



ITA No. 4561/Mum/2016
M/s. Brics Securities Limited
A.Y 2012-13

आयकर अपीलीय अधिकरण “बी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI

माननीय श्री महावीर सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No. 4561/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2012-13)

M/s. Brics Securities Limited Sadhana House, 1 st Floor, 5702 P.B Marg, Behind Mahindra Towers, Worli, Mumbai -400 018.	बनाम/ Vs.	DCIT-Range 4(1)(1) R. No. 640, 6 th Floor Aaykar Bhavan, M.K. Road Mumbai-400 020.
स्थग्रीलेखासं./जीआइआरसं./PAN/GIR No. AAACB-4908-R		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri Yogesh A. Thar, Ld.AR
प्रत्यर्थी की ओर से/ Respondent by	:	Ms. Kavita P. Kaushik, Ld.DR

सुनवाई की तारीख/ Date of Hearing	:	19/11/2019
घोषणा की तारीख / Date of Pronouncement	:	19/11/2019

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member): -

1. Aforesaid appeal by assessee for Assessment Year [in short referred to as ‘AY’] 2012-13 contest the order of Ld. Commissioner of Income-Tax (Appeals)-9, Mumbai [in short referred to as ‘CIT(A)’], *Appeal No.CIT(A)-9/Cir.4/306/2014-15 dated 18/03/2016* on following grounds of appeal: -



GROUND I: DISALLOWANCE OF DEPRECIATION ON BOMBAY STOCK EXCHANGE ("BSE") TRADING RIGHTS

1. On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in upholding the action of the Deputy Commissioner of Income-tax, Range 4(1)(1), Mumbai ("the AO") in disallowing depreciation on BSE Trading Rights amounting to Rs. 36,00,000/-.

2. The Appellant, prays that the depreciation of Rs. 36,00,000/- on BSE Trading Rights as claimed by the Appellant in its Return of income be allowed.

GROUND II: DISALLOWANCE UNDER SECTION 14A OF THE ACT READ WITH RULE 8D OF THE INCOME-TAX RULES, 1962 ('THE RULES')

1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in upholding the action of the AO in making an additional disallowance u/s. 14A of the Act r.w.r 8D of the Rules, without appreciating that the Appellant had suo-moto computed and disallowed expenditure u/s. 14A of the Act in accordance with Rule 8D of the Rules.

2. The Appellant, prays that the disallowance u/s. 14A of the Act be deleted! appropriately reduced.

GROUND III: NOT ALLOWING SET OFF OF LOSS ON DEALING ERRORS WITH THE BUSINESS INCOME

1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in upholding the action of the AO in not allowing loss on dealing errors with the other business income of the Appellant by invoking Explanation to section 73 of the Act and treating it as a speculation loss.

2. The Appellant, prays that the said loss on account of dealing errors be treated as normal business loss and accordingly, allow the Appellant to set-off the same with its other business income.

GROUND IV: NOT ADMITTING THE ADDITIONAL GROUND OF APPEAL FOR RE-COMPUTING CAPITAL GAINS ON SALE OF SHARES OF BOMBAY STOCK EXCHANGE LIMITED ("BSEL")

1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not admitting the additional Ground of Appeal filed by the Appellant during the course of appellate Proceedings and thereby not adjudicating the same on merits.

2. The Appellant, prays that the additional Ground of Appeal being a legal ground deserves to be admitted and thereafter be adjudicated.

WITHOUT PREJUDICE TO GROUND I AND IV

GROUND V: RE-COMPUTING CAPITAL GAINS ON SALE OF SHARES OF BSEL

1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in upholding the action of the AO of not taking the initial cost of acquisition of the membership card of the BSE of Rs. 2,56,00,000/- as the cost of acquisition of shares of BSEL for the purpose of computing the amount of capital gains on sale of shares of BSEL as per section 55(2)(ab) of the Act.



2. The Appellant, prays that the capital gains be re-computed after taking the initial cost of acquisition of the membership card of BSE as the cost of acquisition of shares of BSEL.

GROUND VI: GENERAL

The Appellant craves leave to add to, alter and 1 or amend all or any of the above grounds of appeal.

2. We have carefully considered the rival submissions and perused relevant material on record including the documents placed in the paper-book and the Tribunal order in assessee's own case for earlier years. Our adjudication to the grounds raised in the appeal would be as given in the succeeding paragraphs.

3. Facts on record would reveal that the assessee being resident corporate assessee stated to be engaged in the business of share / stock broking etc. was assessed for impugned AY u/s. 143(3) on 06/01/2015 wherein the returned loss of Rs.71.67 Lacs e-filed by the assessee on 28/09/2012 was reduced to Rs.16.71 Lacs, after certain additions/disallowances. Upon confirmation of certain additions / disallowance by learned first appellate authority, the assessee is under further appeal before us.

4.1 Disallowance u/s. 14A / Rule 8D for Rs.17.50 Lacs

During assessment proceedings, it transpired that the assessee earned exempt dividend income of Rs.29.14 Lacs and against the same, offered *suo-moto* disallowance of Rs.9.84 Lacs in its computation of income stated to be incurred towards earning of such exempt income. The said *suo-moto* disallowance was computed as per Rule 8D and the same comprised-off of



interest disallowance u/r 8D(2)(ii) for Rs.2.50 Lacs and expense disallowance u/r 8D(2)(iii) for Rs.7.33 Lacs, being 0.5% of average investment held by the assessee during the year. The Ld. AO, disturbing the figures of investments (as adopted by the assessee) by including securities held as stock-in-trade, revised the same to Rs.27.34 Lacs which comprised-off of interest disallowance for Rs.10.85 Lacs & expense disallowance for Rs.16.48 Lacs and added the differential amount of Rs.17.50 Lacs to the income of the assessee. The assessee, while computing suo-moto disallowance had excluded those investments also which did not yield any exempt income during the year. However, the said adjustment was also not granted to the assessee while computing the disallowance.

The learned first appellate authority, while confirming expense disallowance u/r 8D(2)(iii), directed Ld. AO to exclude stock-in-trade while computing interest disallowance u/r 8D(2)(ii). Still aggrieved, the assessee is under further appeal before us.

4.2 The Ld. AR has pleaded for exclusion of bank guarantee charges included in interest component since the same would not have any relation to earning-off of exempt income. Further pleas have been raised to excluded growth oriented mutual funds and exclusion of those investments which have not yielded any exempt income during the year. Concurring with the same, we direct Ld. AO to exclude all these 3 components while re-computing the disallowance. The ground stand allowed to that extent.

5.1 Adjustment of Loss on Dealing Errors with business income



The assessee incurred loss of Rs.1.45 Lacs on account of dealing error and claimed the same as deduction. However, the same was disallowed by Ld. AO by invoking explanation to Sec.73 of the Act. The learned first appellate authority confirmed the same since the assessee failed to file primary evidences concerning dealing errors.

5.2 We find that this issue, on principle, is covered in assessee's favor by the decision of this very bench in assessee's own case for AY 2011-12, ITA No.3682/Mum/2016 order dated 02/11/2018 wherein it has been held that losses arising out of punching errors while executing the trade could not be said to have arisen out of speculation business. Therefore, while holding that the said loss would be non-speculation in nature, we direct the assessee to file the details of the same before Ld. AO. The Ld. AO is directed to appreciate the same and re-adjudicate the issue in the light of details furnished by the assessee, keeping in view the decision of the Tribunal for AY 2011-12. The ground stand allowed for statistical purposes.

6.1 Depreciation on Trading Rights and re-computation of capital gains on sale of shares of Bombay Stock Exchange limited

Ground Nos. 1, 4 and 5 pertains to captioned issue. Upon perusal of depreciation chart, it transpired that the assessee claimed depreciation @ 25% on BSE Trading Rights treating the same as *intangible assets*. The amount of depreciation so claimed, for the year under consideration, amounted to Rs.36 Lacs. It was noted that the assessee obtained membership card of Bombay Stock Exchange (BSE) in the year 1994-95 for Rs.2.56 Crores. After the Demutualization and Corporation Scheme of BSE



2005, the ownership rights & trading rights embedded in the membership card were segregated from each other through cancellation of membership card. Accordingly, the assessee was granted trading rights of BSEL without any additional payment and was allotted 10000 shares of BSEL of Re.1/- each on payment of Rs.10,000/-. The assessee treating the cost of trading rights as Rs.2.56 Crores, claimed depreciation @25% which was denied since the shares, in the opinion of Ld. AO, could not be considered as *tangible asset* and therefore, the depreciation on the same could not be allowed to the assessee. Accordingly, the depreciation so claimed by the assessee was disallowed.

6.2 Although the said issue was agitated before Ld. CIT(A), however, in consonance with the first appellate order for AY 2011-12, the claim was rejected. Aggrieved, the assessee is under further appeal before us.

6.3 So far as the claim of depreciation is concerned, it is admitted position that the stated issue is covered against the assessee by the decision of this Tribunal on assessee's own case for AY 2011-12, ITA No.3682/Mum/2016 order dated 02/11/2018. Therefore, Ground No.1 stand dismissed.

6.4 The Ld. AR, in the course of hearing, has made alternative claim to submit that the shares of BSE have been sold by the assessee during the year under consideration and resultant gains have been offered to tax by taking cost of acquisition of the shares as Rs.10,000/- only. Therefore, if the depreciation on trading rights is not allowed to the assessee, the cost of stated shares would also include the cost of membership card acquired by the assessee in 1994-95. For the said submissions, reliance has been



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placed on recent decision of Tribunal (passed considering third member's decision) titled as **M/s Techno Shares & Stocks Ltd. V/s Addl. CIT, ITA No.5938/Mum/2012** confirmatory order dated 18/10/2019. A copy of the same has been placed on record. It has been submitted that additional ground raised by the assessee was not admitted by learned first appellate authority.

6.5 Keeping in view the stated decision of Tribunal, we find force in alternative submissions made by Ld. AR. Therefore, we direct Ld. CIT(A) to admit this ground of appeal and re-adjudicate the same on merits after due appreciation of factual matrix and keeping in view the cited decision of the Tribunal. The assessee is directed to provide the requisite documentary evidences to substantiate the same. Ground Nos. 4 & 5 stands allowed for statistical purposes.

7. Ground No. 6 is general in nature.

8. In the result, the appeal stands partly allowed in terms of our above order.

Order pronounced in the open court on 19th November,2019

Sd/-

(Mahavir Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 19/11/2019
Sr.PS:- **PP,SPS



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आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**