

IN THE INCOME TAX APPELLATE TRIBUNAL  
"F" Bench, Mumbai  
Before S/Shri B.R. Baskaran (AM) & Ramlal Negi (JM)

I.T.A. No. 4230/Mum/2013 (Assessment Year 2008-09)

Mr. Shriprakash V. Sardesai 3 <sup>rd</sup> Floor, Madhave Vilas Setalwad Lane Mumbai - 400 036. PAN : AMYPS0171J (Appellant)	Vs.	DCIT CC-47 Room No. 658 Aayakar Bhavan M.K. Road Mumbai-400020. (Respondent)
--	-----	---

Assessee by	Shri Vijay Mehta & Shri Anuj Kisnadwala
Department by	Ms. S. Padmaja
Date of Hearing	14.12.2017
Date of Pronouncement	10.01.2018

O R D E R

Per B.R. Baskaran (AM) :-

The appeal filed by the assessee is directed against the order dated 11.3.2013 passed by the learned CIT(A)-36, Mumbai and it relates to A.Y. 2008-09. The assessee is aggrieved by the decision of the learned CIT(A) in confirming the following additions made by the Assessing Officer :

- a) Addition made u/s. 68 of the Act : ₹ 468.35 lakhs
- b) Not allowing claim of trading loss : ₹ 468.35 lakhs
- c) Loss on trading of shares disallowed : 377.74 lakhs
- d) Loss on futures and options disallowed : ₹ 115.18 lakhs

2. Facts relating to the case are discussed in brief. The assessee is engaged in the business of share trading through its proprietary concerns named M/s. S.V. Sardesai and M/s. Gifts & Novelties Impex. During the year under consideration, the assessee declared loss of ₹ 45.23 lakhs in the original return of income, which was revised to a loss of ₹ 422.98 lakhs in the revised return of income. The Assessing Officer completed the assessment by making additions listed above, which were also confirmed by the learned CIT(A).

3. Aggrieved, the assessee has filed this appeal before us.

4. We notice that the first and second issues go together. The Assessing Officer noticed that the assessee had taken unsecured loss aggregating to ₹ 468.35 lakhs and they have been squared up during the year. However, the assessee explained that certain persons have given money to him for making investments (Portfolio investments). He submitted that he carried on trading activities in his own name. Due to stock market turmoil, he incurred huge loss on trading of shares. The assessee transferred a portion of loss equivalent to the amount of loan to the account of the persons who gave money for portfolio investments. In this manner, the loan accounts were squared up. However, the assessee could not furnish name and address and other details of the persons who had given money to him for portfolio investments. Accordingly, the Assessing Officer assessed the loan amount of ₹ 460.35 lakhs as unexplained credit u/s. 68 of the Act.

5. In the alternative, the assessee claimed that the loss of ₹ 468.35 lakhs transferred to loan creditors should be allowed in his hands. Since the assessee himself has transferred the loss to the third parties; since he could not furnish the basis on which losses were transferred to the loan account and since the assessee could not produce any of such parties, the Assessing Officer rejected the above said alternative claim of the assessee.

6. Before the learned CIT(A), the assessee submitted that these portfolio investors were introduced by a person named Mr. Jalal Batra and hence the assessee did not have direct contact with any of the investors. Due to stock market turmoil, price of all the shares purchased under the arrangement with Mr. Jalal Batra fall steeply and hence the assessee was constrained to incur a huge loss. Thereafter, the assessee could not establish contact with Mr. Jalal Batra or any of its associates. Hence, the assessee squared up the above said loan by transferring a portion of loss incurred by him, which was equivalent to the amount of loan. However, assessee could not furnish any evidence/material to support the above said explanations. Hence, the learned

CIT(A) confirmed the addition made u/s. 68 of the Act and also confirmed the rejection of the claim of loss in the hands of the assessee.

7. The Learned AR submitted that the addition made u/s. 68 of the Act and rejection of claim for allowing loss transferred to the third party in the hands of the assessee would result in double addition of same item of income. He submitted that it is the assessee who carried on trading activities by utilizing funds given to him under portfolio investment scheme. If the funds so received are treated as unexplained cash credit, then the entire loss incurred in trading of shares should be allowed in the hands of the assessee.

8. On the contrary, the learned Departmental Representative strongly supported the orders passed by the tax authorities.

9. We have heard the rival contentions on this issue and perused the record. Admittedly the assessee could not furnish any details relating to loan amount of ₹ 468.35 lakhs taken by him. There should not be any dispute that initial burden of proof is placed upon the assessee u/s. 68 of the Act i.e. the assessee is required to prove three main ingredients namely identity of creditors, creditworthiness of the creditors and genuineness of the transaction. Admittedly the assessee, in the instant case, has failed to discharge the initial burden of proof placed upon him u/s. 68 of the Act. In our view, the requirement of proving cash credits would lie upon the assessee even in respect of funds received under portfolio management scheme. In view of the above, we are of the view that the tax authorities are justified in assessing the amount of ₹ 468.35 lakhs as unexplained cash credit. We notice that the assessing officer has assessed the same separately without specifying any head of income. In our view, the same may be assessed as income from other sources and the provisions of the Act may be applied accordingly.

10. The next issue relates to the claim for deduction of loss on trading of shares that was transferred to the account of portfolio loan creditors. Admittedly, the assessee has carried on the share trading transactions and

incurred loss. The fact remains that the assessee could not prove the claim of receipt of funds under portfolio investment scheme and in the preceding paragraphs; we have confirmed the addition made u/s 68 of the Act. It is also a fact that it is the assessee, who has transferred a portion of loss to the creditors in order to square up amount taken by him. When the assessee could not prove the claim of receipt of funds under portfolio investment scheme; when the funds were treated as unexplained cash credits and when the assessee has carried on share trading transactions in his own name, in our view, there should not be any bar in allowing the loss in his hands, simply for the reason that the assessee has transferred the said loss to the account of creditors. It is well settled principles of law that there is no estoppels against law, meaning thereby, merely because the assessee itself has transferred a portion of loss to the account of the third party, the same would not disentitled the assessee to claim correct amount of loss before the tax authorities. Accordingly, we are of the view that the loss incurred by the assessee has to be allowed in his hands. Accordingly, we direct the Assessing Officer to allow loss of ₹ 468.35 lakhs, which was transferred to the account of the third parties, in the hands of the assessee.

11. The next issue relates to the disallowance of loss on trading of shares of ₹ 377.74 lakhs. The Assessing Officer noticed that the assessee has claimed a sum of ₹ 377.74 lakhs as loss on trading of shares in the profit and loss account. It was further noticed that the said loss was incurred by two other persons named Mrs. J.S. Sardesai (₹ 282.12 lakhs) and Mr. Ashok Kapoor (₹ 95.62 lakhs). The assessee submitted that he has given advances to these two parties for undertaking trading in certain shares and ultimately they incurred loss. It was submitted that it is the assessee who has to bear loss, since he has carried out trading transaction through these two persons. The Assessing Officer did not accept the said contention of the assessee. Since loss has been incurred by two different persons, the Assessing Officer held that such loss cannot be claimed by the assessee. Accordingly, he disallowed the claim of ₹ 377.74 lakhs. The learned CIT(A) also confirmed the same.

12. We have heard the parties on this issue and perused the record. The Learned AR contended that the assessee himself has carried out trading transactions through the accounts of the above said two persons by giving advances to them. Accordingly, he submitted that the loss incurred in these two accounts should also be allowed in the hands of the assessee.

13. On the contrary, the learned Departmental Representative submitted that each assessee is a separate person and hence loss incurred by other persons cannot be allowed in the hands of the assessee.

14. We have heard the parties on this issue and perused the record. Admittedly, trading transaction has been carried out by Mrs. J.S. Sardesai and Mr. Ashok Kapoor in their respective accounts. The only link is that the assessee has claimed to have advanced to these two persons. The Assessing Officer has also recorded that the contract notes and bills stand in the name of respective persons and not in the name of the assessee. Under these set of facts, we are of the view that the Assessing Officer as well as Ld CIT(A) was justified in rejecting the claim of the assessee. Accordingly, we uphold the order passed by the learned CIT(A) on this issue.

15. The last issue relates to the disallowance of loss on future and options. Before the Assessing Officer, the assessee produced contract notes and ledger account of respect brokers to substantiate the claim of loss on futures and options. The Assessing Officer asked the assessee to furnish confirmation letters obtained from brokers or global report from the broker's website. Since the assessee did not furnish them, the Assessing Officer held that the above said loss is not allowable in the hands of the assessee. Accordingly, he disallowed the claim of ₹ 115.18 lakhs arising on futures and options trading. The learned CIT(A) also confirmed the same.

16. We have heard the parties on this issue and perused the record. Admittedly the assessee has furnished copies of contract notes and ledger account copies of respective brokers before the Assessing Officer. We noticed

that the Assessing Officer did not find fault with them and did not raise any doubt about the genuineness of those documents. Under these set of facts, we are of the view that the Assessing Officer was not justified in rejecting the claim of loss trading on futures and options only for the reason that the assessee did not furnish confirmation letters obtained from the brokers. Accordingly, we are of the view that the learned CIT(A) was not justified in confirming the disallowance so made by the Assessing Officer. Accordingly, we set aside the order passed by the learned CIT(A) on this issue and direct the Assessing Officer to allow the claim of the assessee.

17. In the result, appeal filed by the assessee is partly allowed.

Order has been pronounced in the Court on 10.01.2018.

Sd/-  
(RAMLAL NEGI)  
JUDICIAL MEMBER

Sd/-  
(B.R.BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 10/01/2018

Copy of the Order forwarded to :

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

//True Copy//

PS

BY ORDER,  
(Senior Private Secretary)  
ITAT, Mumbai