

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

ITA NO. 2959/MUM/2017 : A.Y : 2007-08

Ms. Kokila S. Ajmera
Rehman Building, 2nd floor,
24, Veer Nariman Road, Fort,
Mumbai 400 001.
PAN : AALPA2975R (Appellant)

Vs. DCIT, Central Circle-2(4),
Mumbai
(Respondent)

ITA NO. 2960/MUM/2017 : A.Y : 2007-08

Ms. Jyotiben N. Ajmera
Rehman Building, 2nd floor,
24, Veer Nariman Road, Fort,
Mumbai 400 001.
PAN : AALPA2161K (Appellant)

Vs. DCIT, Central Circle-2(4),
Mumbai
(Respondent)

ITA NO. 2961/MUM/2017 : A.Y : 2007-08

Shri Shailesh B. Ajmera
Rehman Building, 2nd floor,
24, Veer Nariman Road, Fort,
Mumbai 400 001.
PAN : AABPA3491J (Appellant)

Vs. DCIT, Central Circle-2(4),
Mumbai
(Respondent)

Appellants by : Shri Prakash K. Jotwani
Respondent by : Shri Rajesh Kumar Yadav

Date of Hearing : 21/12/2017

Date of Pronouncement : 09/03/2018

ORDER**PER G.S. PANNU, AM :**

The captioned are three appeals by three different assessees belonging to the same family pertaining to Assessment Year 2007-08 and involve common issues, therefore, they have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.

2. Since the facts and circumstances in all the three appeals are similar, appeal in the case of Shri Shailesh B. Ajmera being ITA No. 2961/Mum/2017 is taken as the lead case. This appeal is directed against the order of CIT(A)-52, Mumbai dated 28.02.2017, pertaining to the Assessment Year 2007-08, which in turn has arisen from the order dated 19.01.2015 passed by the Assessing Officer, Mumbai under section 143(3) r.w.s. 148 of the Income Tax Act, 1961 (in short 'the Act'). In this appeal, assessee has raised the following Grounds of appeal :-

"1. (a) *On the facts and circumstances of the case and in law the learned CIT (Appeal) erred in confirming the disallowance of claim of carry forward of Speculation Loss of Rs. 85,11,569/-and Short Term Capital Loss of Rs. 28,16,475/-. The same should be deleted in full.*

(b) The Learned CIT (Appeal) failed to appreciate the fact that the appellant had submitted details relating to purchase and sale of shares like Broker's notes, etc to prove the genuineness of the transaction.

(c) The Ld. CIT (Appeal) has erred in confirming the treatment of purchase and the sale of shares as sham transactions and in rejecting the claim of the appellant to carry forward Speculation loss as well as Short Term Capital Loss; even when the appellant has paid the purchase amount as well as

received the sale proceeds through account payee cheques and transacted the sale through a recognized stock exchange which cannot be proved to be bogus.

2. (a) *Without prejudice to the fact that, the share transactions carried out through M/s. Sunchan Securities Ltd. are genuine, the learned CIT (Appeal) has erred in confirming the disallowance of claim of carry forward of short term capital loss of Rs. 28,16,475/- which is incurred while transacting through a broker M/s. Alankit Assignments Ltd. which is registered with the stock exchange and which is not related to Shri Mukesh Choksi.*

(b) The Ld. CIT (Appeal) has erred in not considering the reply filed by the appellant as regards the brokers M/s. Alankit Assignments Ltd. and M/s. Sunchan Securities Ltd. which are registered with the stock exchange and which are not related to Shri Mukesh Choksi.”

3. As a perusal of the Grounds of appeal reveal, the two issues involved relate to the action of income-tax authorities in denying the claim of assessee for carry forward of speculation loss and short term capital loss of Rs.85,11,569/- and Rs.28,16,475/- respectively.

4. Briefly put, the relevant facts are that assessee is an individual deriving income from salary, investments in shares and securities and as a partner in a firm and AOP. For the assessment year under consideration, assessee filed his return of income on 31.07.2007 declaring total income of Rs.4,70,530/-, which was subject to a scrutiny assessment u/s 143(3) of the Act dated 09.11.2009 whereby the returned income was accepted. Subsequently, the assessment was reopened under Sec. 147/148 of the Act on the ground that certain information was received from the Investigation Wing following search action in the case of Mahasagar Group of cases and its key person, Shri Mukesh Choksi on 25.11.2009. As per the information

received, Shri Mukesh Choksi and his group of concerns was engaged in fraudulent billing activity and in giving accommodation entries in order to enable its clients to declare speculation profit/loss, short term capital gain/loss, long term capital gain/loss, profit/loss on account of commodity trading, introduction of application monies, etc. whereas in actuality such transactions were not carried out. The Assessing Officer notes that information gathered in the course of search action showed that assessee had transactions with a concern, M/s. Alliance Intermediaries and Network Pvt. Ltd., which was a concern controlled by Shri Mukesh Choksi. Accordingly, the Assessing Officer doubted the genuineness of the speculation loss and short term capital loss of Rs.85,11,569/- and Rs.28,16,475/- respectively declared by the assessee. In the ensuing assessment finalised u/s 143 r.w.s. 148 of the Act dated 19.01.2015, though the total income has been assessed at Rs.4,70,530/-, which corresponded to the originally assessed income, but the speculation loss of Rs.85,11,569/- and short term capital loss of Rs.28,16,475/- was construed as only accommodation entries where no actual transactions had taken place. Accordingly, assessee was denied the benefit of carry forward of the aforesaid losses.

5. It is noticed that before the Assessing Officer and thereafter before the CIT(A), assessee vehemently pointed out that there was no justification for the said action inasmuch as so far as the claim of short term capital loss of Rs.28,16,475/- was concerned, the same was incurred on account of transactions through broker, M/s. Alankit Assignments Ltd., a concern which was no way related to Shri Mukul Choksi or his group; and, so far as the incurrance of speculation loss of Rs.85,11,569/- was concerned, assessee

pointed out that the same was duly evidenced by the broker notes, bank statement evidencing the payment made relating to the transactions carried out with the broker, M/s. Sunchan Securities Ltd. Pertinently, with regard to the speculation loss, it was pointed out that there was no justification in disallowing the same inasmuch as though the same was carried forward in later years, but no set-off was claimed within the prescribed period and it had since lapsed. It was, therefore, pointed out that the disallowance on this score is of no consequence and ought to be set-aside.

6. We find that the Assessing Officer and also the CIT(A) brushed aside all the factual aspects sought to be brought out by the assessee and instead, merely relied upon the information received consequent to the search on Shri Mukesh Choksi and his group concerns to say that the impugned transactions on account of speculation loss as well as short term capital loss were not genuine and, therefore, it could not be allowed to be carried forward for set-off in subsequent years. In this background, assessee is in appeal before us.

7. Before us, the learned representative took us through the Paper Book and referred to the returns of income filed by the assessee for subsequent Assessment Years of 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13 to point out that the speculation loss of Rs.85,11,569/- had lapsed as there was no occasion of setting it off in the absence of any eligible income in the later years. Thus, on this singular feature it is sought to be pointed out that the action of the Assessing Officer in treating the speculation loss as not genuine and denying its carry forward is rendered nugatory with no consequence on

determination of tax liability, either during the year or in the subsequent assessment years.

8. So far as the short term capital loss is concerned, the learned representative vehemently brought out that at each stage assessee has asserted that the transactions were through M/s. Alankit Assignments Ltd., which was a broking concern duly registered with the stock exchange and not related to Shri Mukesh Choksi or his group in any manner. In support, copies of the broker notes issued by M/s. Alankit Assignments Ltd., ledger account of the broker and a copy of the bank statement highlighting the entries of payments and receipts from/to the above stated broker were referred to. Pertinently, it has been pointed out on the basis of the relevant discussion in the orders of the authorities below that there is no negation to the plea of the assessee that the said broker was not an entity belonging to Shri Mukesh Choksi group of concerns. The learned representative quite fairly submitted that the assessee would be satisfied if the matter is restored back to the file of the Assessing Officer for appropriate verification of its claim of M/s. Alankit Assignments Ltd. not being part of Shri Mukesh Choksi group of concerns and also that the transactions carried out through it were indeed genuine.

9. On the other hand, the Id. DR appearing for the Revenue has primarily relied upon the orders of the authorities below. In this context, we find that all the factual assertions sought to be made by the assessee with regard to M/s. Alankit Assignments Ltd. as well as the nugatory effect of denial of carry forward of speculation loss have not been pointedly addressed by any of the authorities below.

10. In this background, we have carefully considered the rival submissions. Sec. 73 of the Act prescribes that any loss computed in respect of a speculation business shall not be set off except against the profit and gains, if any, of any speculation business. It is further prescribed that where for any assessment year, loss computed in respect of speculation business is not wholly set-off, it may be carried forward to the following assessment years for not more than four assessment years immediately succeeding the assessment year for which the loss was first computed. In the case before us, the assessee claimed that it has incurred a speculation loss of Rs.85,11,569/- during the year and in the absence of any speculation income, he sought to carry forward the same to the subsequent assessment year. For the reasons noted by us in the earlier part of this order, the Assessing Officer inferred that the speculation loss was not genuine and he denied the carry forward of the same. The short point raised by the assessee is that it was permissible to carry forward and set-off such loss in the subsequent years for not more than four assessment years immediately succeeding the instant year. It has been factually brought out that in the returns of income filed for the subsequent four assessment years, such loss was not set-off in the absence of any eligible income, i.e. speculation income. The aforesaid assertions of the assessee have been consistently made before the lower authorities and we find that the same is duly supported by the copies of returns of income placed in the Paper Book filed before us for Assessment Years 2008-09 to 2012-13. Under these circumstances, we find merit in the plea raised by the assessee that the action of the Assessing Officer in denying the benefit of carry forward of speculation loss on the ground of it being non-genuine is of no consequence

so far as the determination of assessee's tax liability in the instant as well as in the subsequent years is concerned. The action of the Assessing Officer is quite nugatory and does not result in any variation in tax liability determined by the assessee in its returns of income in the instant as well as in the assessment years up to 2012-13 *qua* the said speculation loss is concerned. Therefore, we do not find any reasons to uphold the action of the income-tax authorities on this aspect.

11. Insofar as the claim of carry forward of short term capital loss of Rs.28,16,475/- transacted through broker, M/s. Alankit Assignments Ltd. is concerned, on this aspect we find that the preliminary plea by the assessee has not been properly adjudicated. Notably, the entire assessment is based on the findings and information resulting from search proceedings in the case of Shri Mukesh Choksi and his group concerns. The counter argument by the assessee was that M/s. Alankit Assignments Ltd. was not a concern related to Shri Mukesh Choksi and, in support, the relevant documents being broker note, bank statement, etc. was produced. We find that the said plea has not at all been addressed by the Assessing Officer or by the CIT(A). The aforesaid plea is a fundamental aspect, which needs to be thrashed out at the beginning itself, an approach which is conspicuous by its absence in the orders of the authorities below. Therefore, we deem it fit and proper to set-aside the aspect relating to assessment of assessee's claim of carry forward of short term capital loss of Rs.28,16,475/- back to the file of the Assessing Officer. The Assessing Officer shall consider the aforesaid plea of the assessee appropriately and proceed thereafter, as per law. We may clarify here that even if it is found that the concerned broker, M/s. Alankit Assignments Ltd. is not a part of Shri Mukesh Choksi group of concerns, yet,

the Assessing Officer would be at liberty to examine the genuineness or otherwise of assessee's claim as per law. Needless to mention, the Assessing Officer shall allow the assessee a reasonable opportunity of being heard in support of his stand with respect to the claim of carry forward of short term capital loss and only thereafter, he shall pass an order afresh on this limited aspect, as per law.

12. In the result, appeal of the assessee, Shri Shailesh B. Ajmera being ITA No. 2961/Mum/2017 is partly allowed.

13. It was a common point between the parties that the facts and circumstances in the case of Ms. Kokila S. Ajmera and Ms. Jyotiben N. Ajmera in ITA Nos. 2959/Mum/2017 & 2960/Mum/2017 are *pari materia* to those considered by us in the case of Shri Shailesh B. Ajmera in ITA No. 2961/Mum/2017, therefore, our decision therein shall apply *mutatis mutandis* in the said appeals also.

14. Resultantly, appeals of all the assesseees are partly allowed.

Order pronounced in the open court on 9th March, 2018.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Mumbai, Date : 9th March, 2018

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "A" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai