

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH 'A', KOLKATA**

**[Before Shri P.M. Jagtap, AM and Shri Aby. T. Varkey, JM]**

**I.T.A. No. 1324/Kol/2015  
Assessment Year: 2010-11**

***I.T.O. Ward 4(4) Kolkata.....Appellant  
P-7, Chowringhee Square,  
8<sup>th</sup> Floor,  
Kolkata - 700069***

***M/s. Quantum Business Consulting Pvt. Ltd.....Respondent  
4, Synagogue Street,  
8<sup>th</sup> Floor, Room No. 803,  
Kolkata - 700 001  
[PAN : AAACQ 0939 M]***

**Appearances by:**

*Shri P.K. Mondal, Addl. CIT, appearing on behalf of the Revenue.*

*Shri A.K. Tulsyan, FCA appearing on behalf of the Assessee.*

Date of concluding the hearing : December 19, 2017

Date of pronouncing the order : December 22, 2017

**ORDER**

**Per P.M. Jagtap, AM**

This appeal is preferred by the revenue against the order of Ld. CIT (Appeals) – 2, Kolkata dated 11.06.2015 and the solitary issue involved therein relates to the deletion by the Ld. CIT(A) of the addition of Rs. 43,47,066/- made by the AO on account of disallowance of expenses attributable to the share trading activity by treating the same as speculation business as per the Explanation to section 73 of the Income Tax Act, 1961.

2. The assessee in the present case is a company which is engaged in the business of running consultancy services and trading of shares. The return of income for the year under consideration was filed by it on 25.09.2010 declaring a total income of Rs. 58,38,034/-. During the

course of assessment proceedings, the assessee was called upon by the AO to furnish the details of net profit/loss earned from share activity. In reply, the following working was furnished by the assessee showing net profit from share trading at Rs. 2,25,203/- and profit from speculation at Rs. 93,957/-:

<i>"Sales</i>	<i>Rs.</i>	<i>15930672.96</i>
<i>Closing Stock</i>	<i>Rs.</i>	
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		<i>15930672.96</i>
<i>Less:</i>		
<i>Opening Stock</i>	<i>Rs.</i>	<i>3059745.36</i>
<i>Purchases</i>	<i>Rs.</i>	<i>12591639.93</i>
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<i>Gross Profit</i>	<i>Rs.</i>	<i>279287.67</i>
<i>Less: Expenses</i>		
<i>Security Transaction Tax</i>	<i>Rs.</i>	<i>36571.05</i>
<i>TOT &amp; Others</i>	<i>Rs.</i>	<i>12922.80</i>
<i>Demat Charges</i>	<i>Rs.</i>	<i>4590.29</i>
<i>Net Profit From Share Trading (A)</i>	<i>Rs.</i>	<i>225203.53</i>
<i>Profit from Speculation (B)</i>	<i>Rs.</i>	<i>93957.09</i>
<b><i>Total</i></b>	<b><i>Rs.</i></b>	<b><i>319160.62</i></b>

3. The working furnished by the assessee as was not found to be correct by the A.O. According to him, administrative expenses incurred during the year under consideration were not taken into consideration by the assessee while working out the net profit/loss from share trading activity. He held that the said expenses representing common indirect expenses were required to be allocated on proportionate basis to work out the exact profit/loss of the assessee from share trading activity. Since the turnover of the assessee company of share trading activity was 29.32% of the total turnover, he allocated administrative expenses to the extent of Rs. 43,47,066/- being 29.32% of Rs. 1,48,26,282/- to the share trading

activity which resulted in a loss of Rs. 40,27,906/-. The said loss from the share trading activity was treated by the A.O. as speculation loss and by making addition of that extent to the total income of the assessee for the year under consideration, the same was allowed to be carried forward by the A.O. to set off only against the speculation profit.

4. The addition made by the A.O. by working out the loss from share trading activity by apportioning the common administrative expenses and treating the same as speculation loss in terms of Explanation to section 73 was challenged by the assessee in the appeal filed before the Ld. CIT(A) and after considering the submissions made by the assessee as well as the material available on record, the Ld. CIT(A) deleted the said addition for the following reasons given in paragraph no 8.2 of his impugned order:

*"I have examined the facts of the case. The appellant has earned a net profit from share trading of Rs. 2,25,204/- and profit from speculation of Rs. 93,957/-. Consequently there is no evidence of any loss. Section 73 pertains to losses in speculation business. In the case of appellant there is no apparent loss and the resultant loss calculated by the A.O. is entirely based on apportionment of expenses. The matter pertaining to apportionment of expenses was considered and adjudicated by the Hon'ble ITAT Mumbai in the case of ACIT vs KNP Securities P. Ltd. ITA No. 4412/Mum/2003 for AY 1999-00 dated 26.03.2010. In that case, it was adjudicated that share broking and share trading are on indivisible business carried on by the appellant as they have common set of Book of Accounts, common funds and common management. Under the circumstances, attribution of proportionate expenses was incorrect as the explanation to Section 28 can be invoked only when the transactions are in the nature of speculative transactions. However, explanation of section 73 is applicable only in the case of loss in share trading. In the case of the appellant there is a net profit shown and such a profit has been computed into loss by the A.O. through a process apportionment which is not as per*

*law. Therefore as the appellant has not claimed any loss there remains no question of invoking explanation to section 73. I am therefore of the view that both Grounds no. 6 & 7 of the Appeal should be allowed.”*

Aggrieved by the order of the Ld. CIT(A), the revenue has preferred this appeal before the Tribunal.

5. We have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that the addition made by the A.O. by treating the loss from the share trading activity as speculation loss as recomputed by him by allocating the common administrative expenses on proportionate basis is deleted by the Ld. CIT(A) vide his impugned order inter alia by relying on the decision of Mumbai Bench of this Tribunal in the case of ACIT vs KNP Securities Pvt. Ltd. rendered vide an order dated 26.03.2010 passed in ITA No. 4412/Mum/2003. As rightly contended by the learned DR, the said case however is distinguishable on facts, in as much as the assessee in the said case was engaged in the business of share broking and share trading and since the same constituted one indivisible business, having a common set of books of accounts, common funds and common management, it was held by the tribunal that attribution of proportionate expenses was not correct. In the present case, although the assessee had maintained one set of books of accounts with common funds and common management, the activities carried on by it of rendering services and trading of shares cannot be regarded as one indivisible business and since the said activities are entirely different, the indirect common expenses such as administrative expenses are required to be

allocated on some reasonable basis to work out the profit or loss of each activity as rightly held by the A.O.

6. The Ld. CIT(A) vide his impugned order has also held that the assessee having shown net profit from the activity of trading of shares, Explanation to Section 73 is not applicable. As per the said Explanation, where any part of the business of the company consists in the purchase and sale of shares of other companies, such company shall, for the purpose of section 73, 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. As specifically provided in sub-section (1) of section 73 any loss, computed in respect of speculation business carried on by the assessee, shall not be set off except against profits and gains, if any, of another speculation business. A combined reading sub-section (1) of section 73 and Explanation thereto makes it abundantly clear that when the business of a company consisting of purchase and sale of shares of other company is treated as a deemed speculation business, the loss, if any, of such business is required to be computed and such computation has to be after taking into consideration all the direct and indirect expenses laid out or expended wholly or exclusively for the purpose of the business. In the present case, the assessee company while computing the income from share trading activity had considered only the direct expenses and the indirect expenses such as administrative expenses which were partly attributable to the share trading activity, going by its nature, were not considered by it. In this regard, the learned counsel for the assessee has contended that even if the administrative expenses are to be

considered as partly attributable to the share trading activity, the same cannot be allocated on the basis of turnover as done by the A.O. keeping in view the nature of the said activity which involves a very limited time and efforts and does not call for incurring many of expenses claimed by the assessee under the administrative expenses such as advertisement, travelling business promotion, telephone etc. We find merit in this contention of the learned counsel for the assessee. In our opinion, the allocation of administrative expenses made by the A.O. to share trading activity to the extent of 29.32% on the basis of the ratio of turnover is highly excessive and unreasonable and keeping in view the nature of expenses claimed by the assessee as administrative expenses as well as the nature of activity, it would be fair and reasonable to allocate 5% of the total administrative expenses to the share trading activity to compute the profit/loss on such activity. We, accordingly, set aside the impugned order of the Ld. CIT(A) on this issue and direct the A.O. to re-compute the profit/loss of the share trading activity deemed to be speculative in nature in terms of section 73 by allocating 5% of the administrative expenses.

**7. In the result, the appeal of the revenue is partly allowed.**

Order Pronounced in the Open Court on 22<sup>nd</sup> December, 2017.

Sd/-

(Aby.T. Varkey)  
JUDICIAL MEMBER

Sd/-

(P.M. Jagtap)  
ACCOUNTANT MEMBER

**Dated: 22/12/2017**  
Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Quantum Business Consulting Pvt. Ltd., 4, Synagogue Street, 8<sup>th</sup> Floor, Room No. 803, Kolkata – 700 001.
2. I.T.O., Ward 4(4), P-7, Chowringhee Square, 8<sup>th</sup> Floor, Kolkata – 700069.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.  
ITAT, Kolkata