

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND  
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

**ITA No.4218/M/2017  
Assessment Year: 2013-14**

ACIT 4(2)(1), Room No.642, 6 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s. Quant Securities Pvt. Ltd., 612-617, 6 <sup>th</sup> Floor, Maker Chambers IV, Nariman Point, Mumbai - 400 021 <b>PAN: AAACQ1648R</b>
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Jitendra Sanghavi, A.R.  
Shri Amit Khatiwala, A.R.

Revenue by : Shri D.G. Pansari, D.R.

Date of Hearing : 06.06.2019

Date of Pronouncement : 26.06.2019

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal has been preferred by the Revenue against the order dated 24.03.2017 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2013-14.

2. The grounds raised by the Revenue are as under:

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance u/s 73 of the I. T. Act of Rs.69,76,286/- on account of treating share trading loss as speculative loss made by the A.O.

2. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."

3. The facts in brief are that the AO during the course of assessment proceedings noticed that major activities of the assessee were from purchase/sale of shares from which the assessee has shown trading loss of Rs.21,39,273/- in trading its own shares. Therefore, the AO called upon the assessee to explain as to why the trading loss should not be treated as speculation loss which was replied by the assessee vide letter dated 07.12.2015. The AO observed that assessee was engaged in the business of share trading and share broking. The AO noted that share broker is an intermediary between the buyers and sellers of the shares through stock exchange and the shares brought and sold by the assessee are not own account but it merely executes the transactions on behalf of its clients. As a share broker the assessee is not responsible for any profit earned or loss incurred out of the transactions in purchase/sales on behalf of the clients but only received brokerage income from the clients on whose behalf the transactions were executed. Whereas, on the other hand as trader the role of the assessee is distinct from that of share broker. Thus assessee is engaged in the business of share trading wherein the entire sales and purchases were done on its own behalf and whatever profit/losses occurs or incurred would belong to the assessee as share trader. According to the AO the assessee is covered by the explanation to section 73 of the Act and does not fall within the exceptions as provided therein as the business of the assessee comprised the sale and purchase of shares of its own and other companies and therefore the assessee is deemed to have carried on the speculation business within the meaning of section 73 to the extent the business

comprised the purchase and sale of shares and finally disallowed losses of Rs.21,39,273/- incurred in the share trading business. Moreover, the AO also disallowed expenses relating to share trading to the tune of Rs.48,37,013/- by observing that the total expenses as per Profit & Loss account were Rs.4,83,70,130/- and apportioned the same as relating to speculative business in the proportion of turnover in the speculative business to the total turnover.

4. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee by holding that the business of the assessee of share trading and broking is covered in the exceptions provided to explanation to section 73 of the Act and therefore reversed the order of AO.

5. The Ld. A.R. at the outset candidly admitted that the issue in the present case as raised by the Revenue is covered against the assessee by the order of Hon'ble Supreme Court in the case of Sun Tax Investment Ltd. vs. PCIT (2019) 105 taxman.com 282 (SC). However, the Ld. A.R. submitted that the calculation as made by the AO while disallowing the expenses pertaining to the speculative business is fallacious and wrong as the total turnover has been taken as Rs.390,14,24,958/- as against the actual total turnover of Rs.39,01,42,49,580/-. The Ld. A.R. filed a necessary documents to corroborate his arguments and thus prayed before the Bench that to this extent the AO be directed to calculate the disallowance of expenses relating to speculative business on the basis of correct figure of turnover. The Ld. A.R. also mentioned that as per the correct turnover the disallowance worked out to Rs.29,022/-.

6. The Ld. D.R., on the other hand, relied on the grounds of appeal and order of AO.

7. After hearing both the parties and perusing the material on record, we observe that in this case the assessee is engaged in the business of buying and selling of shares and also as broker. Thus the assessee is doing two types of businesses – (1) the dealing in shares and other rendering services of buying and selling of shares to other clients for which the assessee charges commission/brokerage. We have examined the statement filed by the Ld. A.R. during the hearing and observed that the total disallowance of expenses attributable to speculation business worked out to Rs.29,022/-. The relevant details are reproduced as under:

Table-A(Details filed with the AO)

	Sales	Purchases	Total Turnover	Ratio
Own	20,49,22,641	20,69,42,057	41,18,64,698	1%
Client	19,38,47,71,313	19,21,76,13,569	38,60,23,84,882	99%
	19,58,96,93,954	19,42,45,55,626	39,01,42,49,580	

Table-B(AO's working in the Assessment Order)

	Sales	Purchases	Total Turnover	Ratio
Own	20,49,22,641	20,69,42,057	41,18,64,698	1%
Client	19,38,47,71,313	19,21,76,13,569	38,60,23,84,882	99%
	19,58,96,93,954	19,42,45,55,626	39,01,42,49,580	

(While calculating the ratio of own turnover to total turnover the AO wrongly taken the figure of total turnover at Rs. 390,14,24,958/- instead of 3901,42,49,580/-) and thus the expenses pertaining to speculative business was calculated at Rs. 48,37,013/- out of the total expenses Rs. 4,83,70,130/-

Table-C(Correct Working as filed before Id CIT(A))

Segment	Turnover	Ratio
Own - Capital Market Segment	41,18,64,698	0.06%
Client - Capital Market Segment	38,60,23,84,882	
Total of Capital Market Segment <i>(As considered by the Assessing Officer in the Assessment Order)</i>	39,01,42,49,580	
Add: Future & Option Segment	6,40,51,50,32,886	
Add: Currency Derivative Segment	5,95,18,015	
Total	6,79,58,88,00,481	100%

8. We observe from the above tables that the turnover of the assessee has been taken erroneously by omitting the last digit i.e. zero from the turnover. The correct turnover of the assessee is Rs.3901,42,49,580/- whereas the AO has wrongly taken Rs.390,14,24,958/- while calculating the disallowance of expenses relating speculative business. We have also examined the disallowance as calculated by the assessee in table C above and are of the considered view that disallowance of expenses attributable to speculation business has to be made to the extent of Rs.29,022/- only. Accordingly, we set aside the order of Ld. CIT(A) and direct the AO to restrict the disallowance of expenses relating to share trading in own shares at Rs.29,022/- in place of Rs.48,37,013/-. Finally we ,respectfully following the apex court decision in the case of Sun Tax Investment Ltd. vs. PCIT(Supra), reverse the order of CIT(A) and restore the order of

AO with the modification that expenses to be disallowed relating to the speculative business be restricted to Rs.29,022/-.

9. The appeal of the Revenue is partly allowed.

**Order pronounced in the open court on 26.06.2019.**

**Sd/-  
(Ram Lal Negi)  
JUDICIAL MEMBER**

**Sd/-  
(Rajesh Kumar)  
ACCOUNTANT MEMBER**

Mumbai, Dated: 26.06.2019.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.