations in NSEL platform.

6. The Assessing Officer also took the view that the assessee has not taken any steps for recovery of above said amount from the broker M/s. Anand Rathi Commodities Ltd. Further, the assessee has sold goods in the financial year 2013-14 and has written off the same as irrecoverable in the very same year. The Assessing Officer noticed that the NSEL, vide its letter dated 16.6.2016, has submitted that the claims made by brokers/agents/clients against it are premature, since the recovery process are underway by Economic Offences Wing. It was submitted that NSEL possessed assets worth Rs. 7000 crores as against claim of Rs. 5600 crores. It was also submitted that there were duplication of claims, since very same amount was claimed by the brokers/agents/clients. Accordingly the Assessing Officer took the view that since recovery is an ongoing process, ultimate recovery shall take longer time. Based on the above information, the AO also took the view that the claim of bad debts made by the assessee is premature in nature. The Assessing Officer relied on certain decisions and expressed the view that it is necessary for the assessee to prove bonafides of the claim of bad debts. Accordingly the Assessing Officer held that the claim of bad debts is liable to be rejected and accordingly, he disallowed the claim of bad debts. The Ld CIT(A) confirmed the order so passed by the AO. The Ld CIT(A) also expressed the view that the assessee should have shown the above said amount as its income in any of the years.

7. The Learned AR submitted that the assessee has actually sold goods Before 31.7.2013, but they were recorded in the books of account after 31.7.2013. He submitted that the assessee has included the purchase and sales of commodities in its trading account and hence the provisions of sec.36(2) have been duly complied with. Since the trading operation in NSEL has been suspended due to payment crises, the assessee did not receive the above said amount due to it. When the recovery was found to be uncertain, the assessee has chosen to write off Rs.1,79,73,982/- as bad debts. He submitted that the assessee has duly complied with provisions of section 36(1)(vii) read with section 36(2) of the Act and hence claim of the assessee is allowable as bad debts as held in the case of TRF Ltd (323 ITR 397). He further submitted that the assessee has done trading on delivery basis and hence there is no reason for treating this transaction as speculative in nature.

8. The Learned AR also placed reliance on the decision rendered by Mumbai Bench of the ITAT in the case of DCIT Vs. Nirship Securities Pvt. Ltd. (ITA No. 6321/Mum/2019 and others dated 21.6.2021) and submitted that the facts of the present case are identical with the facts of the above said case. The Learned AR submitted that the Coordinate Bench has allowed the claim of the assessee treating it as business loss under section 28 of the Act.

9. On the contrary learned DR supported the order of learned CIT(A).

10. We have heard the rival contentions and perused the record. We notice that there is contradictions between the assessee and tax authorities on factual aspects. We noticed that the Assessing Officer has proceeded on the belief that the assessee has booked sales of commodities on 3.8.2013 and 17.8.2013 i.e. after the date of suspension of trading operations in NSEL. Admittedly, the assessee could not have sold the commodities after suspension of trading operations in NSEL. However, the learned AR submitted that the commodities have been sold by the assessee prior to 31.7.2013. Thus there is

contradiction between the assessee and the Assessing Officer with regard to the date of sales of commodities. Secondly, the learned CIT(A) has expressed the view that the assessee has not complied with the provisions of section 36(2) of the Act i.e. the assessee has not proved the amount written off as bad debts has been declared as her income in any of the years. However it is the submission of the learned AR that the assessee has duly recorded both purchases and sales of commodities in her purchases and sales account disclosed in the profit and loss account. Thus it the contention of the learned AR that provisions of section 36(2) of the Act has been duly complied with.

11. Since there is contradiction with regard to the facts surrounding the issue, we are of the view that the issue relating to claim of bad debts requires examination at the end of the AO on two aspects, viz.,

- (a) the date of sale of commodities and
- (b) whether the assessee has disclosed the amount claimed as bad debts as her revenue.

If the assessee is able to show that sale of commodities have taken place prior to 31<sup>st</sup> July, 2013 and further the assessee has proved that she has declared the above sales amount as revenue in her Trading/Profit & Loss account, then the claim of bad debts is allowable as per the decision rendered by Hon'ble Supreme Court in the case of TRF Ltd (supra). In the case of Nirship Securities Pvt. Ltd. (supra), the claim of business loss has been accepted by the co-ordinate bench of Tribunal and this claim may also be examined from this angle also, if the assessee makes such a claim.

12. In view of the foregoing discussions, we set aside the order passed by learned CIT(A) with regard to the claim of bad debts and restore the same to the file of the AO for the limited purposes of examining two aspects discussed in the preceding paragraph. The assessee may, if so advised, may raise alternative claim of business loss, which may be examined by the AO, if so raised.

13. The ground numbers 2 and 3 relate to the action of the AO in treating the claim of bad debts as speculation loss. The facts relating thereto are that the Assessing Officer noticed that the investigation conducted by Economic Offences Wing showed that the broker M/s. Anand Rathi Commodities Ltd. did not ensure existence of stocks in NSEL warehouses and that they have given false confirmation about availability of stock to the auditor of NSEL. Hence, the Assessing Officer also took an alternative view in this matter, i.e., he held that the trading activities of the assessee should be treated as speculation trading. Accordingly, he held that the loss of Rs.1,79,73,982/- is a speculative loss and allowed the same to be carried forward for set off against speculation gains in the succeeding years. The Learned CIT(A) also confirmed the view taken by the Assessing Officer.

14. The Ld A.R submitted that the assessee has carried on trading operations in NSEL as her regular business activity and income has been declared as her business income. The income so declared by the assessee has been accepted in the past. Accordingly, he submitted that there is no reason to treat the trading operations of the assessee as speculative in nature in this year alone.

15. We heard Ld D.R on this issue and perused the record. We notice that the Assessing Officer has taken the view that the purchase and sales have taken place without availability of corresponding commodities on the basis of enquiries conducted by EOW in the hands of Anand Rathi Commodities and accordingly, he has held that these transactions are speculative in nature. The assessee on the other hand denies such claim and it has been submitted that the assessee has entered into the commodities transactions on delivery basis. The admitted fact is that the NSEL platform has allowed trading in commodities on "delivery basis" and the transactions have been entered by the assessee on that basis only through the broker. Though there are allegations that the broker of the assessee has given false confirmations on availability of

the stock, yet there is no proof to show that the stocks dealt within by the assessee were not available. Hence the view taken by the assessing officer, in our view, is not supported by any material. We notice that the assessee has carried on trading operations prior to the sale of two commodities referred above and has declared business income therefrom. The AO has accepted the same as trading of commodities on delivery basis. Hence, we are of the view that the AO was not justified in treating the loss as speculative loss in respect of this transaction alone, when he has accepted the business income declared by the assessee in respect of other transactions.

16. In fact, the claim of the assessee does not represent profit/loss from trading operations, but it represents debts which were not recovered from NSEL. Only profit/loss from trading operations could be examined for deciding as to whether it is speculative in nature or not. On this reason also, the AO was not correct in law in treating claim of the assessee as speculative in nature.

17. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO not to treat the claim of the assessee as speculative in nature.

18. In the result, appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 05.08.2022.

Sd/-

(KAVITHA RAJAGOPAL)  
JUDICIAL MEMBER

Sd/-

(B.R. BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 05/08/2022

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

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