

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "C" BENCH: NEW DELHI**

**BEFORE SHRI G.S.PANNU, VICE PRESIDENT &
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.6052/Del/2018
[Assessment Year : 2014-15]**

Geofin Investment Pvt. Ltd., 4/42, Punjabi Bagh West, New Delhi-110026. PAN-AABCG8906H	vs	DCIT, Circle-10(1), New Delhi
APPELLANT		RESPONDENT
Appellant by	Shri S K Goel, Adv.	
Respondent by	Shri Vinay Kr.Karan, CIT DR & Shri Kanv Bali, Sr. DR	
Date of Hearing	24.07.2024	
Date of Pronouncement	26.07.2024	

ORDER

PER KULBHARAT, JM :

This appeal filed by the assessee for the assessment year 2014-15 is directed against the order of Ld. CIT(A)-35, New Delhi dated 29.06.2018. The assessee has raised following grounds of appeal:-

1. *"That the order of the learned Commissioner of Income Tax(Appeals) is against law and facts.*
2. *That in the facts and circumstances of the case of the appellant company the order of the learned Commissioner of Income Tax in confirming disallowance of bad debt claim of Rs.76900000/- u/s 36(l)(vii) in respect of outstanding debt against M/s. Liberty Whiteware Ltd.(LWL) New Delhi is altogether arbitrary, against the provisions laid under law, illegal, void and uncalled for.*
3. *That the learned Commissioner of Income Tax(Appeals) has grossly erred in confirming Long Term Loss of Rs.6,97,39,151/- suffered by appellant company in respect of sale of shares of M/s. Liberty White ware Ltd. which is altogether arbitrary, illegal, void and uncalled for.*

4. *That in the facts and circumstances of the case of the appellant the learned Commissioner of Income Tax(Appeals) has erred in confirming disallowance of Rs.107333/- u/s 14A which is arbitrary, void and uncalled for.”*

FACTS OF THE CASE

2. Facts giving rise to the present appeal are that the assessee is a non-banking finance company, engaged in the business of providing need based funding facility and letting and subletting of the properties. The case of the assessee was picked up for scrutiny assessment and the assessment u/s 143(3) of the of the Income Tax Act, 1961 [“the Act”] was passed vide order dated 15.12.2016 as recorded by the Ld.CIT(A) and not disputed by the parties. While framing the assessment, the Assessing Officer [“AO”] made addition of INR 7,69,00,000/- on account of disallowance of bad debt, addition of INR 6,97,39,151/- on account of disallowance of long term loss and further, the AO made addition of INR 50,64,081/- by invoking the provision of section 14A r.w. Rule 8D of the Income Tax Rules, 1962 [“the Rules”]. Thus, the AO assessed the loss at INR 1,65,81,226/- against the declared loss as per return of income of INR 16,82,84,458/-.

3. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A) who after considering the submissions of the assessee, partly allowed the appeal. Thereby, Ld.CIT(A) sustained the addition related to disallowance of bad debt and long term loss and restricted the addition made by invoking the provision of section 14A of the Act to the extent of INR 1,07,333/- i.e. to the extent of the exempt income, earned by the assessee.

4. Aggrieved against this, the assessee preferred appeal before this Tribunal.

5. At the time of hearing, Ld. Counsel for the assessee submitted that **Ground No.1** is general in nature, needs no separate adjudication. Hence, Ground No.1 needs no separate adjudication.

6. Ld. Counsel for the assessee further submitted that he does not wish to press **Ground No.4** due to smallness of the amount of disallowance. Considering the submissions of Ld. Counsel for the assessee, Ground No.4 is dismissed as not pressed.

7. In respect of **Ground No. 2** raised by the assessee, is against the disallowance of bad debt of INR 7,69,00,000/- u/s 36(1)(vii) of the Act, written off during the year under appeal.

8. Ld. Counsel for the assessee submitted that the authorities below have not considered the fact in right prospective and wrongly applied the judgement rendered by the Hon'ble Supreme Court in the case of **S.A. Builders Ltd. vs CIT 288 ITR 1 [SC]**. Ld. Counsel for the assessee submitted that the assessee had provided all the relevant evidences before the authorities below that they failed to consider the same and proceeded to pass the impugned order without giving any meaningful and effective opportunity to the assessee.

