

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'A' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.7539/Del./2019
(ASSESSMENT YEAR : 2016-17)**

Almonds Global Securities Ltd.,
F-33/3, Phase II,
Okhla Industrial Area,
New Delhi – 110 020.

vs. ACIT, Central Circle 18,
New Delhi.

(PAN : AABCA0005H)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Ms. Rano Jain, Advocate
Ms. Mansi Jain, CA
Shri Akhil Singhal, CA
REVENUE BY : Shri Kanv Bali, Sr. DR

Date of Hearing : 23.03.2023
Date of Order : 10.04.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of Id. CIT
(Appeals)-27, New Delhi pertaining to AY 2016-17.

2. The grounds of appeal taken by the assessee read as under :-

“1. That on facts and in the circumstances of the case and in law, the CIT(Appeal) has erred in confirming an addition made by the Assessing Officer by passing an order u/s 143(3) of the Income Tax Act amounting to Rs. (-) 24,01,075/- on account of bad debts / debts written off u/s 37 of the Income Tax Act.

2. That on facts and circumstances of the case, the Ld. CIT(A) erred in law and on facts in not giving reasonable opportunity of being heard.

3. That on facts and circumstances of the case, the Ld. CIT(A) erred in law and on facts in not relying upon the judgment of territorial High Court and Supreme Court as applicable in this case.”

3. Brief facts of the case are that the assessee company is involved in the business of brokers for NSE/BSE apart from advisory and consultancy services. During the year under consideration, one of the customers of the assessee, Shri Ramesh Kumar Gupta has done trading in various segments of stocks on BSE and NSE including futures. Due to certain transactions in futures, the account of the client created debit balance of Rs.40,36,304/-. After making certain efforts, the assessee recovered certain amounts and finally the amount of Rs.24,01,075/- could not be recovered by the assessee inspite of recovery proceedings initiated by the assessee. This amount was claimed by the assessee initially as bad debts. As per the AO, the amount has never been taken into account in computing the income of previous year in which such debt or part has become irrecoverable, so he disallowed the same. According to the AO, it is a pre-condition to claim any amount of bad debts on revenue account.
4. Upon assessee's appeal, Id. CIT (A) confirmed the same.
5. Against this order, assessee is in appeal before us. We have heard both the parties and perused the records.

6. Ld. Counsel of the assessee submitted that the assessee has duly credited the brokerage on the transaction and the total debt due includes part of brokerage, hence she claimed that the entire bad debt is allowable. In this regard, she placed reliance on the decision of Hon'ble Delhi High Court in the case of CIT vs. Bonanza Portfolio Ltd. – 2009 (8) TMI 636 – Delhi High Court.

7. Per contra, ld. DR for the Revenue relied upon the orders of the authorities below.

8. Upon careful consideration, we note that assessee has credited brokerage into income and the total bad debt in this year includes brokerage and part of the amount of transaction owe to the assessee. In such situation, we note that Hon'ble Delhi High Court in the case of CIT vs. Bonanza Portfolio Ltd. (supra) was considering the following question:-

“Whether in view of the provisions of section 36 (1)(vii), the total debit balance including the consideration collectible by the assessee company for the sale/purse of shares can be claimed by the assessee as bad debts when the assessee company had only credited brokerage in the profit and loss account?”

9. After due analysis, the Hon'ble Court concluded as under :-

“ Following the aforesaid order we hold that the money receivable from the client has to be treated as “debt” and since it became bad, it was rightly considered as "bad debt" and claimed as such by the assessee in the books of account. Since this bad debt occurred in the year in question, it was shown by

the assessee in that manner. Since the brokerage payable by the client is a part of the debt and that debt had been taken into account in the computation of the income, the conditions stipulated in sub-section (2) of section 36 read with section 36(1)(vii) stand satisfied in this case. Hence, question of law stands decided against the Revenue and in favour of the assessee. This appeal is accordingly dismissed.”

10. Thus, in identical situation, when the debt included brokerage and amount receivable otherwise, Hon’ble High Court has expounded if the entire debt becomes bad the same is allowable as bad debt. Respectfully following the precedent, we set aside the orders of authorities below and decide the issue in favour of the assessee.

11. In the result, this appeal filed by the assessee stands allowed.

Order pronounced in the open court on this 10th day of April, 2023.

**Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 10th day of April, 2023
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-27, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**