

आयकर अपीलीय अधिकरण “एक-सदस्यमामला” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI

माननीय श्री अमरजीत सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI AMARJIT SINGH, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.6485/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2014-15)

M/s. Monarch Network Finserve Private Limited (earlier known as M/s Ravisha financial services private Ltd.) 901/902, Atlanta Centre Sonawala Lane, Opp. Udyog Bhavan, Goregaon East Mumbai-400 063	बनाम/ Vs.	Income Tax Officer-13(3)(1) 2 nd Floor, Aaykar Bhavan M.K. Road, Churchgate Mumbai-400 020
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AAACR-4982-K		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Ms. Neha Paranjpe - Ld. AR
Revenue by	:	Ms. Smita Verma - Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	07/07/2021
घोषणा की तारीख / Date of Pronouncement	:	12/07/2021

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for AY 2014-15 contest the order of Ld. Commissioner of Income Tax (Appeals)-21, Mumbai [CIT(A)] order dated 18/06/2019 on following grounds of appeal.

1. The Ld.CIT (A) erred confirming the disallowance of Rs.11,67,645/- made by the Ld. A.O. under section 36(1)(vii) of the Act without appreciating that the said amount pertains to the interest receivable on the loan given to

Rajhoo Bharot and the same was written off as bad debt as the said party shown inability to repay the said interest. Thus, the disallowance of Rs.11,67,645/- made u/s 36(1)(vii) is not justified and the same may be deleted.

2. The Ld.CIT (A) erred in confirming the disallowance of Rs.17,14,430/- being referral fees paid to Networth Stock Broking Ltd. alleging that there no TDS compliance without appreciating that the Assessee has been paying referral fees to the said company since many years after due compliance of TDS. Thus, the disallowance of Rs.17,14,430/- is unjustified.

As evident, the assessee is aggrieved by confirmation of disallowance of bad debts and another disallowance of referral fees paid by the assessee.

2. We have carefully heard the rival submissions, oral as well as written and perused relevant material on record including documents placed in the paper-book. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

3. The material facts are that the assessee being resident corporate assessee is registered as non-banking finance company (NBFC). Accordingly, granting of loans and earning of interest would be the business of the assessee. An assessment was framed for the year u/s 143(3) on 30/12/2016 wherein certain additions / disallowance were made. The brief facts as well as adjudication to disallowances which are subject matter of appeal would be as follows.

4. Disallowance of Bad Debts

4.1 During assessment proceedings, it transpired that the assessee claimed reversal of interest for Rs.11.67 Lacs with respect to a person namely Rajhoo Barot. It was submitted that the said party was granted loan and it repaid Rs.137 Lacs in full and

final settlement. Accordingly, the outstanding amount was written-off as bad debts by way of interest reversal in the books of accounts. The interest income earned from the said party was stated to be offered to tax in earlier years as supported by the ledger extract of the said party. However, finding that the assessee charged interest even after the date of settlement letter dated 13/01/2014 issued by the borrower, Ld. AO concluded that the assessee failed to establish the genuineness of the whole transaction.

4.2 The Ld. CIT(A) noted that the assessee advanced sum of Rs.136.98 Lacs to Mr. Rajoo Barot on 24/01/2013. On the said sum, the assessee was charging interest on daily basis. The borrower repaid amount of Rs.137 Lacs in installment but did not pay the interest. Accordingly, outstanding amount of Rs.11.67 Lacs was written-off in the books of accounts. The borrower wrote a letter for waiver of entire amount of interest. Thus the outstanding amount of interest of Rs.11.67 Lacs was not acknowledged as debt by the borrower even though the relevant entries were made by the assessee in the loan /advances account. Section 36(1)(vii) of the Income Tax Act, 1961 prescribes conditions for the write off of a debt which was due to it and these conditions have to be complied in totality to claim deduction u/s 36(1)(vii). First of all the amount should be classifiable as a debt and if the amount is not acknowledged as a debt, the same cannot be claimed as a revenue deduction u/s. 36(1)(vii) of the IT Act, 1961. Prima facie the amount of interest was not acknowledged as a debt by Rajoo Barot and therefore write-off of the same could not be claimed u/s

36(1)(vii). The alternative claim that at the write-off would be allowable as business loss would also not be tenable on the facts of the case. The assessee failed to provide reasonable cause for writing-off the amount. Aggrieved, the assessee is in further appeal before us.

5. Upon due consideration, we find that granting of loan was assessee's business and interest income would be business income for the assessee. If the interest was offered to tax and the same could not be subsequently recovered then in such a case the assessee would be entitled for claim of bad-debts u/s 36(1)(vii) provided the amount was written-off as irrecoverable in the books of account. Prima facie, the assessee has fulfilled the conditions laid down u/s 36(1)(vii). Therefore, we direct Ld. CIT(A) to ascertain the fact that the interest was offered to tax by the assessee and write-off of the same was claimed as bad-debts in the books during the year. If so, the claim would be allowable u/s 36(1)(vii) in terms of decision of Hon'ble Apex Court in **TRF Ltd. V/s CIT (323 ITR 397)**. The ground stand allowed for statistical purposes.

6. Disallowance of referral fee :

6.1 The assessee paid referral fee of Rs.17.14 Lacs to a group entity namely M/s Network Stock Broking Limited (NSBL). To verify the same, notices / summons was issued to various borrowers / clients. However, only two clients responded and furnished documents. In the reply, it was submitted by the borrower that the loans were sanctioned directly through one of the sales representatives of the assessee. Thus, it was concluded by Ld. AO that the assessee failed to produce evidences to support the

referral fees paid by it. It was also noted that pursuant to MOU between the assessee and M/s NSBL, the assessee was paying separate charges for infrastructural facilities for utilizing the space and staff and therefore, the additional payment could not be allowed. Further, the fee was paid to parent company which was loss-making entity and therefore the payment was to avoid the instance of tax in the hands of the assessee. Finally, the same was disallowed and added back to its income.

6.2 The Ld. CIT(A) observed that M/s NSBL was in the business of trading of shares whereas the assessee was in the business of financing against pledge of shares. The business being inter-linked, transfer of funds between the parent company and assessee could not be ruled out. When both the entities were interconnected, it was incumbent upon the assessee to justify with the facts like nature of services rendered, loans granted, quantum of interest earned on such referrals and reasons justifying payment at the rate of 15 % of the interest earned. The assessee could not justify any such things during assessment proceedings or during appellate proceedings and therefore, the claim was rightly disallowed particularly when the assessee could not furnish proof of deduction of tax at source u/s 194H. Aggrieved, the assessee is in further appeal before us.

7. The Ld. AR has placed on record ledger extracts for AY 2013-14, 2014-15 & 2015-16 to submit that payment of referral fees was regular feature. In fact, no such addition was made even in assessment order passed u/s 143(3) for AY 2016-17. It was submitted that the payment was as per Memorandum of Understanding dated 21/03/2011 which specify the terms of

reference. The referral fee thus received by M/s NSBL was offered to tax. The payment was after deduction of tax at source which is supported by TDS certificates.

8. Keeping in view the submissions made before us, we deem it fit to restore this issue back to the file of Ld. CIT(A) for fresh adjudication. The Ld. CIT(A) is directed to appreciate all these evidences / documentary evidences and re-adjudicate the issue after providing reasonable opportunity of hearing to the assessee. The assessee, in turn, is directed to substantiate its claim. This ground stand allowed for statistical purposes.

Conclusion

9. The appeal stands allowed for statistical purposes.

Order pronounced on 12th July, 2021.

Sd/- (Amarjit Singh) न्यायिक सदस्य / Judicial Member	Sd/- (Manoj Kumar Aggarwal) लेखा सदस्य / Accountant Member
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मुंबई Mumbai; दिनांक Dated : 12/07/2021
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.