

IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH KOLKATA

BEFORE SHRI A.T.VARKEY, JM &DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.1739/Kol/2017

(निर्धारणवर्ष / Assessment Year:2011-12)

ITO, Ward-6(2), Kolkata	Vs.	M/s Gemini Overseas Ltd.
		19, R.N. Mukherjee Road, Kolkata-700001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCG 0658 E		
(Assessee)	..	(Revenue)

Assessee by : Shri Robin Choudhury, Addl. CIT Sr. DR

Respondent by : Shri Manish Tiwari, AR

सुनवाईकीतारीख/ Date of Hearing : 23/01/2019

घोषणाकीतारीख/Date of Pronouncement : 29/03/2019

आदेश / ORDER

Per Dr. A. L. Saini:

The captioned appeal filed by the Revenue, pertaining to assessment year 2011-12, is directed against an order passed by the learned Commissioner of Income Tax (Appeals)-2, Kolkata (in short the ld. 'CIT(A)'), which in turn arises out of assessment an order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (in short the 'Act') dated 05.03.2014.

2. Ground No. 1 raised by the Revenue reads as under:

"i. Whether on the facts and in the circumstances of the case, the ld. CIT(A) has erred in law in allowing Loss of Rs. 81,90,769/- resulting from sale of shares of Tatia Skylines & Health Forms Ltd. and J.P. Morgan and also

erred in appreciating the facts relying on extraneous and irrelevant considerations.

3. Brief facts qua the issue are that the assessee has claimed Rs. 88,43,720/- as long term capital loss. It was found that during the previous year the assessee sold shares of Tatia Skylines & Health Farms Ltd. and JP Morgan for consideration as follows:

Name of the Script	Purchase price claimed	Date/year of purchase	Sale price claimed	Indexed price of acquisition	Price per share	Loss claimed
Tatia Skylines & Health Farms Ltd.	41,25,000	1998-99	1,65,000	83,55,769	Rs. 1/-	81,90,769
JP Morgan	21,00,000	2007-08	20,56,850	27,09,800	No detail could be filed	6,52,950
Total	62,25,000		22,21,850	1,10,65,569		88,43,720

During the assessment proceedings, AO asked the assessee to produce the details of purchase for verification of price of the shares and the respective year of acquisition. In response, the assessee-company filed copies of bills which indicate the sale of shares of Tatia Skylines & Health Farms Ltd. to different persons at a value of Re.1/-. The AO noticed from the computation of the long term capital loss, which reveals that the year of acquisition of shares of Tatia Skylines & Health Farms Ltd. and JP Morgan are 1998-99 and 2007-08 respectively. In respect of JP Morgan, the assessee was unable to file any details. As the assessee-company failed to produce any evidence as to its sale of shares of Tatia Skylines & Health Farms Ltd, through stock exchange therefore AO concluded that the claim of loss in share transaction is not being substantiated by assessee. Hence, the long term capital loss as have been claimed by the assessee against both the

scripts, as discussed above, is denied by assessing officer and not allowed to be carried forward.

4. Aggrieved by the stand so taken by the AO, the assessee carried the matter in appeal before the Ld. CIT(A) who has deleted the addition. Aggrieved, the Revenue is in appeal before us.

5. We have heard both the parties perused the material available on record, we note that this ground of Revenue relates to disallowance of loss incurred under the head "Long Term Capital Gains" of Rs. 88,43,720/- arising from sale of unquoted shares of Tatia Skylines & Health Farms Ltd. of Rs.81,90,769/- and JP Morgan Rs.6,52,950/- both totalRs.88,43,719/-.The particulars regarding the year of acquisition, cost price, indexed cost and sale consideration were furnished in the course of assessment proceedings. Admittedly, the shares held in Tatia Skylines & Health Farms Ltd. are not quoted in any recognized Stock Exchange. It is common knowledge and it is a well known fact that unquoted shares are not transacted through stock exchange. But that does not necessarily mean that the sale of such unquoted shares is bogus or loss resulting from such unquoted shares is required to be rejected. Bills in support of sale of shares of such unquoted shares in favour of different persons were furnished by assessee before AO. Therefore,denial of long term capital loss to the extent of Rs. 81,90,769/- cannot be ignored merely on the plea that sales were not effected through Recognized stock exchange. The contention of A.O. that shares were not sold in acute financial exigency may also be said extraneous and irrelevant. The cost of acquisition of shares in Tatia Skylines & Health Farms Ltd. i.e. Rs. 41,25,000/- is apparent from schedule 5 of audited accounts of the assessee. In view of the totality of facts explained above the disallowance of assessee's claim for long term capital loss of Rs. 81,90,769/- is beyond any controversy and requires to be allowed and therefore we confirm the findings of Id CIT(A).

We note that so far of long term capital loss of Rs.6,52,950/- arising from sale of 20,56,850 shares of JP Morgan, it is an admitted fact that the company failed to

furnish any details. The failure to furnish such details may result in disallowance of Long term capital loss of Rs.6,52,950/- relating to acquisition and sale of shares of JP Morgan shares only. Keeping in view of above, the loss arises from the sale of 20,56,850 shares of JP Morgan wherein the assessee failed to furnish any details are not allowed and balance loss is allowed. Hence, A.O. is directed to delete the addition accordingly and balance loss of Rs.6,52,950/- is confirmed. That being so, we decline to interfere with the order of Id. C.I T.(A) in deleting the aforesaid addition. His order on this addition is, therefore, upheld and the ground of appeal of the Revenue is dismissed.

6. Ground No.2 raised by the Revenue reads as follows:

ii. Whether on the facts and in the circumstances of the case, the ld. CIT(A) has erred in proceeding on extraneous belief and misconception of law in allowing Rs. 2,79,962/- out of Dyes & Chemicals u/s 40(a)(ia) of the Act.

7. Brief facts qua the issue are that during the year, the assessee debited an amount of Rs.18,27,397/- under the head "Conversion", machining & Other Direct Expenses." The assessee was asked to file the details of the above said expense and evidence in support of the same. It was noted by AO from the submission of the assessee that a total number of 8 (eight) expenses under different names are included in the above mentioned expense. They are Embroidery, Weaving charges, stores and spares, Dyes & Chemicals, Power & Fuel, Washing Charges and Thread cutting. Under the head 'Dyes and chemicals' an expenditure to the tune of Rs. 2,79,962/- has been made. The assessee was asked to produce the necessary ledgers and bills, vouchers as evidence in support of its claim. From the submission filed by the assessee it was noted that the Dyes and Chemicals have been purchased in the name of one "Tassar Dyeing & Finishing Works", Bhagalpur from different parties such as Raman Scientific Agencies, Sandeep Kumar and Manish Dyes and chemicals etc. It was assumed that the assessee had given contract for dyeing its products to "Tassar Dyeing & Finishing Works", Bhagalpur. The fact was evidenced from the vouchers of Raman Scientific Agencies, Sandeep Kumar and Manish Dyes and chemicals. Having given

contract to “Tassar Dyeing & Finishing Works”, Bhagalpur, for the necessary dyeing, the assessee was liable to deduct tax at source u/s 194C of the Act. But the assessee had failed to deduct tax at source, hence the entire amount of Rs. 2,79,962/- was disallowed and added to the total income of the assessee.

8. Aggrieved by the stand so taken by the Assessing Officer, the assessee carried the matter in appeal before the Id CIT(A), who has deleted the addition made by the Assessing Officer. Aggrieved, the Revenue is in appeal before us.

9. We have heard both the parties perused the material available on record, we note that the assessee submitted before the AO all the bills of Dyes & Chemicals and copy of TDS return for the relevant assessment year. It is an admitted fact that expenses claimed under the sub-head "Dyes & Chemical" amounting to Rs. 2,79,962/- is in relation to purchases of materials. This fact is also admitted at para 5 of the assessment order. Therefore, the question of deduction of TDS U/s 194C is not applicable. That is, the provisions of Chapter XVIIB of the Act relating to TDS do not attract on purchase of goods and materials. Therefore, the disallowance made by AO is contrary to the provisions of section 194C of the Act. That being so, we decline to interfere with the order of Id. C.I T.(A) in deleting the aforesaid addition. His order on this addition is, therefore, upheld and the ground of appeal of the Revenue is dismissed.

10. In the result, appeal of the Revenue is dismissed.

Order pronounced in the Court on 29.03.2019

Sd/-
(A.T.VARKEY)
न्यायिकसदस्य / JUDICIAL MEMBER

Sd/-
(A.L.SAINI)
लेखासदस्य / ACCOUNTANT MEMBER

कोलकाता /Kolkata;

दिनांक/ Date:29/03/2019

(SB, Sr.PS)

Copy of the order forwarded to:

1. ITO, Ward-6(2), Kolkata
2. M/s Gemini Overseas Ltd.
3. C.I.T(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

True copy

By Order

Assistant Registrar
ITAT, Kolkata Benches