

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री मंजुनाथ. जी, लेखा सदस्य एवं श्री मनोमोहन दास, न्यायिक सदस्य के समक्ष
BEFORE SHRI MANJUNATHA. G, ACCOUNTANT MEMBER AND
SHRI MANOMOHAN DAS, JUDICIAL MEMBER

आयकर अपील सं./ITA No.2918/Chny/2019
निर्धारण वर्ष /Assessment Year: 2014-15

The Dy. Commissioner of
Income Tax,
Corporate Circle-2(1),
Chennai.

M/s.Global Calcium Pvt. Ltd.,
Vs. No.125 & 126,
SIPCOT Industrial Complex,
Hosur – 635 126
[PAN: AAACG-2998-N]

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Assessee by

: Shri B. Rama Krishnan, FCA &
Shri Shrenik Chordia, C.A

प्रत्यर्थी की ओर से /Revenue by

: Shri P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 11.12.2023

घोषणा की तारीख /Date of Pronouncement

: 29.12.2023

आदेश / ORDER

PER MANOMOHAN DAS, J.M:

This appeal by the Revenue is directed against the order of the
Id. Commissioner of Income Tax (Appeals) 6 Chennai [CIT(A) dated
31-07-2019 and pertains to the Assessment Year [AY] 2014-15. The
grounds of the Revenue are as under:

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"The Order of the learned Commissioner of Income Tax (Appeals) is contrary to the Law and facts of the case.

1. CIT(A) erred in directing the AO to allow the assessee's claim of write off of "investments through NSEL of Rs. 3,20,86,850/- by holding that dues from NSEL as irrecoverable and writing of the same as bad debts is in accordance with the provisions of sec.36(1)vii) as well as sec28 of the Act.

1.1 CIT(A) ought to have appreciated the fact that AO has clearly established in the assessment order that the assessee does not qualify for deduction as per clause (i) & (ii) of sub-section (2) of section 36, as no capital was invested by the assessee on NSEL has ever been offered for taxation in any of earlier years. Further such activity cannot be classified as money lending activity.

1.2 CIT(A) omitted to consider the fact that recovery process has been initiated by NSEL and various other agencies. Since, the recovery is an ongoing process; the ultimate deficiency amount recoverable cannot be conducted in the AY: 2014-15 till the deficiency amount arrived.

1.3 As per Board's Circular No. 12/2016(F.No.279/MISC/140/20215- /T J) dt. 30./05/2016, the assessee has not fulfilled the condition as stipulated in sub section (2) of section 36 of the income tax Act, 1961. Hence, the claim of bad debt of Rs.3,20,86,850- is premature and final deficiency amount could not be arrived immediately.

2. CIT(A) erred in directing the AO to allow the assessee's claim of write off advance of Rs.1,11, 68, 046/- by holding that advancing loans (/CDs) to its sister concern, is strategic business loans and accordingly, when written off in the books, becomes eligible for deduction, not only u/s. 36 (1)(vii) of the Act, but also u/s. 28 of the Act.

2.1 As per Borad's Circular No.12/2016 (F. No.279/MISC/140/2025- IT J) dt. 30/05/2016, the assessee needs to fulfil the condition as stipulated in sub section (2) of section 36 of the Income Tax Act, 1961, for the claim of bad debt. But the assessee has not fulfilled the condition of clause (1) of sub section (2) of Section 36 of the Income Tax Act, 1961.

2.2 CIT(A) omitted to consider the fact that the assessee is a manufacturer of minerals and vitamin compounds and not money lending is the main business of the assessee.

For these and other grounds that may be adduced at the time of

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hearing, it is prayed that the Order of the learned Commissioner of Income Tax (Appeals) be set aside and that ore Assessing Officer be restored."

2. The brief facts of the case are that the assessee is a company. It made investments of Rs.3,20,86,850/- through M/s. National Spot Exchange Ltd. (NSEL). Also the assessee made advances to the tune of Rs. 1,11,68,046- to M/s. Global Nutrition, its sister concerned entity. The assessee write off of the invested amount of Rs. 3,20,86,850/- as the NESL suddenly collapsed on 31-07-2013. Similarly, the amount of Rs.1,11,68,046/- also write off as M/s Global Nutrition not in a position to repay that amount. The assessee filed its return of income for the AY 2014-15 on 25-09-2014 declaring a total income of Rs. 7,3162,020/-. At the same time the assessee claimed deduction of the aforesaid write off amounts. The case was selected for scrutiny under CASS and statutory notices was issued and served upon the assessee. The assessee responded to the notices and filed the necessary details as well as relevant documents. The Id. Assessment Officer [AO] completed the assessment u/s. 143(3) of the Act. The Id. AO vide order dated 30-12-2016 inter alia disallowed the claim of deductions and added the said amount to the total income of the assessee. They are: (i) Disallowance of write off of investments

through NSEL Rs.3,20,86,850 and (ii) write off of advance of Rs.1,11,68,046/-.

3. Being aggrieved, the assessee filed 1st appeal before the Id. CIT(A). The Id. CIT(A) vide order dated 31-07-2019 decided the appeal in favour of the assessee.

4. Being aggrieved, the Revenue filed the present appeal before the Tribunal.

5. Heard the representatives of both the parties and perused the materials on record. In respect of the issue of disallowance of write off of investments through NSEL for Rs.3,20,86,850/-, we observe that the Id. Assessing Officer [AO] disallowed the claim of the assessee by observing that as the process of recovery of money has been started, it is premature for the assessee to write off the invested amount of Rs.3,20,86,850/- which is not acceptable to us. As per our observation the starting of process to recover the write off amount does not mean that entire invested amount has been recovered. The assessee had taken into consideration the situation arisen from the sudden break down of the NSEL. The assessee took a commercial decision to write off the invested amount. The situation

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which was prevailing at the time of break down of NSEL has compelled the assessee to write off the invested amount. Again, write off of amount does not mean that the assessee has abandoned its claim over the write off amount. Therefore, recovery process would be going on and process of recovery is not a guarantee that the assessee will get back the entire invested amount. If any recovery will take place, then, that recovered amount would be the profit of the assessee for that year and would be the subject of the Income Tax Act, 1961. The assessee cannot wait for an indefinite period for taking a decision whether the account should be classified as bad or not. The assessee has taken into consideration the situation which was arisen after sudden collapse of the NSEL while taking a decision for classification of the amount as bad debt. Nobody except the assessee can fix a time line for classifying the invested amount as bad debt. It is up to the owner of the money, like the assessee to take a decision by taking into consideration about the prevailing situation of the invested money. Therefore, our considered opinion is that, the Id. CIT(A) is fully justified by deleting the disallowance of Rs.3,20,86,850/- vide his order dated 31-07-2019. Accordingly, we decide this ground of appeal of the Revenue in favour of the assessee.

6. The next issue is disallowance of write off of Rs. 1,11,68,046/- by the Id. AO. This issue is related to the making of advances by the assessee company to M/s Global Nutrition, a sister concern of the assessee. We observe that, although M/s Global Nutrition is a sister concern of the assessee company, it is a different entity legally. It took advances from the assessee company for its business purposes. However, they are not in a position to repay the advanced amount to the assessee company. Therefore, the assessee company classified the amount as "bad debt". We observe that the classification of the amount as a bad debt by the assessee company who can also be called a creditor, it is their discretion. That decision to write off the amount was taken by the assessee by applying its commercial wisdom. The assessee company taken into consideration about the financial position of M/s Global Nutrition and accordingly, took a decision to treat the amount granted to M/s Global Nutrition as bad debt. The Id. CIT(A) considered the reasons for such classification by the assessee company. We also considered the same. The Id. CIT(A) correctly decided the issue in favour of the assessee. The write off amounts are allowable loss. Accordingly, we decide this ground of the Revenue in favour of the assessee.

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7. In the result, the appeal of the Revenue is dismissed.

Order pronounced on 29th December, 2023.

Sd/-
(मंजुनाथ. जी)
(Manjunatha. G)

लेखा सदस्य /Accountant Member

Sd/-
(मनोमोहन दास)
(Manomohan Das)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai, दिनांक/Dated: 29th December, 2023.

EDN/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF