

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
&  
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No.1699/Del/2015  
Assessment Year: 2011-12**

**M/s Ravi Iron Ltd.  
67 Navyug Market, Ghaziabad  
PAN: AAACR9855M**

**vs DCIT , Circle- 2,  
Ghaziabad.**

Appellant

Respondent

**Assessee by Shri Sharat Chandra, CA  
Revenue by Shri Surender Pal, Sr. DR**

**Date of Hearing 28.11.2018  
Date of Pronouncement 10.12.2018**

**ORDER**

**PER K. NARASIMHA CHARY, JM**

Challenging the order dated 7.1.2015 in Appeal No.576/2013-14, passed by the Learned Commissioner of Income Tax (Appeals)-Ghaziabad (Ld. CIT(A)), assessee preferred this appeal.

2. Brief facts of the case relevant for the purpose of this appeal are that the assessee is a company dealing in purchase and sale of iron and steel. They

have filed their return of income for the Asstt. Year 2011-12 on 28.9.2011 declaring income of Rs.2,20,83,820/-. However, learned AO by an order dated 23.1.2014 passed u/s 143(3) of the Income-tax Act, 1961 ("the Act") computed the same at Rs.2,73,44,547/- by making certain additions which include the long term capital gain to the tune of Rs.34,77,181/- and denying the loss of Rs.11,13,280/- in shares trading.

3. Now appeal preferred by the assessee learned CIT(A) upheld these two additions. Though the assessee also challenged the addition of Rs.2,92,786/- appearing on the liability side of the balance sheet as CST payable as the amount was due to be paid to the Government, assessee not pressed this ground at the time of arguments. Now, therefore, what remains effectively for consideration is the addition of Rs.34,77,181/- and the disallowance of the capital loss of Rs.11,13,280/- on account of trading in shares.

4. Now coming to the addition of Rs.34,77,181/-, the facts are that during the financial year 2010-11, the assessee sold two plots No.P-8 for Rs.90,00,000/- and another plot E-23 for Rs.1,17,43,686/-. According to the assessee, such plot No. P-8 was originally allotted by M/s Ansal Housing & Construction Ltd. to the vendors, namely, Sunil Jain, HUF and Sumit Jain, HUF for a consideration of Rs.14,95,000/- but subsequently those two people having received a premium of Rs.16,14,000/- agreed for registration of such plot by the Ansal Housing and Construction Ltd. In favour of the assessee on the assessee making the payment of Rs.14,95,000/-. Accordingly the registration took place. In these circumstances, assessee computed the capital gains by adopting the cost of

acquisition at Rs.34,77,181/- in the Financial Year 2005-06 and worked out the indexed cost of acquisition at Rs.49,41,297/- and deducting the same from Rs.90 lacs sale consideration, he reached the taxable capital gain at Rs.40,58,720/-.

5. Learned AO did not agree with the submissions of the assessee and by looking into the sale deed executed by M/s Ansal Housing & Construction Ltd. In favour of the assessee, he had taken the cost of acquisition at Rs.14,95,000/- in the Financial year 2005-06 and the indexed cost of acquisition at Rs.23,67,616/-. In this process he brought Rs.66,32,384/- under the long term capital gain.

6. For making this addition, learned AO gave the reasoning stating that no documents or evidence was produced before him to show that any amount was paid by the assessee to M/s Sunil Jain, HUF towards the consideration of purchase of the plot and the sale deed executed by M/s Ansal Housing & Construction Ltd. in favour of the assessee being the most authenticated and relevant evidence, the consideration mentioned therein alone has to be accepted. He further opined that in the sale deed there is no mention of the name of Sunil Jain, HUF or anybody else to have received any sale consideration and even if any amount was said to have given, it cannot be co-related to the purchase price of that plot and the loan taken from ICICI Housing Finance is also not proved to have any link with the payment of purchase consideration of this plot to M/s Sunil Jain, HUF. Learned AO further stated that there is no provision in the income-tax Act to add the amount of interest of loan in the cost of acquisition and the claim of the assessee for adding the capital interest was also not acceptable. He,

therefore, did not consider the stamp value and the interest in the cost of acquisition.

7. In the appeal, learned CIT(A) agreed that the learned AO stating that in the agreement of sale between Sumit Kumar Jain, HUF and Sunil Kr. Jain, HUF, the reference of allotment was blank and the allotment letter is only in the name of Sunil Jain, HUF and in that event how Sumit Kumar Jain, HUF, whose name is not to be found in the allotment came in the picture so as to give consent for the sale of such plot by the Ansal Housing & Construction Ltd. In favour of the assessee. Learned CIT(A) further stated that no form or document was produced from Sunil Jain, HUF evidencing that they have received any consideration from the assessee towards the sale consideration of that plot. In these circumstances, holding that there is no evidence to connect the Jains' HUF with the acquisition of the property by the assessee from M/s Ansal Housing & Construction Ltd., learned CIT(A) confirmed the addition.

8. We have perused the record. From the beginning, it has been the contention of the assessee that both the Jains' were the original allottees of the property and they received the consideration as could be seen from the account of the assessee with ICICI bank, the copy of which is placed at page 55 of the paper book. Assessee also produced the certificate issued by the ICICI bank to show that in connection with the purchase of property in plot No. BA-008, Block B, Ansal Golf Link-1, Greater Noida, Noida, the assessee was granted sanctioned loan of Rs.25,41,000/- out of which a sum of Rs.12,70,500/- each was paid to Shri Sunil Jain, HUF and Shri Sunit Jain, HUF by way of cheque nos. 03119 and 03118 respectively. When the

entries of the account of the assessee with ICICI bank at page 55 of the paper book are examined in the light of the certificate, it is clear that such an amount was directly paid to these persons by the bank. This certificate clearly establishes that the loan was extended only for the purchase of the property in plot no.8. In the circumstances, we are of the considered opinion that the entries at page 55 of the paper book are sufficiently corroborated by this certificate. We are, therefore, of the considered opinion that this addition cannot be sustained.

9. Now coming to the issue of not accepting the claim of loss of Rs.11,13,280/- in the share trading, both the authorities below recorded a finding that there is no evidence to show that there was delivery of shares. Assessee agitated before the learned AO and the ld. CIT(A), that there was delivery of shares. In spite of the assessee producing a copy of trading account and demat account before the authorities in support of his contention that when the shares were purchased delivery was taken and when the shares were sold, delivery was given.

10. Assessee brought to our notice the statement of transactions as done by the assessee in the accounts of Star Investment P. Ltd. and also the statement of holding in their books which clearly show that there were entries to the effect that there was opening balance purchase and closing balance indicating that there was delivery of shares when purchased and delivered back when these shares were sold. In these circumstances, the finding of the authorities below that there was no delivery of shares or that none of these documents prove that the delivery of shares were taken or given is incorrect. Section 73 has no application to the facts of this case.

Hence, we find that the loss of Rs.11,13,280/- in share trading is acceptable.  
We, therefore, answer this issue in favour of the assessee.

11. In the result, appeal of the assessee is allowed.

**Order pronounced in the Open Court on 10<sup>th</sup> December, 2018.**

Sd/-

sd/-

**(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER  
MEMBER**

**(K. NARASIMHA CHARY)  
JUDICIAL**

Dated: 10<sup>th</sup> December, 2018

VJ

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI

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