

आयकर अपीलीय अधीकरण, न्यायपीठ – “B” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
 (समक्ष) श्री ऐ. टी. वर्की, न्यायीक सदस्य एवं डॉ. अर्जुन लाल सैनी, लेखा सदस्य)
 [Before Shri A. T. Varkey, JM & Dr. A. L. Saini, AM]

I.T.A. No. 1000/Kol/2016
Assessment Year: 2011-12

Income-tax Officer, Wd-2(3), Kolkata	Vs.	M/s. Admire Vinimay Pvt. Ltd. (PAN: AACCA7164Q)
Appellant		Respondent

Date of Hearing	19.09.2018
Date of Pronouncement	30.11.2018
For the Appellant	Shri Kapil Mondal, JCIT, Sr. DR
For the Respondent	Shri M. D. Shah, AR

ORDER

Per Shri A.T.Varkey, JM

This appeal preferred by the revenue is against the order of the Ld. CIT(A)-9, Kolkata dated 24.02.2016 for AY 2011-12.

2. Ground nos.1 and 2 of revenue's appeal is against the order of Ld. CIT(A) in deleting the addition of Rs. 1,39,45,715/- on account of trading loss claimed in fabrics only to set off an interest income of Rs.1,58,03,411/-. We would like to reproduce both the grounds of appeal preferred by the Revenue:

“1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in directing the AO to treat the loss of Rs.1,39,45,715/- in alleged trading loss in fabrics as genuine.

2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in ignoring the AO's basis of disallowance inasmuch as the Assessee had no ideal about the trading, its nature, the conduct of its business at all to claim a trading loss apparently only to set off an interest income of Rs.1,58,03,411/-.”

3. Briefly stated facts are that during the course of assessment proceeding, the AO observed that the assessee has shown loss of Rs.1,39,45,715/- from trading in fabrics. He also observed that the assessee during the year under consideration had earned interest income of Rs.1,58,03,411/- and incurred loss amounting to Rs.1,39,45,715/- from trading in fabrics. He also noted that there is no opening stock or closing stock of fabrics. By issuing notice u/s. 142(1) of the Income-tax Act, 1961 (hereinafter referred to as the "Act") the assessee was specifically asked to produce books of account, stock register, bills/challans and all supporting evidences to substantiate the transactions/trading in fabrics/textiles as claimed by the assessee and which have been shown in the audited account by it for the year ended 31.03.2011. The assessee was also asked to produce the Principal Officers of the parties/concerns with whom the assessee has transacted/traded in fabrics during the year along with their evidence of identity, books of account and bank statement to substantiate the genuineness of their transactions in fabrics with the assessee during the year. According to AO, though the AR of the assessee appeared but did not produce the details or any supporting evidence in respect of aforesaid transaction in fabrics. Hence, the AO issued show cause notice to the assessee as to why the loss generated through the purchase and sales of fabrics should not be treated as bogus loss considering the assessee's failure to substantiate the aforesaid transactions. According to AO, the assessee neither produced the books of account nor any details in support of trading business in fabrics to substantiate the genuineness of loss claimed to have incurred from such transactions. Therefore, according to AO, the transactions in fabrics/textiles shown by the assessee is sham/unreal transactions and the loss of Rs.1,39,45,715/- arising in the books of account against these transactions were treated as a bogus loss and was consequently disallowed and added back to the total income of the assessee. Aggrieved, assessee preferred an appeal before the Ld. CIT(A), who deleted the addition as made by the AO by observing as under:

"4.1. It is seen that the books of account were produced and the AO had issued notices u/s. 133(6) to some parties for verification of sales and purchases. These parties have filed replies to the notices u/s. 133(6). Without finding any defect in the replies to notices u/s. 133(6), the AO has held these transactions to be bogus. In the subsequent AY, the AO has held the transactions with same parties as genuine. It is difficult to understand how the transactions in one year are held to be bogus and in subsequent year are held to be genuine, when no defect has been found out by AO in replies to notices u/s. 133(6). The AO is directed to treat the loss in trading in fabrics as genuine"

Aggrieved, revenue is now in appeal before us.

4. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the Ld. CIT(A) has made a finding that the books of account were produced and the AO had issued notices u/s. 133(6) to some parties for verification of sales and purchases and those parties have filed replies to the AO. The Ld CIT(A) took note of the fact that AO without finding any defect in the replies to notices u/s. 133(6), has held these transactions to be bogus. The Ld CIT(A) has also taken note that in the subsequent AY, the AO has held the transactions with same parties as genuine. So the Ld CIT(A) wondered as to how the transactions in one year can be held to be bogus and in subsequent year to be genuine, when no defect has been found out by AO in replies to notices u/s. 133(6) and gave relief to the assessee. This finding of fact has not been assailed by the Revenue in its ground of appeal which we have reproduced (supra), so the said finding of fact has crystallized. Once the parties with whom assessee had transaction has replied to AO pursuant to sec. 133(6) notice and AO failed to find any fault/infirmity in their replies and in the subsequent assessment year the AO find the transaction with the very same parties to be genuine, there is no reason to doubt/disbelieve the transaction which resulted in loss and the finding of fact by Ld. CIT(A) remained uncontroverted before us as the Ld. DR was unable to produce any cogent/relevant material to do so. So we find no infirmity in the order of the Ld. CIT(A) and the same is hereby upheld. Therefore, this ground of appeal of revenue is dismissed.

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

Order is pronounced in the open court on 30/11/2018

Sd/-
(Dr. A. L. Saini)
Accountant Member

Sd/-
(A. T. Varkey)
Judicial Member

Dated: 30th November, 2018

Jd.(Sr.P.S.)

Copy of the order forwarded to:

- 1 Appellant – I.T.O., Ward-2(3), Kolkata.
- 2 Respondent – M/s. Admire Vinimay Pvt. Ltd., 16, Jamunalal Bajaj Street, Ground Floor, Kolkata-700 001..
- 3 CIT(A)-9, Kolkata. (sent through e-mail)
- 4 CIT , Kolkata
- 5 DR, Kolkata Benches, Kolkata (sent through e-mail)

/True Copy,

By order,

Sr. Pvt. Secretary