

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
SHRI B. R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.1513/Bang/2019
Assessment Year : 2016-17

DCIT, Circle – 1(1)(2), Bengaluru.	Vs.	M/s. BPL Ltd., 11 th KM, Bannerghatta Road, Arakere, Bengaluru – 560 076. PAN : AAACB 9461 B
ASSEESSEE		RESPONDENT

Assessee by	:	Smt. Sheethal, Advocate
Revenue by	:	Shri. Sumer Singh Meena, CIT(DR)(ITAT), Bengaluru

Date of hearing	:	28.02.2022
Date of Pronouncement	:	04.03.2022

ORDER

Per N V Vasudevan, Vice President

This is an appeal by the Revenue against Order dated 28.03.2019, passed by CIT(A)-1, Bengaluru, in relation to Assessment Year 2016-17.

2. The grounds raised by the Revenue reads as follows:

1. The order of the Learned CIT (Appeals), in so far as it is prejudicial to the *interest of revenue, is opposed to law and the facts and circumstances of the case.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing the AO to set off brought forward business loss and long term capital loss against current year's*

income when no such loss was available in the books due to being set off against share premium during the year.

3. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not adjudicating on the point that no brought forward business loss and long term capital loss are available to the assessee in books during the relevant year due to being set off against share premium during the year.*
 4. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 33,67,091/- on account of cessation of liabilities u/s 41(1) of IT Act, 1961 though the balances have been carried forward for many years.*
 5. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 33,67,091/- on account of cessation of liabilities u/s 41(1) of IT Act, 1961 though no replies were received by the AO u/s 133(6) from these creditors till date of completion of assessment.*
 6. *On the facts and in the circumstances of the case and in law, the revenue requested for admission of additional evidence in form of reply received from M/s Anushka Business Consulting u/s 133(6) of the IT Act, 1961 confirming that the debts pertaining to assessee company have been written off by them and no recovery action has been taken by them.*
 7. *For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the Ld. CIT (A) be reversed and that of the Assessing Officer be restored.*
 8. *The appellant craves leave to add, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of appeal.*
3. The assessee is a company engaged in the manufacturing and trading of high-quality electronics products such as TV, Refrigerators, AC, etc. As

far as ground Nos.1, 7 and 8 are concerned, they are general in nature and do not call for any specific adjudication. Ground Nos.2 and 3 relates to the issue with regard to the claim of the assessee for set off of brought forward loss for Assessment Years 2008-09 and 2011-12 against Long Term Capital Gain (LTCG).

4. The assessee, a listed entity, was a pioneer in electronic goods and still has high Brand recall. Due to various reason, the company lost market share and incurred losses for the past many years. It had obtained a Corporate Debt Restructuring approved by the courts and based on the said order, liquidated its assets and paid off its secured lenders over a period of time. However, the balance sheet was burdened with accumulated loss. With a view to reflect the correct financial position, it approached the High Court of Kerala with a scheme of arrangement, whereby the accumulated loss was to be set off against Share premium amount reflected in the books of accounts. Based on the said order, the Share premium was set off against the loss and so reflected in the financials for the year ending 31.3.2016.

5. The assessee filed its return of income for Assessment Year 2016-17, declaring total income of Rs.36,80,828/- under the head "Income from House Property". The assessee had sold its properties at Delhi and Bengaluru and derives Long Term Capital Gain (LTCG) of Rs.14,88,16,483/-. The assessee had Long Term Capital Loss (LTCL) of Rs.27,55,73,246/- carried forward from Assessment Year 2013-14. The assessee set off LTCL against LTCG and claimed carried forward of LTCL remaining unabsorbed.

6. The AO was of the view that since the LTCL of Rs.27,55,73,246/- no longer exist in books of account, it cannot be set off consequent to the scheme of arrangement whereby accumulated losses were set off against share premium amount reflected in the books of account. The stand of the assessee was that section 74 of the Act provides for carry forward of loss on account of capital gains. There is no prohibition in the said section or any other provision in the Act that if the assessee sets off LTCL in scheme of arrangement under Companies Act, 1956, the LTCL would be consequently reduced even for the purpose of the Act. The only restriction is in section 79 and 80 where it talks of change in shareholding or delayed filing of loss return. In the case of the assessee no such change in shareholding has been effected nor has there been any delay in filing of returns. The assessee submitted that there has not been any reduction of share capital either. Further, the assessee has capital loss carried forward of Rs.27,55,73,246 based on orders under section 143(3) for Assessment Year 2013-14. Therefore, the assessee submitted that the addition made of Rs.14,88,16,483 is incorrect in law and has to be deleted.

7. The AO observed that write off of investments is a colourable device. According to the AO, the Hon'ble Kerala High Court allowed the loss in the books of accounts that remained to be set off against share premium A/c and therefore the said loss will no longer be available for set off.

8. The CIT(A) upheld the plea of the assessee and he held that LTCL that was determined as per the Act in earlier Assessment Year will be available for set off and the order of Hon'ble Kerala High Court setting off

the loss against share premium will not have any impact while examining a claim under section 74 of the Act.

9. He held that the assessee's claim of LTCL on sale of investments, had been scrutinised by the AO, year after year and for the Asst. year 2012-13, the said loss was determined consequent to the appellate order received in the case by passing an Order U/Section 143(3) rws 254 of the Act. Thus, the business loss and the Long Term capital loss determined in the case of the assessee are valid and determined by the successive AO's based on the examination of the facts in the scrutiny orders.

10. He held that the AO, without any material evidence, has given a finding that the assessee's claim of long-term capital loss is a colourable device to avoid payment of capital gains without taking any proper remedial action for the relevant Asst. yeas for which the said losses pertain to. If at all the AO had any doubt about the genuineness of the said loss claim of the appellant, the proper course of action is to re-open the said assessments for the purpose of determination of the allowable losses. However, the AO, without any said due process, had simply assumed the claim to be a sham transaction, which is highly improper. The claims of losses pertaining to various years commencing from the Asst. year 2008-09 to 2013-14 are in respect of several transactions independently undertaken by the assessee, which have to be examined on record, to establish that they were sham. Accordingly, the CIT(A) directed the AO to undertake the exercise by scrutinising the final orders passed in respect of the previous years as per the available records and allow the claim of the assessee for set off.

11. Aggrieved by the order of the CIT(A), the Revenue has preferred ground Nos.2 and 3 before the Tribunal. We have heard the submissions of the learned DR who reiterated the stand of the assessee as contained in the order of the AO

12. After considering the rival submissions, we are of the view that the order of the CIT(A) does not call for any interference. As right held by the CIT(A), the corporate restructuring and the consequent reduction in the accumulated losses by setting it off against share premium account reflected in the books of account will have no effect whatsoever in so far as the claim for set off of brought forward loss under the Act made by assessee. Moreover the finding of the AO that the assessee adopted colourable device has also been rightly held to be without any basis by the CIT(A). It has not been brought out on record that by reason of the restructuring the books and the order of the Hon'ble Kerala High Court, the assessee is precluded from utilizing the carryforward LTCL against set off of LTCG in future years as contemplated by section 74 of the Act. In such a scenario, we are of the view that the set off was rightly directed to be allowed by the CIT(A). Consequently, the order of the CIT(A) on this issue is upheld and ground Nos.2 and 3 raised by the Revenue are dismissed.

13. As far as ground Nos.4 to 6 raised by the assessee is concerned, the facts are that the assessee was due and payable a sum of Rs.11,61,171/- to a creditor M/s. Anushka Business Consulting and a sum of Rs.22,02,920/- to M/s. Kasturi Associates. The AO found that these balances remain outstanding in the books of the assessee and the assessee did not have transactions with these 2 creditors for many years. The AO found that there was no payment made from 2018. The AO was of the view that the

aforesaid liability no longer existed and by virtue of the provisions of section 41(1) of the Act, the aforesaid sums have to be added as income of the assessee.

14. Before CIT(A), the assessee submitted that the liabilities reflected in the balance sheet cannot be treated as cessation of liabilities. Merely because the liabilities are outstanding for last many years, it cannot be inferred that the said liabilities have ceased to exist. It is also a fact that the assessee has not written off the outstanding liabilities in the books of account and the outstanding liabilities are still in existence would prove that the assessee acknowledged his liabilities as per the books of account. Section 41(1) of the Act is attracted when there is cessation or remission of a trading liability. The AO shall have to prove that the assessee has obtained the benefits in respect of such trading liabilities by way of remission or cessation thereof. Merely because the assessee obtained benefit of deduction in the earlier years and balances are carried forward in the subsequent year, would not prove that the trading liabilities of the assessee have become non-existent. If a Trading Liability is being shown by an assessee in his books for years it cannot be considered as ceased merely because of the facts that it is being shown for years and the assessee is unable to provide confirmation from the editors or other details from the creditors or the possibility of creditors demanding their money back is minimal.

15. The CIT(A), after considering the submissions, deleted the additions made by the AO. The CIT(A) held as follows:

“For the liability to cease there should be some development supervening the initial relationship by which both the parties, particularly the appellant's obligation to pay ceases in respect of liability. However, in the present case no such supervening development, nullifying the liability to pay or obligation to pay, has ever happened. And it is not the case of the AO that the liability has ever ceased, not even in the subsequent Asst Years till Date. The AO has not established that the parties had unilaterally or bilaterally treated the said transaction to be a nullity, thereby discharging the appellant of the liability to pay. The AO has not given any such finding of fact in the order. However, simply considering the presence of the creditors in the books, is no reason to assume that the liability has ceased by invoking the provisions of Section 41(1). Explanation 1 is as under:

"Explanation . - For the purpose of this sub-section, the expression "loss or expenditure or some benefit in respect of any such trading liability by way of remission or cessation thereof" shall include the remission or cessation of any liability by a unilateral act by the first mentioned person under clause (a) or the successor in business under clause (b) of that sub-section by way of writing off such liability in his accounts"

4.3 As per the agreed facts, there is no such write off of the liability in this case. Thus, the AO has no basis for giving a finding that the liability has ceased to exist during the financial year 2015-16.”

16. The CIT(A) also relied on the decision of the Hon'ble High Court in the case of Alwaris and Thomas (2016) 69 taxmann.com 257 (Karnataka) wherein the Hon'ble High Court held that merely because creditor could not be traced on date when verification was made that may not be a ground to conclude that there was cessation of liability because cessation of liability has to be cessation in law of debt to be paid by assessee to creditor.

17. Aggrieved by the order of the CIT(A), the Revenue has raised ground Nos.4 to 6. We have heard the submissions of the learned DR who reiterated the stand of the Revenue as reflected in the grounds of appeal. Though the Revenue has contended in ground No.6 that it had requested the filing of additional evidence in the form of letter of M/s. Anushka Business Consulting, wherein they have informed the AO that they have written off the liability of the assessee in their books of accounts, there is no such discussion in the order of the CIT(A) nor was any evidence filed before the Tribunal. In the given circumstances, we are of the view that the conclusions of the CIT(A) are just and proper and call for no interference. As rightly held by the CIT(A), the fact that the debt is outstanding for a long time without any payment cannot be the basis to come to a conclusion that the said debt ceased to exist. We, therefore, confirm the order of the CIT(A).

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

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(B. R. BASKARAN)
Accountant Member

Sd/-
(N.V. VASUDEVAN)
Vice President

Bangalore,
Dated: 04.03.2022.
/NS/*

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.