आयकर अपीलीय अधिकरण

मुंबई पीठ “ए”,मुंबई

श्री विकास अवस्थी, न्यायिक सदस्य एवं

श्री एस. रिफौर रहमान, लेखाकार सदस्यके समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “A”, MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER&
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER

आअसं.298 से 300/मुं/2022 (नि.व. 2014-15,2015-16 एवं 2017-18)
ITA NO.298 TO 300/MUM/2022(A.Y.2014-15, 2015-16 & 2017-18)

Laffans Petrochemicals Ltd.
One BKC, 1302, 13th Floor, B-Wing,
Plot No.C-66, G-Block, Bandra Kurla Complex,
Bandra(East), Mumbai 400 051.
PAN: AAACL-0645-D ...... अपीलार्थी/Appellant

बनाम Vs.

Asstt.Commissionerfo Income Tax,
Circle 10(2)(1), Mumbai,
Room No. 509, 5th Floor,
Aaykar Bhavan, M.K.Road,
Mumbai 400 020 .....प्रतिवादी/Respondent

आअसं.2552/मुं/2021 (नि.व. 2014-15)
ITA NO.2552/MUM/2021(A.Y.2014-15)

Asstt.Commissionerfo Income Tax,
Circle 2(2)(1), Mumbai,
Room No. 545, 5th Floor,
Aaykar Bhavan, M.K.Road,
Mumbai 400 020 ...... अपीलार्थी/Appellant

बनाम Vs.

Laffans Petrochemicals Ltd.
One BKC, 1302, 13th Floor, B-Wing,
Plot No.C-66, G-Block, Bandra Kurla Complex,
Bandra(East), Mumbai 400 051.
PAN: AAACL-0645-D .....प्रतिवादी/Respondent

Assessee by : S/Shri Haridas Bhat & Shekhar Gupta
Revenue by : Shri Manoj Kumar Sinha
सुनवाई की तिथि/ Date of hearing : 16/03/2023
घोषणा की तिथि/ Date of pronouncement : 28 /03/2023

आदेश/ORDER

PER VIKAS AWASTHY, JM:

Thethreeappeals by the assessee for assessment years 2014-15, 2015-16 and 2017-18 and the cross appeal of the Revenue for 2014-15 are taken up together for adjudication as the issues raised in all these appeals germinate from same set of facts.

2. For the sake of convenience, the appeals are decided in seriatim of assessment years.

ITA NO.298/MUM/2022 A.Y. 2014 -ASSESSEE'S APPEAL &
ITA NO.2552/MUM/2021 A.Y. 2014 – REVENUE'S APPEAL

3. These cross appeals are directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 21/10/2021 for the assessment year 2014-15.

4. The appeal by the assessee is time barred by 58 days. The assessee has filed an application supported by an affidavit, citing reasons for delay in filing of the appeal. The delay has been attributed to COVID-19 Pandemic. After examining the contents of the affidavit, we are satisfied that the delay in filing of appeal is not deliberate and has occurred prima-facie for bonafide reasons mentioned in the affidavit. The Hon'ble Apex Court taking suo-motu cognizance of unprecedented situation caused by Pandemic extended the

period of limitation under General and Special Laws in respect of all judicial or quasi-judicial proceedings[Re. Cognizance for Extension of Limitation, 441 ITR 722(SC)], hence, the delay in filing of the appeal is condoned and the appeal is admitted to be heard for disposal on merits.

5. Shri Haridas Bhat appearing on behalf of the assessee submits that the assessee is engaged in trading of commodities through 'National Spot Exchange Ltd.('NSCL'). During the period relevant to assessment year under appeal, the assessee had made purchases of Rs.38.94 crores and sales of Rs.43.23 crores through NSCL. The outstanding as on 31/03/2014 was Rs.9,01,54,404/-. The NSCL collapsed on account of bogus transactions being carried out therein and there was little likelihood of recovery of the amount. The assessee wrote off 50% of the outstanding amount i.e. Rs.4,50,77,202/-. The assessee could recover Rs.3,70,092/- from the outstanding amount. The income earned from trading in commodities was offered to tax by the assessee under the head 'business income'. The Assessing Officer rejected assessee's claim and held that the profit from trading in commodities is speculative transaction within the meaning of section 43(5) of the Income Tax Act, 1961 [in short 'the Act']. Aggrieved by the assessment order dated 31/12/2016, the assessee filed appeal before the CIT(A). The CIT(A) without appreciating the facts and without considering the amendment to sub-section(5) to section 43 of the Act upheld the findings of Assessing Officer. The ld. Authorized Representative for the assessee submits that clause (e) to proviso to section 43(5) of the Act was inserted by the Finance Act, 2013 w.e.f. 01/04/2014. By virtue of newly inserted clause (e), trading in commodities and derivatives was taken outside the purview of 'speculative transaction'. The ld.

Authorized Representative for the assessee in support of his submissions placed reliance on the following decisions:

(i) ACIT vs. Ketan Anil Shah, in ITA No.2188/Mum/2022, A.Y. 2014-15 decided on 19/01/2023.

(ii) ACIT vs. M/s. Clothing Culture Ltd., in ITA No.495/Mum/2021, A.Y.2014-15 decided on 31/10/2022.

(iii) Chowdry Associates vs. ACIT, 184 ITD 222 (Del-Trib)

6. Per contra,Shri Manoj Kumar Sinha representing the Department vehemently defended the impugned order. The ld. Departmental Representative submits that the Assessing Officer and the CIT(A) have categorically held that the transaction carried out by the assessee through NSCL were not delivery based. The assessee was given ample opportunity to place on record relevant documents to substantiate physical delivery. The assessee failed to furnish any cogent evidence in this regard, hence, the transactions of trading in commodity were held to be speculative within the meaning of section 43(5) of the Act.

7. We have heard the submissions made by rival sides and have examined the orders of authorities below. It is an undisputed fact that during the period relevant to assessment year under appeal, the assessee traded in commodities at NSCL. The transaction in commodities were carried out through broker Motilal Oswal Commodities Broker Pvt. Ltd. Some of the broker Contract Notes for purchase/sale of commodities at NSCL are at pages 8 to 25 of the paper book. As can be gathered from the impugned order, the only reason for holding transaction as speculative is, that the assessee failed to

furnish relevant documentary evidence to substantiate physical delivery of commodities.

8. Sub-section (5) to section 43 defines 'speculative transaction'. The same is reproduced herein below:

> "***Section 43***
>
> *(5) "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:*
>
> ***Provided*** *that for the purposes of this clause-*
>
> *(a) …………*
> *(b) ………..*
> *(c) ………..*
> *(d) ………..*
> *(e) an eligible transaction in respect of trading in commodity derivatives carried out in a [recognised stock exchange] [, which is chargeable to commodities transaction tax under Chapter VII of the Finance Act, 2013 (17 of 2013)] shall not be deemed to be a speculative transaction:*

A bare perusal of proviso (e) to section 43(5) of the Act would show that trading in commodity derivatives are outside the purview of 'speculative transaction', subject to compliance of other conditions as mentioned therein. It is not the case of the Revenue that it is not an 'eligible transaction' or the trading was not carried out in a 'recognized stock exchange'. The case laws that have been referred to in the assessment order for discarding assessee's claim of 'business income' are prior to insertion of Clause (e) by the Finance Act, 2013 w.e.f. 01-04-2014. Thus, in our considered view, the Assessing Officer and CIT(A) without taking note of sub-clause (e) have erred in holding that the transaction of trading in commodity by the assessee is speculative.

9. In the case of Chowdry Associates vs. ACIT (supra), wherein the assessee had been trading at NSCL for commodities and had offered income therefrom as business income, the Assessing Officer held the transaction to be speculative. In first appeal, the CIT(A) confirmed the findings of Assessing Officer. The assessee carried the issue in appeal before the Tribunal. The Tribunal after examining the facts of case, CBDT Circular No.12/2016 and various other decisions concluded as under:

> *"31. The matter before us deals with the non-recovery of the advances given to the brokers. The AO, for the instant year held that the assessee is dealing in speculative transactions and invoked provisions Section 43(5) of the Act. The AO has also held that the assessee has been carrying trade in commodity derivatives. Section 43(5)(e) considers an eligible transaction in respect of trading in commodity derivatives carried out in a recognized association shall not be deemed to be a speculative transaction. Hence, we hold that the transactions of the assessee shall not be deemed to be speculative transactions. Chapter VII of the Finance Act 2013 w.e.f. 01.04.2014, details as to what is a commodity derivative in the Commodities Transaction Tax (CTT). As per the CTT commodity derivative means a contract for delivery of goods which is not a ready delivery contract or a contract for differences which derives its value from the prices of such underlying goods. Thus, we find that the assessee is in the business of commodity derivatives but not in the speculation transaction as held by the AO. The revenue has also accepted the income from the transactions of the assessee as business income but not as income from speculation for all the earlier years. (Owing to collapse of the NSEL, no further trading could be conducted by the assessee in the latter years). It is also an undisputed fact that the trade advances given by the assessee stands irrecoverable.*
>
> *32. In conclusion, keeping in view the facts of the case, a tax history of the assessee , treatment given by the revenue to the transactions undertaken by the assessee, finding of the AO that the assessee is into commodity derivatives, provisions of the Section 43(5) invoked by the AO, provisions of Section 43(5)(e) relied upon by the Id. AR, Explanation (2) of Section 43 as to what constitutes commodity derivatives, Para 5 of Chapter VII of Finance Act, 2013, CBDT Circular No. 3/2006 dated 27.02.2006, orders of the Co-ordinate Bench of ITAT in MeghSakariya International (supra), Omni Lens Pvt. Ltd. (supra), judgment of the Hon'ble Apex Court in the case of TRF Ltd. (supra), we hereby hold that the business loss claimed by the assessee is allowable u/s 28 of the Act."*

10. Thus, after examining facts of the case, provisions of section 43(5) of the Act and the decision cited above, we have no hesitation in holding that the income generated from trading in commodities in the instant case is not a speculative transaction and is assessable as 'business income' of the assessee. Consequently, appeal by the assessee is allowed.

ITA NO.2552/Mum/2021-.A.Y.2014-15:

11. The Revenue in its appeal has assailed the findings of CIT(A) on the following grounds:

(I) Allowing of bad debts u/s. 36(2) of the Act;

(ii) Allowing Depreciation on motor car and motor car expenses; and

(iii) Deleting disallowance u/s. 14A r.w..r.8D(2)(ii) of the Act

12. The ld. Authorized Representative for the assessee submitted at the outset that the ground No.1 raised by the Revenue is consequential to the ground raised in appeal by the assessee. In respect of ground No.2, the ld. Authorized Representative for the assessee submits that the issue is covered by the Tribunal order in assessee's own case for Assessment Year 2012-13 in ITA No.1464/Mum/2018 decided on 29/05/2019. In respect of ground No.3, relating to disallowance u/s. 14A of the Act, the ld. Authorized Representative for the assessee submits that the issue is squarely covered by the decision of Hon'ble Bombay High Court in the case of CIT vs. Bengal Finance & Investments Pvt. Ltd. in ITA No.337 of 2013 decided on 10/02/2015.

13. The ld. Departmental Representative supported the findings of the Assessing Officer in respect of grounds raised in appeal by the Revenue.

14. Both sides heard. The Revenue in ground No.1 of appeal has assailed the findings of CIT(A) in allowing assessee's claim of bad debts amounting to Rs.4,50,77,202/- u/s. 36(2) of the Act. The CIT(A) even though after holding the transaction as speculative has granted relief to the assessee by placing reliance on the decision in the case of Rajputana Trading Co. Ltd. vs. CIT, 72 ITR 286 (SC). In appeal by the assessee (ibid) we have held that revenue from trading in commodity is a 'business income'. The bad debts claimed by the assessee in the normal course of business are allowable in the light of decision of Hon'ble Supreme Court of India in the case of TRF Ltd. 323 ITR 397(SC). The ground No.1 in department's appeal is consequential to our findings in appeal by the assessee. Hence, ground No.1 raised in the appeal by Revenue is dismissed.

15. In ground No.2 of appeal, the Revenue has assailed assessee's claim of depreciation on motor car and motor car expenses. We find that this issue has already been decided by the Co-ordinate Bench in assessee's own case in Assessment Year 2012-13(supra). The relevant extract of the findings of the Co-ordinate Bench on this issue are as under:-

> *"7.2 We have heard the rival submissions. It is a well settled proposition that merely because the asset is purchased in the name of director, the company cannot be denied depreciation on the same, if the asset is otherwise found to be used for the purpose of business. The decision relied upon by the assessee in the case of CIT vs. Dilip Singh Sardarsingh Bagga [1993] 201 ITR 995 (Bombay) clearly supports the stand of the assessee. We, thus, set aside the order of CIT(A) and direct the Assessing Officer to allow depreciation on the motor vehicle and related expenses on motor vehicle. Accordingly, this Ground of appeal is also treated as allowed."*

There has been no change in the facts in the impugned assessment year, hence, in the light of above findings by the Tribunal, ground No.2 of the appeal is dismissed.

16. In ground No.3of appeal, the Revenue has assailed deleting of disallowance u/s. 14A of the Act. The CIT(A) has deleted the disallowance by placing reliance on the decision of Hon'ble Jurisdictional High Court in the case of Bengal Finance & Investments Pvt. Ltd. (supra) and also on the decision in the case of ACIT vs. Vireet Investments Pvt. Ltd. 58 ITR 313(Del-SB). It is now a settled proposition that disallowance u/s.14A of the Act could not be added to book profits u/s. 115JB of the Act. No contrary material has been placed before us by the Revenue. We find no infirmity in the findings of the CIT(A) on this issue, hence, ground No.3 of appeal is dismissed.

17. In the result, appeal by the Revenue is dismissed.

18. **To sum up, appeal by the assessee is allowed and that of Revenue is dismissed.**

ITA NO.299 & 300/Mum/2022: A.Y. 2015-16 & 2017-18.

19. Both sides are unanimous in stating that the facts and the grounds raised by the assessee in appeal for these Assessment Years are identical to the grounds raised in appeal for 2014-15 in ITA NO.298/Mum/2022.

20. We find that the solitary issue raised in both the appeals by the assessee is with respect to rejection of assessee's claim to treat income from trading in commodity as 'business income'. The Revenue has held it to be speculative transaction. The findings given while adjudicating the appeal of assessee for Assessment Year 2014-15 would *mutatis mutandis*apply to the appeals of the assessee for Assessment Year 2015-16 and 2017-18. Hence, both these appeals are allowed for parity of reasons.

21. **To sum up, appeals by the assessee for Assessment Years 2014-15, 2015-16 and 2017-18 are allowed and appeal of Revenue for 2014-15 is dismissed**.

Order pronounced in the open court on Tuesday the 28th day of March, 2023.

Sd/-	Sd/-
(SHRI S.RIFAUR RAHMAN)	(VIKAS AWASTHY)
लेखाकार सदस्य/ACCOUNTANT MEMBER	न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 28/03/2023
Vm, Sr. PS(O/S)

<u>प्रतिलिपि अग्रेषित Copy of the Order forwarded to</u> :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्तCIT**/PCIT**
4.. विभागीय प्रतिनिधि, आय.अपी.अधि., मुबंई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

BY ORDER,

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(Dy./Asstt.Registrar)
Mumbai