

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH MUMBAI

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 4007/MUM/2023
Assessment Year: 2014-15**

Pico Capital Private Limited (Successor In Interest Of M/S Western India Garments Private Limited) 22(1) Bombay Cotton MIIS Compound, Dattaram Lad Path Kalachowky, Mumbai - 400033 (PAN: AAACW2493G)	Vs.	Deputy Commissioner of Income Tax-8(3)(2), Mumbai
(Appellant)		(Respondent)

**ITA No. 4211/MUM/2023
Assessment Year: 2014-15**

Deputy Commissioner of Income Tax - 8(2)(1), Mumbai	Vs.	Western India Garments Private Limited 22(1) Bombay Cotton MIIS Compound, Dattaram Lad Path Kalachowky, Mumbai - 400033 (PAN: AAACW2493G)
(Appellant)		(Respondent)

Present for:

Assessee : Shri Dharan Gandhi, Advocate
Revenue : Shri Arun Kanti Datta, CIT DR

Date of Hearing : 03.07.2025

Date of Pronouncement : 22.09.2025

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

These two appeals filed by assessee and revenue are against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2023-24/1056675304(1), dated 29.09.2023 passed against the assessment order by DCIT, Circle - 8(3)(2), Mumbai, u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 13.12.2016 for Assessment Year 2014-15.

2. Grounds taken by the assessee are reproduced as under:

1. *The Ld. CIT(A), NFAC has erred in confirming the disallowance of Rs. 13,52,543/- made u/s 14A r.w.r. 8D of the Rules over and above the disallowance of Rs. 11,02,185/- made by the Appellant.*
2. *The Assessment order u/s 143(3) of the Act, dated 13.12.2016 is bad in law as the same has been passed in the name of the non-existent person.*
3. *The Ld. AO, has erred in the levying interest under section 234B of the Act.*
4. *The Ld. AO erred in initiating penalty proceedings u/s 271(1)(c) of the Act.*

2.1 Grounds taken by revenue are reproduced as under:

1. *Whether on the facts and circumstance of the case and in law the Ld.CIT(A) is justified in deciding that the amount of Rs. 7,51,57,515/- qualifies for being claimed as bad debts u/s 36(1)(vii) of the Act, as the appellant has booked the sales of such amount, without keeping in view the fact that, since the ownership of the unsold goods remains with the assessee, the cost of purchase of the same amounting to Rs.7,57,00,515/- is to be added to the total income of the assessee as undisclosed stock.?*
2. *The Ld. CIT (A)'s order is contrary in law and on facts and deserves to be set aside.*
3. *The appellant prays that the order of Ld. CIT (A) on the above grounds be set aside and that of the AO restored. The appellant craves leave to amend or alter any ground or add a new ground that may be necessary at the time of hearing.*

3. At the outset, it is to be noted that Western India Garments Pvt. Ltd. got merged with Veer Mercantile Pvt. Ltd. whose name was subsequently changed to Pico Capital Pvt. Ltd. Revenue had filed its appeal in the name of erstwhile company, i.e., Western India Garments Pvt. Ltd. It was directed by the Bench to submit revised Form-36 along with grounds of appeal in the name of Pico Capital Pvt. Ltd., i.e., successor to Western India Garments Pvt. Ltd. Due compliance was made and revised Form-36 along with grounds of appeal are placed on record.

4. Brief facts of the case are that assessee is engaged in the business of export of ready-made garments and investment in shares and intercorporate deposits. Assessee filed its return of income on 29.09.2014 reporting total income as a loss at Rs.7,37,79,903/-. The return was subsequently revised on 11.10.2014 with revised total loss at Rs.7,37,84,296/-. Assessee had reported income from house property at Rs.3,27,062/-, loss from business at Rs.7,33,96,232/- and income from capital gains at Rs.46,46,822/-. In the year under consideration, assessee had debited an amount of Rs.7,66,24,693/- towards bad debts written off, for which details were called for. These represent amount receivable from Anand Rathi Commodities Ltd. (National Spot Exchange Ltd.). The details of claim of bad debts in respect of trades undertaken by the assessee which could not be completed due to closure of NSEL as tabulated below:

Scrip Name	Date of Purchase	Purchase amount	Date of sale	Sale consideration	Settlement date
Sugar - Maharashtra	08.07.2013	1,04,64,159/-	08.07.2013	1,06,00,692/-	13.08.2013
Paddy Basmati - Maharashtra	26.07.2013	2,06,66,800/-	26.07.2013	2,07,93,600/-	12.08.2013
Paddy Basmati - Maharashtra	19.07.2013	96,09,523/-	19.07.2013	97,52,322/-	24.08.2013
Sugar - Maharashtra	18.07.2013	97,84,114/-	18.07.2013	99,32,412/-	23.08.2013
Cottonseed Wash oil - Maharashtra	10.07.2013	1,18,14,588/-	10.07.2013	1,19,76,653/-	16.08.2013
Black Pepper - Maharashtra	10.07.2013	1,80,87,228/-	10.07.2013	1,83,57,718/-	16.08.2013
Total		8,04,26,412/-		8,14,13,397/-	

5. While completing the assessment, ld. AO disallowed Rs.7,66,24,693/- towards claim of bad debts and added Rs.7,57,00,515/- toward cost of purchase treated as undisclosed stock. Assessee has made multiple submissions in the course of assessment proceedings on this issue. Certain submissions are reproduced for ready reference:

i) Submission made by letter dated 07.11.2016

“Bad debts written off of Rs.7.66 crs.

In respect of the sad bad debts written off we have to state as follows:

- *The assessee-company has been trading in commodities on the National Spot Exchange Ltd (NSEL) since March 2011 upto July 2013*
- *NSEL is an exchange for trading in commodities duly registered with the ap regulatory authority, wiz, Forward Markets Commission (FMC)*
- *Trading on NSEL was only through registered brokers who traded on behalf of their clients (traders) as well as on their account*
- *Trading on NSEL was stopped with effect from July 31, 2013 by the FMC on noticing various discrepancies and defaults by the NSEL authorities causing substantial losses to the traders*
- *The assessee company was trading on NSEL through ‘Anand Rathi Commodities Ltd’ (ARCL) a duly registered broken with NSEL.*

- *Copy of ledger account of ARCL in the books of the assessee-company from 01.04.2013 to 31.03.2014 is enclosed herewith for your perusal. The said ledger account would show how the amount of Rs.7.66 crs turned bad over the years and hence had to be written off as a bad debt. The said ledger account would also show that the commodities sold were accounted as sales in the books of the assessee-company and hence offered as income of the respective year.*
- *Copy of the resolution passed by the Board of Directors of the assessee-company in its meeting held on 15/04/2014 approving write-off of the said amount of Rs 7.66 crs as a bad debt is enclosed herewith.*

"In the course of assessment hearing you had stated as to why business of trading in commodities on the NSEL should not be treated as speculation business in this regard we hereby submit as follows

- *Following documents are enclosed herewith in connection with the said trading of commodities on the NSEL*
- *Date wise and commodity wise statement of purchases and sales of commodities from 01.04.2013 to 31/07/2013 resulting in a net profit of Rs. 27.91 737/-*
- *- Contract notes issued by the registered broker ARCL through whom the trading on NSEL was conducted*
- *Letter reference NSEL/DEL/13-14 dated 01/06/2013-03/08/2013 along with client wise Delivery Allocation Report*
- *It can be seen from the contract notes of ARCL that ARCL has recovered VAT on trading of commodities from the assessee-company*
- *In the said letter of NSEL they have in para 2 clearly mentioned as follows*

"We confirm that the warehouse receipts are in our custody. It is clearly understood that the ownership of the commodities against the said warehouse receipts lies with you till the warehouse receipts will be tendered against your commodity pay-in obligation

- *Further, the Delivery Allocation Report attached to the said letter of NSEL, among other particulars clearly mentions the warehouse location where the said commodity owned by the assessee company is stored*
- *Further section 43(5) of the Act provides as follows:*

"speculative transaction" means a transaction in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips'

Based on the aforesaid factual and legal position it is submitted that there is no ground to treat the business of trading in commodities on NSEL as speculation business"

ii) In another submission dated 28.11.2016

"In the course of the assessment hearing you had mentioned as to how sale of commodities on the National Spot Exchange Ltd (NSEL) was effected in August 2013 when the trading on the exchange was stopped by the Forwards Market Commission (FMC) with effect from 31 07 2013

In this regard we have to state that the date of sale mentioned in the statement filed vide letter dated 07.11.2016 is not the date of sale it is in fact the date of expiry of the contract it is submitted that all the sales were effected before 31.07.2013 In this regard we are enclosing herewith a statement alongwith the contract notes in respect of the five instances which would show that the sales were before 31.07 2013."

iii) Through its submission dated 05.12.2016, assessee explained the manner in which trading in commodities was done on NSEL.

iv) In submission dated 08.12.2016, assessee submitted as under:

"Bad debts written off of Rs 7.66 crores

In this regard hither to our written submissions filed vide letter dated 07-11-2016 we hereby submit as follows

- *Section 36(1)(v) provides as follows*

"The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein in computing the income referred to in section 28-

(vi) subject to the provisions of sub-section (2) the amount of any bad debt. or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year

- *Section 36(2)10 provides as follows*

"In making any deduction for a bad debt or part thereof the following provisions shall apply-

(i) no such deduction shall be allowed unless such debt or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof is written off or of an earlier previous year...."

In this regard, the Hon'ble Supreme Court while interpreting section 36(1)(vii) rws 36(2) has held in TRF Ltd v CIT (2010) 323 ITR 397/ 190 Taxman 391 (SC) as follows

“Section 36(1)(v) of the Income-tax Act, 1961-Bad debts Assessment years 1990-91 1993-94 and 1994-95 - Whether after 1-4-1989, it is not necessary for assessee to establish that debt in fact, has become irrecoverable it is enough if bad debt is written off as recoverable in accounts of assessee Held, yes-

Whether where Assessing Officer had not examined whether in fact bad debt or part thereof was written off in accounts of assessee, matter was to be remitted back Assessing Officer for de novo consideration of above mentioned aspect only-Held, yes

Copy of the said decision is enclosed herewith.

In this regard the CBDT has issued Circular No 12/2016 dated May 30, 2016 in para nos 5 & 6 of which it has stated as follows:

“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 section 36 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.”

In view of the aforesaid it is submitted that the claim of the assessee for write off of bad debt of Rs. 7.66 crores is allowable and should be allowed.”

6. In sum and substance, through the above submissions, assessee claimed that ld. AO without rejecting the audited accounts altered the accounting treatment of bad debts, sales and closing stock which is violative of the provisions of the Act. Further, treatment given by ld. AO of undisclosed stock is without appreciating the fact that operations of NSEL were stopped by the regulatory authority, i.e., Forward Markets Commission for the reason that goods purportedly lying in designated warehouses were infact not in existence there and hence, delivery of the sold goods could not be given by the seller. Assessee, thus claimed that the entire irregularity in NSEL was on account of non-existence of goods in the designated warehouses and

hence, even if, the said goods were treated as stock in trade of the assessee, the same would have to be allowed as a deduction on account of loss of stock, not recoverable.

7. From the above submissions, the issue in respect of NSEL narrows down on the two points as under:

i) Amount of sale consideration which has already been recognised as income has to be allowed as bad debts u/s.36(1)(vii) on writing off such amount, or

ii) if the sale transactions are not accepted then, since assessee has paid the purchase consideration and goods are not provided to the assessee, therefore the said amount is allowable as a business loss u/s.28(i).

7.1. Accordingly, there is nothing pre-mature in writing off the bad debts in respect of the amounts receivable by the assessee. On these above aspects, Id. CIT(A) has given his detailed observations which are fact based, after taking into consideration the submissions made before him. He has analysed the copies of contract notes and summary of transactions along with ledger of Anand Rathi Commodities Ltd. Factual position noted by him mentions that contract notes are prior to the date 31.07.2013 which contain all the necessary and relevant details towards date and time of the trade, trade number, particulars of the commodity, quantity, price, total value, delivery charges and VAT. Id. CIT(A) has also referred to the delivery allocation report received by the assessee on payment of purchase amount according to which stock was in possession of NSEL warehouse though the title of the goods was with assessee. Assessee had entered into transaction for sale of such commodities which is booked immediately though the money is received in T+2 to 3 weeks.

Ld. CIT(A) also took note of the factual position that subsequent to July 2013, trading operation of NSEL was suspended by the Government. Since the stock of goods was not found in the warehouse, assessee did not receive the consideration for the sale from the purchasers. It was the legal obligation of NSEL to settle the contracts but it failed to pay the outstanding amounts under the contracts to the assessee through its broker member, namely Anand Rathi Commodities Ltd. Accordingly, sale consideration of the commodities became irrecoverable. Subsequently, assessee could only recover Rs.5,53,926/- from NSEL which was received by it on 01.11.2018 and the balance remained irrecoverable. This receipt was offered to tax by the assessee in AY 2019-20. Thus, considering all these factual position, ld. CIT(A) allowed the claim of bad debts u/s. 36(1)(vii), since assessee had booked sales of the said amount. Thus, ground raised by the assessee on this issue was allowed.

8. The issue before us is no longer *res integra* as it has been dealt with by several Coordinate Benches of the Tribunal including-

- i) Chowdry Associates vs. ACIT [2020] 117 taxmann.com 840 (Del Trib)
- ii) DCIT vs. Cello Pens and Stationery Pvt. Ltd. [2022] 215 TTJ 486 (Mum)
- iii) Flair Exports Pvt. Ltd. vs. DCIT [2022] 138 taxmann.com 582 (Del Trib)
- iv) ACIT vs. Syed Habibur Rehman [2022] 139 taxmann.com 582 (Del Trib)

8.1. In all these decisions, it has been held that where an assessee was in business of commodity derivatives and Revenue had also accepted income from transactions of assessee as business income and not as income from speculation of all earlier years, if owing to suspension of operations by NSEL, assessee could not recover amounts from brokers which were advance for purchase of commodities, such loss was allowable u/s.28. In the present set of facts which are similar to the facts contained in the above list of judicial precedents, respectfully following the same, we do not find any reason to interfere with the fact based finding given by Id. CIT(A). Accordingly, ground raised by the Revenue is dismissed.

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

10. In the appeal filed by the assessee contesting on disallowance made u/s.14A r.w.r. 8D, assessee had received dividend income of Rs.92,77,712/- which was claimed as exempt u/s.10(34) and 10(35). Assessee had made a *suo moto* disallowance of Rs.11,02,185/- u/s. 14A while computing its total income. In the course of assessment proceedings, assessee explained the methodology adopted by it for computing the amount *suo moto* disallowed by it, by way of Note-4 forming part of the statement of total income which gave the working of average of investments. Assessee explained that in the working, value of investments, income from which is exempt from tax earned have been considered while calculating average investment as provided u/r. 8D of the Income Tax Rules, 1962 (the Rules). Thus, assessee tabulated the details of the investments which was not considered for calculating the average investments:-

Sr. No.	Particulars	As on 31.3.2014	As on 31.3.2013
1	Investment in unquoted equity shares	12,67,50,100/	12,67,50,100/
2	Investment in taxable bonds	1,60,08,229/	1,60,01,570/
3	Investment in debt Mutual funds	17,28,38,411/	11,46,78,600/-

11. Contrary to the above submissions, ld. AO took the average investments of Rs.48,65,51,645/- for applying 0.5% u/r. 8D(2)(iii) to arrive at total disallowance of Rs.24,54,728/-. After giving credit for the suo moto disallowance, ld. AO made an addition for the balance amount of Rs.13,52,543/- toward disallowance u/s. 14A r.w.r. 8D. How ld. AO has arrived at the figure of average investment of Rs.48,65,51,645/- is nowhere mentioned in the assessment order and therefore not discernible as to how this working has been arrived at.

11.1. In the first appellate stage, ld. CIT(A) while dealing with the ground raised by the assessee on the disallowance made by the ld. AO u/s.14A r.w.r. 8D, based his decision by referring to the amendment brought to section 14A vide Finance Act, 2022 whereby an explanation was introduced. He thereafter referred to the decision of Coordinate Bench of ITAT Guwahati in the case of ACIT vs. Williamson Financial Services Ltd., according to which the explanation was retrospective in nature and therefor upheld the disallowance made by the ld. AO.

12. Before us, ld. Counsel for the assessee at the outset reiterated the above factual position of how it calculated the suo moto disallowance by not taking certain investments which did not yield any exempt income, details of which are already tabulated above. Further, ld. Counsel for the assessee referred to the decision of Hon'ble High Court of Guwahati in the case of Williamson Financial Services Ltd. vs. CIT in case No. ITA/4/2024, dated 24.09.2024 whereby the reliance placed by ld. CIT(A) on the decision of Coordinate Bench of ITAT of Guwahati was reversed by the Hon'ble High Court holding in favour of the assessee that explanation inserted to section 14A vide Finance Act, 2022 is applicable prospectively. Hon'ble High Court while giving its judgement dealt with the decision of Hon'ble High Court of Delhi in the case of PCIT vs. Era Infrastructure India Ltd. [2022] 141 taxmann.com 289 (Del) amongst various other decisions. Further, ld. Counsel pointed out that the working given by the assessee while computing the suo moto disallowance u/r. 8D(2)(iii) is based on the decision of Hon'ble ITAT Special Bench in the case of PCIT vs. Vireet Investments Pvt. Ltd. [2017] 82 taxmann.com 415 (Del Trib)(SB) whereby has it has been held that only those investments are to be considered for computing average value of investment which yielded exempt income during the year. According to the ld. Counsel, what ld. AO has resorted to is contrary to the decision of Hon'ble High Court of Guwahati and the decision of Hon'ble Special Bench.

13. We have perused the records and gone through the factual position as well as the details tabulated above. We have also perused the judicial precedents and find that basis adopted by ld. CIT(A) as well as by ld. AO are in starck contravention to the judicial precedents referred above, namely, decisions of Hon'ble High Court of Guwahati and Delhi and that by Hon'ble Special Bench. Respectfully, following

the same and taking into account the factual position, details of which are already tabulated above, disallowance made by the ld. AO is deleted. Ground raised by the assessee in this appeal is allowed.

14. In the result, appeal of the Revenue is dismissed and appeal of the assessee is allowed.

Order is pronounced in the open court on 22 September, 2025

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 22 September, 2025

MP, Sr.P.S.

Copy to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai