

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “B” BENCH

**(BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
& SHRI S. S. GODARA, JUDICIAL MEMBER)**

**ITA. No: 1680/AHD/2012
(Assessment Year: 2004-05)**

The DCIT, Circle-8, Ahmedabad	V/S	Sun Finlease (Gujarat) Limited, 3, Ravi Pushp Apartments, Road, Gurukul Memnagar, Ahmedabad
(Appellant)		(Respondent)

PAN: AACCS 1443G

**Appellant by : Shri Mudit Nagpal, Sr. D.R.
Respondent by : Shri Sunil Talati**

(आदेश)/ORDER

Date of hearing : 11-04-2018
Date of Pronouncement : 16 -04-2018

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:

1. This appeal by the Revenue is preferred against the order of the Ld. CIT(A)-XIV, Ahmedabad dated 29.05.2012 pertaining to A.Y. 2004-05.

2. The substantive grievance of the revenue read as under:-

1a) The Ld. Commissioner of Income-Tax(Appeals)-XIV, Ahmedabad erred in law and on facts in holding that the claim of loss of Rs.35,60,511/- on sale of shares of Merit Credit Corporation Ltd., are genuine.

1b) The Ld. Commissioner of Income-Tax(Appeals)-XIV, Ahmedabad erred in law and on facts in holding that the provisions of Section 73 of the Act are not applicable to the Assessee and hence the claim of loss on sale of shares cannot be treated as speculation loss.

3. During the course of the scrutiny assessment proceeding, the A.O. noticed that the assessee has earned a profit of Rs. 33,49,808/- on trading of mutual funds. The A.O. found that Rs. 5,24,300/- was earned on trading of some shares whereas loss of Rs. 35,57,761/- was incurred on trading of other shares. The assessee showed net loss of trading in shares of Rs. 30,33,461/-. This loss was further set off by the assessee against the profit of trading in mutual funds. The A.O. was of the opinion that the claim of loss in trading in shares was not genuine and therefore disallowed the same. Further, the A.O. was of the opinion that the set off loss was not available to the assessee in the spirit of provisions of Explanation to Section 73 of the Act.
4. Assessee carried the matter before the Id. CIT(A) who confirmed the assessment. The matter travelled up to the Tribunal and the Tribunal set aside the issue to the files of the A.O. to decide afresh.
5. To give effect to the direction of the Tribunal, a fresh notice was given to the assessee asking it to substantiate with necessary evidences, the loss incurred by it in the shares of Merit Credit Corporation Ltd. Assessee filed a detailed reply with necessary documentary evidences. After considering the submissions and the evidences field by the assessee, the A.O. was of the opinion that the

assessee has not submitted the basic evidences required from the directors Merit Credit Corporation Ltd. and from the proprietor of Talati Associates. The A.O. was of the opinion that since the essential documents and evidences for the verification of genuineness of the share transactions have not been produced by the assessee. The assessee has failed to fulfill the directions given by the Tribunal and completed the assessment of once again disallowing the claim of loss and its set off as was done in the first round of litigation.

6. The assessee carried the matter before the Id. CIT(A) and reiterated its claim of loss with supporting evidences. After considering the facts and the submissions, the Id. CIT(A) observed as under:-

“After considering all the facts, it is noted that the transfer of shares of Merit Credit Corporation Limited to Shri Narendra L. Parmar is supported by many factual evidences which are not controverted by the A. O. First of all, the shares have actually been transferred in the name of Shri Parmar The appellant has submitted a letter from Shri Parmar requesting the company to transfer the shares in his name. The letter was submitted on 01/05/2004. It contains the share certificate number, distinctive numbers and also contains the stamp of the company showing that the letter was received. The transfer is noted in the share transfer register of the company. Further, the payment of the shares have also been received by cheque which is also evident from the certificate given by Talati Associates, the broker. Due to unfortunate demise of Shri Parmar, the transactions could not be personally-confirmed from him, but his legal heir has submitted a letter confirming that the shares have been purchased by him. All these evidences show that the transfer of shares had in fact taken place. The A. O. while acknowledging these evidences have not pointed out any defect in these evidences and the reason for not accepting the evidences produced by the appellant during the course of assessment proceedings after the case was set aside by the ITAT to his file. The share was delisted from the stock exchange and therefore any further information regarding the actual transaction on the floor of stock exchange is not available as the transaction were done as off market transactions. Therefore, in absence of any contrary fact, the transaction shown by the appellant shall have to be accepted.

Regarding the price of the share, it is noted that the last average price quoted in the stock exchange was Rs.2.30 whereas the appellant has transacted the shares @ 1.80 per share. In my view since the rate at which the shares have been shown is supported by documentary evidence in the form of sale bill by the broker and acceptance by the buyer, the price which is indicated in the sale bill should be accepted and it cannot be linked with the price at which the share was last quoted. Once the share is delisted from the stock exchange, any price which is mutually agreeable by the buyer and seller can be fixed for the share unless there is a contrary evidence to prove that the price was otherwise. In the present case, there is no such evidence available and, therefore, the price mentioned by the appellant should be accepted. However, since the appellant has himself agreed for the sale consideration to be taken at Rs.2.30, the A. O. is directed to adopt the same and rework the loss. As per the working done by the appellant, the consequential loss would come to Rs.32,69,075/-. The A. O. is directed to revise the figure of loss; after verifying the calculation given by the appellant.”

7. Before us, the ld. D.R. strongly supported the findings of the A.O. Per contra, the ld. counsel for the assessee reiterated what has been stated before the lower authorities.
8. We have given a thoughtful consideration to the orders of the authorities below. We find that the A.O. has treated the transactions in the shares as sham transaction being a colourful device to avoid paying tax on the profit on sale of mutual funds. We find that the loss on sale of shares of Merit Credit Corporation Ltd. is fully supported by the contract notes, the share certificates, the endorsement in the share certificates that the shares have been transferred in the names of the purchasers. All the supporting documentary evidences are on record and at the behest of the Tribunal, the ld. counsel for the assessee furnished the copies of the share certificates of Merit Credit Corporation Ltd. which has clear endorsement in the Memorandum of transfers of shares in the name of Narendra L. Parmar. Merit Credit Corporation Ltd is a listed company and the off-market transaction has been done at the traded rate on

- the stock exchange. On this, there is no dispute between the parties. The register of share transfer in the books of Merit Credit Corporation Ltd. clearly shows that the name of the transferor as Sun-Finlease (Gujarat) Ltd. (assessee) and the name of the transferee as Narendra Lalubhai Parmar. These direct evidences go to establish the genuineness of the transaction and therefore the action of the A.O. was uncalled for and rightly remedied by the First Appellate Authority in allowing the claim of loss and therefore no interference is called for. Ground no. 1 is accordingly dismissed.
9. The grievance raised vide ground no. 2 is in fact not emanating from the order of the authorities below. We find that the Id. CIT(A) has by a separate order framed u/s. 154 of the Act dated 25.06.2012 has categorically held that the assessee is an approved NBFC and was principally engaged in the activity of granting loans and advances and accordingly the provisions of Explanation to Section 73 will not be applicable in the case of the assessee. In our considered opinion, this order of the Id. CIT(A) framed u/s. 154 is also an appealable order and the revenue should have preferred a separate appeal but by an application dated 09.01.2017, the revenue preferred fresh grounds of appeal and with letter dated 11.01.2018 for the condonation of delay in filing revised grounds of appeal.
10. In our considered opinion, to avoid unnecessary litigation and to bring the litigation to an end, the delay is condoned.
11. As mentioned elsewhere, in the order framed u/s. 154 of the Act, the Id. CIT(A) held that provisions of Section 73 are not applicable on the facts of the case in hand.

12. In our considered opinion and considering the nature of the business activities of the assessee Explanation to Section 73 is not applicable on the facts of the case in hand because of the exclusion provided in the said explanation which says “other than a company, the principle business of which is the business of banking or the granting of loans and advances”.
13. Considering the relevant provisions of the Act, we do not find any reason to interfere with the findings of the ld. CIT(A). Ground no. 2 is also dismissed.
14. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in Open Court on 16 - 04- 2018

Sd/-

(S. S. GODARA)
JUDICIAL MEMBER True Copy
Ahmedabad: Dated 16/04/2018

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad