

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"F" BENCH, MUMBAI**

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.2839/MUM/2024**

**(Assessment Year : 2014-15)**

**ACIT**

249, 2<sup>nd</sup> Floor,  
Kautilya Bhavan,  
Mumbai – 400051

..... Appellant

v/s

**Vijay Enterprises**

272, Udyog Keshtra,  
Mulund West,  
Mumbai- 400080  
PAN: AACFV5271A

..... Respondent

Assessee by : Shri Mehul Shah

Revenue by : Shri Prashant Barate, Sr.DR

Date of Hearing – 11/11/2024

Date of Order - 12/11/2024

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeal has been filed by the Revenue challenging the impugned order dated 27/03/2024 passed under section 250 of the Income Act, 1961 ("the Act") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*] for the assessment year 2014-15.

2. In this appeal, the Revenue has raised the following grounds: –

*"1. On the facts and in the circumstances of the case, the Id. CIT(A) has erred in allowing the assessee's claim of deduction of Rs.26,25,000/-u/s. 35(1)(ii) of the I.T. Act despite the fact that it was established to be an accommodation entry taken from one M/s. School of Human Genetics and Population Health which was confirmed during the survey action conducted u/s. 133A by Investigation Wing of Kolkata?"*

*2. On the facts and in the circumstances of the case, the Id. CIT(A) is justified in allowing deduction of Rs.26,25,000/-made u/s. 35 of the IT Act ignoring the fact that authorized signatories of M/s. SHG& PH is unequivocal terms admitted that this institute was used for providing accommodation entries on commission basis."*

*3. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in holding that the A.O. had not brought any material evidence on record against the donor and ignoring the fact that the credible information was on the basis of survey conducted by the Investigation Wing after due verification of material found during such action?"*

*4. On facts and circumstances of the case and in law the Ld. CIT(A) has erred in deleting the disallowance of business loss of Rs. 1,85,77,751/-being the bad debt claimed u/s. 36(1)(vii) of the Income Tax Act, 1961."*

3. The brief facts of the case are that the assessee is a firm and for the year under consideration filed its return of income on 24.09.2013 declaring a total income of 2,98,00,950/-. The return filed by the assessee was selected for scrutiny and statutory notices under section 143(2) and section 142(1) were issued and served on the assessee. During the assessment proceedings, it was observed that the assessee gave a donation of Rs.15 Lakh to the School of Human Genetics and Population Health and accordingly claimed a deduction of Rs.26,25,000 being 175% of the donation under section 35(1)(ii) of the Act. In order to verify the genuineness of the donations to this very institution, commission under section 131 of the Act was issued by the Investigation Wing, Kolkata. As per the report of the Investigation Wing, Kolkata, this Institution was facilitating bogus donations and was found that donors/beneficiaries were in connivance with the Institute with the active help of brokers, entry operators and bogus

donation syndicates. Accordingly, the assessee was confronted with the findings of the Investigation Wing and was asked to show cause as to why the deduction claimed under section 35(1)(ii) be not disallowed. In response, the assessee submitted that the School of Human Genetic and Population Health was specified in the category of 'other institution' vide notification no.4 of 2010 dated 28.01.2010 and thus fulfils all the conditions laid down in section 35(1)(ii) of the Act. The assessee further submitted a copy of PAN card, Certificate of Registration of Societies (West Bengal), copy of Registration Certificate under section 12A, copy of Renewal of Recognition of Scientific & Industrial Research Organization issued by Ministry of Science & Technology, to support its contention that deduction under section 35(1)(ii) of the Act was correctly claimed by the assessee. During the assessment proceedings, the assessee was asked to file the details of any research work carried out by the School of Human Genetics and Population Health. However, the assessee failed to prove the genuineness of the donation and also failed to produce clinching evidence such as progress report etc. to establish the same. Accordingly, the Assessing Officer ("AO") vide order dated 30.12.2016 passed under section 143(3) of the Act disallowed the deduction of Rs.26,25,000 claimed by the assessee in respect of donation under section 35(1)(ii) of the Act. Further, during the assessment proceedings, it was found that the assessee has claimed a business loss amounting to Rs.1,85,77,751 while filing the return of income. Accordingly, the details of the same were called from the assessee. In response, the assessee submitted that during the year, the assessee indulged in trading in commodities/commodity derivatives on

National Spot Exchange Pvt Ltd. ("NSEL") through its brokers M/s Padmakshi Commodities Pvt Ltd. The AO, vide assessment order, held that losses accruing to the assessee from trading on NSEL fall squarely within the ambit of speculative transaction and the gains or loss resulting from such transaction be characterised as speculative in nature. Accordingly, the AO treated the loss amounting to Rs.1,85,77,751 as a speculative loss and further held that such losses can only be set off against the profits and gains of another speculation business. The contention of the assessee of treating it as a bad debt, due to NSEL fraud, was also rejected by the AO as the loss was not crystallised loss but a contingent loss.

4. The learned CIT(A), vide impugned order, allowed the appeal filed by the assessee and deleted the disallowance of deduction claimed under section 35(1)(ii) of the Act as well as deleted the disallowance of loss of Rs.1,85,77,751. Being aggrieved the Revenue is in appeal before us.

5. We have considered the submissions of both sides and perused the material available on record. At the outset, from a careful perusal of the impugned order passed by the learned CIT(A), we find that the learned CIT(A) in its 129-page order has merely referred to the findings of the Assessing Officer and extensively quoted various judicial pronouncements on the issue of deduction claimed under section 35(1)(ii) of the Act and the business loss claimed by the assessee. During the hearing, the learned Authorized Representative ("*learned AR*") though vehemently relied upon the order passed by the learned CIT(A), however, could not refer to the exact findings of the learned CIT(A) in granting relief to the assessee and

deleting the disallowance of deduction claimed under section 35(1)(ii) of the Act and deleting the disallowance of loss of Rs.1,85,77,751. Thus, having perused the impugned order passed by the learned CIT(A), we are of the considered view that the same is bereft of any independent reasoning by the learned CIT(A) and apart from quoting various decisions, neither recorded any specific findings on the facts of the assessee's case nor pointed out how the decisions referred by it are relevant and applicable to the present case. Since the learned CIT(A) has not rendered any findings on the merits of the assessee's case, we deem it appropriate to restore the appeal to the file of the learned CIT(A) for *denovo* adjudication after examination of the issue in the light of the submissions of both parties. Accordingly, the impugned order on this issue is set aside and the grounds raised by the Revenue are allowed for statistical purposes.

6. In the result, the appeal by the Revenue is allowed for statistical purposes.

Order pronounced in the open Court on 12/11/2024

**Sd/-**  
**OM PRAKASH KANT**  
**ACCOUNTANT MEMBER**

**MUMBAI, DATED: 12/11/2024**  
*Prabhat*

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

By Order

Assistant Registrar  
ITAT, Mumbai