

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

**BEFORE SHRI M.BALAGANESH, AM
&
SHRI RAM LAL NEGI, JM**

**ITA No.1467/Mum/2018
(Assessment Year :2013-14)**

Dy. Commissioner of Income Tax – 8(1)(1) Room No.624, 6 th Floor Aayakar Bhavan M.K.Marg, Mumbai – 400 020	Vs.	M/s. Ryka Commercial Ventures Pvt. Ltd 5 th Floor, Sobo Central 28, Madan Mohan Malviya Road, Tardeo, Mumbai – 400 034
PAN/GIR No.AAFCR8983H		
(Appellant)	..	(Respondent)

Revenue by	Shri D.G. Pansari
Assessee by	Shri Vipul Joshi
Date of Hearing	05/09/2019
Date of Pronouncement	11/09/2019

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.1467/Mum/2018 for A.Y.2013-14 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-14, Mumbai in appeal No.CIT(A)-14/IT-375A/15-16 dated 11/12/2017 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 29/02/2016 by the Id. ACIT 8(1)(1), Mumbai (hereinafter referred to as Id. AO).

2. The Ground Nos. 1 & 2 raised by the revenue is with regard to the action of the Id. CIT(A) deleting the addition made on account of loss on valuation of shares.

3. The brief facts of this issue are that the assessee is a private limited company engaged in the business of trading of fabrics and shares as per first page of the assessment order. The Id. AO observed that during the year, the assessee had purchased and sold some shares of various group entity companies belonging to "Future Group" of which assessee also is a part. The assessee had claimed the purchase of these shares as "stock in trade" and accordingly valued at the end of the year at lower of cost or market price in accordance with the Accounting Standards – 2 (AS-2) issued by the Institute of Chartered Accountants of India (ICAI). Pursuant to the said valuation at the lower of cost or market price, the assessee incurred loss on valuation of shares to the tune of Rs.8,59,29,193/- and claimed the same as business loss in the return of income. On perusal of the financial statements of the assessee, the Id. AO observed that the total revenue earned by the assessee from its operations constituted 62.61% from fabric sales and remaining from sale of shares. Further, the total sales to purchase ratio for fabric during the year was 1.011 while that for shares was 0.03903. Based on this, the Id. AO concluded that the assessee had not indulged in the activity of trading in shares of four companies namely (i) Capital First Limited (ii) Future Consumer Enterprises Ltd., (iii) Future Retail Ltd – DVR (iv) Future Retail Ltd. and had in fact acquired these shares with a long term perspective and hence, the same are to be classified only as "investments". The Id. AO accordingly concluded that since the shares have been reclassified by him as investments, there is no question of valuing the same at lower of cost or market price at the end of the year. Hence, he disallowed the loss

arising on account of valuation of shares to the tune of Rs.8,59,29,193/- in the assessment.

3.1. The assessee submitted that it started purchasing the shares commencing from December 2012 onwards and shares so purchased were treated as "stock in trade" in its books of accounts since the date of purchase. Part of these shares was also sold during the year. The profit derived therefrom was duly offered to tax as business income by the assessee which has been accepted by the Id. AO. The assessee submitted that its intention to treat the shares as stock in trade could be further substantiated on the basis of following facts:-

- a. The paid up capital of the company was Rs.1,00,000/-only.
- b. Since the own funds were very limited, assessee company availed finance facility of Rs.100 crores from J M Financial Products Limited, against the security of shares, for the business of trading in shares.
- c. The facility sanctioned by J M Financial Products Limited was for a short tenor of 1 year only.
- d. The finance facility was utilized for the purpose of purchasing shares for the business of trading in shares and the amount of interest paid on the borrowed funds have also been debited to the Profit & Loss Account.
- e. From the above, it could be appreciated that the shares purchased by the assessee company were purchased with the intention of trading in shares and not to hold them as investments since the assessee company utilized short term resources for purchase of shares. Had the intention of the assessee company been to make long term investments in shares, the assessee company would have used long term resources for purchase of shares.
- f. Further, it could also be appreciated that the assessee company has not only purchased shares during the relevant previous year but the

assessee company had also sold the shares so purchased partly during the same previous year.

g. The company had purchased the shares as a part of its inventory. Had the shares been purchased for the purpose of investments, the transaction would have required to be approved by the Board of Directors and passed a Board Resolution for the same. However, for trading transaction of purchase of shares and securities as an item of inventory, no such Board Resolution is required.

3.2. The assessee also placed reliance on the CBDT Circular No. 6/2016 dated 29/02/2016 wherein it has been categorically stated that "*where the assessee himself, irrespective of the period of holding the listed shares and securities, opts to treat them as stock in trade, income arising from transfer of such shares / securities would be treated as business income.*"

3.3. In the instant case, the assessee had right from the time of inception had treated the acquisition of shares as stock in trade and the profit derived from sale of shares were duly offered to tax as business income which has been accepted by the Id. AO. The assessee accordingly argued that having accepted the gains derived from sale of shares as business income, the Id. AO could not have treated the loss arising on valuation of shares at the lower cost or market price at the end of the year alone as not to be a business loss. The Id. CIT(A) appreciated the entire contentions of the assessee and placed heavy reliance on the CBDT Circular No. 6/2016 dated 29/02/2016 and deleted the addition made by the Id. AO.

4. Aggrieved, the revenue is in appeal before us.

5. We have heard rival submissions. We find from the aforesaid narration of facts that the assessee had during the year earned income from sale of shares to the tune of Rs.3,01,16,697/-. From the perusal of the balance sheet of the assessee we find that assessee had treated the purchase of shares as an item of expenditure and sale of shares as item of income in its profit and loss account and had valued the closing stock of shares at the lower of cost or market price in accordance with AS-2 issued by ICAI on valuation of inventories. We also find that the closing stock of shares had been duly reflected as stock in trade in the balance sheet in schedule – 6 thereon under the head “inventories”. All these facts clearly go to prove the intention of the assessee beyond doubt that right from inception of acquisition of shares, the shares were treated only as stock in trade by the assessee. The assessee had infact offered the gains or losses from sale of shares as business income which has also been accepted by the Id. AO by taxing it as business income. While it is so, there is absolutely no reason for the Id. AO to take a divergent stand with regard to loss arising on account of valuation of closing stock of shares at the end of the year alone. Moreover, we find that the issue under dispute is already addressed by the CBDT Circular No. 6/2016 dated 29/02/2016 wherein CBDT had categorically held that once assessee has shown the shares as stock in trade, the gains or losses thereon should be construed only as business income or business loss. Moreover, the Id. AR also placed on record the assessment order in the A.Y.2014-15 passed u/s.143(3) dated 05/12/2016 in its own case, wherein similar question was raised by the Id. AO and on going through the reply of the assessee, the Id. AO had accepted the entire transactions in sale of shares as business income / business loss including the loss arising on account of valuation of closing stock of shares at the lower of cost or market price.

5.1. In view of the aforesaid observations, we find that the Id. CIT(A) had rightly deleted the addition made on account of valuation of shares at the end of the year to the tune of Rs.8,59,29,193/-. Accordingly, the ground Nos. 1 & 2 raised by the revenue are dismissed.

6. The grounds Nos.3 & 4 raised by the revenue are with regard to deletion of disallowance made u/s.14A of the Act.

6.1. We have heard the rival submissions and perused the materials available on record. We find that assessee had not derived any exempt income during the year under consideration and hence, there cannot be any applicability of provisions of Section 14A. Hence, we find no infirmity in the order of Id. CIT(A) granting relief to the assessee. Accordingly the Ground Nos.3 & 4 raised by the revenue are dismissed.

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

Order pronounced in the open court on this 11/09/2019

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 11/09/2019
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai