IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad

Before

Before Shri Rama Kanta Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member

ITA No.637/Hyd/2019		
Assessment Year : 2014-15		
Nekkanti Systems Private Limited, Hyderabad. PAN : AACCN1440J.	Vs.	Income Tax Officer, Ward – 16(2), Hyderabad.
(Appellant)		(Respondent)
ITA No.484/Hyd/2019		
Assessment Year : 2015-16		
The Deputy Commissioner of Income Tax, Circle – 16(1), Hyderabad.	Vs.	Nekkanti Systems Private Limited, Hyderabad. PAN : AACCN1440J.
Assessee by:	Sri S. Rama Rao.	
Revenue by:	Sri Rajendra Kumar – CIT DR	
Date of hearing:	18.07.2022	
Date of pronouncement:	27.07.2022	

O R D E R

Per Laliet Kumar, J.M.

These are the two connected appeals filed by the assessee and Revenue for A.Y. 2014-15 and 2015-16 against the orders of Principal Commissioner of Income Tax, Hyderabad dt.29.03.2019 u/s 263 of the Act and Commissioner of Income Tax (Appeals) – 4, Hyderabad dt.23.01.2019 u/s 143(3) of the Income Tax Act, respectively.

2. The grounds raised in the appeal filed by the assessee u/s 263 of the Act for A.Y. 2014-15 reads as under :

> *"1. The order of the learned Principal Commissioner of Income Tax is erroneous both on facts and in law.*
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> *2. The learned Principal Commissioner of Income Tax erred in holding that the trading activity in F & O undertaken by Sri Karthik Velagapudi and Smt. P. Usha Rao on behalf of the company Nekkanti Systems Pvt. Ltd., is not assessable in the assessment of the appellant.*
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> *3. The learned Principal Commissioner of Income Tax erred in holding that the loss claimed on account of F&O of Rs.1,67,31,578/- loss assessable in the assessment of Sri Karthik Velagapudi and Smt. P. Usha Rao and is not an allowable loss in the assessment of the company.*
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> *4. The learned Principal Commissioner of Income Tax erred in holding that the order u/s 143(3) dated 04.11.2016 for the assessment year 2014-15 is erroneous and prejudicial to the interest of revenue on the ground that the loss claimed under F&O of Rs.1,67,31,578/- is not allowable."*

3. The brief facts of the case are that assessee is a company who filed its e-return for A.Y. 2014-15 on 21.09.2014 declaring taxable income of Rs.22,64,140/-. Subsequently, the case was selected for scrutiny and notice u/s 143(2) of the Act was issued and was served on the assessee on 08.09.2015. In response to the notice u/s 143(2) and subsequent statutory notice u/s 142(1) of the Act, director of the company appeared from time to time and furnished the information as called for. After examining the material available on record and the information furnished by the assessee, Assessing Officer completed the assessment u/s 143(3) of the Act accepting the income returned.

3.1. Subsequently, a show cause notice was issued on 03.12.2018 to the assessee as to why the assessment order for A.Y. 14-15 should not be revised as the assessment order was erroneous and prejudicial to the interest of the revenue as per provisions of section 263 of the I.T. Act. In response to which, Ms. P. Usha Rao, Director of the assessee company

appeared and furnished written reply on various dates. On verification of all the details furnished, ld.PCIT revised the assessment order u/s 143(3) of the Act on 04.11.2016 for A.Y. 2014-15 as the same is erroneous and prejudicial to the interest of the revenue.

3.2. Feeling aggrieved with the order passed u/s 263 of the Act, assessee is now in appeal before us.

4. First, we will take up the appeal of the assessee for A.Y. 2014-15 whereby the assessee has sought to challenge the order passed by the ld.PCIT quashing the assessment made u/s 143(3) of the Act vide order dt.04.11.2016 u/s 263 of the Act

5. The written submissions filed by the ld.AR in brief are that nowhere in the order, ld.PCIT mentioned that the Assessing Officer had not conducted necessary enquiry before completing the assessment for the impugned A.Y. 2014-15. Further, ld.PCIT has not considered the fact that the Assessing Officer allowed the loss from F & O in the impugned A.Y. 2014-15 only after conducing necessary enquiries. Ld.CIT(A) allowed the appeal for A.Y. 2015-16 and directed the Assessing Officer to allow the loss from F & O and the view taken by the Assessing Officer for A.Y. 2014-15 is supported by the order of ld.CIT(A) for A.Y. 2015-16 and hence, ld.PCIT is not correct to conclude that the view taken by the Assessing Officer in A.Y. 2014-15 is not a possible view. Ld.AR further submitted that it is a well settled principle of law that where the enquiry was conducted by the Assessing Officer and thereafter assessment order was passed taking one of the possible views, then provisions of section 263 cannot be invoked by the PCIT to substitute his view and in these circumstances, the exercise of power u/s 263 cannot be sustained. It is a settled principle of law that if the view which was taken by the Assessing Officer is a possible view, it would not be within the jurisdiction of the revisional authority to exercise the power u/s 263.

5.1. The ld.AR further submitted that the assessments in the hands of the Directors of the assessee were also completed accepting the explanations submitted by the Directors that the loss from F&O arisen by the activities carried out on behalf of the assessee company was disclosed and considered in the assessment and hence, there was no loss to Revenue and as such, the assessment order passed for A.Y. 2014-15 is not prejudicial to the interests of revenue. In this connections, he relied on the following decisions :

A) Malabar Industrial Co. Ltd. Vs. CIT - (2000) 243 ITR 83 (SC).
B) CIT Vs. Max India Limited (2007) 295 ITR 282 (SC)
C) Ultratech Cements Ltd. Vs. State of Rajasthan - (2020) 117 taxmann.com 807 (SC).
D) CIT Vs. Smt. Neena Krishna Menon – (2021) 123 taxmann.com 205.
E) CIT Vs. GM Mittal Stainless Steel (P) Ltd. – (2003) 263 ITR 255 (SC)
F) CIT Vs. Canara Bank – (2021) 123 taxmann.com 207
G) Narayan Tatu Rane Vs. ITO – (2016) 70 taxmann.com 227.

6. On the other hand, ld.DR for the Revenue had submitted that the action on the part of the ld.PCIT was in accordance with the law as the Assessing Officer at the time of framing the original assessment order has not examined the issue raised by the ld.PCIT. He has drawn our attention to the show cause notice issued by ld.PCIT. Based on show cause notice, it was submitted by ld.DR that the Assessing Officer had allowed the debit of Rs.1,73,99,050/- while computing the income of the assessee, whereas the said amount was the trading loss caused to the directors of the company while doing the share trading in their respective D-MAT accounts. It was also submitted that the assessee is only entitled to debit the losses which were directly related to the activities of the assessee for carrying out the

business activities of the assessee. In the present case, the ld.PCIT has called upon the assessee to substantiate as to under which provision of law, the loss accrued to directors in their personal capacity can be adjusted against the income of the assessee company.

6.1. Ld.DR further submitted that in the A.Y. 2015-16, the similar issue was examined by the Assessing Officer and the Assessing Officer had called the report from M/s. Zen Money and the said M/s.Zen Money had given a categorical report stating that all the three individuals namely, assessee and the two Directors were maintaining their separate D-mat accounts with the M/s.Zen Money and the loss which has been claimed by the assessee do not represent the loss caused to the assessee on account of the trading activity by it.

6.2. It was also submitted by ld.DR that the assessee had not informed the ld.CIT(A) who was hearing the appeal arisen out of the order passed by the Assessing Officer for A.Y. 2015-16, about the pendency of revision proceeding before ld.PCIT, despite assessee having received the show cause notice u/s 263 of the Act prior to the last date of hearing. It was submitted that the ld.CIT(A) for A.Y. 2015-16 had relied upon the finding of the Assessing Officer for A.Y. 2014-15 whereas the said finding of the Assessing Officer for A.Y. 2014-15 was subject matter of revision before the ld.PCIT.

7. The ld.AR for the assessee in rebuttal had submitted that the show cause notice for hearing of 263 was received by the assessee after the conclusion of the proceedings for A.Y. 2015-16 and the ld.CIT(A) had passed the order for A.Y. 2015-16 on 23.01.2019. The assessee immediately after receipt of the order dt.23.01.2019 from the ld.CIT(A) had forwarded the order to ld.PCIT. However, ld.PCIT has not considered the said order which

was forwarded by the assessee to the ld.PCIT. The ld.AR for the assessee had also filed the written submissions on 25.07.2022, the relevant portion of the written submissions are as under :

> *"22. It is humbly submitted that it is connected with the powers of the Board of Directors of a company and the delegation of powers to the Directors. According to the provisions of Sec.179 of the Companies Act, the Board of Directors of the company shall be entitled to exercise such powers as the company desires them to do. The provisions of clause (e) of sub section (3) of Sec.179 of the Companies Act empowers the Board of Directors of the company to invest the funds of the company if a resolution is passed to the effect. First proviso to sub section (3) of Sec.179 of the Companies Act mentions that the Board may by a resolution delegate such powers to any committee of directors, the managing director, the manager or any other principal officer of the company. In the case of the company, in consequence to Sec.179 of the Companies Act, a resolution was passed by the company on 1.4.2013 and also an agreement was entered into between the company and the Directors of the company (pages No 15, 16 8617). The Directors of the company acted on behalf of the company in accordance with the directions given by the Board of Directors and as authorised by Sec.179 of the Companies Act. Therefore, delegation of powers in company on the business of the company through its directors is legally permissible.*
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> *23. Firstly, it is submitted that the Board of Directors can Authorise the Directors to carry on business of the company in their name.*
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> *In this respect, the meaning and legal position of Directors may be necessary which is explained here under:*
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>> *a) A Director is an agent of the company for the conduct of the business of the company. Directors of a company have fiduciary relationship with the company as well as the shareholders when he acts as an agent or officers of a company.*
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>> *b) A company is a legal person who is living only in the eyes of law. It is a creation of law which lacks both body and mind. It cannot act, just like a human being. It can act only through. some human agency. Directors are' those· persons through whom company acts and does business. They are collectively known as Board of Directors.*
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>> *c) Cairns L.J. in Ferguson v. Wilson [1867] 2 Ch App 77, 89 said :*
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>> *"What is the position of directors of a public company They are merely agents of a company. The company itself cannot act in its own person, for it has no person; it can only act through directors, and the case is, as regards those directors, merely the ordinary case of principal and agent. Wherever an agent is liable, those directors would be liable; where the liability would attach to the principal, and the principal only, the liability is the liability of the company."*

d) The Hon'ble Supreme Court in [1958] 34 ITR 10 (SC) Badridas Daga Vs. CIT held that

"When once it was established that 'C' was in charge of the business, that he had authority to operate on the bank accounts, and that he withdrew the moneys in the purported exercise of that authority, his action was referable to his character as agent, and any loss resulting from misappropriation of funds by him would be a loss incidental to the carrying on of the business."

e) In the case of the assessee, the Directors, on due authorisation by the company, carried on the business of the company i.e., trading in shares, as agents of the company and on behalf of the company and therefore, the profit and/or loss thereon should be treated as the outcome of the business of the company and allowed in the assessment of the company. It cannot be considered as profit and/or loss of the Directors in their assessments. From the above, it is clear that the Board of Directors are permitted to pass a Resolution authorising the directors to act on behalf of the company which is permissible under the Companies Act and the assessee company did exactly what was permitted by the Companies Act."

In view of the above, it was submitted that the order passed by the ld.PCIT was wrong and contrary to the order passed by the ld.CIT(A) for A.Y. 2015-16.

8. We have heard the rival submissions and perused the material on record. Before we deal with the issue, it is essential to bring certain important dates which are relevant for the determination of present set of appeals.

04-11-2016	The Assessing Officer passed assessment order for A.Y. 2014-15 u/s 143(3) of the Act.
25-10-2017	The Assessing Officer for A.Y. 2015-16 had passed the assessment order whereby disallowing the loss of Rs.2,18,87,793/- on account of trading in F & O caused to the new Directors namely Smt. Usha Rao and Karithk Velagapudi.
28-11-2017	The assessee preferred the appeal against the order passed by the Assessing Officer for A.Y. 2015-16.

03-12-2018	Ld.PCIT issued a show cause notice for A.Y. 2014-15 u/s 263 of the Act alleging that the Assessing Officer has not examined the allowability of loss claimed by the assessee to the tune of Rs.1,73,99,050/-.
06-12-2018	The last date of hearing before the ld.CIT(A) for A.Y. 2015-16.
23.01.2019	The ld.CIT(A) passed the order allowing the loss of Rs.2,18,87,993/-
29.03.2019	The ld.PCIT passed the order setting aside the order of the Assessing Officer passed for A.Y. 2014-15 and directed the Assessing Officer to disallow the excess loss claimed on account of F&O for an amount of Rs.1,67,31,578/-.

9. The interesting facts as per the case of the assessee for A.Y. 2014-15 are that the assessee company had passed a Board Resolution on 01.04.2013 whereby it was resolved that the company for the administrative reason has authorized to both of its Directors namely, Ms. P. Usha Rao and Mr. Karthi Velgapudi to operate, act or otherwise deal in the stocks / derivatives in the stock exchange, for and on behalf of the assessee company. They were also authorized to operate the stocks and derivatives trading accounts of assessee company or can operate through the accounts opened in their respective names and they have to maintain a clear log of the transactions and have to submit periodical reports and statements to the assessee company, the amount required shall be drawn from the account of assessee company and submit period account and reports etc.

9.1. It is the case of the assessee before us that a sum of Rs.2,06,18,388/- was paid by the assessee company to its director Ms. P. Usha Rao and similarly, an amount of Rs.50,04,600/- was paid to other director Karthik Velagapudi. Thus, in total an amount of

Rs.2,56,22,988/- was given by the assessee to its directors namely, Ms. P. Usha Rao and Mr. Karthik Velagapudi. As against the above said two amounts, the trading loss notified by Ms. P. Usha Rao was Rs.1,37,11,755/- and by Karthik Velgapudi was Rs.16,84,539/-. The total loss suffered by the assessee was Rs. 1,73,99,050/-.

9.2. Similarly, for A.Y. 2015-16, the payment made by the company to its directors namely, Ms. P. Usha Rao on various occasions was Rs.1,72,83,000/-. (Page 58 of the Paper Book) and against that amount, the said Ms. P. Usha Rao suffered a trading loss of Rs.2,18,87,793/-, which was later on claimed to be the loss of assessee company.

10. As per the order of the Assessing Officer dt.04.11.2016, there is no discussion on the allowability or disallowability of the amount of Rs.1,73,99,050/- in the assessment order. During the course of argument, the ld.DR has drawn our attention to the letter dt.26.04.2016 whereby ten questions were posed to the assessee which reads as under :

1. 1. Assessment particulars of Directors & copies of return of income of Directors.
2. Complete copy of the Annual report and financial statements.
3. Details of Amalgamation / Demerger during the year.
4. Proof in support of payment of Statutory dues outstanding on 31.03.2014.
5. Party wise details of other current liabilities.
6. Proof in support of additions made to fixed assets during the year.
7. Party wise details of reduction in Short Term Loans and Advances (Assets).
8. Reconciliation of amount paid to specified persons u/s 40A(2)(b).

9. Details of major expenditure claimed during the year along with supporting evidence.
10. Books of accounts and copies of bank accounts held during the year.

10.1. From the perusal of above questions, it is clear that none of the questions pertain to the claim of deduction by the assessee for the loss suffered by the directors in their individual accounts. Neither the Assessing Officer asked assessee pertaining to the above said questions nor it was replied by the assessee. Hence, the present case is a case of no enquiry by the Assessing Officer.

11. An assessment order to be held liable to revision under section 263 of the Act, if the twin conditions, firstly, order to be an erroneous and secondly, order prejudicial to the interest of the Revenue, should be satisfied simultaneously. The Hon'ble Delhi High Court in the case of GEE VEE Enterprises Private Limited versus CIT [1975] 99 ITR 375 (Delhi) held that the CIT may consider the order of the Income Tax Officer as erroneous not only because it contains some apparent error of reasoning or of law or of fact on the face of it but also because it is a stereo-typed order which simply accepts what the assessee has stated in his return and fails to make inquiries which are called for in the circumstances of the case. The Hon'ble Delhi High Court referred to the two decisions of the Hon'ble Supreme Court in the case of Rampyari Devi Saraogiv. Vs. Commissioner of Income Tax, (1968) 67 I.T.R. 84 (12), and Tara Devi Aggarwai v. Commissioner of Income Tax, (1973) 88ITR 323 (13) and observed that it is not necessary for the Commissioner to make further inquiries before cancelling the assessment order of the Income Tax Officer.

12. The Commissioner regarded the order as erroneous on the ground that in the circumstances of the case the Income Tax Officer should have made further inquiries before accepting the statements made by the assessed in his return. The Hon'ble Delhi High Court in the case of GEE VEE Enterprises cited supra justified making of inquiries by the Assessing Officer by observing as under:

> *"14. The reason is obvious. The position and function of the Income Tax Officer is very different from that of a civil court. The statements made in a pleading proved by the minimum amount of evidence may he accepted by a civil court in the absence of any rebuttal. The civil court is neutral. It simply gives decision on the basis of the pleading and evidence which comes before it. The Income Tax Officer is not only an adjudicator but also an investigator. He cannot remain passive in the face of a return which is apparently in order but calls for further inquiry. It is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an inquiry. The meaning to be given to the word "erroneous" in section 263 emerges out of this contract. It is because it is incumbent on the Income Tax Officer to further investigate the facts stated in the return when circumstances would make such an inquiry prudent that the word "erroneous" in section 263 includes the failure to make such an inquiry. The order becomes erroneous because such an inquiry has not been made and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct nor can it be said that it was necessary for the Commissioner to himself make such inquiry before cancelling the order of assessment."*

13. Similarly, Hon'ble Calcutta High Court in the case of CITCentral-1 Vs Maithan International (Cal) IT Appeal No. 53 of2012 has observed as under :

> *"It is not the law that the Assessing Officer occupying the position of an investigator and adjudicator can discharge his functions by perfunctory or inadequate investigation. Such a course is bound to result in erroneous and prejudicial orders. Where the relevant enquiry was not undertaken, as in this case, the order is erroneous and prejudicial too and therefore revisable. Investigation should always be faithful and fruitful. Unless all truthful areas of enquiry are pursued the enquiry cannot be said to have been faithfully conducted."*

14. The Hon'ble Delhi High Court has again emphasized in the case of ITO versus DG Housing Projects Ltd. ITA 179/2011 that where there is complete lack of enquiry on the part of the Assessing Officer, the assessment order is erroneous the relevant observation of the Hon'ble High Court are as under :

> *"A distinction must be drawn in the cases where the Assessing Officer does not conduct an enquiry; as lack of enquiry by itself renders the order erroneous and prejudicial to the interests of the Revenue and cases where the Assessing Officer conducts an enquiry but the finding recorded is erroneous and which is also prejudicial to the interests of the Revenue. In the latter cases, the Commissioner has to examine the order or the decision taken by the Assessing Officer on the merits and then form an opinion on the merits that the order passed by the Assessing Officer is erroneous and prejudicial to the interests of the Revenue. In the second set of cases, the Commissioner cannot direct the Assessing Officer to conduct further enquiry to verify and find out whether the order passed is erroneous or not."*

15. Further, we also find that in terms of Explanation-2 below section 263 of the Act, which has been made effective from assessment year 2015-16 w.e.f. 01.06.2015, an assessment order is deemed to be erroneous insofar as it is prejudicial to the interest of the Revenue, if the Assessing Officer fails to carry out the inquiries, which ought to have been carried out in the facts and circumstances of the case.

16. In view of the above judicial precedents and the amendment introduced by the Finance Act by way of Explanation-2 of Section 263 of the Act, if the Assessing Officer failed in carrying out the enquiry which ought to have been carried in the fact and circumstances of the case, the assessment order is obviously erroneous.

17. The issue in dispute in the case of assessee before us, is that whether inquiry was conducted by the Assessing Officer during assessment proceeding on the issue of disallowability of loss caused to the directors in the hands of the assessee or not ?

18. In the present case, despite the fact that the losses were caused to the directors in their accounts, the Assessing Officer has allowed the said loss to be set off against the income of the assessee company without making any enquiry. The same is not permissible in law. No question was asked by the Assessing Officer to the assessee and there was no basis for allowing the deduction of such trading loss to the assessee company. We cannot approve the same as in the present case, no transactions were carried out by the assessee company during the period from 01.04.2013 to 31.03.2014 resulting into loss of Rs.1,73,99,050/-. In fact, from the perusal of Page 82 ledger account of M/s. Zen Securities Limited, in the books of the assessee company, only a loss of Rs.6,67,472/- was shown on account of trading in securities / derivatives. Therefore, in our view, the order passed by the Assessing Officer is unsustainable and the action on the part of the ld.PCIT was correct.

19. The ld.AR for the assessee has also submitted before us that by virtue of Board resolution, these two directors have been asked by the Board to do trading activities for and on behalf of the company. On being asked by the Bench as to whether these two directors and the company are having separate individual trading accounts with M/s.Zen Money or not, it was answered by the ld.AR fairly that they are maintaining separate accounts. Even otherwise the said fact is appearing at Para 3 of the ld.PCIT's order where the three unique client codes were given to three individuals and the unique client code of the assessee was 070N013N

wherein only a loss for the sum of Rs.6,67,472/- was caused to the assessee company. In our view, the two directors namely Ms. P. Usha Rao and Karthik Velagapudi were having two different unique client codes and the amounts were transferred by the assessee company to these two directors. Thus, merely transferring the amounts by the company to the accounts of directors cannot ipso facto lead to the conclusion that they were authorized to transact for and on behalf of the assessee company. Once the transactions can be undertaken by the company on its own capacity, having separate unique client code, then it is possible that the activity would be carried out through the accounts of the directors. Therefore, in our view, the order passed by ld.PCIT is in accordance with the law.

20. During the course of proceedings before the ld.PCIT or before us, the assessee has not raised the applicability of section 179 of the Companies Act, 2013. However, in the written submissions reproduced hereinabove, a fresh explanation was given by the assessee. Firstly, the assessee is not permitted to take any fresh ground before us which has not been raised either before ld.PCIT or during the course of arguments before us. Section 179(3)(e) provides as under : **The Board of directors of a company shall exercise the following powers <u>on behalf of the company</u> by means of resolutions passed at meeting of the board, namely,**

- To invest the funds of the company.

21. The power under section 179(3)(e) can only be given to the directors only for investing the funds of the company. The word “invest” used in the clause is required to be interpreted in a narrow sense as it’s meaning cannot be expanded to include “trading activities of purchase and

sale of shares by the directors in their individual capacity." The board resolution dated 01.04.2013 provides as under :

> *" FURTHER RESOLVED THAT the above Directors of the company are also authorized to operate the transactions for and on behalf of the company and for which do draw amounts from the company from time tome and submit periodic reports to the company clearly segregating between the transactions made for and on behalf of the company and transactions made in respective personal capacities.*
>
> *FURTHER RESOLVED THAT the company do take cognizance of the statements/reports submitted by the above said directors and take on record only the effect of the transactions made for an on behalf of the company. This arrangement shall be in place from the first day of April, 2013 and shall be valid and binding on the company till 31st March, 2016 or until withdrawn by the board by giving prior notice in writing."*

22. From the perusal of the Board resolution, it is amply clear that the Board has given the power to the directors to transact **"for and on behalf of the company".** Contrary to the power given by the resolution, the directors have started doing business of share trading in their individual capacity. The act of the director cannot be said to be the act of company under the provisions of the Companies Act, 2013. There is distinction between the company and its directors under the Act and the act done by the directors in their individual capacity cannot be said to be an act on behalf of the company. As per the Companies Act and as well as the Income Tax Act, the company and its directors are two distinct jurist entity. Hence, both are separately assessed under the provisions of the Income Tax Act.

23. The trading of sale and purchase of shares done by the directors of the company in their individual capacity cannot be said to be in pursuance to the Board's resolution passed by the assessee company. In the board resolution, there is no whisper of making any "investment" on behalf of the company by these directors as provided u/s 179(3)(e) of the Companies Act, 2013. In view of the above, we do not find any justification

for the Assessing Officer to allow the deduction of the losses suffered by these directors in the hands of the assessee company.

24. In the result, the appeal of assessee in ITA No.637/Hyd/2019 for A.Y. 2014-15 is dismissed.

25. **Now we will come to the appeal of Revenue in ITA 484/Hyd/2019 for A.Y. 2015-16.**

26. The only effective ground raised by the Revenue in the appeal for A.Y. 2015-16 reads as under :

> *"The ld.CIT(A) erred in allowing the loss claimed by the assessee company from trading in Futures & Options pertaining to the director and carried out in the trading account of the director and not through such trading account maintained in the name of the company wherein no trading activity carried out."*

27. The ld.DR for the Revenue had submitted that the ld.CIT(A) has deleted the disallowance of Rs.2,18,87,793/- which was made by the Assessing Officer on account of trading losses made by the directors of the assessee company. The ld.DR has drawn our attention to para 2.1 of the order passed by the Assessing Officer which reads as under :

> *"2.1. During the course of hearing, it is noticed that the assessee company claimed loss from "F & O" to the tune of Rs.2,18,87,793/ -. The details of the transactions made in F & O have been called for. It is informed by the assessee that it transacted in derivatives through M/s.Zen Money, Hyderabad. In response to this office letter dt:23-08-2017, issued u/s.133(6)of the I.T.Act, the intermediary "Zen Money" furnished the KYC of the client and the bank accounts details linked to the transaction, besides intimating that there are no transactions done by the company during the financial year 2014-15 relevant to the assessment year 2015-16. It is noticed from the KYC document that the account was opened in the name of the company by linking the PAN No.[AACCN1440]. It is also written in the resolution passed at the meeting of Board of Directors of M/s. Nekkanti Systems Pvt Ltd ., on 11-02-2008, a copy of which was submitted to Zen Money at the time of opening the account, where from it is observed that Smt.P Usha Rao-*

Director of the company has been authorised to negotiate and finalise the terms and conditions for opening the account and for completing the formalities. It is further resolved in the meeting that Smt.P Usha Rao, Director of the company was individually authorised to operate the account on behalf of the company. But the assessee submitted that the statement of transactions conducted in Zen Money during the year, as per which it is seen that the transactions has been made not in the name of the company but in the name of Smt.P Usha Rao."

28. It was the case of the Assessing Officer that the assessee company has claimed loss of Rs.2,18,87,793/- on account of F&O trading undertaken by the directors of the company in their individual capacity. The Assessing Officer had issued summons u/s 133(6) of the Act to M/s.Zen Money and in response thereto, it was intimated by the company M/s.Zen Money that no transactions were done by the company during the F.Y. 2014-15 relevant to A.Y. 2015-16. It was also pointed out that different unique client codes were granted to the assessee company and to its two directors. The Assessing Officer after affording opportunities to the assessee, had disallowed the deduction claimed by the assessee for an amount of Rs.2,18,87,793/- as the said amount does not pertain to the company and the company has not carried out any transactions with M/s.Zen Money.

29. Feeling aggrieved with the order of Assessing Officer, assessee preferred appeal before ld.CIT(A) who allowed the appeal of the assessee vide Para 4.2 by observing as under :

"*4.2. I have carefully considered the assessment order, grounds of appeal and AR's submissions in this regard. The only issue involved in this appeal is with regard to purchase and sale of shares, stocks, scripts, commodities, futures and options etc. by the Directors of the appellant, Ms. Usha Rao and Sri Karthik Velagapudi, on behalf of the appellant are for the purpose of the appellant's business activity or for the purpose of the said directors' personal activity. It can be seen from the facts that the said directors are authorized to deal with the business activities of the appellant on its behalf. The funds required for purchase of shares, stocks, scripts etc. by the said directors are provided by the appellant. This also seen that they have operated that*

account on behalf of the appellant not in their own account. The profit or loss by way of purchase /selling of shares, stocks, scripts etc. has not arisen to the directors but to the appellant. The same is evident that appellant admitted the loss or profit derived from the said activity of the Directors in its hands in the immediately preceding year. Since the directors have acted on behalf of the appellant and they have carried out the activity of purchase and sale of shares stock, scripts etc. after duly authorized by the appellant, the said activity of the directors would automatically construed to be the business activity relating to the appellant itself and not that of the directors. In view of the above and I am of the considered view the loss/profit arising from the activity carried on by the said directors required to be assessed in the hands of the appellant only. Therefore, the AO is not justified in treating the loss of Rs.2,18,87,893/- which has arisen by the activities carried out by the said directors on behalf of the appellant in the hands of the said directors. Therefore, the AO is directed to allow the said loss of Rs.2,18,87,793/- in the hands of the appellant. As a result, the grounds raised in this regard are allowed."

30. The ld.DR has relied upon the order passed by the ld.PCIT u/s 263 of the Act and it was submitted that there was no occasion for the ld.CIT(A) to allow the disallowance made by the Assessing Officer for the trading losses suffered by the directors of the company in their individual accounts. It was submitted that the company and the director are different persons and are assessable to income tax separately. It was submitted that the loss occurred to the company cannot be transferred to the account of the assessee. Loss caused to the directors of the company cannot be considered to be the loss of the company. Similarly, the profit earned by the directors cannot be added in the hands of the company. The law is fairly settled that income is to be assessed in the right hands and the income cannot be assessed in another person's hand either by transferring the profit or loss.

31. Ld.AR for the assessee had submitted that the directors were duly authorized by the company to operate the accounts on behalf of the company. It was also the contention of the ld.AR that if the company has caused the profit to carry out the activities of the trading and if any loss

had been caused on account of trading activities carried out by the assessee then the same is required to be adjusted against the income of the assessee. It was submitted that as per the resolution passed by the company, the activities were carried out and there is no breach or violation of the activities carried out by the assessee. It was also submitted that in the financial year relevant to assessment year, the directors earned profit on account of transactions carried out by them besides the loss caused to the assessee on account of the trading activities. It was also contended by the ld.AR that in the hands of the directors, the loss / income has not been assessed on account of the transactions carried out by the assessee for and on behalf of the assessee company. In view of the above, it was submitted that the order passed by the ld.CIT(A) was in accordance with law.

32. We have heard the rival submissions and perused the material on record. As held by us while deciding the appeal filed against the order passed u/s 263 of the Act that the Assessing Officer for A.Y. 2014-15 has not applied his mind and has allowed the deduction for an amount of Rs.1,73,99,050/-. We are in agreement with the contention of the ld.DR that the director and the company are separate and distinct persons / assessees, and the income / loss of different assessee are required to be assessed separately. Part D of Chapter IV of the Income Tax Act deals with the profits and gains of profession. As per the Act, the assessee is only entitled to deduction as per Part D of Chapter IV which interalia provides that if a loss is caused to the assessee on account of business carried out by the assessee, then the said loss is allowable. In our view, any loss which is intrinsically connected with the business of the assessee is an allowable deduction.

33. In the present case, it is clear from the facts on record that the activities of share trading were carried out by the directors in their individual capacity from their unique client codes. Therefore, in our view, the losses / income, if any, caused on account of such activities carried out by the directors from their own unique client codes cannot be allowed in the hands of the assessee. Further, an interesting aspect is also brought on record that as against Rs. 2,06,18,388/- allegedly given by the company to its directors, the directors had suffered loss of Rs.1,67,31,578/- for A.Y. 2014-15 and similarly, as against Rs. 1,72,83,000/- allegedly given by the company to its directors on various occasions, the directors had suffered a loss of Rs.2,18,87,793/-. Thus, the loss suffered by the assessee, was more than the amount lent by the assessee to its directors. The conduct of the company and its directors does not inspire confidence as it is highly improbable to believe that the assessee will continue to transact through its directors, despite persistent losses.

34. In the light of the above, we are of the opinion that the order passed by the ld.CIT(A) is required to be set aside and the order of the Assessing Officer is required to be restored. Accordingly, the appeal of the Revenue is allowed.

35. We may point out that the assessee in the present case filed additional grounds and in view of the above finding, we do not find any merit in the additional grounds filed by the assessee and accordingly, the same are also dismissed.

36. In the result, the appeal of Revenue in ITA No.484/Hyd/2019 for A.Y. 2015-16 is allowed.

37. To sum up, the appeal filed by the assessee is dismissed and the appeal filed by the Revenue is allowed.

Order pronounced in the Open Court on 27th July, 2022.

Sd/-	**Sd/-**
(RAMA KANTA PANDA) **ACCOUNTANT MEMBER**	**(LALIET KUMAR)** **JUDICIAL MEMBER**

Hyderabad, dated 27th July, 2022.
TYNM/sps

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3	ITO, Ward – 16(2), Hyderabad.
4	CIT (Appeals) – 4, Hyderabad
5	PCIT – 4, Hyderabad
6	Pr. CIT, Hyderabad.
7	DR, ITAT Hyderabad Benches
8	Guard File

By Order