

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F' NEW DELHI**

**BEFORE SHRI G.D.AGRAWAL, HON'BLE PRESIDENT
AND
SHRI SUDHANSHU SRIVASATAVA, JUDICIAL MEMBER**

**ITA No. 2252/Del/2010
ASSESSMENT YEAR: 2006-07**

**ITA NO 1826/DEL/2014
ASSESSMENT YEAR: 2006-07**

Premium Linkers Ltd. 102, Palco House, 2162/T-10, Main Patel Road, New Delhi-110008. PAN-AAACP1111G	vs	ITO, Ward-14(3), New Delhi.
(Appellant)		(Respondent)

Appellant by	Sh. K. Sampath, Adv.
Respondent by	Sh. Atiq Ahmad, Sr.DR
Date of Hearing	06.09.2017
Date of Pronouncement	04.10.2017

ORDER

PER BENCH

ITA 2252/Del/2010 is an appeal filed by the assessee against the order of Ld. CIT (A) dated 31.3.2010 for AY 2006-07 whereas ITA 1826/Del/2014 is preferred by the assessee against confirmation of penalty imposed u/s 271(1)(c) of the Income Tax Act, 1961 for the same year. The grounds of appeals taken by the assessee in ITA 2252/Del/2010 are as under:-

“That on the facts and circumstances of the case and in law, the Ld CIT (A) erred in confirming the following action of the Assessing Officer.

1. In completing assessment u/s 144 of the Income Tax Act, 1961 without allowing reasonable, adequate and proper opportunity of hearing.

2. In disallowing loss on sale of snares in a sum of Rs.1,62,40,000/- incurred in the normal course of business .

The above actions of the Ld. CIT(A) are most arbitrary, erroneous and untenable and it is prayed that such actions must be quashed.”

2. The appeal was earlier dismissed on 25.10.2011 as nobody was present and Tribunal had dismissed the appeal *in limine*. However, vide order dated 23.8.2013 the same was recalled and was finally heard on merits on 10.12.2013 and was disposed off vide order dated 7th February, 2014. However, the assessee moved a Miscellaneous Application before the ITAT and this order too was recalled vide order dated 08/04/2016 in MA No. 295/Del/2014.

3. The brief facts of the case are that the assessment in this case was completed u/s 144 of the Income Tax Act, 1961 vide assessment order dated 15.12.2008. The Assessing Officer disallowed an amount of Rs.1,62,40,000/- as loss claimed by the assessee on sale of shares. The Assessing Officer had issued various

notices for compliance but nobody appeared. Therefore, on 24.10.2008 a final questionnaire was issued and the assessee filed reply on dated 7.11.2008 and the hearing was then adjourned for 27.11.2008 on which date no compliance was made. Therefore, the Assessing Officer issued a final show cause notice dated 4th December, 2008 wherein various observations made by the Assessing Officer were noted and it was specifically mentioned that if on the fixed date compliance was not made, the assessment would be completed u/s 144 of the Act. The Assessing Officer, thereafter, completed the assessment by holding as under:-

"This letter was received back un-served with the remarks of the postal authorities' "Left". This is the same address at which the earlier notices were duly served upon the assessee. Inspector was also deputed but as per his report he has affixed the show cause notice along with notice u/s 142(1) at the address of the assessee i.e. 102, Palco House, 2162/T-10, Main Patel Road, New Delhi - 110008. Since the proceedings are barred by limitation and the assessee is not attending the office in spite of more than sufficient opportunity allowed to him, I am left with no other alternative but to decide the case on merits on the basis of material available on record and as proposed in the show cause notice dated 4.12.2008.

In the absence of any details and information the loss claimed by the assessee on trading of shares of

Rs.1,62,40,000/- as discussed above is disallowed. It is also gathered that the assessee has made the transactions of Rs.1,40,00,000/- in respect of shares of M/s Tech DNA Solutions Ltd. through Vinayak Local Area Bank, Sikar, Rajasthan. Enquiries conducted revealed that the Vinayak Local Area Bank is not allowed to make any transactions by the Govt. There are only two employees of the bank sitting there and they cannot make any transaction of receipt and clearing. The transaction made through the bank has no evidence of genuineness. The assessee could not give any supporting documentary evidence in respect of these transactions in spite of more than sufficient opportunity allowed to him. Accordingly, an amount of Rs.1,62,40,000/- is added to the income declared by the assessee as proposed in the show cause notice dated 4.12.2008 and penalty proceedings u/s 271(1)(c) are being initiated separately for furnishing inaccurate particulars of its income."

4. Before the Ld CIT (A), the assessee objected to the assessment order made u/s 144 and also argued on merits. The Ld CIT (A), after obtaining remand report from Assessing Officer and after going through various documents filed by the assessee, did not accept the contentions of assessee and upheld the disallowance made by the Assessing Officer. The relevant observations of Ld CIT (A) are contained in Para 5.3 which are reproduced below:-

"I have carefully considered the submission made by the appellant and perused the assessment order passed by the Assessing Officer. It is seen that the appellant had earned profit of Rs.1,63,35,766/- on the sale of shares of M/s IKF Technologies Ltd. The appellant has submitted the evidence in respect of the transaction in the shares of M/s IKF Technologies Ltd. That transaction was carried out through a recognized broker and on the recognized stock exchange. The AR has submitted complete details about the sale and purchase of shares of IKF Technologies Ltd. However, in respect of loss of Rs.1,30,00,000/- on sale of shares of Tech DNA Solutions, the applicant has failed to submit any convincing evidence. No bills and contact notes from any recognized broker were produced in respect of transaction of Tech DNA Solutions. No share certificate No. and distinctive nos. of shares of Tech DNA Solutions were submitted. Admittedly the shares of Tech DNA Solutions are not traded in the futures and options (F&O) segment. Therefore, the only possibility is through taking the delivery. It is an admitted fact that Vinayak Local Area Bank is a tainted entity which has been banned by the Govt. from undertaking any transaction. It is also an admitted fact that the director of the appellant company Mr. Prakash Chand Goyal is promoter of this tainted entity/bank. Thus the appellant was in a position to obtain whatever confirmation they wanted from the above tainted entity, but they could not produce any corroborative evidence that any real transaction was carried out in the shares of Tech DNA Solutions. Similar is the case in

respect of claim of loss of Rs.32,40,000/- on sale of shares of other companies. The appellant could not submit any evidence like bills and contract notes from a recognized broker for the transactions carried out on a recognized stock exchange. No share certificate number and distinctive no of shares were submitted in respect of the so called shares of the other companies. Even basic information in respect of above transaction was not submitted by the appellant. The appellant could not provide any evidence for payment of brokerage on the above transaction and payment of securities transaction tax and service tax in respect of above transaction. No evidence whatsoever was produced which could prove the genuineness of the transaction in respect of which loss of Rs.1,62,40,000/- has been claimed. Thus it is evident that the transaction was an after thought and designed to set off the profit on the shares of IKF Technologies Ltd. In view of the above discussion, I hold that the Assessing Officer was fully justified in treating the loss on sale of shares of Tech DNA Solutions Ltd. and other companies as not genuine and disallowing the same. I, therefore, confirm the addition of Rs.1,62,40,000/- made by the Assessing Officer. This ground is rejected."

5. Aggrieved, the assessee is in appeal before us.
6. At the outset, the Ld AR submitted that "Left" remarks as contained in the order of assessment are wrong and assessee was not provided sufficient and reasonable opportunity and it will be in

the interest of justice if the appeal is remitted back to the office of Assessing Officer for re-adjudication. He further submitted that even Ld CIT (A) did not provide adequate and proper opportunity.

7. The Ld. DR, on the other hand, submitted that sufficient notices were issued even then the assessee did not care to appear before Assessing Officer. In this respect our attention was invited to the relevant portion of assessment order and further submitted that Ld CIT (A) after considering the contentions of assessee and after obtaining remand report from Assessing Officer had decided the matter on merits. Therefore, no objective will be achieved by sending the case back to the office of Assessing Officer as the Ld CIT (A) has considered all the relevant material. Therefore, it was pleaded that prayer of the Ld AR to send back the case to the Assessing Officer was only to buy time and should not be accepted.

8. We have heard the rival submissions and have perused the relevant material on record. The fact that the assessment was completed u/s 144 of the Act is undisputed. The only plea of the assessee is that it may be provided adequate opportunity to present its case. It is evident from the assessment order that the addition of Rs. 1,62,400/- on account of loss in trading of

shares was made in absence of any details. Before the Ld. CIT (A) also, the assessee could not furnish relevant details like the basis of valuation of shares, the date of purchase of shares and the working of the loss said to have been incurred on account of trading in shares. Thus, the assessee was not able to substantiate its claim before the Ld. CIT (A) also. However, before us, the Ld. AR has given an assurance that the assessee shall fully co-operate with the AO if it is given another opportunity to furnish the required details/evidences/documents. Therefore, looking into the overall facts and circumstances of the case and keeping in mind that a high pitched assessment at Rs. 1,62,44,980/- has been made as against the returned income of Rs. 4,984/-, we deem it fit to restore the issue to the file of the AO for fresh adjudication after giving the assessee a proper opportunity. We also direct the assessee to fully co-operate with the AO in the assessment proceedings. Accordingly, ITA No. 2252/Del/2010 stands allowed for statistical purposes.

9. ITA No. 1826/Del/2014 pertains to the penalty imposed u/s 271(1)(c) with respect to the quantum proceedings which we have already restored to the file of the AO as above. In view

of our remanding the quantum proceedings to the file of the AO, we restore the penalty proceedings also to the file of the AO to be adjudicated afresh after the completion of the assessment proceedings. Accordingly, this appeal also stands allowed for statistical purposes.

10. In the final result, both the appeals stand allowed for statistical purposes.

The order is pronounced in the open court on 4th October, 2017.

Sd/-

Sd/-

**(G.D. AGRAWAL)
PRESIDENT**

**(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

Dated: 4th October, 2017
GS

Copy forwarded to:

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

TRUE COPY

By Order

ASSISTANT REGISTRAR

