

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER
AND
SH. O.P. KANT, ACCOUNTANT MEMBER**

ITA No. 4519/Del/2013
Assessment Year: 2009-10

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| M/s. Sucon India Ltd., B-532, Nehru Ground NIT, Faridabad | Vs. | ACIT, Circle-II, New Delhi |
| PAN : AAGCS9603L | | |
| (Appellant) | | (Respondent) |

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| Appellant by | Dr. Rakesh Gupta & Sh. Amit Kumar, Advocates |
| Respondent by | Sh. S.S. Rana, CIT(DR) |

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| Date of hearing | 29.11.2016 |
| Date of pronouncement | 18.01.2017 |

ORDER

PER O.P. KANT, A.M.:

This appeal by the assessee is directed against order dated 12/06/2013 of learned Commissioner of Income-tax (Appeals)-2, Faridabad, for assessment year 2009-10, raising following grounds:

“1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and facts in confirming the action of Ld. AO in making an aggregate addition of Rs.27,63,30,230/- by denying the claim of set off of loss from shares and derivatives (Rs.17,27,16,630/- loss on account of trading in derivatives, Rs.10,10,75,192/- loss on account of trading in shares and Rs. 25,38,408/- loss on account of intraday trading in shares) in view of Explanation to section 73 of the Income Tax Act, 1961.

2. That in any view of the matter and in any case, order of Ld. CIT (A) in confirming the action of Ld. AO, in making the impugned addition by denying the set off of the loss aggregating to

Rs.27,63,30,230/- (Rs. 17,27,16,630/- loss on account of trading in derivatives, Rs.10,10,75,192/- loss on account of trading in shares and Rs. 25,38,408/- loss on account of intraday trading in shares) and framing the impugned assessment order, is bad in law and against the facts and circumstances of the case.

3. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”

2. Facts in brief of the case are that the assessee was engaged in the business of trading of shares and securities etc. as well as execution of works contract. For the year under consideration, the assessee filed return of income on 21/09/2009 declaring loss of Rs.25,94,45,470/-. The case was selected for scrutiny and notice under section 143(2) of the Income-tax Act, 1961 (in short ~~the Act~~) was issued and complied with. In the course of scrutiny proceedings, the Assessing Officer observed that the assessee claimed loss of Rs.27,63,30,230/- from business of trading of shares etc, which was partly set off against the profit of Rs.1,80,42,386/- shown from work contracts resulting into net loss of Rs. 25,94,45,470/-. The Assessing Officer held the claim of the loss from trading activity in shares etc as loss from speculation activity and denied set off against the business profit and after making other additions total income of the assessee was assessed at Rs.1,59,42,600/-. Aggrieved, the assessee filed appeal before the learned Commissioner of Income-tax (Appeals), who after considering the submission of the assessee, dismissed the appeal. Aggrieved, the assessee is in appeal before the Tribunal raising the grounds as reproduced above.

3. In grounds No. 1 and 2, the assessee has effectively challenged the action of learned Commissioner of Income-tax (Appeals) in confirming the addition of Rs.27,63,30,230/- by denying the claim of set off of loss.

3.1 The facts in respect of issue in dispute are that the loss of Rs.27,63,30,230/- was consisted of following losses:

- (i) loss on trading in shares through BSE/NSE Rs.10,10,75,192/-
- (ii) loss on intraday trading on BSE/NSE in shares of Rs.25,38,407/-
- (iii) loss on derivatives trading on NSE/BSE Rs.17,27,16,630/-

3.2 The assessee submitted that the transactions other than intraday were non-speculative and in any case was actual business losses and sale and purchase of shares was delivery based. It was further submitted that transactions in derivatives were also non-speculative, in compliance to section 43(5) of the Act. The Assessing Officer held that the assessee company was engaged in dealing in shares and, therefore, explanation to section 73 of the Act applies directly to the assessee and according to the said explanation if any part of the business of the company consists in the purchase and sale of shares of other companies, then for the purpose of section 73 of the Act, the assessee shall be deemed to be carrying on the speculation business to the extent of business of purchase and sale of such shares. Accordingly, the loss from trading in share amounting to Rs.10,10,75,192/- was held as loss from speculation business. Similarly, he held that derivative transaction might not be speculative under section 43(5) of the Act, but when the dealing in those is undertaken by the company which forms the business of such company, the provision of Explanation to section 73 come into play. According to the Assessing Officer, the provision of section 73 are specific and relevant for the limited purpose of setoff of the business. In view of the observations, the Assessing Officer disallowed claim of setoff of the losses of Rs.27,63,30,230/- and addition was made accordingly. Before the learned Commissioner of Income-tax (Appeals), the assessee

contested loss of Rs.10,10,75,192/- on account of delivery based purchase and sale of shares and loss of Rs.17,27,16,630/- on account of derivative trading. After considering the various judicial pronouncements mentioned in the impugned order, the learned Commissioner of Income-tax (Appeals) upheld the finding of the Assessing Officer on the issue in dispute.

3.3 Before us, the learned counsel of the assessee submitted that as far as losses from the derivative transactions was concerned the issue in dispute has been decided in favour of Revenue in the case of DLF Commercial Developers Ltd. by the Hon^{ble} Delhi High Court, reported in 261 CTR 126, whereas same issue in dispute has been decided by the Hon^{ble} Calcutta High Court in the case of Asian Financial Services Ltd. Vs. Commissioner of Income Tax, in GA No. 3250 of 2015 in favour of the assessee. He further submitted that in case where the decision of the Hon^{ble} Jurisdictional High Court on the issue in dispute is not available and decisions of non-jurisdictional High Courts are available which are contrary to each other, than the decision favourable to the assessee should be followed. In this connection, the learned counsel relied on the decision of the Hon^{ble} Apex Court in the case of Vegetable Product, reported in 88 ITR 192.

3.4 As regard to the loss of Rs.10,10,75,192/- from activity of purchase and sales of shares, the learner counsel relied on the circular No. 204 dated 24/07/1976 issued by the Central Board of Direct Taxes (CBDT) and submitted that object of Section 73 of the Act was to curb the device resorted to by business houses controlling group companies to manipulate and reduce the taxable income of Company under Control. Further, he submitted that in the case of Aman Portfolio Private Limited Vs. DCIT 92 ITD 324 (Delhi), the Tribunal has held that Explanation to

Section 73 is a provision against tax avoidance, and should be invoked only, if any manipulative devise is adopted by business houses to reduce their taxable income as mentioned in Circular No. 204, dt. 24th July, 1976. Accordingly, the learned counsel submitted that loss from the activity of purchase and sale of shares also cannot be held as speculative in nature.

3.5 The learned counsel did not press in respect of intraday loss of Rs.25,38,407/-

3.6 On the other hand, the learned Commissioner of Income Tax (Departmental Representative) relied on the finding of the lower authorities and submitted that as far as loss from derivative transactions was concerned, the decision of the Hon^{ble} Delhi High Court in the case of CIT Vs. DLF Commercial Developers Ltd. (supra) might be followed wherein it is held that by all accounts derivatives are based on stocks and shares, which falls squarely within the Explanation to Section 73 and loss from sale/purchase of such derivative would be speculative loss.

3.7 We have heard the rival submission of the parties and perused the relevant material on the record. In the grounds raised by the assessee, two issues emerge before us. The first issue is whether loss from dealing in derivative transaction can be set off against business income or not. Second issue before us is whether loss from the purchase and sale of shares can be set off against the business income in terms of section 73 of the Act.

3.7.1 Regarding the first issue, the assessee has shown loss on derivatives trading on NSE/BSE Rs.17,27,16,630/- and claimed to set off the same against business income. The learned CIT(DR) submitted that issue in question is covered by the decision of the Hon^{ble} Delhi High Court in the case of CIT Vs. DLF Commercial Developers Ltd.(supra).

We find that the Honble High court referred to both Section 73 and Section 43 of the Income-tax Act and decisions available on the issue in dispute and held that loss from the derivative transactions was speculative for the purpose of section 73 of the Act and, therefore, could not be adjusted against business profit. The relevant finding of the Honble High Court is reproduced as under:

“6. Before a discussion on the merits of the appeal, it would be essential to extract the relevant provisions of the Income Tax Act. Section 73 (with explanation), to the extent it is relevant, reads as follows:

“Losses in speculation business.

73. (1) Any loss, computed in respect of a speculation business carried on by the assessee, shall not be set off except against profits and gains, if any, of another speculation business.

(2) Where for any assessment year any loss computed in respect of a speculation business has not been wholly set off under sub-section (1), so much of the loss as is not so set off or the whole loss where the assessee had no income from any other speculation business, shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year, and—

(i) it shall be set off against the profits and gains, if any, of any speculation business carried on by him assessable for that assessment year; and

(ii) if the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on.

(3) In respect of allowance on account of depreciation or capital expenditure on scientific research, the provisions of sub-section (2) of section 72 shall apply in relation to speculation business as they apply in relation to any other business.

(4) No loss shall be carried forward under this section for more than [four] assessment years immediately succeeding the assessment year for which the loss was first computed.

[Explanation.—Where any part of the business of a company [other than a company whose gross total income consists mainly of income which is chargeable under the heads "Interest on securities", "Income from house property", "Capital gains" and "Income from other sources"], or a company the principal business of which is the business of banking or the granting of loans and advances) consists in the purchase and sale of shares of other companies, such company shall, for the purposes of this section, be deemed to be carrying on a speculation business to the extent to which the business consists of the purchase and sale of such shares.]

Section 43, to the extent it is relevant, reads as follows:

43. In Sections 28 to 41 and in this section, unless the context otherwise requires-

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(5) "Speculative transaction" means a transaction in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips:

Provided that for the purposes of this clause –

(a) A contract in respect of raw materials or merchandise entered into by a person in the course of his manufacturing or merchanting business to guard against loss through future price fluctuations in respect of his contracts for actual delivery of goods manufactured by him or merchandise sold by him; or

(b) a contract in respect of stocks and shares entered into by a dealer or investor therein to guard against loss in his holdings of stocks and shares through price fluctuations; or

(c) a contract entered into by a member of a forward market or a stock exchange in the course of any transaction in the nature of jobbing or arbitrage to guard against loss which may arise in the ordinary course of his business as such member (or)

(d) An eligible transaction in respect of trading in derivatives referred to in clause {(ac)} of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) carried out in a recognized stock exchange;]

Shall not be deemed to be a speculative transaction, [Explanation – Four the purpose of this clause, the expressions –

(A) Carried out electronically on screen-based systems through a stock broker or sub-broker or such other intermediary registered under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) in accordance with the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) or the Securities and Exchange Board of India Act, 1992 or the Depositories Act, 1996 (22 of 1996) and the rules, regulations or bye-laws made or directions issued under those Acts or by banks or mutual funds on a recognized stock exchange; ;and

(B) which is supported by a time stamped contract note issued by such stock broker or sub-broker or such other intermediary to every client indicating in the contract note the unique client identity number allotted under any Act referred to in sub-clause (A) and permanent account number allotted under this Act;

(ii) “recognized stock exchange” means a recognized stock exchange as referred to in clause (f) of section 2 of the Securities Contracts (Regulation) act, 1956 (42 of 1956) and which fulfils such conditions as may be prescribed and notified by the Central Government for this purpose;]

It is apparent, facially, that the term “speculative transaction” has been defined only in Section 43(5). At the same time, it is qualified that the scope of the definition is restricted in its application to working out the mandate of Sections 28 to 41 of the Act. In terms of the Explanation to Section 73(4), in the case of a company, business of purchase and sale of shares is deemed to be speculation business. However, certain companies are excluded from this Explanation, which are:

(i) a company whose gross total income consists mainly of income which is chargeable under the heads 'Interest on securities', 'Income from house property', 'Capital gains' and 'Income from other sources'.

(ii) a company, the principal business of which is the business of banking or the granting of loans and advances.

Section 43 defines, for the purpose of Sections 28 to 41, certain terms. The latter provisions fall in Chapter IV, in Section D, which deal with computation of business income. The said provisions provide for matter relating to computation of such income, rent taxes, insurance of buildings, repairs of plant and machinery, depreciation, reserves for shipping business, rehabilitation fund, expenditure on certain eligible objects or schemes, deductions, amounts not deductible, profits chargeable to tax, etc. The assessee is no doubt correct in contending that the only definition of derivatives is to be found in Section 43(5); yet the Court cannot ignore or overlook that the definition – to the extent, it excludes such transactions from the mischief of the expression “speculative transactions” is confined in its application. Parliamentary intendment that such transactions are also excluded from the mischief of Explanation to Section 73 (4), however, is not borne out.

In this context, it would be instructive to notice that in *Rajshree Sugars and Chemicals Ltd (supra)*, the Madras High Court noticed, rather dramatically, that “..‘Derivatives are time bombs and financial weapons of mass destruction’ said Warren Buffett, one of the world's greatest investors, who overtook Microsoft Maestro in 2008 to become the richest man in the world and who is known as the ‘Sage of Omaha or Oracle of Omaha’. Derivatives, according to him, can push companies on to a spiral that can lead to a corporate melt down....” The High Court then, after examining the nature and characteristics of derivatives transactions, observed that:

“5. What are these ‘derivatives’ which have gained such a great deal of notoriety? In simple terms, derivatives are financial instruments whose values depend on the value of other underlying financial instruments. The International Accounting Standard (IAS) 39, defines “derivatives” as follows:

A derivative is a financial instrument:

(a) whose value changes in response to the change in a specified interest rate, security price, commodity price, foreign exchange rate, index of prices or rates, a credit rating or credit index, or similar variable (sometimes called the ‘underlying’);

(b) that requires no initial net investment or little initial net investment relative to other types of contracts that have a similar response to changes in market conditions; and

(c) that is settled at a future date.

Actually, derivatives are assets, whose values are derived from values of underlying assets. These underlying assets can be commodities, metals, energy resources, and financial assets such as shares, bonds, and foreign currencies.”

It is no doubt, tempting to hold that since the expression “derivatives” is defined only in Section 43 (5) and since it excludes such transactions from the odium of speculative transactions, and further that since that has not been excluded from Section 73, yet, the Court would be doing violence to Parliamentary intendment. This is because a definition enacted for only a restricted purpose or objective should not be applied to achieve other ends or purposes. Doing so would be contrary to the statute. Thus contextual application of a definition or term is stressed; wherever the context and setting of a provision indicates an intention that an expression defined in some other place in the enactment, cannot be applied, that intent prevails, regardless of whether standard exclusionary terms (such as “unless the context otherwise requires”) are used. In The Vanguard Fire & General Insurance Co. Ltd., Madras v. M/S. Fraser And Ross & Anr AIR 1960 SC 971 it was held that:

“It is well settled that all statutory definitions or abbreviations must be read subject to the qualification variously expressed in the definition clauses which created them and it may be that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or the context. That is why all definitions in statutes generally begin with the qualifying words similar to the words used in the present case, namely, unless there is anything repugnant in the subject or context. Therefore in finding out the meaning of the word “insurer” in various sections of the Act, the meaning to be ordinarily given to it is that given in the definition clause. But this is not inflexible and there may be sections in the Act where the meaning may have to be departed from on account of the subject or context in which the

word has been used and that will be giving effect to the opening sentence in the definition section, namely, unless there is anything repugnant in the subject or context. In view of this qualification, the court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words under the circumstances.”

Similarly, in N.K. Jain and Ors. v C.K. Shah and Ors. AIR 1991 SC 1289, it was held that:

“4. The subject matter and the context in which a particular word is used are of great importance and it is axiomatic that the object underlying the Act must always be kept in view in construing the context in which a particular word is used.....”

11. The stated objective of Section 73- apparent from the tenor of its language is to deny speculative businesses the benefit of carry forward of losses. Explanation to Section 73 (4) has been enacted to clarify beyond any shadow of doubt that share business of certain types or classes of companies are deemed to be speculative. That in another part of the statute, which deals with computation of business income, derivatives are excluded from the definition of speculative transactions, only underlines that such exclusion is limited for the purpose of those provisions or sections. To borrow the Madras High Court’s expression, “derivatives are assets, whose values are derived from values of underlying assets”; in the present case, by all accounts the derivatives are based on stocks and shares, which fall squarely within the explanation to Section 73 (4). Therefore, it is idle to contend that derivatives do not fall within that provision, when the underlying asset itself does not qualify for the benefit, as they (derivatives – once removed from it and entirely dependent on stocks and shares, for determination of their value).

12. In the light of the above discussion, it is held that the Tribunal erred in law in holding that the assessee was entitled to carry forward its losses; the question framed is answered in favour of the revenue and against the assessee. The appeal is, therefore, allowed; there shall be no order as to costs.”

3.7.2 On the other hand, the learned counsel of the assessee relied on the decision of the Hon'ble High Court of Calcutta in the case of Asian Financial Services Ltd. Vs. Commissioner of Income Tax-3, Kolkata (supra). In the said case one of the questions raised was that, whether on the true and proper interpretation of the Explanation to section 73 of the Income-tax Act, 1961, the Tribunal was justified in law in holding that loss of Rs.3,24,76,185/- incurred in eligible transaction within the meaning of proviso (d) to section 43(5) not involving any purchase/sale of shares as such was speculation loss ?

3.7.3 The Hon'ble High Court of Calcutta disagreed with the decision of the Hon'ble Delhi High Court and held as under:

“It would appear that the activities appearing in Clauses (a) to (e) are not to be deemed to be speculative transactions. Therefore, this comes within the category of deemed business which is however distinct and separate from any other business. Now, the question is, whether loss arising out of such deemed business can be set off against the profit arising out of other business or businesses which may for clarity be called proper business. Under Section 70 of the Act, the assessee is entitled to have the loss set off against his income from any other source under the same head unless otherwise provided. Therefore answer to the question is that the assessee is entitled to have the loss arising out of deemed business set off against the income arising out of business proper unless otherwise provided. The question however remains whether the explanation to Sub-Section (4) of Section 73 relied upon by Mr. Lodh provides otherwise. A plain reading of the explanation quoted above cannot be said to have provided otherwise. In that case the irresistible conclusion is that the assessee is entitled to set off such loss arising out of deemed business against the income arising out of business proper.

The learned Tribunal has supported the contention of the revenue relying upon the judgment of the Delhi High Court quoted above. The views expressed by the Hon'ble Delhi High Court are contained in a part of the sentence, which is as follows:

"by all accounts the derivatives are based on stocks and shares, which fall squarely within the Explanation to Section 73(4)"

We are inclined to think that the clause of the sentence which fall squarely....', qualifies the word 'shares' and not the word 'derivatives'. We have no difficulty in accepting the views of the Delhi High Court when they say that shares fall squarely within the Explanation to Section 73(4) but we are unable to agree when derivatives are treated at par with the shares because the legislature has treated them differently."

3.7.4 In the case of Asian Financial Services Ltd. (supra), the Hon^{ble} Calcutta High Court accordingly answered the question in negative.

3.7.5 The learned counsel submitted before us that both the decision are of the High Court other than Jurisdictional High Court, which is the Punjab and Haryana High Court in the case of the assessee. The learned counsel relying on the decision of the Hon^{ble} Supreme Court in the case of Vegetable Product Ltd., reported in 88 ITR 192 submitted that where contrary decision of the Hon^{ble} high courts other than the jurisdictional High Court are available, then in such a situation, decision favourable to the assessee should be followed. The Hon^{ble} Supreme Court in the case of vegetable product Ltd (supra) held as under:

"4. There is no doubt that the acceptance of one or the other interpretation sought to be placed on s. 271(1)(a)(i) by the parties would lead to some inconvenient result, but the duty of the Court is to read the section, understand its language and give effect to the same. If the language is plain, the fact that the consequence of giving effect to it may lead to some absurd result is not a factor to be taken into account in interpreting a provision. It is for the legislature to step in and remove the absurdity. On the other hand, if two reasonable constructions of a taxing provision are possible, that construction which favours the assessee must be adopted. This is a well-accepted rule of construction recognised by this Court in several of its decisions. Hence, all that we have to see is, what is the true effect of the language employed in s. 271(1)(a)(i). If we find that

language to be ambiguous or capable of more meanings than one, then we have to adopt that interpretation which favours the assessee, more particularly so because the provision relates to imposition of penalty.”

3.7.6 Respectfully following the above decision of the Hon^{ble} Supreme Court in the case of Vegetable Product Ltd. (supra), we are inclined to follow the decision of the Hon^{ble} Calcutta High Court on the issue in dispute. Accordingly, we hold that the loss incurred on derivative transaction was not a speculative loss and is allowed to be adjusted against business income.

4. On the second issue whether the loss of Rs.10,10,75,192/- from the activity of trading in shares, i.e., purchase and sale of shares is a speculation loss in terms of explanation to section 73(4) of the Act, is concerned, in the case of a company, business of purchase and sale of shares is deemed to be speculation business except following companies:

(i) a company whose gross total income consists mainly of income which is chargeable under the heads 'Interest on securities', 'Income from house property', 'Capital gains' and 'Income from other sources'.

(ii) a company, the principal business of which is the business of banking or the granting of loans and advances.

5. The assessee company is not in the list of companies which are excluded under the explanation to section 73(4) of the Act. The learned counsel, however, relied on the CBDT Circular and submitted that objects of section 73 was to curb the device resorted by the business houses controlling the group companies to manipulate and reduce the taxable income of the company under control. He further relied on the decision of the Tribunal in the case of Aman Portfolio Private Limited

(supra) and submitted that no manipulative device was adopted by the assessee to reduce his taxable income. We do not agree with the contention raised by the learned counsel of the assessee. The provisions of the Act are very clear and unambiguous that for the purpose of section 73 the business consists of purchase and sale of shares be deemed to be a speculation business. The circular issued by the CBDT cannot override the provisions introduced by the Parliament. The Hon'ble Supreme Court in the case of Keshavji Raoji & Co. vs. CIT (1990) 82 CTR (SC) 123 : (1990) 182 ITR 1 (SC) held that as long as there is no ambiguity in the statutory language, resort to any interpretative process to unfold the legislative intent becomes impermissible. The requirement of interpretation arises only when the words used in the statute are, on their own terms, ambivalent and do not manifest the intention of the legislature.

6. Further, a Division Bench of the Delhi Tribunal in the case of SRJ Securities Ltd. vs. Asstt. CIT (2003) 81 TTJ (Del) 484, after exhaustively considering the various aspects, has held that loss suffered by assessee, a share broker-cum-dealer, on purchase and sale of shares on its own account was speculation loss within the meaning of Sec. 73 r/w Explanation and assessee's main income not being interest on securities, income from house property, capital gains or income from other sources and assessee not being in the business of banking or granting of loans and advances, and the business of share broker and share dealer being separate and distinct businesses, the loss could not be set off against commission earned from brokerage business. The relevant finding of the Tribunal is reproduced as under:

“32. The next question that arises for consideration is whether the business carried on by the assessee-company on the one hand carries on the sale and purchase of shares on behalf of his clients and on the other hand purchase and sale of shares on his own can be said to be a speculative business as suggested by the appellant. When we examine this in the light of the Explanation attached to the Section, the answer to this question is given in the statute itself. The statute lays down in the Explanation that where the business of the company consists in purchase and sale of shares of other companies (other companies (assessee-company) emphasis supplied) shall be deemed to be carrying on speculation business to the extent to which the business consists of business of purchase and sale of shares. A bare look at the Explanation leaves no room to doubt that when a company like the appellant-company before us enters into a transaction vis-a-vis the sale and purchase of shares to its own account, it is deemed to be into the speculative business. The commission earned by no stretch of imagination in the form of brokerage can be said to be his speculative business income for the various reasons stated above. Sec. 73 of the IT Act, more particularly sub-cl. (i) is categorical and mandates that the speculation loss has to be set off against a speculation profit and not otherwise. When the assessee earns commission through confirmed order from the parties, how can it be said to be a speculative business. As the commission earned from the business carried out for the clients is not a speculative business, we are afraid it could not be set off against any speculative loss. When the legislature mandates that a company entering into the sale and purchase of shares is deemed to be into speculative business the losses suffered has to be adjusted against the profits of the speculative business and not against any other business. We, therefore, are of the opinion that the AO was right and so was the CIT(A) when they disallowed the claim of the assessee on account of loss incurred by the purchase of shares.”

7. Further, the decision in the case of Aman Portfolio Private Limited (supra) is decision of a SMC bench of Tribunal.

8. Thus, respectfully following the decision of the Tribunal in the case of SRJ Securities Ltd. (supra), we hold that the activity of purchase and sale of shares carried out with assessee for the purpose of section 73 of

the Act is a speculation business activity and, accordingly, the loss of Rs.10,10,75,192/- suffered from the activity of purchase and sale of shares cannot be allowed to set off against the business income. Accordingly, the grounds of the assessee are partly allowed.

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

The decision is pronounced in the open court on 18th January, 2017.

Sd/-
(H.S. SIDHU)

JUDICIAL MEMBER

Dated: 18th January, 2017.

RK/(D.T.D)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Asst. Registrar, ITAT, New Delhi