

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

**SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 4454/MUM/2023
(Assessment Year: 2014-15)**

Indira Commodities Pvt. Ltd.,
5, Indira House, 3rd Floor,
Topiwala Lane, Lamington Road,
Mumbai - 400001
[PAN: AABCI3136M]

..... **Appellant**

Deputy Commissioner of Income Tax
Circle 2(2)(1), Mumbai,
Aayakar Bhavan, M.K. Road,
Mumbai - 400020

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Kiran S. Mehta
For the Respondent/Department : Shri H M Bhatt

Date

Conclusion of hearing : 30.05.2024
Pronouncement of order : 24.06.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Assessee has challenged the order, dated 29/11/2022, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2014-15, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 08/12/2016, passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The Assessee has raised following grounds of appeal:
 1. *"In the Facts and Circumstances of the Appellant's case,*

the learned CIT (A) erred in confirming the disallowance of the claim for deposit with M/s. National Spot Exchange Ltd. Rs.8,50,000 which was written off to profit and loss account in the year in reference and was claim as a deduction while computing the Total Income for the year.

2. In the facts of the Appellant's case, the learned CIT (A) erred in not appreciating and considering that the said amount was even otherwise allowable as a deduction other than as a bad debt."

3. When the appeal was taken up for hearing, the Learned Authorised Representative for the Appellant submitted that the present appeal was filed after a delay of 314 days in the application seeking condonation of delay in filing the appeal it has been stated as under:

"1. The order of learned CIT (A) for the year in reference seems to have been passed on 29/11/2022.

2. The appeal against the said order is being filed now, i.e. about 305 days late. The reasons for the said delay may be briefly explained as under:

a. The said order of CIT (A) dated 29/11/2022 was not served on the registered e- mail ID of the company nor did the Appellant receive any message on the registered mobile number nor was the same served physically.

It was only when the statutory auditor was checking the IT Login account of the Appellant to review the tax demands, if any, in the accounts of the Appellant for FY 2022-23 that it was noticed that the impugned appeal order was already passed. This was noticed by the Appellant's representative on 03/08/2023

b. At that relevant point in time the Director attending the matter of the company were travelling and upon their return in second week of October, 2023,

they contacted the counsel who then advised them to file the second appeal before Your Honours.

- c. *Thus, the appeal before Your Honours is being filed within 60 days of the Directors of the Appellant coming back to Mumbai in the second week of October, 2023.*

3. In the factual matrix set out above, the Appellant prays that Your Honours may kindly condone the delay in filing the Appeal and may kindly admit the appeal and oblige.”

4. We have taken note of the explanation by the Appellant for explaining the delay of 314 days in filing the present appeal. In our view, the Appellant was prevented by sufficient cause in filing the present appeal. Further, the Revenue has not been able to controvert the submission made on behalf of the Appellant that the copy of the order, dated 29/11/2022, was not served upon the Appellant. According to the Appellant, the knowledge of passing the order dated 29/11/2020 having been passed by the CIT(A) was acquired on 28/08/2023 through the statutory auditor. The present appeal has been filed within the period of 60 days from the aforesaid date. Taking into consideration the above stated facts and circumstances of the present case, we hold that the Appellant had reasonable cause for not filing the appeal within a period of 60 days from the date of passing of the order impugned and therefore, the delay of 314 days in filing the present appeal is condoned.
5. We have heard both the sides on merits and perused the material on record. The contention advanced on behalf of the Appellant is that the Appellant had claimed deduction of INR 8,50,000/- under section 36(i)(vii) read with Section 36(2) of the Act in the return of income for the Assessment Year 2014-15 as the aforesaid amount was written-off in the books of accounts.

However, the Assessing Officer disallowed the aforesaid deduction. The CIT(A) confirmed the action of the Assessing Officer concluded that the decision of the Appellant to write-off the amount as bad debt was premature and that the Appellant had failed to show that the amount was taken into account in computing the income in any of the previous year. It has been contended on behalf of the Appellant while the CIT(A) has recorded the submissions of the Appellant have been perused, the same have not been taken into consideration by the CIT(A) while deciding the appeal.

6. Per contra, Learned Departmental Representative submitted that the Assessing Officer as well as the CIT(A) had rejected Appellant's claim for deduction in respect of amount written-off as bad debt under Section 36(i)(vii) read with Section 36(2) of the Act on the ground that the Appellant had failed to show that the applicable conditions stood fulfilled. Relying upon paragraph 5.2 of the order passed by CIT(A), Learned Departmental Representative submitted that the amount of actual loss was still not quantified and therefore, the CIT(A) was correct in computing that the decision of the Appellant to write of the amount in its books of accounts was premature.
7. In rejoinder, Learned Authorised Representative for the Appellant reiterated the submission and vehemently contented that in identical facts and circumstances, the Tribunal had accepted similar claim made by the Appellant and in this regard relied upon the written submissions were filed before the CIT(A) and the judicial precedents forming part of the paper book.
8. We have considered the rival submissions and perused the material on record. We find that the CIT(A) has disposed off the

issue in the following manner:

"5.2 The addition made by the AO and the submissions of the AO have been perused. The deduction u/s.36(1)(vii) is not permissible as the amount is not a debt which has been taken into account in computing the income in any previous year. It is deposit made for conducting the business on NSEL and therefore it cannot be written off and claim as revenue expenditure until the loss is quantified and there is no recovery possible. In the present case, the assets of NSEL have not been fully liquidated and the dues have not been settled. So therefore the action of AO to treat it as business loss is premature. Therefore, the action of AO in disallowing it is upheld and the grounds raised in this regard are dismissed."

9. On perusal of the above, we find that after narrating the background facts in paragraph 5.1 of the order, the CIT(A), has in paragraph 5.2 of the order impugned, confirmed the action of the Assessing Officer to treat the business loss as premature. We find that the specific submissions made by the Appellant before CIT(A) (placed at page 1 to 9 of the paper-book) have not been considered/dealt with by the CIT(A). At the same time, we note that the Appellant has also not placed before us documents/details showing that amount written-off as bad debt and claimed as deduction under Section 36(1)(vii) read with Section 36(ii) of the Act was offered to tax as income in any of the preceding assessment years. Therefore, keeping in view, the overall facts and circumstances of the present case, we set-aside the order dated 29/11/2022, passed by the CIT(A), with the directions to the CIT(A) to decide the appeal afresh on merits after taking into consideration the submissions of the Appellant. The Appellant is directed to place on record of the CIT(A) all the relevant information/details on which the Appellant wishes to place reliance in support of its profits claimed/contention. In terms of the aforesaid, Ground No. 1 and 2 raised by the Appellant are allowed for statistical purposes in result the

present appeal is allowed for statistical purposes.

10. In result, the appeal preferred by the Assessee is allowed for statistical purposes.

Order pronounced on 24.06.2024.

Sd/-
(Amarjit Singh)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 24.06.2024
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai