

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH: KOLKATA

**Before: Shri P.M. Jagtap, Accountant Member and
Shri S.S. Viswanethra Ravi, Judicial Member**

**I.T.A No. 1897/Kol/2014
A.Y: 2009-10**

**Income-tax Officer
Ward-11(1), Kolkata**

Vs.

**M/s. DPD International
Private Limited
PAN:AAACD9574D**

[Appellant]

[Respondent]

For the Appellant : Shri Pradip Majumer, Addl.CIT, Id.Sr.DR
For the Respondent : Shri S. Jhajaharia, FCA, Id. AR

Date of hearing : 05-09-2018
Date of pronouncement : 26 -10-2018

ORDER

Shri P.M. Jagtap, AM:

This appeal is preferred by the revenue against the order of Ld. CIT (Appeals) - XII, Kolkata dated 22-07-2014.

2. The relevant facts of the case giving rise to this appeal are that the assessee is a company, which is engaged in the business of share trading. The return of income for the year under consideration was filed by it on 24-09-2009 declaring a total income of Rs. 7,845/-. In the said return, a loss of Rs. 68,95,588/- from the share trading was declared by the assessee and the same was set off against income from interest and other income. According to the AO, the loss from share trading as declared by the assessee was liable to be treated as speculation loss as per Explanation below section 73 and the same, therefore, was not allowable for set off against interest and other income. He, therefore, required the assessee company to explain as to why its claim for set off should not be disallowed by invoking the Explanation to section 73. In reply, no explanation whatsoever was offered by the assessee. The assessee company also did not produce any documentary evidence in the form of bills and vouchers to support and substantiate the expenses of Rs.5,57,900/- claimed by it inspite of sufficient opportunity given by the AO. Due to non-compliance on the part of the assessee, the AO was no left with no other alternative to complete the assessment u/s. 144 of the Act to the best of his judgment. In the assessment so completed vide order dt. 22-12-2011, the claim of the assessee for set off of loss from share trading amounting to Rs. 68,95,588/- was

disallowed by the AO by invoking Explanation to section 73. He also disallowed expenses claimed by the assessee to the extent of Rs. 2,68,950/- being 50% of the total expenses. Accordingly, the total income of the assessee was determined by the AO at Rs.71,72,383/- in the assessment completed u/s. 144 vide order dt. 22-12-2011.

3. Against the order passed by the AO under section 144, an appeal was preferred by the assessee before the Ld. CIT (A). During the course of appellate proceedings before the ld. CIT(A), written submission was filed by the assessee in support of its claim of set off of share trading loss as well as expenses claimed under the various heads. The said written submission filed by the assessee was forwarded to the AO by the ld. CIT(A) for his verification and comments. In the remand report submitted to the ld. CIT(A), the AO offered his comments and when the same were confronted by the ld. CIT(A) to the assessee, the later also filed the rejoinder. After considering this entire material on record, the ld. CIT(A) allowed the claim of the assessee for set off of speculation loss for the following reasons given in para 5.2.5 of his impugned order:-

“5.2.5 From the foregoing facts and the legal position, it may be seen that the case of the appellant company is not covered under the Explanation to sec. 73. However, admittedly, the income shown by the appellant at Rs.66,22,069/- stated in the return of income filed is speculation income only. Therefore, there is merit in the submission that even if the explanation below section 73 is applying in the case of the appellant and the loss from share trading is treated as speculative loss, the same would be allowed to be set-off with the speculative gain of Rs.66,22,069/- as per provisions contained in section 73(1) of the Income Tax Act, 1961. Therefore, the Assessing Officer is directed to allow set off of Rs.68,95,588.22 on account of speculation loss against speculative gain of Rs.66,22,069/- and allow appropriate relief to the appellant company accordingly.”

4. The disallowance of 50% made by the AO out of expenses claimed by the assessee under various heads was also restricted by the ld. CIT(A) to 10% for the following reasons given at para 5.2.6, page-20 of the ld. CIT(A).

“5.2.6 Regarding the ad-hoc disallowance of 50% of the expenditure debited to profit & loss Account, the contention of the appellant is that it mentioned regular books of account, which have been duly audited under sec. 44AB and that the expenses are duly supported with bills and vouchers. However, I find that claim of some of the items of the expenditure could be unvouched and unverifiable. In my view, disallowance of 10% of the total expenditure shall be fair and reasonable as against 50% disallowed by the Assessing Officer. The Assessing Officer is directed to work out such disallowance accordingly and allow appropriate relief to the appellant. “

5. Aggrieved by the order of the Ld. CIT (A), the revenue has preferred this appeal before the Tribunal on the following grounds:-

1. That on the facts and in law of the case the ld. CIT(A) erred in allowing Set off speculation loss of Rs.66,22,069/- from Speculation gain of Rs.66,22,069/-, though the AO finds that despite repeated opportunity, the assessee could not appear to explain such set off.

2. That on the facts and in the circumstances of the case the ld. CIT(A) erred in allowing the expenditure of Rs.2,68,950/- which was also not been explained the show cause during the course of assessment proceedings.”

6. We have heard the arguments of both the parties and also perused the material available on record. As regards the issue involved in ground no.1 relating to assessee's claim for set off of share trading loss against other income, it is observed that the ld. CIT(A) has allowed the same after having found that the case of the assessee was not covered under Explanation to section 73. He also found that income shown by the assessee to the extent of Rs.66,22,069/- was in the nature of speculation income only and accordingly held that the assessee company even otherwise was eligible to set off its share trading loss against the said income. At the time of hearing before us, entitled the ld. DR has not been able to bring on record anything to rebut or controvert the findings recorded by the ld. CIT(A). As a matter of fact, the revenue in the ground specifically raised in its appeal has clearly admitted the fact that speculation income of Rs.66,22,069/- was declared by the assessee company. We, therefore, find no justifiable reason to interfere with the impugned order of the ld. CIT(A) giving relief to the assessee on this issue and upholding the same, we dismiss ground no. 1 of revenue's appeal.

7. As regards the issue involving in ground no. 2, it is observed that the disallowance of 50% made by the AO out of expenses claimed by the assessee company under the various heads was restricted by the ld. CIT(A) to 10% after taking into consideration the fact that the assessee company had maintained regular books of account, which were duly audited u/s. 44AB of the Act and the expenses claimed were duly supported with bills and vouchers. In our opinion, the relief given by the ld. CIT(A) to the assessee on this issue is well founded and the disallowance sustained by the ld.CIT(A) being fair and reasonable in the facts and circumstances of the case, we uphold the impugned order on this issue and dismiss ground no. 2 of the revenue's appeal.

8. In the result, the appeal of the revenue is dismissed.

Order Pronounced in the Open Court on 26th - October, 2017.

Sd/-
S.S.Viswanethra Ravi
Judicial Member

Sd/-
P.M. Jagtap
Accountant Member

Dated 26-10-2018

PP(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant/Revenue: Income Tax Officer, Ward 11(1), P-7 Chowringhee Square, 6th Floor, Kolkata-69.
2. Respondent/Assessee: M/s. DPD International Pvt. Ltd. 6 Brabourne Road, Burrabazar, Vaishno Chambers, Kolkata-1.
3. CIT,
4. CIT(A), Kolkata.
5. DR, Kolkata Benches, Kolkata

**PP/SPS True Copy By By Order

Assistant Registrar
ITAT Kolkata