

**IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH MUMBAI**  
**BEFORE SHRI R.C.SHARMA, AM**  
**&**  
**SHRI RAM LAL NEGI, JM**  
**ITA No.3763/Mum/2014**  
**(Assessment Year :2009-10)**

DCIT – 4(1), Mumbai	Vs.	M/s. Alka Securities Ltd., Maitri, Plot No.10, Road No.10, JVPD Scheme, Juhu, Vile Parle (W) Mumbai – 400 049
<b>PAN/GIR No.</b>		<b>AAACA4835E</b>
<b>Appellant)</b>	<b>..</b>	<b>Respondent)</b>

Revenue by	Shri B.S. Bist
Assessee by	Shri Aditya Maheshwari
<b>Date of Hearing</b>	<b>23/12/2016</b>
<b>Date of Pronouncement</b>	<b>03/03/2017</b>

**आदेश / O R D E R**

**PER R.C.SHARMA (A.M):**

This is an appeal filed by the Revenue against the order of CIT(A)-8, Mumbai dated 13/03/2014 for the assessment year 2009-10 in the matter of order passed u/s.143(3) of the IT Act.

2. The following grounds have been taken by the Revenue:-

1. *"On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in accepting the additional evidence under rule 46A in spite of the fact that the assessee was given various opportunities during the assessment proceeding and the same is also mentioned in the assessment order.*

2. *"On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in allowing the appeal of the assessee in spite of the fact the document submitted by the assessee during the appellate proceeding was not matching with the claim of the assessee and the assessee has not*

*submitted any explanation for the mismatch in the claim of the long term capital term."*

*3. "On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in accepting the two audit report dated 20.07.2009 and 25.08.2009 in spite of the fact that there is no provision to maintain two different audit report as per income tax act."*

*4'. "On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in allowing the appeal of the assessee in spite of the fact that the assessee failed to substantiate its claim of expenses by producing bills and vouchers of the same."*

*5. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."*

3. Rival contentions have been heard and record perused. In this case, assessment was framed u/s.144, wherein the addition was made on account of capital gains by disallowing the capital gains claimed as exempt u/s.10(38) amounting to Rs.1,60,77,649/-. During the appellate proceedings, the assessee filed evidence under rule 46A. By the impugned order, the CIT(A) deleted the addition after observing as under :-

*"4.4.1 It is observed that AO has taxed long term capital gains exempt u/s 10(38) of Rs.16,077,649/- (the correct figure is Rs. 17,077,649) @ 20% on the grounds that it is not possible to verify the genuineness of the transaction. It is a matter of record that all securities in respect of which Long Term Capital Gains have been claimed as exempt were sold on a recognized stock exchange and Securities Transaction Tax have been paid on the same. I find that details of Long Term Capital Gains exempt u/s 10(38) along with copy of Contract Note have been submitted and can be verified that Long Term Capital Gain earned by the appellant is Rs.17,077,649/-. Further, it is evident from the Contract Note that the Securities Transaction Tax has been paid on shares sold and thus the entire Long Term Capital Gains of Rs. 17,077,649/- is exempt u/s 10(38).According to section 10(38) any income falling within the said section shall not be included in computing total income where*

*such income arises from transfer of long term capital asset, being an equity share in a company or a unit of an equity oriented fund where such transaction is chargeable to securities transaction tax. Since Securities Transaction Tax has been paid at the time of sale of shares, the gain arising on transfer of shares shall not be taxable and should be exempt u/s 10(38). The Ld. AO was therefore, not correct in adding the Long Term Capital Gains to total income and taxing the same @ 20% whereas such Gains are exempt u/s 10(38). Accordingly, the addition made by the Ld. AO is deleted. This ground of appeal is thus allowed."*

*With regard to the disallowance made on account of speculation loss, the Ld. CIT(A) deleted the same after having the following observation:*

*"I have considered the facts of the case and also gone through the appellant's submission. The appellant clarified that while submitting quantitative details of stock in trade in the notes forming part of accounts of Annual Report during assessment proceedings due to typographical error incorrect figures of sales, purchases and stock were submitted. Due to above figures, speculation loss of Rs. 24,806,560/- was worked out by the assessing officer. During remand proceedings final financial statements of the Company were submitted and it is also confirmed that as per final Audit Report the speculation loss works out at only Rs. 1,363,279/- and not Rs. 24,806,560/- as computed by the Assessing Officer. Further, in the Remand Report it is confirmed that the final figures of stock, sales and purchases submitted during the remand proceedings tallies with the audit report of AY 2010-11 i.e. subsequent year. I find that for making any addition on account of speculation loss as done by Ld. AO, the same should have been somewhere reflected in Profit & Loss account. As can be seen from Profit & Loss A/c of the company, the same is nowhere reflected in the Profit & Loss a/c. Hence there is no iota of doubt that the speculation loss actually incurred by the company is Rs. 1,363,279/- only as debited in the Profit & Loss A/c. The loss has been shown under Schedule 9 as share trading profit of Rs. 87,618/- and mark to market loss on valuation of closing stock has been shown on the face of the Profit & Loss A/c as changes in stock of Rs. 1,450,897/- totalling to Rs. 1,363,279/-. I find that since Ld. AO has admitted that the figure actually tallies with what the appellant has submitted there is no basis for making the addition, the Ld. AO is directed to delete the same. This ground of appeal is accordingly allowed."*

4. It was argued by learned DR that in the course of original assessment proceedings, inspite of several opportunities being given to the assessee, no details and supporting evidences were filed before the AO therefore,

AO was compelled to pass order u/s.144. However, assessee has filed some documents before the CIT(A) which are in contravention of Rule 46A. He also pointed out that CIT(A) has deleted the addition by accepting to audit reports of different dates which is not permissible in law.

5. On the other hand, learned AR relied on the findings recorded by CIT(A) and contended that assessee has filed the required documents before the CIT(A) in terms of Rule 46A and also sent to the AO for his comments and verification.

6. We have considered rival contentions and found that during original assessment proceedings, assessee could not file the documents as asked by the AO, therefore, AO has passed order u/s.144. However, in terms of Rule 46A, assessee has filed all the required documents before the CIT(A), which was sent by him to the AO for his comments. However, the AO has declined the same on the plea that during original assessment proceedings, various opportunities were given to the assessee to file the same but he could not file. We found that during original assessment proceedings AO was not satisfied with the genuineness of the long term capital gain earned by assessee in respect of shares sold by him. However, CIT(A) has allowed assessee's claim merely by observing that shares were sold in recognized stock exchange and STT was also paid by the assessee. However, no finding with regard to genuineness of the transaction was recorded by CIT(A). Similarly, speculation loss was not allowed by the AO and before CIT(A), It was claimed that while submitting

quantitative details of stock in trade in the notes forming part of accounts of Annual Report during assessment proceedings due to typographical error incorrect figures of sales, purchases and stock were submitted. Due to this, wrong speculation loss was worked out by the AO. However, before CIT(A) assessee has submitted final audit report. Verifying the correct speculation loss, the CIT(A) deleted the addition by observing that from the P & L account of the company, nowhere such speculation loss was reflected. There appears to be some contradiction in the working of speculation loss.

7. Keeping in view the totality in facts and circumstances of the case, we set aside both the orders of the lower authorities and the matter is restored back to the file of the AO for deciding afresh after verifying the documents submitted by assessee during remand proceedings. We direct accordingly.

**8. In the result, appeal of the Revenue is allowed for statistical purposes.**

Order pronounced in the open court on this 03/03/2017

**Sd/-**  
**(RAM LAL NEGI)**  
JUDICIAL MEMBER

**Sd/-**  
**(R.C.SHARMA)**  
ACCOUNTANT MEMBER

Mumbai; Dated 03/03/2017

Karuna Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai

		Date	Initial	
1.	Draft dictated on	27/02/2017		Sr.PS
2.	Draft placed before author	28/02/2017 (dictation pad has been enclosed herewith alongwith original file)		Sr.PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/ PS
6.	Kept for pronouncement on			Sr.PS
7.	File sent to the Bench Clerk			Sr.PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			