9. On the contrary, Ld. CIT DR opposed these submissions and supported the orders of the authorities below.

10. We have considered the submissions of the Ld. Authorized Representatives of the parties and perused the material available on record.

We find that the assessee had placed on record the relevant evidences. However, the AO failed to consider the evidences and advert to the submissions of the assessee. Primarily, the claim of the assessee was rejected on two counts are that firstly, investment in rehabilitation of sick company does not constitute business activity and secondly, there was no commercial expediency for doing so. We are unable to affirm the view of the AO that no prudent person would invest in a sick company. Sometimes rehabilitation and revival of a sick company earns huge dividends. Moreover, it is well settled law that AO cannot question the decisions taken by the assessee during the course of business and for running of such business subject to rider, such decision should not be a colourable device to evade taxes. Law is well settled that taxing authority cannot superimpose its prudence on the prudence of businessman. Undisputedly, the assessee company is authorized in Memorandum of Association, for carrying out business of non-banking finance company. Thus, finance and investment are normal business activities of the assessee. Therefore, by no stretch of imagination, it can be construed that transaction in question was not part of business activity. We hereby set aside the orders of the authorities below and restore this ground to the file of the AO for decision afresh. The AO would consider the submissions and verify the veracity of claim that the bad debt occurred in a normal course of business. Hence, Ground No. 2 of assessee's appeal is allowed for statistical purposes.

11. **Ground No.3** raised by the assessee against the confirmation of disallowance of Long Term Loss of INR 6,97,39,151/-.

12. Ld. Counsel for the assessee qua Ground No.3, submitted that the AO failed to consider the material filed before him. He submitted that the AO did not advert to the submissions and explanation offered alongwith supporting evidences. He submitted that no meaningful and effective opportunity was afforded to the assessee. He therefore, prayed that on this issue, the matter may be remanded back to the Assessing Officer for fresh decision. He submitted that the assessment was framed in haste as the impugned assessment was getting time barred. He contended that the assessee had submitted before Ld.CIT(A) regarding non-providing of opportunities to the assessee for supporting its claim. He also brushed aside the categoric submissions made in this regard and mechanically affirmed the finding of the AO.

13. Ld. CIT DR supported the orders of the authorities below. However, he submitted that the Hon'ble Tribunal if feel in its wisdom that the issues need re-verification by the AO in the light of evidence placed on record. The Revenue would have no objection for the same.

14. We have heard Ld. Authorized Representatives of the parties and perused the material available on record. In respect of Ground No. 3, the finding of the AO is as under:-

“The AR of the company has not filed any evidence/justification in support of such a huge loss of Rs.6.97 crores. No detail, even has been filed in support of sales consideration being received of Rs.32 lakh and valuation of such shares as required under the Act. Therefore, the same cannot be allowed as such. Further, considering the collusion between these sister concerns, when the assessee company was very much aware of the financial health of M/s LWL, this transaction cannot be held as a

real one. Therefore, capital loss of Rs.6,97,39,151/- is hereby disallowed and added back to income of the assessee. I am satisfied that the assessee has furnished inaccurate particulars of its income, penalty proceedings u/s 271(l)(c) are being initiated separately.”

15. The above finding of AO is affirmed by the Ld.CIT(A) on the basis that AO recorded that no evidence was furnished by the assessee. It is transpired from records that the above finding of the AO is factually incorrect as all details are available on record. It is also found that certificate to this effect is appended with the Paper Book stating that these details were also available on record during the assessment proceedings. The AO ought to have verified the veracity and correctness of the evidences placed on record. There cannot be any justification for disallowance made purely on the basis of suspicion without controverting the claim of the assessee. We therefore, considering the totality of the facts and submissions made by the Ld. Counsel for the assessee and in the interest of principle of nature justice, deem it proper to restore and remand this ground to the file of the AO to re-consider the submissions of the assessee and re-verify the claim of loss suffered by the assessee and thereafter, decide the issue afresh in accordance with law. Hence, Ground No. 3 of assessee's appeal is allowed for statistical purposes.

16. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 26th July, 2024.

Sd/-
(G.S.PANNU)
VICE PRESIDENT

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Amit Kumar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI