

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER**

**ITA No.1077/M/2022
Assessment Year: 2012-13**

M/s. Loop Mobile Holdings Pvt. Ltd., A-1, Ground Floor, Plot No.846, Tanishq Westria, Matru Ashish Bldg., Fitwala Delisle Road, Mumbai – 400 013 PAN: AAACB8605K	Vs.	DCIT 7(1)(7), Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Ganesh Rajgopalan, A.R.
Revenue by : Ms. Shailaja Rai, D.R.

Date of Hearing : 11 . 08 . 2022

Date of Pronouncement : 25 . 08 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, M/s. Loop Mobile Holdings Pvt. Ltd. (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 24.03.2022 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)] qua the assessment year 2012-13 on the grounds inter alia that:

“1. On the facts and in the circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) erred in denying sufficient opportunity to the Appellant to make its submissions and also further erred in ignoring the Appellant's request for a personal hearing to present its case.

2. On the facts and in the circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) erred in treating the loss due to diminution in the value of stock in trade of Rs.1576,84,89,508/- as a notional loss by way of mere book entries without any actual transaction and further erred in alleging the same to be a colourable device employed by the Appellant to avoid taxes.

3. On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) erred in affirming the Assessing Officer's treatment of loss due to diminution in the value of stock-in-trade as speculative loss of Rs.1,576,84,89,508/- under section 73 of the Income Tax Act, 1961.

4. Without prejudice to the above ground, on the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) erred in upholding the treatment by the AO of not considering the Appellant's sole business as a deemed speculation business and only taking as a loss from speculative business the decrease in value of the stock-in-trade and not the net loss of Rs.4,20,86,95,095/-.

5. On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) erred in disallowing business support expenses of Rs. 3,86,21,9E7/~ paid to its subsidiary, Loop Mobile India Limited (LMIL) and incurred by the Appellant towards protecting its brand and the value of its assets and its business.

6. On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) erred in holding the transaction of sale of shares of Loop Telecom Limited (LTL) as sham transaction and disallowing the short term and long-term capital loss of Rs.687,75,00,000/- and Rs.12,36,3S,085/- respectively.

7. The Appellant craves leave to add to, alter, amend, substitute, delete and /or otherwise modify in any manner whatsoever, any of the foregoing grounds of appeal at any time before or during the appeal proceedings.”

2. Briefly stated facts necessary for adjudication of the controversy at hand are : the assessee is engaged in holding of investment inter alia in Capital Global Ltd. (CGL) and Loop

Telecommunication Holding India Limited (LTHIL) and pursuant to the scheme of amalgamation of CGL and LTHIL were amalgamated with the assessee with appointed date being 1st April 2011. Assessee filed the return of income at the total loss of Rs.337,74,34,460/-, which was revised on 31.03.2014 declaring total loss at Rs.758,58,55,815/-. During the scrutiny proceedings while declining the contentions raised by the assessee, the Assessing Officer (AO) assessed the total income of assessee at Rs.1,525,43,79,462/- by computing the income under section 143(3) of the Income Tax Act, 1961 (for short 'the Act') as under:

computed as under:	
Business loss as per revised return	-4208695095
Add speculation loss	1 5768489508
Add car hire charges	747585
Add Business support expenses	39588805
Add Legal Et professional fee	33045059
Assessed business income	11633175862
Short term capital gain on redemption of debenture	3621203600
Short term capital Loss and long term capital gain and long term capital loss on sale of shares of Loop Telecom Ltd treated as sham transaction	0
Assessed total income	15254379462
Rounded off to	Rs. 1525,43,79,460/-

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has partly allowed the appeal ex-parte. Feeling aggrieved the assessee has come up before the Tribunal by way of filing present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. Bare perusal of para 4 of the impugned order wherein chronology of dates fixed and notice issued to the assessee is given which apparently shows that on the date fixed i.e. 15.11.2021 assessee asked for two weeks time to file the fresh ground wise submissions and thereafter he resubmitted the paper book. Again despite numerous opportunities granted for 07.03.2022, 08.03.2022, 14.03.2022 and 15.03.2022 assessee failed to file the further submissions called for by the Ld. CIT(A) and consequently Ld. CIT(A) decided the appeal against the assessee.

6. We are of the considered view that when assessee at the very outset has come up with specific request to grant him the opportunity to file the ground wise submissions as called for by the Ld. CIT(A) but no opportunity has been granted to the assessee because subsequent opportunity with gap of 2 to 3 days was given which appears to have not been intimated to the assessee. To decide the issue once for all on merits and to stop the multiplicity of the proceedings adequate opportunity of being heard is required to be given to the assessee. So the impugned order passed by the Ld.

CIT(A) is hereby set aside and remitted back to the Ld. CIT(A) to decide afresh after providing adequate opportunity of being heard to the assessee. Consequently, appeal filed by the assessee is hereby allowed for statistical purposes.

Order pronounced in the open court on 25.08.2022.

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 25.08.2022.

* 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.