

*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "SMC" KOLKATA*

Before **Shri S.S, Godara, Judicial Member**

ITA No.1661/Kol/2017 Assessment Year:2008-09
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M/s Poddar Dewki Ltd. 4, Fairlie Place, Kolkata-700001 [PAN No.AABCP 7795 B]	<u>बनाम/</u> V/s.	Income Tax Officer, Ward-5(2), Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-700 069
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Subash Agarwal, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri C.J. Singh, JCIT-SR-DR
सुनवाई की तारीख/Date of Hearing	05-03-2019
घोषणा की तारीख/Date of Pronouncement	08-05-2019

आदेश /O R D E R

This assessee's appeal for assessment year 2008-09 arises against the Commissioner of Income-tax (Appeals)-2, Kolkata's order dated 04.05.2017 passed in case No. 795/CIT(A)-2/14-15, involving proceedings u/s. 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. The assessee's first substantive ground challenges correctness of both the lower authorities' action disallowing its share trading loss to the tune of ₹1 lac in assessment as upheld in lower appellate proceedings. The CIT(A)'s detailed discussion qua the instant first issue reads as under:-

"Ground-1 to 6.

These grounds of appeal as raised by the assessee against the order of the Assessing Officer are as under:-

- That the appellant has purchased shares for the purpose of dealing in shares, i.e, business, the Learned Assessing Officer erred in holding that the said*

purchases were not for the purposes of business and that the said purchases were bogus transactions.

- *That all the evidences with regard to purchase of shares were adduced, the Learned Assessing Officer erred in brushing aside the said evidences by holding that purchase was not real.*
- *That the appellant sold the shares purchased incurring a loss of Rs.1 lakh, which was assessable under the head “business”, the Learned Assessing Officer erred in holding that the said sales were not real and disallowed the said loss.*
- *That the Learned Assessing Officer erred in holding that the sales of shares was not real by not allowing reasonable opportunity to explain the same.*
- *That loss of Rs.1 lakh incurred on sale and purchase of shares was allowable as business loss, the Learned Assessing Officer erred in disallowing the same by holding the entire transactions of purchase and sale as not real.*
- *That in any case, the loss on purchase and sale in shares was allowable under the head “other Sources”, the Learned Assessing Officer erred in disallowing the said loss.*

The AR of the appellant during the appellate proceedings furnished written submissions as under:-

The appellant had purchased 10,000 equity shares of Kaveri Multipurpose Articles Pvt. Ltd. @ Rs.40/- per share for Rs.4,00,000/- from ISA BHEEL LTD on 07.,10.2007. The said shares were sold on 12.11.2007 @ Rs.30/- per share for Rs.3,00,000/- to Mandakini Holdings Ltd resulting in a loss of rs.1,00,000/-. The said transaction was shown as ‘**business**’.

With regard to the said transactions, the Learned Assessing Officer has first said that since the assessee was not carrying on any business and this being a single transaction cannot be taken as business.

In this connection, it may be mentioned that even if it is not taken as business, the same may be considered as loss from ‘**Other Sources**’. However, the Learned Assessing Officer has proceeded further to hold that these were not real transactions at all on the following reasons:-

- a) The address fo the seller i.e. M/s ISA BHEEL LTD is the same of the purchaser;
- b) The purchase i.e. Mandakini Holdings Ltd is having the address which used to be earlier address of the appellant.
- c) The Learned Assessing Officer sent notice u/s. 133(6) to the seller M/s ISA BHEEL LIMITED, a copy of which is enclosed as page – 25 of the paper book. M/s ISA BHEEL LTD submitted the reply dt. 19th November, 2010 confirming the said sale, a copy of which together with Annexures is enclosed as pages 26 and 27 of the Paper Book.

With regard to the said transaction the Learned Assessing Officer has pointed out that in the purchase bill, name of Godavari Multipurpose Articles Pvt Ltd is appearing whose shares were purchased instead of the name of Kaveri Multipurpose Articles Pvt. Ltd.

This was nothing but a clerical mistake. However, in compliance with the same Shri S.K. Jhunjhunwala, Director of ISA BHEEL LTD appeared before the Learned Assessing Officer on 13.12.2010 and his statement was recorded, a certified copy of which is enclosed as page 32 and 33 of the paper book. A type copy of the same is enclosed as annexure ‘A’.

From the certified copy of the orders sheet, it is clear that since the Learned Assessing Officer never asked Shri Jhunjhunwala to furnish/produce a copy of the audited Balance Sheet of ISA BHEEL LIMITED for the relevant period, the question of non-compliance with the same did not arise at all. Although Shri S.K. Jhunjhunwala confirmed the transaction, still on flimsy grounds, without any basis of materials, the Learned Assessing Officer has held the said purchase of Rs.4,00,00/- a bogus and sham.

Re: Sale

The Learned Assessing Officer has written that he had sent a letter to the purchaser M/s. Mandakini Holdings Ltd which came back unserved with the postal remark “**not known**”. Thereafter, he requested the appellant to produce the Principal Officer/Director along with books of account for the relevant period. But accordingly to the Learned Assessing Officer, the ape failed to produce the person and failed to produce any credible documents to establish that the transaction actually took place and the appellant duly received payment of Rs.3 lakhs by selling the aid shares thus according to the Learned Assessing Officer, not only the alleged purchaser remained untraceable at the given address but the payments remained unestablished and hence the genuineness of alleged transaction remained unverified. Further, the assessee failed to state that what compelling circumstances, the shares were sold at a loss of Rs.1,00,000/-. For the said reasons, he treated the sales as bogus.

In this connection, the appellant states as under:-

The certified copy of the entire entries entries in the Order sheet is enclosed from pages 28 to 33 of the Paper Book, from, which it is clear, that there is no entry showing that any notice/letter was sent to Mandakini Holdings Ltd., Further, it may be pointed out that the Learned Assessing Officer vide his letter dated 01.12.2012, had asked the appellant to produce the director of the Mandakini Holdings. In this connection it may be mentioned that Shri S.K. Gadia, director of Mandakini.

Holdings had gone along with the appellant’s representative to the Learned Assessing Officer on 13.12.2010 but since the Learned Assessing Officer was busy, neither his matter was taken up nor his presence was recorded. The said company is an Income Tax Assessee and as such, the question of any non-compliance of any notice at its given address does not arise at all.

From all the facts mentioned earlier, the purchases and sales were genuine, in which the appellant incurred a loss of Rs.1,00,000/-.

If the loss is not allowed under the head “business”, the same should be allowed under the head “Other Sources.”

I have considered the submissions of the authorized representative of the appellant as well as the assessment order framed in the light of the materials available on record before the AO during the assessment proceedings. I have agree with the view as taken by the AO in the matter, who has already discussed the in detail while passing the order. In view of above, the order of the AO is upheld. These grounds of appeal are dismissed.”

3. I have given my thoughtful consideration to rival contentions. Both the lower authorities have treated the assessee’s share trading loss to the tune of ₹ 1 lac as bogus

and not allowable therefore. It transpires during the course of hearing that assessee had placed on record its details of purchases as well as sales followed by compliance of sec. 133(6) notice from both the parties concerned. The CIT(A) has admittedly not made any adverse comment in his lower appellate findings *qua* the same. This is not the Revenue's case that the assessee has not filed all the relevant particulars regarding its share trading loss in the paper book forming part of the case record. I therefore direct the Assessing Officer to delete the impugned disallowance.

4. Next comes the second issue of disallowance of salary and other related expenses to the tune of ₹11,76,990/- made in both the lower proceedings. Suffice to say, it transpires at the outset that the instant issue is very much recurring one wherein the CIT(A) as well as this tribunal have allowed only 20% of the impugned claim in earlier assessment years 2001-02 to 2006-07. I therefore adopt judicial consistency and direct the Assessing Officer to restrict the impugned disallowance to the extent of 80%. The assessee gets relief to the extent 20% accordingly.

5. The assessee's third grievance is that both the lower authorities ought to have allowed it a sum of ₹2,10,384/- on account of interest under the head "income from house property". The Revenue's case is that the instant issue does not emanate either from the assessment or in lower appellate findings. It fails to dispute that the instant issue of interest under the head "income from house property" is also a recurring one alike in earlier assessment years. The assessee has placed on record its computation of interest attributable to house property comprising of opening balance of loan, interest attributable to house property interest debited in profit and loss account and interest attributable to house property along with its relevant corresponding particulars as well as the CIT(A)'s order in assessment years 2003-04 to 2010-11 to this effect. I deem it appropriate in the larger interest of justice that the earned assessing authority needs to re-examine the entire issue alongwith the above factual details to finalize necessary computation of interest attributable to house property income. This ground is taken as accepted for statistical purposes.

Mr. Agarwal is fair enough in not pressing for the assessee's next substantive ground seeking to delete interest filing fees, service tax & processing charges, audit fee, general charges disallowance / additions involving sums of ₹6,14,496/-, ₹2,100/-,

487/-, ₹2,947/-, ₹1,124/- & ₹910/-; respectively with a rider that same shall not be treated as a precedent in any other assessment year. The Revenue does not dispute the assessee's preceding rider. I therefore decline these two substantive grounds has not pressed in keeping in mind smallness of amount in above terms.

6. This assessee's appeal is partly allowed accordingly.

Order pronounced in open court on 08/05/2019

Sd/-
(S.S. Godara)
Judicial Member

Kolkata,

*Dkp/Sr.PS

दिनांक:- 08/05/2019 कोलकाता

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-M/s Poddar Dewki Ltd., 4, Fairlie Place, Kolkata-001
2. प्रत्यर्थी/Respondent-ITO Ward-5(2), Aayakar Bhaqwan, P-7, Chowringhee Square, Kolkta-69
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।