

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, 'सी', मुंबई।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "C", MUMBAI**

श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं
श्री जी. मंजूनाथ, लेखा सदस्य, के समक्ष

**Before Shri JOGINDER SINGH, Judicial Member, and
Shri G. MANJUNATHA, Accountant Member**

**ITA NO.338/Mum/2016
Assessment Year: 2002-03**

Late Smt. Pannadevi Agarwal through legal heir Shri Madhav Prasad Agarwal, C/o- Shankarlal Jain & Associates LLP, 12, Engineer Bldg, 265 Princess Street, Mumbai-400002	बनाम/ Vs.	ACIT, Range-18(2), Piramal Chambers, Lalbaug, Mumbai
(निर्धारिती / Assessee)		(राजस्व / Revenue)
P.A. No.AABPA6142P		

निर्धारिती की ओर से / Assessee by	Shri S.L. Jain
राजस्व की ओर से / Revenue by	Shri Rajat Mittal -DR

सुनवाई की तारीख / Date of Hearing :	29/11/2017
घोषणा की तारीख/ Date of Pronouncement	29/11/2017

आदेश / O R D E R

Per Joginder Singh (Judicial Member)

The assessee is aggrieved by the impugned order dated 18/11/2015 of the Ld. First Appellate Authority, Mumbai, confirming the disallowance of Short Term Capital Loss amounting to Rs.28,91,841/- on purchase and sale of shares of M/s Kushal Software Ltd., holding that the transaction of the said script was predetermined orchestrated transactions without properly appreciating the evidence produced by the assessee, ignoring the evidences in the form of bills for purchase and sale as issued by the stock broker, contract notes, shares being credited in the assessee's de-mat account and transferred from the de-mat account at the time of sale, payment being made by cheque, and the transaction being confirmed by the broker directly to the Assessing Officer.

2. During hearing, Shri S. L. Jain, ld. counsel for the assessee, advanced arguments which are identical to the ground raised by contending that the relevant evidences were not made available to the assessee and

further the Assessing Officer did not carry out the direction of the Ld. Commissioner of Income Tax (Appeal) in remand proceedings. On the other hand, the ld. DR, Shri Rajat Mittal, though defended the impugned order but did not controvert the argument of the assessee that direction of the Ld. Commissioner of Income Tax (Appeal) in remand proceedings was not carried out by the Assessing Officer.

2.1. We have considered the rival submissions and perused the material available on record. The facts, in brief, are that the assessee is a partner of M/s Priyata International and M/s Om Intercontinental. The income of the assessee includes income from house property and Long Term Capital Gains and also from speculation in shares. The assessee declared income of Rs.2,88,51,320/- in her return filed on 29/10/2002, which was processed u/s 143(1) on 10/02/2003 at the returned income. The case of the assessee was selected for scrutiny, therefore, notices u/s 143(2) and 142(1) were served upon the assessee. The assessee attended the proceedings from

time to time and submitted the details and also produced the books of accounts as is evidenced from the assessment order itself. The income of the assessee also includes Long Term Capital Gain of Rs.2,87,28,191/-. While making the assessment the Ld. Assessing Officer disallowed the Short Term Capital Loss of Rs.28,91,841/-, claimed by the assessee and incurred on certain transaction carried out in the shares of Kushal Software Ltd., for which (As per the assessee) necessary bills contract notes, details of payment, were submitted by the assessee. The purchase and sale were effected through M/s VRP Financial Services Pvt. Ltd. (registered broker) with the interconnected Stock Exchange of India. The addition was made by the Assessing Officer on the plea that M/s VRP Financial Services Ltd. was summoned twice, but nobody appeared and the assessee did not produce the broker for examination. The stand of the assessee before us is that in response to first summon, the broker appeared and filed the certain details and when the second summons were summoned, the broker was out of Mumbai and the assessee requested the Assessing

Officer to enforce the presence of the broker u/s 131 of the Act. The Ld. Assessing Officer was of the view that certain action has been taken against the broker by SEBI for certain contravention and thus the claimed loss was disallowed. The case of the assessee before us is that proper opportunity was not provided to the assessee. We have also perused the observation made in para 3.6 of the impugned order along with para 4.3. Considering the totality of facts, we are of the view that one more opportunity may be provided to the assessee to substantiate the claim of the assessee. The assessee is at liberty to necessary evidence in support of his/her claim. The Ld. Commissioner of Income Tax (Appeal) may summon the broker to satisfy himself with respect to genuineness of transaction and also may sought report from the Assessing Officer. The assessee is also directed to produce the broker. Thus, the appeal of the assessee is sent to the file of the Ld. Commissioner of Income Tax (Appeal) for fresh adjudication in accordance with law. The appeal of the assessee is allowed for statistical purposes.

Finally, the appeal of the assessee is allowed for statistical purposes.

This Order was pronounced in the open court in the presence of ld. representatives from both sides at the conclusion of the hearing on 29/11/2017.

Sd/

(G. Manjunatha)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 29/11/2017

Shekhar, P.S./नि.स.,

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त,(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai