



IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.642/MUM/2020
(Assessment Year 2015-16)

National Stock Exchange of India Ltd.,

Exchange Plaza, Bandra Kurla Complex,
Bandra East,
Mumbai – 400051
PAN : AAACN1797L

..... Appellant

v/s

Principal Commissioner of Income Tax-7,

1st Floor, Aaykar Bhavan,
Mumbai - 400020

..... Respondent

Assessee by : Shri J.D. Mistry, Sr. Adv.
Shri Harsh Kapadia

Revenue by : Shri Kailash C. Kanojiya, CIT-DR

Date of Hearing – 29/01/2025

Date of Order - 03/04/2025

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The assessee has filed the present appeal against the impugned order dated 03/12/2019, passed under section 263 of the Income Tax Act, 1961 (*"the Act"*) by the learned Principal Commissioner of Income Tax (Appeals)-7, Mumbai, [*"learned PCIT"*], for the assessment year 2015-16.

2. In this appeal, the assessee has raised the following grounds of appeal.

"1. (a) On the facts and in the circumstances of the case and in law, the Ld. Pr.

Commissioner of Income Tax (PCIT) erred in initiating revision proceedings u/s. 263 of the Income Tax Act, 1961 vide show-cause notice dated 23.01.2019 and thereby erred in passing an order w/s. 263 of the Income Tax Act, 1961 as the assessment sought to be revised is neither erroneous nor prejudicial to the interest of revenue.

1. (b) The Ld. PCIT erred in invoking the revisionary power under section 263(1) of the Income Tax Act, 1961 without appreciating the fact that the Ld. Assessing officer (AO) after making specific enquiry, examining the facts and proper application of mind, completed the assessment u/s 143(3) of the Income Tax Act, 1961 by accepting the claim of the appellant, which was in accordance with the provisions of law.

1. (c) On the facts and in the circumstances of the case and in law the Ld. PCIT erred in deciding the issue of allowability of contribution to Core SGF by himself instead of setting aside the order and directing the Ld. AO to make fresh assessment and as such the order u/s. 263 of the Income Tax Act, 1961 is illegal and bad in law needs to be quashed.

1. (d) On the facts and in the circumstances of the case and in law, the appellant prays that the order of the Ld. PCIT passed u/s.263 of the Income Tax Act, 1961 may be quashed being void ab-initio and bad in law as it seeks to substitute the view of the Ld. PCIT in place of the view of the Ld. AO.

2. (a) On the facts and in the circumstances of the case and in law, the Ld. PCIT erred in directing the Ld. AO to disallow an amount of Rs. 170 crores contributed to NSCCL Core Settlement Guarantee Fund (Core SGF) and doing so is wrong and contrary to the facts of the case, the provisions of Income Tax Act, 1961, and the Rules made thereunder.

2. (b) On the facts and in the circumstances of the case and in law the Ld. PCIT erred in holding that contribution made by appellant stock exchange to MRC of Core SGF set-up and maintained by Clearing Corporation is not an permissible deduction, and the reasons assigned for doing so are wrong and contrary to the facts and circumstances of the case, the provisions of the Income Tax Act, 1961 and the Rules made thereunder."

3. In the present appeal, the assessee is aggrieved against the invocation of revision proceedings under section 263 of the Act by the learned PCIT.

4. The brief facts of the case pertaining to this issue as emanating from the record, are: The assessee is in the business of running of stock exchange and the main object of the assessee is to facilitate, promote, assist, regulate and manage in public interest, dealings in securities of all kinds and to provide

specialized advanced, automated and modern facilities for trading, clearing and settlement of securities and to ensure trading in transparent, fair and open manner. For the year under consideration, the assessee filed its return of income on 01.09.2015, declaring a total income of Rs.968,20,00,970/-. The return filed by the assessee was selected for scrutiny through CASS. After considering the submissions of the assessee in response to the statutory notices issued during the assessment proceedings, the Assessing Officer ("AO"), vide order dated 29.12.2017 passed under section 143(3) of the Act, assessed the total income of the assessee at Rs.968,33,68,600/-.

5. Subsequently, vide notice dated 23.06.2019 issued under section 263 of the Act, revision proceedings were initiated in the case of the assessee on the basis that while passing the assessment order under section 143(3) of the Act, the AO has failed to carry out inquiries as warranted by the facts and circumstances of the case and the assessment was completed without examining all the aspects which were required to be looked into for arriving at the correct taxable income of the assessee. It was alleged that the assessee has contributed an amount of Rs.170 crore towards Contribution to NSCCL Core Settlement Guarantee Fund ("*Core SGF*") and debited the same in the Profit & Loss account under the head "*Office Expenses*", which is a contingent liability of the assessee, and therefore is not permissible deduction under section 37 of the Act. Accordingly, it was alleged that the assessment order passed allowing the contribution to the Core SGF is erroneous insofar as it is prejudicial to the interest of the revenue, as the AO failed to make relevant and meaningful inquiry as warranted by the facts of the present case.

6. In response to the notices issued under section 263 of the Act, the assessee submitted that during the assessment proceedings, the AO examined the issue of deduction of contribution to the Core SGF claimed by the assessee and framed the assessment order after being fully satisfied with the submissions of the assessee. The assessee further submitted that during the assessment proceedings, the AO raised the query regarding the contribution to the Core SGF and the same was duly responded to by the assessee with all necessary documents/evidence. Thus, the assessee submitted that the AO allowed the deduction of contribution to the Core SGF claimed by the assessee after due examination of the submissions of the assessee and after proper application of mind to the documents/evidence produced.

7. The learned PCIT, vide impugned order, disagreed with the submission of the assessee and held that the nature of the fund in which the assessee has contributed is that of a provision made to meet contingent liability and the AO should have conducted further inquiry and verified the true nature of Core SGF. However, the AO, during the assessment proceedings, only once inquired about the contribution made by the assessee to the Core SGF, which was responded to by the assessee. The learned PCIT held that the assessment order is based on a wrong assumption of facts and a wrong application of law, as the liability has nowhere been proved by the assessee to have been crystallized. Thus, the learned PCIT held that the AO has failed to conduct a proper inquiry and verification. Accordingly, by referring to the provisions of clause (a) of Explanation 2 to section 263(1) of the Act, the PCIT held that

the assessment order is erroneous insofar as it is prejudicial to the interest of the Revenue. Accordingly, the learned PCIT directed that the contribution of Rs.170 crore made by the assessee to the Core SGF is not an allowable expense, and thus, directed the AO to disallow the same and to conduct further inquiry to find out actual payment made from Core SGF during the year to meet any default of clearing members and the assessee share in the same and to allow such amount as expenditure. Being aggrieved, the assessee is in appeal before us.

8. We have considered the submissions of both sides and perused the material available on record. In the present case, revision proceedings under section 263 of the Act were initiated as the AO allowed the contribution made by the assessee to Core SGF, which as per the learned PCIT is a contingent liability, and therefore, the learned PCIT held that the assessment order is based on wrong assumption of facts and incorrect application of law and the AO has not conducted proper inquiry and verification while allowing the claim of the assessee. We find that during the year under consideration, an amount of Rs.170 crore was transferred by the assessee to the Clearing Corporation towards contribution to the Minimum Required Corpus of Core SGF as per Circular dated 27/08/2014 issued by the Securities and Exchange Board of India ("SEBI"). The assessee debited the contribution to the Core SGF amounting to Rs.170 crore to the Profit & Loss account for the year ending 31/03/2015. We find that in this regard, the assessee duly made the declaration in its audited financial statement for the year under consideration, which is reproduced as follows for ready reference: -

"35. a) In accordance with Regulation 33 of Securities Contracts (Regulations) (SECC) Regulations, 2012 (The Regulations) issued on June 20, 2012, every recognized stock exchange is required to transfer twenty five percent of its annual profits every year to a fund of the recognized clearing corporation(s) which clears and settles trades executed on that stock exchange to guarantee settlement of trades. Subsequently, the Securities and Exchange Board of India (SEBI) in its Press Release No.66/2012 dated June 21, 2012, has said that an expert Committee is being formed which will inter-alia "look into the norms for adequacy of the core corpus of the Settlement Guarantee Fund (SGF)/Trade Guarantee Fund (TGF) and its sourcing, including transfer of profits by stock exchanges to SGF/TGF in the long run. Pending the report of the Expert Committee, no transfer of profits to the Settlement Guarantee Fund in terms of the Regulations has been made. However, as a matter of prudence during the financial year 2013-14 the Company has made a provisional appropriation of Rs. 219.40 crores being 25% of the profit after tax for Financial Year 2012-13 out of the opening balance of Profit and Loss Account as on April 1, 2013 and Rs. 254.82 crores being 25% of the profit after tax for the year ended March 31, 2014, Further, during the year, the Company has made a provisional appropriation of Rs 52.97 crores after adjustment for transfer of & 170 crores as mentioned here in below in note (35)(b). Accordingly, total provisional appropriation amounting to Rs. 527.19 crores (Previous Year – Rs. 474.22 crores) has been shown under the head Short Term Provisions in the Balance Sheet

b) In terms of Securities and Exchange Board of India circular CIR/MRD/DRMNP/25/2014 dated August 27, 2014, the Clearing Corporation (CC) shall have a fund called Core SGF for each segment of each Recognised Stock Exchange (SE) to guarantee the settlement of trades executed in respective segment of the SE. The Recognised SE shall contribute at least 25 % of the Minimum Required Corpus of Core SGF (MRC). The contribution to be made by the Recognised SE to the said Core SGF can be adjusted against transfer of 25% of the profit by the Recognised SE as required by Regulation 33 of SECC Regulations. Accordingly, an amount of Rs. 170 crores have been transferred to the Clearing Corporation towards contribution to the said Minimum Required Corpus of Core SGF during the year ended March 31, 2015 and the same is adjusted against appropriation of 25% of the profit as mentioned in note (35)(a). Accordingly, contribution to NSCCL Core SGF amounting to Rs. 170 crores has been charged to Statement of Profit and Loss for the year ended March 31, 2015 and shown as exceptional item."

9. We find that vide notice dated 07.03.2017 issued under section 142(1) of the Act, the assessee, inter alia, was asked to furnish the balance sheet and capital account, which was duly complied with by the assessee. Further, vide another notice dated 11.08.2017 issued under section 142(1) of the Act, the AO asked the assessee to furnish the details, inter alia, on the issue of other large expenses claimed in the Profit & Loss account. Responding to the

aforesaid notice vide submission dated 23.09.2017, forming part of the paper book from pages 47-60, we find that the assessee, inter alia, furnished a detailed note on the allowability of contribution amounting to Rs.170 crore made to Core SGF. We find that the assessee also submitted the complete copy of the Circular dated 27.08.2014 issued by the SEBI in respect of Core SGF.

10. Therefore, from the perusal of the notices issued by the AO during the assessment proceedings and the reply filed by the assessee thereto, we find that the issue of the claim of contribution to Core SGF was specifically raised during the scrutiny assessment proceedings, and the same was duly replied to by the assessee. Therefore, we do not find any basis in the findings of the learned PCIT that the claim of the assessee was allowed without conducting a proper inquiry and verification. Accordingly, the reliance placed on the provisions of clause (a) of Explanation 2 to section 263(1) of the Act is completely misplaced in the present case.

11. As regards the findings of the learned PCIT that the order passed by the AO is based on a wrong assumption of facts and wrong application of law, since the contribution made by the assessee to Core SGF was allowed despite being a contingent liability, we find that the Co-ordinate Bench of the Tribunal in assessee's own case in National Exchange of India Ltd. vs. DCIT, in ITAs No. 730 and 731/Mum/2023, for the Assessment Years 2016-17 and 2017-18, vide order dated 26.10.2023, after considering the SEBI's circular, as noted in the foregoing paragraphs, held that the statutory contribution made by the assessee to the Core SGF is allowable under section 37(1) of the Act

as the said contribution has been made exclusively during the course of carrying on its business as a stock exchange. Thus, the decision of the Co-ordinate Bench of the Tribunal in the assessee's own case cited supra further supports the conclusion reached by the AO in allowing the claim of contribution to the Core SGF. Since the view taken by the AO has also been affirmed by the Co-ordinate Bench of the Tribunal in the assessee's own case in subsequent years, there cannot be any dispute that the same is a plausible view. Therefore, in light of the decision of the Co-ordinate Bench of the Tribunal cited supra, we are of the considered view that the learned PCIT has erred in concluding that the assessment order is based on a wrong assumption of facts and a wrong application of law. Accordingly, we are of the considered opinion that the learned PCIT erred in invoking the provisions of section 263 of the Act. Hence, the impugned order passed under section 263 of the Act is set aside, and the grounds raised by the assessee are allowed.

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

Order pronounced in the open Court on 03/04/2025

Sd/-
B.R. BASKARAN
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 03/04/2025
Prabhat