

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, बी, मुंबई ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "B", MUMBAI**

**श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं
श्री अश्वनी तनेजा, लेखा सदस्य, के समक्ष**

**Before Shri Joginder Singh, Judicial Member, and
Shri Ashwani Taneja, Accountant Member**

**ITA NO.8047/Mum/2010
Assessment Year: 2006-07**

Mangal Keshav Securities Limited, 501, Heritage Plaza, J.P. Road, Opp. India Oil Colony, Andheri (W), Mumbai-400 053	बनाम/ Vs.	ACIT 4(3), Aayakar Bhavan Mumbai-
(निर्धारिती / Assessee)		(राजस्व / Revenue)
P.A. No.AAACM8597F		

निर्धारिती की ओर से / Assessee by	Shri Nishan Thakkar & Shri Prasant J. Thacker (AR)
राजस्व की ओर से / Revenue by	Mrs. J. K. Garg(DR)

सुनवाई की तारीख / Date of Hearing :	27/08/2015
आदेश की तारीख /Date of Order:	29/09/2015

आदेश / O R D E R

Per Ashwani Taneja (Accountant Member):

The present appeal has been filed by the assessee against order dated 11.10.2010, passed by the Ld. Commissioner of

Income Tax-11, Mumbai for the assessment year 2006-07. The assessee has raised following grounds of appeal:-

“1 Ground No.1: Disallowance of fines, penalties etc., of Rs. 908,193

1.1 The Commissioner of Income-tax (Appeals)-11 [the CIT (Appeals)], Mumbai on the facts and circumstances of the case and in law erred in upholding the disallowance of fines, penalties etc., levied for non maintenance of KYC forms, short collection of margin money etc., aggregating to Rs. 908,193 under the provisions of the Income-tax Act, 1961 ('the Act') on the premise that such payments are incurred in relation to offence which is prohibited by law.

1.2 The appellant submits that it has neither undertaken any activity which was 'violation' or offence of any law nor has concluded any activity which is 'prohibited' by law. The appellant submits that payment of fine, penalties etc., in question have been paid on account of procedural non-compliance and are compensatory in nature and that the CIT(Appeals) failed to appreciate the submissions made in the course of the appellate proceedings.

1.3 The appellant prays that the assessing officer be directed to give appropriate direction in this matter to delete the disallowance of Rs. 908, 193.

2 Ground No.2: Disallowance of Bad Debts of Rs. 211,109

2.1 On the facts and circumstances of the case and in law, the ACIT erred in disallowing the bad debts claim of Rs. 211,109.

2.2 The appellant submits that the CIT(Appeals) failed to appreciate the fact that the debts were written off as 'bad' as claimed as deduction since there has not been any recovery from the parties. The CIT(Appeals) ought to have allowed the deduction of bad debts in accordance with section 36(1)(vii) read with section 36(2) of the Act.

2.3 The appellant prays for due relief. ”

2. After hearing both the sides, the appeal is disposed as under:

3. Ground No.1: The assessee has challenged the action of Assessing Officer (hereinafter called as 'AO'), in making disallowance of a sum of Rs.9,08,193/- being the amount of fine paid by the assessee to SEBI/Stock Exchange for non-maintenance of KYC forms, short collection of margins money etc., on the ground that such payments were incurred in relation to an offence which is prohibited by the law.

3.1 The brief facts are that the assessee is a closely held company engaged in the business of share/stock broking and is a member of BSE, NSE, is a DP for CDSL & NSDL and Mutual Fund Distribution. During the course of assessment proceedings, it was noted by the AO from the Tax Audit Report in Form No. 3CA, that the assessee has paid penalty/fine, levied by the Stock Exchange amounting to Rs.9,08,193/-. The AO informed the assessee that in view of Explanation 1 to section 37 of the Act, the aforesaid amount was not allowable as business expenditure. The assessee, in reply, submitted that it has neither undertaken any activities which were in 'violation' or 'offence' of any law, nor has conducted any activities which were prohibited by law. It was submitted by the assessee that fines, penalty etc. have been paid for some procedural non-compliances, inadvertently done by the assessee company and therefore, the same could not be strictly construed as an 'offence' or something 'which is prohibited by law'. But the AO was not satisfied and aforesaid

amount was disallowed by invoking explanation to section 37 of the Act.

3.2. Being aggrieved, the assessee carried the matter to the Learned Commissioner of Income Tax (hereinafter called as “Ld CIT(A)”), wherein detailed submissions were made by the assessee company. But the Ld CIT(A) was not satisfied and disallowance made by the AO was confirmed. Being aggrieved again, the assessee has filed the present appeal before the tribunal.

3.3. During the course of hearing before us, Ld counsel had made detailed arguments and reiterated most of the submissions made by the assessee company before the authorities below. In addition to that, he has relied upon the judgment of Hon’ble Tribunal in assessee’s own case, wherein similar disallowance has been deleted by the Tribunal in assessment year 2007-08 vide order dated 04.11.2010 in ITA No.121/Mum/2010.

3.4. On other hand, Ld DR has relied upon the orders of the lower authorities.

3.5. We have gone through the submissions of both the parties and details & documentary evidences shown to us by Ld. Counsel. He has taken us through various pages of the paper book to show that the impugned payments have been made on account of routine fines for minor procedural irregularities, in day- to- day working of the assessee

company. The assessee company is engaged into stock broking activities and also in financial services which involves substantial compliance requirements with various regulatory authorities e.g. BSE, NSE, CDSL, NSDL, & SEBI etc. In the regular course of the business of the assessee company, certain procedural non-compliances are not unusual, for which assessee is required to pay some fines or penalties. In our considered view, these routine fines or penalties are “compensatory” in nature; these are not punitive. These fines are generally levied to ensure procedural compliances by the concerned persons. Their levy depend upon facts and circumstances of the case, and peculiarities or complexities of the situations involved. Sometimes elements of discretions of levying authorities are also involved therein.

3.6. On the other hand, an ‘offence’ would be the one which will arise as a result to commission of an action which is prohibited by law, and, in all the given situations, no element of any consent of the parties involved can bring any change in its legal consequences. Similarly, any amount paid by the assessee, in the form of compensation, as a consequence of breach of contract between the two parties, cannot be said to be amount paid for any purpose which is an ‘offence’, prohibited by the law. In other words, under the income tax law, one is required to go into the real nature of the transactions and not to the nomenclature that may have been assigned by the parties. Thus, to decide such issues, we are required to see real substance under the Income Tax Law, and

not merely its form. Thus, only those payments, which have been made by the assessee for any purpose which is an 'offence' or which is 'prohibited by law', shall alone would be hit by the explanation to section 37. We take support from the orders of Hon'ble Tribunal in assessee's own case for A.Y. 2007-08 in ITA No.121/Mum/2010 dated 04.11.2010, and the relevant portion is reproduced below:

"2. The only issue in this appeal is against the deletion of addition made on account of penalty paid to Stock Exchange amounting to Rs.6,83,507 in violation of the bye-laws of the Stock Exchange. Briefly stated the facts of the case are that the assessee was engaged in the business of share and stock broker as member of Bombay Stock Exchange and National Stock Exchange etc. A sum of Rs.6,83,507 was claimed by it towards penalty paid to stock exchange. The Assessing Officer came to the conclusion that the disallowance was to be made in the light of Explanation to section 37(1). He, therefore, made the addition, which came to be deleted in the first appeal.

3. After considering the rival submissions and perusing the relevant material on record it is noted that the penalty was paid by the assessee on account of execution of trades without submission of PAN card by the clients, non-submission of unique client code details, inspection, execution of option trades, short delivery, margin violation fees. From the very nature of the amounts paid it is palpable that there is no infraction of law by the assessee as contemplated in Explanation to sec. 37(1). It is only a case of certain irregularities committed while carrying on the business in normal course. Various benches of the tribunal have consistently taken view in assessee's favour in such circumstances. The Id. AR has placed on record copies of such order in Goldcrest Capital Markets Ltd. Vs. ITO [(2010) 130 TTJ 446 (Bom) and Master Capital Services Ltd. Vs. DCIT [(2007) 108 TTJ 0389 (Chd.)], etc. In our considered opinion, the learned CIT(A) was justified in ordering for the deletion of this addition. We, therefore, uphold the impugned order."

3.7. We find that the facts in this year are same. Nature of expenses incurred in the name of fines or penalties are same as have been incurred in assessment year 2007-08. These facts could not be controverted by the Ld DR during the course of hearing. Therefore, relying upon the judgment of Hon'ble Tribunal in assessee's own case, we find that disallowance is contrary to law and the same is directed to be deleted. Thus, Ground No.1 is allowed.

4. Ground No.3: The assessee has challenged the action of Ld. CIT(A) in confirming the disallowance of the bad debts of Rs.2,11,109/-.

4.1. The brief facts are that assessee had claimed bad debts amounting to Rs.14,75,076/-, on account of bad debts written off u/s 36(1)(vii) of the Income Tax Act 1961. During the course of assessment proceedings, the AO asked the assessee to justify its claim. On the basis of reply of the assessee, the AO found that the claim was justified partly and therefore, a sum of Rs.2,11,109/- was disallowed on the ground that assessee was not able to establish that this amount had become "bad".

4.2. Before the Ld CIT(A), the assessee submitted that, there was no requirement, as per law, to establish that the debt had become bad and mere write off in the books of accounts was enough. Ld CIT(A) was not satisfied on the ground that proper

details were not filed by the assessee. Being aggrieved, the assessee carried the matter before the Tribunal.

4.3. During the course of hearing before us, it was submitted by the assessee that non-filing of details was never questioned by the AO and the claim was disallowed merely on the ground that assessee was not able to prove that “debt” had become “bad”. Therefore, both of the lower authorities have erred in making the disallowance. Ld counsel also drew our attention to the evidences providing requisite details with regard to the impugned amount of Rs.2,11,109/- and also relied upon the judgment of Hon’ble Supreme Court in the case of TRF Ltd. vs. CIT 323 ITR 397.

4.4. On the other hand, Ld DR relied upon the orders of authorities below.

4.5. We have gone through the submissions made by both the sides. We find that this issue, on legal principles, now stands covered in favour of the assessee by the judgment of Hon’ble Supreme Court in the case of TRF Ltd., supra, wherein it has been held that in view of the amended law, the assessee is now required to merely show the write off of the debts, and the establishing a debt as ‘bad’ is not mandatory. Therefore, on legal principle, we hold that the impugned claim is allowable to the assessee. We send this issue back to the file of the AO for the limited purpose of verification of the details as were required by the Ld CIT(A) and which were allegedly not filed by the assessee. Needless to say that AO shall give full

opportunity to the assessee to file the requisite details and thereafter he shall adjudicate this issue in view of the judgment of the Hon'ble Supreme Court in the case of TRF Ltd., supra. Thus, Ground no.2 is allowed for statistical purposes.

5. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 29th September 2015.

Sd/-
(Joginder Singh)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(Ashwani Taneja)
लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 29/09/2015

Patel, P.S. नि.स.

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai