

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 2603/Mum/2022 (A.Y. 2015-16)

Jinal Capital Services Pvt. Ltd.

601/602, Fantasia,
Vallabh Bhai Patel Road,
Santacruz West, Mumbai-400054.

PAN: AAACJ6928M

..... Appellant

Vs.

Income Tax Officer,
Aayakar Bhavan, M.K. Road,
Mumbai-400020.

..... Respondent

Appellant by : Sh. Paresh Shaparia
Respondent by : Sh. Vranda U Matkari, Sr. DR
Date of hearing : 22/12/2022
Date of pronouncement : 24/01/2023

ORDER

PER GAGAN GOYAL, A.M:

This appeal by assessee is directed against the order of Commissioner of Income Tax (Appeals)-9, Mumbai dated 02.09.2022 under section 250 of the Income Tax Act, 1961 (for short 'the Act') for A.Y. 2015-16. The assessee has raised the following grounds of appeal:

"1. On the facts and circumstances of the case as well as in law the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of

learned Assessing Officer of disallowance of bad debts amounting to Rs. 1,92,16,172/-.

2. Without prejudice to the above, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of learned Assessing Officer of disallowance of business loss under section 37(1) of the Act.

3. The order passed by the Learned Assessing Officer is devoid of any merit, arbitrary, uncalled for and bad in law, the appellant be given such relief or reliefs as prayed for.

4. Appellant craves leave to add, alter and/or modify the grounds of appeal on or before the date of hearing of the appeal.”

2. Brief facts of the case are that assessee filed its return of income on 29-09-2015 declaring total income at Rs 8,08,900/- under the normal provisions and Rs 8,34,748/- under the provisions of sec 115JB of the act. Case of the assessee was selected for complete scrutiny under CASS. Assessee company is in the business of trading in shares and dealing in financial service sector, securities and derivatives.

3. During the year under consideration, it is seen from the P&L Account of the assessee that assessee has written off a sum of Rs. 1,92,16,172/- as bad debts while dealing with NSEL. Assessee was asked to substantiate this claim as bad debts. In response assessee submitted various submissions before the AO but was not able convince him, resultantly the same was disallowed and added back to the income of the assessee. Being aggrieved with this action of AO assessee preferred an appeal before the Ld. CIT (A), but no relief to the assessee.

4. In the result assessee again moved to ITAT against the order of Ld. CIT (A) order. We have gone through the order of AO, order of Ld. CIT (A) and submissions of the assessee along with paper-book filed. We observed that

assessee was trading on NSEL platform through its broker M/s Greshma Commodities Pvt Ltd in AY 2014-15. The assessee has total commodities sales of Rs. 1,96,00,410/- and commodity purchase of Rs. 1,91,82,959/- resulting into profit of Rs 3,60,446/- and after deducting transaction charges of Rs. 57,005/- offer the balance for taxation in the said AY. Assessee was entitled to recover Rs. 1, 92, 16,172/- from NSEL. Due to a scam at NSEL the dues recoverable by the assessee from NSEL could not be recovered. Looking at the amounts of various parties involved vis-à-vis assets available for liquidation assessee anticipated this amount as irrecoverable and claimed the same as bad debts. The AO relied upon the letter sent to CBDT by Future Market Communication (FMC) under the aegis of Ministry of Consumer Affairs which is as under:

“To disallow the claim of the assessee AO relied upon information received from NSEL through CBDT vide reference no. NSEL/CEO/16-17 dated 27-06-2016 “it was stated that the amounts recovered have been distributed to these brokers under the supervision of FMC. Presently, the recovery process is being monitored by the honorable High Court Committee (HCC) appointed by the honorable Bombay High Court. There are enough assets to liquidate the assets and receive the outstanding amounts. These brokers/traders have received about 10% of outstanding amount.

However, it has come to light that most of the brokers/traders have claimed the outstanding amount as bad debts u/s 36(1)(vii)/37(1) of the I.T. Act. Since, substantial assets have been attached by the investigating agency and the process of recovery which is being monitored by HCC/MPID Court is to further distributed to the brokers/traders. The process of auctioning of the assets have started and properties worth Rs 300 Crores is under auctioning and it is evident that significant amount will be received by the brokers/traders. Thus, the claim of bad debts are premature, as final deficiency in amount could not be arrived at as contemplated u/s 36(2)(ii). Also refer sec 37(1) of the I.T. Act.”

5. Further, the AO has also stated that since NSEL was not a registered exchange under FCRA and the source of funds for the transaction on the NSEL

platform are remaining to be verified, such transactions are illegal and cannot be allowed. AO further referred the observation made by EOW Mumbai lead to infer huge deployment of illegal and benami funds by broker, traders and NBFC companies whose colour and source seems doubtful.

6. It is observed that the communication of CBDT mentioned supra and the report of EOW is general in nature. Involvement of assessee has not been established in any of the reports relied upon by the AO for any wrong doing, any illegal or benami money and unscrupulous source. It is further observed that communication of CBDT is absolutely against the spirit of law and the same can't be relied upon to disallow the claim of the assessee. As far as the irregular formation and working of NSEL is concerned, assessee is nowhere responsible as the same is being regulated by the then FMC (forward market commission), a government of India body under the ministry of consumer affairs.

7. As mentioned supra that assessee has already declare surplus amounting to Rs. 3,60,446/- in AY 2014-15 out of transactions carried out at NSEL, broker note of the transaction is already placed on record, ledger of the intermediary broker is already on record and source of the investment are not under challenge. These are settled facts and nowhere in challenge. The communication of CBDT mentioned supra rather confirms the genuineness of transaction entered into. The only advice in that communication to the AO is to examine the matter carefully while allowing the claim of the assessee as bad debt u/s. 36(1)(vii)/36(2)/37(1). This communication is not even in the category of circular or notification. Hence, not even applicable on AO's concerned and above all its language violates the rights of the assessee to claim bad debts even in genuine

case. AO's application of this communication along with other reports he relied upon is very harsh step towards assessee whom are actually the victims of a scam.

8. NSEL was a national level spot market commodity exchange under the aegis of FMC, ministry of consumer affair. In the FY 2013-14 NSEL had defaulted in payments amounting to Rs. 5500 Crores. The parties to whom the payments had not been made were able to recover very minuscule amount against their outstanding's. Various government agencies were involved in investigations and accepted that scam had taken place barring few unscrupulous elements rest all are genuine investors who ultimately turned into victims of this scam. In the matter under consideration the assessee is able to recover only 6.2% of the total dues. More than 3 years have elapsed and there is no further recovery to the assessee company.

9. However, AO declined the claim of the assessee by relying upon Forward Market Commission report being premature under section 36(2)(ii) / 36 (1)(vii) and by returning the following findings:

"4.3.4 It can be seen from recent media reports, observations by HCC in its Teport and various incriminating observations made by EOW, Mumbai in its remand note lead to infer huge deployment of illegal and benmi funds by Brokers, Trailers, and NBFCs companies whose color and source seems doubtful. Some of the observations also refer to benami funds being introduced by brokers for their grader clients by using their NBFC arms for funding. In such case/s, where the transaction is held as financial transaction and not a commodity transaction, the color and source of money which is being written off itself is doubtful, the claim if allowed, may result in genuine amount getting written off against the doubtful money thereby resulting in loss to exchequer. Hence, in such case rejection of claim of bad debts shall be relevant and necessary and the claim of bad debts may not lie allowed/allowable ab-initio."

10. The Ld. AR for the assessee contended that the issue before the Bench is covered by the order passed by Co-ordinate Bench of Chennai Tribunal in case of M/s. Megh Sakariya International P. Ltd. V/s. DCIT in ITA No. 59/CHNY/2018 in favour of the assessee. We have perused the order passed by the Co-ordinate Bench of this Tribunal in case of M/s. Megh Sakariya International P. Ltd. (supra) which is on identical issue having been decided in favour of the assessee by returning following findings:

"7. We have considered the rival contentions and perused the orders of the authorities below. It is not disputed that assessee had started commodity trading in NSEL through its broker Sugal Commodity Brokers Pvt Ltd during the relevant previous year. It is also not disputed that debt of 2,02,42,194/- became due to the assessee from the said exchange, on account of the commodity trading undertaken by the assessee during the relevant previous year. Observation of the Id. Assessing Officer with regard to the claim as it appears at page 3 of its order is reproduced hereunder:-

"It is pertinent to mention here that the Department has' received information from the National Spot Exchange that due to various reasons the trading on the exchange platform was stopped on 3pt July, 2013, and the NSE has to settle the outstanding receivables of the traders. The NSE also stated that the amounts recovered have been distributed to the brokers under the supervision of the Forward Market Commission (FMC). The NSC further stated that there are enough assets to liquidate and recover the outstanding amounts of the traders / Brokers.

It has come to the light that most of the brokers 1 traders have claimed the outstanding amount as deduction as bad debt u/s 36(1) (vii) / 37(i) of the Income tax Act, 1961. Similarly, most of the NBFC companies which had lent money to Brokers/Traders have also written off such amounts as bad debts.

The NSC further stated that it is in the process of auctioning of the assets and the process have started. It is evident that significant amounts will be received by the brokers / traders. Thus, the claim of bad-debt are premature".

It is significant to note that id. Assessing Officer had accepted the debt to be bad, but had disallowed the claim deeming it to be premature It is also clear that debt arose on account of trading in commodities in the exchange and not due to sale of any capital assets. Hon'ble Apex Court in the case of TRP Ltd (supra) had held at under at para 4 of its judgment.

"4. This position in law is well-settled. After April 1 1989, it is not necessary for the assessee to establish that the debt, in fact, has become irrecoverable. It is enough if the bad debt a written off as irrecoverable in the accounts of the assessee. However, in the present case, the Assessing Officer has not examined whether the debt has, in fact, been written off in the account of the assessee When a bad debt occurs, the bad debt account is debited and t customer's account is credited, thus, closing the aunt of the customer in the case of companies, the provision is deducted from sundry debtors As stated above, the Assessing Officer has not examined whether, in fact, the bad debt or part thereof is written off in the accounts of the assessee. The exercise has not been undertaken by the Assessing Officer. Hence, the matter is remitted to the Assessing Officer for de novo consideration of the abovementioned aspect only and that too only to the extent of the write-off"

It is dear that once a debt is written as recoverable in the accounts of the assessee, it has to be allowed. It is not required that debt should have arose on account of transactions in any preceding years. Once a debt is claimed as bad and written off in the accounts it has to be allowed. No doubt, if the assessee at a later point of time recovers any money against any sum, it is bound to show it as income. Considering the judgment of Hon'ble Apex Court in the case of T.R.F. Ltd (supra), we are of the opinion that the claim of the assessee had to be allowed. Orders of the lower authorities on this issue are set aside."

11. In view of the discussion made in the preceding para and by following the order (supra) passed by Co-ordinate Bench of Tribunal. The Ld. CIT(A) has erred in confirming the assessment order by disallowing the bad-debt on the ground of being premature. Co-ordinate Bench has also relied upon the judgment passed by Hon'ble Supreme Court of India in case of T.R.F Ltd v/s CIT (2010) 190 Taxman 391(SC). So in view of the matter, impugned order passed by Ld. CIT(A) is set-aside and AO is directed to allow the claim of the assessee.

12. In the result appeal filed by the assessee is allowed.

Order pronounced in the open court on 24th day of January, 2023.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Mumbai, दिनांक / Dated: 24/01/2023

SK, Sr.PS

Copy of the Order forwarded to:

1. अपीलार्थी / The Appellant ,
2. प्रतिवादी / The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई / DR, ITAT, Mumbai
6. गार्ड फाइल / Guard file.

BY ORDER,

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(Dy. /Asstt. Registrar)
ITAT, Mumbai