

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted Through Virtual Court)

**Before: Smt. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 394/Rjt/2017
Assessment Year 2014-15**

M/s. Shaz Enterprise, "Amrutdeep", Mahavir Society, Nirmala Convent School Road, Rajkot PAN:AAMFS8446G (Appellant)	Vs	The Income Tax Officer, Ward-2(1)(1), Rajkot (Respondent)
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**Assessee Represented: Shri Vimal Desai, A.R.
Revenue Represented: Shri B.D. Gupta, Sr.DR**

Date of hearing : 17-05-2023
Date of pronouncement : 26-05-2023

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the Appellate order dated 22.08.2017 passed by the Commissioner of Income Tax (Appeals)-2, Rajkot arising out of the assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2014-15.

2. The brief facts of the case is that the assessee is a partnership firm engaged in the business of trading corrugated boxes and kraft paper and trading in securities and commodities. During the Financial Year 2013-14, the assessee started to deal on National Spot Exchange Ltd. (NSEL) through a Broker as part of its business activities. The assessee earned Rs. 20,02,471/- for the earlier Assessment Year 2013-14 from dealing of NSEL and offered the same for taxation. For the present Assessment Year 2014-15, the assessee earned profit of Rs. 15,98,868/- from NSEL trading. However the trading on NSEL was suspended on 31.07.2013 due to severe payment crisis. The assessee had receivable of Rs. 2,45,35,393/- from NSEL through the Broker. The assessee was unable to receive any significant amount from the Broker or NSEL. The assessee lodged a criminal complaint for recovery of the outstanding amounts against NSEL in September, 2013. At the time of finalization of the accounts in March, 2014, there was no positive response from NSEL or the broker regarding the recovery and therefore the assessee became certain that the entire amount will not be received and no significant amounts will be received in near future. Following the accounting concept of prudence (i.e. all forcible losses should be booked), the assessee booked part loss of Rs. 84,79,826/- (nearly 35% of the outstanding) in the present Assessment Year 2014-15, after adjusting the profit of Rs. 15,98,868/- and thereby the net loss debited to the profit and loss account was Rs. 68,80,958/-.

3. The Assessing Officer proposed to disallow the above loss on the ground that Bombay High Court appointed a Committee to

liquidate the assets of NSEL and recover the outstanding amounts and that approximately Rs. 16,00,000/- were disbursed in May, 2016. It is also stated that auctioning of the assets of NSEL had started and therefore the A.O. was of the view that significant amounts will be received by the Broker or Trader. Therefore the A.O. was of the view that the loss/bad debt claim by the assessee is premature and therefore a show cause notice was issued calling for explanation.

3. In reply, the assessee submitted the High Court Committee was formed only September 2014 which was much after the closing of the accounting year. There was no surety given that full amount will be received. The assessee had written off only part of the amount during the assessment year 2014-15. Even if the amount is received in future it can always be taxed u/s. 41(1) of the Act. The assessee also made alternative submissions that the impugned amount was deductible as bad debt. The above reply of the assessee was considered and not satisfied by the A.O. and thereby the loss claimed by the assessee was not allowed and added as the income of the assessee.

4. Aggrieved against the same, the assessee filed an appeal before the Ld. Commissioner of Income Tax (Appeals), Rajkot. The Ld. CIT(A) confirmed the addition, however held that it is a speculative transaction, which cannot be set off against the business income of the assessee and dismissed the assessee's appeal observing as follows:

"6. Having considered facts and circumstances of the case and rival contentions I find that the substantial issue to be decided is whether the

assessee's claim of bad debt in respect of sum receivable from the NSEL is allowable. The assessee has claimed that in view of scam in NSEL, the payments due from NSEL are not recoverable and hence write off of part of the amounts due is allowable to it. To decide the issue it would be appropriate to understand the nature of transactions entered by assessee on NSEL. It is seen that the sales and purchases on NSEL were effected on the same day. While the payment for purchase was immediately made in lieu of a warehouse receipt as delivery within 3 days, sale consideration is paid by NSEL after 36 days, when the party would deliver the warehouse receipt and get the sale consideration higher than the purchase price paid. The important fact is that the delivery of good never takes place and there is no guarantee that warehouse receipt is supported by the goods actually present in the warehouse. On none of occasions the assessee has taken delivery of goods or has verified that goods are present in the warehouse and made a claim to his goods. Had the assessee taken delivery of goods against warehouse receipt and had he re-deposited goods in warehouse to obtain a warehouse receipt, it could have been termed a trading transaction. In absence of delivery of any actual goods involved in the whole transaction, the same are nothing but speculative transactions. Therefore, the claim of partial write off of receivables from a speculative trading in anticipation of failure on part of NSEL to pay back cannot be allowed as expense against non-speculative income of assessee. With these observations the disallowance is confirmed. Grounds of appeal are rejected.

7. For statistical purpose, the appeal of the assessee is to be treated as dismissed.”

5. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal:

The Grounds of appeal mentioned herein below are without prejudice to one another.

1. The assessment order u/s. 143(3) is bad in law.

2. The learned Assessing Officer has erred in law as well as on facts in making the disallowance of Rs.68,80,958/- being the loss incurred on NSEL trading. The ld. CIT(A) has erred in treating the said loss as speculative loss.

3. The learned Assessing Officer has erred in law as well as on facts in not granting the deduction of Rs.68,80,958/- as bad debts alternatively claimed by the appellant. The ld. CIT(A) has erred in not adjudicating the said plea of the appellant.

The appellant craves leave to add, alter, amend, delete or withdraw one or more grounds of appeal.

5.1. Ld. Counsel Shri Vimal Desai appearing for the assessee filed before us a Paper Book running to 167 pages consisting of various documents about NSEL transaction and various Tribunals decision stating that NSEL transaction/loss cannot be construed as speculative in nature. Thus the Ld. Counsel submitted that without giving any opportunity to the assessee, the Ld. CIT(A) held that the NSEL transaction as speculative transaction, which cannot be set off against the business loss and thereby dismissed the assessee appeal. Thus relying upon the various decisions of the Tribunal namely (A) M/s. Nirshilp Securities Pvt. Ltd. Pvt. Ltd. in ITA No. 6321/Mum/2019 dated 21.06.2021 and (B) Co-ordinate Bench of Delhi Tribunal in the case of U.K. Paints India Ltd. in ITA No. 7604/Delhi/2017 dated 27.11.2020. The Ld. Counsel requested to allow the assessee appeal.

6. Per contra, the Ld. Sr. D.R. Shri B.D. Gupta appearing for the Revenue supported the order passed by the lower authorities and requested to uphold the same.

7. We have given our thoughtful consideration and perused the materials available on record. It is not in dispute that the assessee has booked loss of Rs. 84,79,826/- after adjusting against the profit, the net loss of Rs. 68,80,958/-. The Assessing Officer denied the trading loss on the ground of the High Court Committee appointed by the Bombay High Court, to liquidate and recover the outstanding amounts from NSEL. Thus the Assessing Officer held that the NSEL trading loss is premature and cannot be allowed. However the ld. CIT(A) without giving any opportunity to the

assessee held that the above transaction as speculative transaction, which cannot be set off against the business income and thereby dismissed the assessee's appeal.

8. We are of the considered view that the Ld. CIT(A) decided the appeal on the ground that the loss as speculative loss without giving opportunity to the assessee to confront the same. Therefore the appellate order passed by the Ld. CIT(A) is hereby set aside, with a direction to the Ld. CIT(A) to decide the appeal after giving opportunity of hearing to the assessee, how the loss is a speculative loss or not.

9. In the result, the appeal filed by the Assessee is hereby allowed for statistical purposes.

Order pronounced in the open court on 26-05-2023

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 26/05/2023

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
राजकोट