

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
BEFORE SUNIL KUMAR SINGH, HON'BLE JUDICIAL MEMBER

I.T.A. No. 1425/Mum/2024

Assessment Year: 2015-16

&

I.T.A. No. 1424/Mum/2024

Assessment Year: 2016-17

&

I.T.A. No. 1524/Mum/2024

Assessment Year: 2017-18

ACIT-19(1), 506, 5 th Floor Piramal Chamber Lalbaugh, Parel, Mumbai - 400012	Vs	Goenka Trading, 11, Mehta Mahal, 15 th Mathew Road Opera House, Mumbai - 400004. [PAN: AAAFG0225H]
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Fenil Bhatt, Adv.
Revenue by :	Shri Bhangapatil Pushkaraj Ramesh, Sr. DR

सुनवाई की तारीख/Date of Hearing : 15/01/2025
घोषणा की तारीख /Date of Pronouncement: 20/01/2025

आदेश/ORDER

PER BENCH:

I.T.A. No. 1425/Mum/2024, ITA No.1424/Mum/2024 and I.T.A. No. 1524/Mum/2024 are three separate appeals preferred by the Revenue against three separate orders dated 29/01/2024 by Commissioner of income Tax (Appeals), NFAC, Delhi [hereinafter 'the Id. CIT(A)'] pertaining to AYs 2015-16, 2016-17 and 2017-18.

2. Since the facts in the captioned appeals are identical, they were heard together and are disposed off by this common order for the sake of convenience and brevity.

3. Briefly stated the facts of the case are that the assessee is a registered partnership firm, engaged in the business of trading in diamonds and commodities, trading in shares, Future and Option & securities, etc. The return of income for A.Y. 2015-16 was electronically filed, declaring loss of (-) Rs.5,94,42,028/-.

4. During the course of scrutiny assessment proceedings, the AO noticed that the assessee has claimed bad debt written off of Rs.13 crore. The basis for this claim was due to the stoppage of the trading in National Spot Exchange Limited (hereinafter 'NSEL'). According to the AO, the NSEL is not a recognized commodity exchange and only 25 members are as sellers and these 25 members in connivance with NSEL traded fictitious stocks on the exchange for which they raised fake documents during financial contracts between these 25 member companies as sellers and buyers, the companies squared off the contracts on the date of maturity, but later on when the investments grew substantially in these companies, they did not honour their commitment and thereby caused wrongful loss to the investors.

5. Taking a leaf out of the EOW report, the AO came to the conclusion that the assessee had not produced any documents which shows that the assessee has made any effort for recovery of said bad debts of Rs.13 crore and went on to disallow the claim.

6. Before the CIT(A), strong reliance was placed on the decision of the Hon'ble Supreme Court in the case of T.R.F. Ltd. vs. CIT (2010) 323 ITR 397 (SC) and also on the Circular No.12/2016 of the CBDT dated 30.05.2016, the CIT(A) was convinced with the claim of the assessee and allowed the bad debt.

7. Before us, the Sr.DR strongly supported the findings of the AO. It is the say of the DR that since the transactions have been declared to be illegal, the claim of bad debt cannot be allowed. Strong reliance was placed on the decision of the Hon'ble Supreme Court on preponderance of probabilities in the case of CIT vs. Durga Prasad More, (1971) 82 ITR 540 (SC) and Sumati Dayal vs. CIT, (1995) 214 ITR 801 (SC). The Sr.DR further pointed out that the assessee did not comply with Accounting Standard AS-5 and prayed for reversal of the order of the CIT(A).

8. We have given a thoughtful consideration to the orders of the authorities below.

9. It is an undisputed fact that the assessee entered into the contract prior to the action of EOW and suspension of NSEL. The following circular of NSEL needs special mention.

"National Spot Exchange Limited

Circular

Ref. No. : NSEL/TRD/2013/065

July 31, 2013

Dear Member,

Suspension of Trading and Postponement of settlement of all one day forward contracts other than e-series contracts

In terms of the provisions of the Rules, Bye-Laws and Business Rules of the Exchange, the Members of the Exchange are notified as under:

1. Pursuant to directions issued by the Department of Consumer Affairs, Government of India vide letter dated July 12, 2013, the Exchange had given an undertaking to the Government and simultaneously, with a view to ensure orderly performance of the markets, introduced T+10 contracts with Trade for Trade settlements.

2. Despite this, there is a loss of trading interest in the market due to underlying uncertainties, which has led to trade in-equilibrium.

3. Under these circumstances and also in view of the grave emergency that has emerged in the market and in order to safeguard interests of all participants and market in general and pursuant to Bye-laws and Rules, the relevant authority is satisfied that continuation of trade in one day forward contracts, other than e-series contracts, is not in the interests of market and that, it is expedient in the general interests of the trade so to do, has decided as under:

i. Trading in all contracts, except e-series contracts, stands suspended until further notice.

ii. Notwithstanding anything contained in the Bye-laws or any contract, it has been decided to merge the delivery and settlement of all pending contracts with effect from today and to defer it for a period of 15 days and consequently, the positions outstanding in the contracts will be settled by way of delivery and payment after expiry of 15 days.

iii. A revised settlement calendar will be announced for contracts due for settlement after such 15 days period.

4. It is clarified that the trading and settlement as well as physical delivery pertaining to e-series contracts like e-gold, e-silver etc. will continue as usual.

5. It is further clarified that other initiatives of the Exchange such as e-auction, e-procurement, MSP operations on behalf of Government agencies (NAFED and SFAC), etc. shall also continue uninterrupted.

Members are requested to kindly take note of it.

For and on behalf of
National Spot Exchange Ltd.

Santosh Mansingh
Asst. Vice President"

10. When the contract was finally settled, the assessee could not recover the amount due to it and hence was left with no choice but to write off the same. The assessee has actually written off the debt as is evident from the copy of the ledger account placed in the paper book.

11. In our considered opinion, the assessee satisfies the claim in the light of the decision of the Hon'ble Supreme Court in the case of TRF Ltd. (supra) which has been accepted by the Board vide Circular No.12/2016 which read as under:

Circular No.12/2016

F.No.279/Misc./140/2015-ITJ
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, Dated 30th May, 2016

Subject: - Admissibility of claim of deduction of Bad Debt under section 36(1) (vii) read with section 36(2) of the Income-Tax Act, 1961- reg.

Proposals have been received by the Central Board of Direct Taxes regarding filing of appeals/pursuing litigation on the issue of allowability of bad debt that are written off as irrecoverable in the accounts of the assessee. The dispute relates to cases involving failure on the part of assessee to establish that the debt is irrecoverable.

2. Direct Tax Laws (Amendment) Act, 1987 amended the provisions of sections 36(1)(vii) and 36(2) of the Income Tax Act 1961, (hereafter referred to as the Act) to rationalize the provisions regarding allowability of bad debt with effect from the 1st April, 1989.

3. The legislative intention behind the amendment was to eliminate litigation on the issue of the allowability of the bad debt by doing away with the requirement for the assessee to establish that the debt, has in fact, become irrecoverable. However, despite the amendment, disputes on the issue of allowability continue, mostly for the reason that the debt has not been established to be irrecoverable. The Hon'ble Supreme Court in the case of TRF Ltd. In CA Nos. 5292 to 5294 of 2003 vide judgment dated 9.2.2010¹, has stated that the position of law is well settled. "After 1.4.1989, for allowing deduction for the amount of any bad debt or part thereof under section 36(1)(vii) of the Act, it is not necessary for assessee to establish that the debt, in fact has become irrecoverable; it is enough if bad debt is written off as irrecoverable in the books of accounts of assessee."

4. In view of the above, claim for any debt or part thereof in any previous year, shall be admissible under section 36(1)(vii) of the Act, if it is written off as irrecoverable in the books of accounts of the assessee for that previous year and it fulfills the conditions stipulated in sub section (2) of sub-section 36(2) of the Act.

5. Accordingly, no appeals may henceforth be filed on this ground and appeals already filed, if any, on this issue before various Courts/Tribunals may be withdrawn/not pressed upon.

6. This may be brought to the notice of all concerned

(Sadhana Panwar)
DCIT (OSD) (ITJ)
CBDT, New Delhi"

12. Considering the facts of the case in totality, in the light of the decision of the Hon'ble Supreme Court (supra), we do not find any reason to interfere with the findings of the CIT(A). All the appeals filed by the Revenue are dismissed.

13. Before parting, the decision of Hon'ble Supreme Court in the case of CIT vs. Kurji Jinabhai Kotecha, (1977) 107 ITR 101 (SC) relied upon by the Sr.DR is misplaced inasmuch as the said decision relates to the speculation business / speculation loss whereas the case in hand is of write off of bad debts.

12. In the result, all the three captioned appeals by the Revenue are dismissed.

Order pronounced in the open Court on 20th January, 2025.

Sd/-

**(SUNIL KUMAR SINGH)
JUDICIAL MEMBER**

Sd/-

**(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER**

Mumbai, Dated 20/01/2025

SC S.P.

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai