

*IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH "A" KOLKATA*

Before **Shri Waseem Ahmed, Accountant Member** and  
**Shri S.S.Viswanethra Ravi, Judicial Member**

**ITA No.935/Kol/2012**  
Assessment Years:2005-06

Pavillion Commercial Pvt. Ltd., 9, Lal Bazar Street, Kolkata-700 001 [PAN No. AABCP 5608 F]	<u>बनाम /</u> V/s.	ITO Ward-5(2) Aayakar Bhawan, Kolkata-700 069
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri V. N. Datta, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri Sallong Yaden, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	27-06-2016
घोषणा की तारीख/Date of Pronouncement	12-08-2016

**आदेश /O R D E R**

**PER Waseem Ahmed, Accountant Member:-**

This appeal by the assessee is against the order of Commissioner of Income Tax (Appeals)-VI, Kolkata dated 23.03.2012. Assessment was framed by ITO Ward-5(2), Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 26.12.2007 for assessment year 2005-06. Solitary inter-connected grounds raised by the assessee per its appeal are as under:-

*"1. That the order passed by the Ld Assessing Officer as well as Ld. C.I.T.(A) is arbitrary, imaginary without any basis and illegal.*

*2. That the Ld. C.I.T.(A) has erred in confirming the disallowance of short term capital loss of Rs.5681304/- which was disallowed by the Ld Assessing Officer only on the basis of that the stock broker has been suspended by the SEBI, which is totally against the fact and law also.*

3. That the Ld. C.I.T.(A) has erred in confirming the disallowance of short term capital loss of Rs.5681304/- which was disallowed by the Ld Assessing Officer observing that the short term capital loss arise by trading in shares of companies whose stock were banned by SEBI. This is totally against the fact and law.

4. That the Ld. C.I.T.(A) has erred in confirming the order passed by Ld. Assessing Officer ignoring the fact that Kolkata Stock Exchange Association Ltd has confirm the trade detail executed by broker in the script by which short term capital loss arise which is totally unjustified and it should not be sustained.

5. That leave may be granted to add, to alter modify or amend ground or grounds of appeal during the hearing of appeal.”

Shri V.N. Datta, Ld. Authorized Representative appeared on behalf of assessee and Shri Sallong Yaden, Ld. Departmental Representative appeared on behalf of Revenue.

2. Only inter-connected issue in this appeal is that Ld. CIT(A) erred in confirming the action of Assessing Officer by treating the short term capital loss of ₹56,81,304/- as bogus loss.

3. Facts in brief are that assessee in the present case is a Private Limited Company and engaged in the business of loan and advance. For the year under consideration, assessee has filed its return declaring a business loss of ₹69,92,140/-. Thereafter, the case was selected for scrutiny and accordingly notice u/s 143(2) r.w.s. 142(1) of the Act was issued.

4. Assessee for the year under consideration has made purchase and sale of share of various companies and booked a loss of ₹56,81,304/-, details of such companies are as under:-

	Inwards	Outwards	Loss
Globe stock	43,32,152/-	12,47,803/-	30,84,354/-
Pslfinance	4,97,725/-	49,300/-	4,48,425/-
Limtxinv	9,89,900/-	1,24,700/-	8,65,200/-

Sangocon	15,75,340/-	2,92,080/-	12,83,260/-
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During the assessment proceedings, AO observed that sale/purchase of shares of M/s Globe Stock and Securities Ltd. has been banned by SEBI and investigation is carried out against the other companies as stated above by SEBI. It was also observed that the broker M/s Rajendra Prasad Shah through whom the transactions in the share of above companies were carried out by the assessee was also suspended by SEBI. The relevant contract notes were sent to Kolkata Stock Exchange (KSE for short) by the AO for verification but KSE was not able to provide the name and address of the seller/purchaser of such shares. From the detailed, it was observed that the broker M/s Rajendra Prasad Shah, created the loss for the assessee by furnishing purchase and sales bills with a view to provide the loss to assessee. Accordingly, AO observed that the loss claimed by assessee for ₹ 56,81,304/- in the sale-purchase of share of the aforesaid companies are nothing but a bogus short term capital loss which cannot be allowed to the carried forward. Thus, the loss claimed by assessee was disallowed.

5. Aggrieved, assessee preferred an appeal before Ld. CIT(A) whereas assessee submitted that :

- (i) The Kolkata Stock Exchange had confirmed the transactions executed by the broker M/s Rajendra Prasad Shah;
- (ii) All the transactions were executed in the relevant previous year 2004-05 and till 31.03.2005, the sale of company share of M/s Glob Stocks & Securities Ltd. were not banned and also the broker M/s Rajendra Prasad Shah was not suspended by the SEBI;
- (iii) The order of SEBI was passed on 29.09.2005 and 30.11.2005 respectively which is long after the transactions date and close of the financial year;
- (iv) The shares purchased at market rate through broker M/s Rajendra Prasad Shah against account payee cheque, the shares were duly credited in the demat account of assessee. Similarly, shares were sold at the market rate against the payment through account payee cheque therefore no disallowance by holding the aforesaid transactions as bogus is warranted

However, Ld. CIT(A) has disregarded the claim of assessee and upheld the action of AO by observing the following facts:-

- (a) Share broker, M/s Rajendra Prasad Shah did not provide the details of the buyers and sellers of the share of aforesaid company, therefore the activities were suspended as the broker, M/s Rajendra Prasad Shah deliberately was not providing the details of buyers and sellers which are mandatory in nature. The said broker was suspended for the activity of share done in the earlier year period also;
- (b) It was noted from the date-wise chart of the price of the unquoted share-scrip of the aforesaid four companies that there was a sharp decline in the price of the companies. Although, the SENSEX was gaining ratio growth.

Accordingly, Ld. CIT(A) found that *modus operandi* adopted by assessee is to avoid taxes being non-genuine circumstances and it was nothing but a colorable device to avoid tax and he upheld the action of AO.

Being aggrieved by this order of Ld. CIT(A) assessee came in second appeal before us.

6. Before us Ld. AR submitted paper book which is running pages from 1 to 63 and stated that SEBI has suspended the broker, M/s Rajendra Prasad Shah on account of some other reasons and the transactions made by assessee was before the date of suspension of said M/s Rajendra Prasad Shah by the KSE. The ld. AR drew our attention on pages 1 to 13 where the contract notes in support of sale & purchase of shares was placed. Similarly the summery of Dmat account was placed on pages 14-17 of the paper book and the bank statement was reflecting all the transactions which is placed on pages 18 to 34 of the paper book. On the hand the ld. DR vehemently supported the order of the lower authorities.

6.1 We have heard rival parties and perused the materials available on record. From the foregoing discussion we find that the authorities below have treated the loss of the assessee as bogus because the broker of KSE was suspended. However, we find

that the transactions were complete in terms of documentation and there was no defect in the papers submitted by the assessee in support of the transactions. We also find that there were entries for the sale purchase of the shares in the bank statements, contract notes, dmat account of the assessee. In our considered view we find that the assessee has proved the transaction on the basis of documents and therefore the suspension of the broker by SEBI will not hold the transaction in valid. In this connection we are putting our reliance in the judgment of Hon'ble jurisdictional High Court in the case of Commissioner of Income Tax vs. Korlay Trading Co. Ltd. (1999) 152 CTR 0017 : (1998) 232 ITR 0820, the head note of the case reads as under :

*“Business income—Loss on sale of shares—Genuineness of transaction doubted—Assessee by furnishing name of company, number of shares purchased, date of sale, amount of purchase and sale money, etc. discharged its initial burden—Merely because broker through whom transaction was made failed to produce his books does not mean that transaction was not genuine—No investigation made by ITO to bring on record any material to disbelieve the claim of assessee—Transaction is proved—Finding of Tribunal is based on material and cannot be said to be perverse—Claim for loss was allowable”*

In the instant case, ld. DR has not brought any defect with respect to the transactions of the sale & purchase of the shares but just mentioned that the broker through whom the transactions were made was suspended. We also find that the broker was not suspended during the period, when the transactions for sale & purchase of the shares taken place. The ld. DR has also not brought on record the reasons for which the broker was suspended. In view of above, we are inclined to reverse the order of authorities below and this ground of assessee is allowed.

**7. In the result, assessee's appeal stands allowed.**

Order pronounced in open court on 12/08/2016

Sd/-  
(S.S.Viswanethra Ravi)  
Judicial Member

Sd/-  
(Waseem Ahmed)  
Accountant Member

\*Dkp

दिनांक:- 12/08/2016

कोलकाता / Kolkata

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant-Pavillion Commercial Pvt. Ltd. 9, Lal Bazar Street, Kolkata-01
2. प्रत्यर्थी/Respondent-ITO, Ward-5(2), Aayakar Bhawan, Kolkata-700 069
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
कोलकाता