

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "SMC, MUMBAI

Before Shri R P Tolani, Judicial Member

ITA No.2885/Mum/2016
Assessment Year : 2010-11

Elara Securities (India) Pvt Ltd. IndiaBulls Finance Centre, Tower 3, 21 st Floor, Senapati Bapat Marg, Elphinstone Road (W), Mumbai- 400 013 PAN AABCE7968D	Vs.	DCIT 4(1), Mumbai
(Appellant)		Respondent)

Appellants By : Shri Jitendra Jain
Respondent By : Ms. Beena Santosh

Date of Hearing :31.01.2017

Date of Pronouncement : 31.01.2017

ORDER

Per R P Tolani, Judicial Member

This is assessee's appeal. The assessee has raised the ground that the learned CIT(A) has erred in law and on facts

- i) In applying Explanation to Section 73 to deem the loss of Rs.2,0-4,640 as a speculation loss without appreciating the fact that it was incurred on squaring off of erroneous trades executed on behalf of the clients and devolved on the appellant.
- ii) In confirming allocation of expenses amounting to Rs.7,28,560/- to the loss incurred on squaring off of erroneous trades and thereby further increasing the deemed speculation loss.

iii) The learned CIT(A) ought to have appreciated the fact that the expenses of Rs.7,28,560/- were incurred by the appellant relate to its normal broking activity.

2. The brief facts of the case are that the assessee is a member of BSE, NSE and MCX-SX and engaged in the business of share and stock broking and trading. During the year in question the assessee claimed loss from trading in securities at Rs.2,04,640/- Questions were raised in this behalf explained that this was not a loss directly incurred by the assessee in any kind of trading but represented business exigencies in which some of the share dealings of customers were erroneously executed by the assessee's employees and as per the norms and to save its reputation the assessee had to settle and bear the losses due to the operational errors and bad deliveries. Such exigencies are faced by the assessee in normal course of its business. The assessee gave evidence in this behalf which has been rejected merely on the observation that they are handwritten. Besides, the learned AO further disallowed expenses of Rs.7,28,560/- on the assumption that the assessee was in above deemed speculative share trading and these expenditure were related to speculation activity. The assessee gave complete details along with evidence in this behalf, which are admittedly mentioned in the written submissions filed before the CIT(A), as under :

"b) Trading expenses Rs 728560 – With respect to Trading expenses of Rs.728,560, it may be noted that these include various levies, fees, charges by entities such as SEBI, NSE, BSE, DP etc. These are levies/fees related to performance of normal broking activity undertaken by a Stock Broker

Some of these expenses are linked to volume of trades executed by the stock broker and some are in the nature of fixed annual fees.

Further it may be noted that these are essential for undertaking broking activity, wherein the company buys/ sells shares on behalf of its clients and hence are fully allowable as normal business expenditure. These expenses are incurred for institutional stock broking business as a whole.

The details of trading expenses of Rs.728,560 incurred for the year along with sample supporting invoices is enclosed..”

The learned CIT(A) did not appreciate the facts and submissions properly and upheld the order of the AO.

3. It is contended that there is no case of applying explanation to section 73 as there is no speculation activity. The loss has been incurred due to the fault of the employees and the expenditure is fully allowable incurred wholly and exclusively for the purpose of regular business of the assessee being a corporate broking house duly registered on stock exchanges.

4. The learned DR relied on order of the authorities below. The learned counsel further contends that similar loss in preceding year has not been objected to by the department in order u/s. 143(3).

5. I have heard both the parties and have perused the material available on record. Looking at the turnover and assessee's commission income, operational default by assessee's huge staff cannot be held as unreasonable. The assessee's total income is a loss and not a positive figure. The accounts are duly audited and follow the established rules and norms. The loss caused by operational default of the employees cannot be treated as loss on account of speculation activity of the assessee and such loss represents normal business exigencies. Such type of

business exigencies cannot be assumed to be speculative activity so much to attract explanation to section 73.

6. Apropos ground no.2, since it is held that there no speculation activity carried on by the assessee consequently; there is no justification in disallowing the same expenditure assuming speculation activity. Besides assessee has demonstrated that expenditure disallowed represent institutional fees and other incidental expenses, which has not be factually disallowed by the authorities below. In view thereof, both the disallowances are deleted and the assessee's grounds are allowed.

7. In the result, the assessee's appeal is allowed.

Order pronounced in the open court on this day of 31st January, 2017.

**Sd/-
(R P Tolani)
JUDICIAL MEMBER**

Mumbai, Dated : 31st January, 2017.
SA

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai.
4. The CIT
5. The DR, 'SMC' Bench, ITAT, Mumbai

BY ORDER

//True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai