

**IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH
MUMBAI**

**BEFORE SHRI R.C.SHARMA, AM
&
SHRI PAWAN SINGH, JM**

**ITA No.4120/Mum/2018
(Assessment Year: 2013-14)**

Centrum Broking Ltd., Centrum House, 5 th Floor, CST Road, Vidyanagari Marg, Kalina, Santacruz (E), Mumbai-400098.	Vs.	D.C.I.T., 4(1)(1) Mumbai.
PAN/GIR No.AABCA 1498 E		
(Appellant)	..	(Respondent)

Assessee by	Shri Jitendra Jain/Shri Pankaj Pathak (AR)
Revenue by	Shri Chaudhary Arun K. Singh (DR)
Date of Hearing	29/08/2019
Date of Pronouncement	06/09/2019

आदेश / ORDER

PER: R.C. SHARMA, A.M.

This appeal by the assessee is directed against the order dated 20/03/2018 of Id. CIT(A)-09, Mumbai for the A.Y. 2013-14 in the matter of order passed U/s 143(3) of the Income Tax Act, 1961 (in short, the Act). Following grounds have been taken by the assessee:

- “1. The Id. CIT(A) erred in law and on facts in ignoring the documents filed by your appellant to support that irrecoverable amount of Rs. 55,18,606/- was on account of misappropriation of funds by one of the directors, Mr. P.K. Advani.
2. The Id. CIT(A) erred in law and on facts in confirming the disallowance of Rs. 55,18,606/- claimed as Bad Debts/Business Loss considering the same as personal expenses.

3. *The Id. CIT(A) erred in law and on facts in confirming disallowance of Rs. 20,99,056/- being arbitration award granted in favour of Mr. P.K. Advani, considering the same as not incurred in the ordinary course of business of your appellant.*

Your appellant craves leave to add, amend, modify, substitute, alter or withdrawn any of the grounds of appeal.

2. Rival contentions have been heard and record perused. There is delay of 7 days in filing the appeal. As per the reasons given for delay, it was submitted that the delay accorded due to shifting of office of the assessee company. The assessee has also filed an affidavit of its director in support thereof. Considering the reason for delay, we are satisfied that there was justifiable reasons for delay, therefore, in the substantial interest of justice, we condone the delay of 7 days and appeal is being heard on merit.

3. First grievance of the assessee relates to disallowance of amount of Rs. 55,18,606/- on account of misappropriation of funds by the director Mr. P.K. Advani. The A.O. has discussed this issue in para 3.3 of his order and has disallowed the same on the ground that these are personal expenses of the director and hence not allowable. BY the impugned order, the Id. CIT(A) has confirmed the action of the A.O., against which the assessee is in further appeal before the ITAT.

4. We have considered the rival contentions and carefully gone through the orders of the authorities below and found from the record

that prior to 2004, the assessee company was owned and managed by Advani group. In 2004, the assessee company was taken over by Centrum group and name was changed to Centrum Broking Pvt. Ltd. However, Mr. Advani continued as a director of the assessee company till June, 2005. In 2005, due to differences and disputes between Mr. Advani and the Centrum group, Mr. Advani was removed as a director of the company. After the exit of Mr. Advani, the assessee company on perusal of its books of accounts realised that a sum of Rs. 95,44,693/- [details at pg 6 of CIT(A) order] was misappropriated by Mr. Advani by debiting the assessee company's accounts on account of his various personal expenses or non-business expenses. The assessee company recovered a sum of Rs. 40,26,087/- and the balance amount of Rs. 55,18,606/- was written off and claimed as business loss which is agitated in this appeal.

5. From the record we also found that the assessee in arbitration proceedings initiated by Advani group before NSE made a claim of the said amount as evident from pgs 3, 4 and 5, paras 6 and 10 of the said Award dated 13th December 2011. However, the Tribunal held that since the assessee company has not made a counterclaim or filed a separate arbitration for the said amount no relief was granted to the assessee company. The said order became final on 28th August 2012 whereby

consent terms were agreed between the Advani group and the assessee company.

6. As per material placed on record, we found that the claim is made on account of misappropriation of funds by the ex-director of the company. The said director misused his authority while holding the position and incurred various expenses from the company's funds which were of personal in nature. The fact that out of Rs. 95.44 lakhs, the assessee company is claiming only Rs. 55.18 lakhs proves the bonafideness of the assessee in recovering part of the money and writing off the balance. Thus we found that the aforesaid loss has incurred in the course of business of the company and therefore should be allowed as a business loss. Reliance is placed on following decisions:

- a. Sassoon J. David & Co. Pvt Ltd. - 98 ITR 50 (Bom),
- b. BadridasDaga - 34 ITR 10 (SC).
- c. Harshad Choksi - 349 ITR 250 (Bom),
- d. Boots Piramal Health Care Ltd - 3213/Mum/2009 (now known as M/s Nicholas Piramal Consumer Products Pvt. Ltd).

7. It was argued by the Id. AR that the Hon'ble Supreme Court in the case of Associated Banking Corporation of India Limited vs CIT reported in 56 ITR 1(SC) has held that "the loss by embezzlement must be deemed to have occurred when the assessee came to know about the embezzlement and realized that the amount embezzled could not be recovered". In another decision, the Hon'ble Supreme Court in the case

of Badridas Daga V/s CIT reported in 34 ITR 10) (SC) has held that "the losses which have been suffered by the assessee as a result of misappropriation by an employee have (1) which was incidental to the carrying on the business and should therefore be deducted in computing the profit of the business.

8. In view of the above discussion, we direct the A.O. to allow sum of Rs. 55,18,606/- as business loss.

9. The next grievance of the assessee relates to addition of sum of Rs. 20,99,056/- being arbitration award granted in favour of Advani group by the Arbitral Tribunal constituted by NSE.

10. The AO has discussed this issue in para 3.2 of his order and on the ground that same is not for business has disallowed the claim. The CIT(A) in his order in para 3.2.2 has confirmed the same.

11. From the documents placed on record, it is admitted position that the assessee company is in the business of broking and a member of NSE. Under the NSE Act and Rules, the dispute between the trading members of NSE and its constituent is to be resolved as per the procedure prescribed therein. One of the procedure is by filing an arbitration claim by the parties to the dispute. Pursuant thereto Advani group filed arbitration proceedings against the assessee company for recovery of the shares belonging to the Advani group and held by the

assessee company. The Arbitral Tribunal vide its order dated 13th December 2011 allowed the claim of the Advani group. In para 6 of the said Award the Tribunal has given a finding that the transaction in dispute arises from the business of the assessee company. The Tribunal directed the assessee company to pay a sum of Rs. 20,15,097/- to the Advani group along with interest of Rs. 83,959/-. The said Arbitral Award became final by the assessee company withdrawing its arbitration petition before the Hon'ble High Court on 28th August 2012 by entering into consent terms with Advani group.

12. In view of the above discussion, we direct the A.O. to allow a sum of Rs. 20,99,056/- as business loss arising out of business of the assessee company. It has been very well discussed in the arbitration award under NSE Act and Rules. Accordingly the A.O. was not justified in coming to the conclusion that the said claim is not arising out of the business of the assessee company.

13. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 06th September, 2019.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 06/09/2019
*Ranjan

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai