

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH KOLKATA

[Before Sri S. S. Godara, Judicial Member]

आयकर अपीलसं./I.T.A No.1462/Kol/2019

(निर्धारण वर्ष / Assessment Year: 2006-07)

Dipnarayan Management Pvt. Ltd. C/o P.K. Himmatsinghka, 41, B.B. Ganguly Street, 2 nd Floor, Kolkata.	Vs.	ITO, Ward-6(1), Kolkata
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCD0963B		
(Appellant)	..	(Respondent)

Appellant by : Shri Pramod Kumar Himmatsinghka, Advocate

Respondent by : Shri Dhrubajyoti Ray, JCIT, Sr. DR

सुनवाई की तारीख/ Date of Hearing : 11/11/2019

घोषणा की तारीख/Date of Pronouncement : 27/11/2019

आदेश / O R D E R

Per Shri S. S. Godara:

This assessee's appeal for assessment year 2006-07 arises against the Commissioner of Income Tax (A) - 7, Kolkata order dated 25.03.2019 passed in case No.907/CIT(A)-7/Ward-6(1)/Kol/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 raises following substantive grounds in the instant appeal:

"1. That under the facts and circumstances of the case Ld CIT(A) and the Assessing Officer both were not justified in not examining the specific direction of ITAT Kolkata whether the assessee is in trading of shares or in speculation business.

2. That the CIT(A) erred in computing the total income Rs. 1,44,25,413/- arbitrarily & compare the other source of income Rs. 8,72,413/- to decide the exception of explanation to sec. 73.

3. That the CIT(A) erred in confirming the order of AO in holding that company's principal business is not granting of Loan & Advances and thereby erred in applying the rigors of explanation to section 73 and disallowed the set-off of share trading loss Rs. 5,95,000/- with other business income."

3. Both the learned representatives invite our attention to the CIT(A)'s detailed discussion declining the assessee's impugned set off of interest income against share trading losses as under:

"4. Ground Nos. 1 to 3

These grounds are on the common issue and directed against the action of the AO treating the trading loss of 5,95,000/- in shares to be speculative in nature and therefore not permissible to be set off against any other source of income as per explanation to section 73 of the Act. The issue is to be seen in the backdrop of the Explanation to section 73 of the Act. To make it brief, the said Explanation says that any company carrying on any business and also indulges in trading in equity shares would be considered in indulging in speculative business as far as the transactions in the shares are concerned. However, if the said company has major income chargeable to tax on account of Interest on Securities, Income from House property, Income from Capital Gains and Income from Other Sources or if the said company is principally engaged in the business of banking or the granting of loans and advances, the said company would not be hit by the said Explanation to section 73. In this backdrop, I find that the issue at hand is only to be decided on the legal provisions of the Act based on the facts of the case. I find that interest income earned by the appellant during the year is 8,57,826/- (including TDS amounting to 1,88,769/-). The income from interest on fixed deposit and I.T. refund is only 14,587/-. Therefore, total income from other source comes out to be 8,72,413/- out of total income of 1,44,25,413/-. The proportion of income from other source comes out to be only 6.04% of the total income. It is also found that the total amount of capital in the present case is 5,06,55,000/-, however, the loans and advances granted is only 70,95,612/- which again comes out to 14% of the total capital. Hence, the appellant is neither having the major income from other source nor the major business is granting of loans and advances. Hence, the transactions are deemed to be of speculative business and the loss thereof is not to be adjusted with any other income, except gain from speculation business. Considering the facts and in the circumstances of the case, I find no infirmity in the action of the AO."

4. It is clear that both the learned lower authorities have applied section 73 Explanation for not setting off assessee's interest income amounting to Rs.8,72,413/- against share trading losses of Rs.5,95,000/- on the ground that the former sum is only 6.04% of the total income of Rs.1,44,25,413/- followed by total capital of Rs.5,06,55,000/- turning out as much more than loans/advances of Rs.70,95,612/- and therefore, he concludes as per head of income as well capital with the assessee's case is covered under section 73 Explanation.

5. I have given my thoughtful consideration to rival contentions. I find no merit in the CIT(A)'s twin reasoning. This tribunal's decision in M/s Sonal Tieup Pvt. Ltd. Vs. CIT ITA No.827/kol/2009; after taking into account hon'ble jurisdictional high court's judgment in ITA No.860 of 2008 CIT vs. Shree Salasar Properties & Finance (P) Ltd., holds that it is the income and not deployment of capital/funds which forms necessary criteria for deciding the principal business of a company for the purpose of set off losses. I go by the very reasoning to reiterate that the assessee's interest income of Rs.8,72,413/- is much more than the share trading

losses involving net figures of Rs.5,95,000/-. The assessee's principal business therefore is not covered u/s 73 Explanation since its interest income exceeds the losses derived from share trading in other words. I accordingly accept the assessee's set off claim. The Assessing Officer is directed to finalise the necessary computation as per law.

6. This assessee's appeal is allowed.

Order is pronounced in the open court on 27.11.2019.

Sd/-
(S. S. Godara)
JUDICIAL MEMBER

कोलकाता /Kolkata;
दिनांक/ Date:27/11/2019
(RS, Sr.PS)

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. The Appellant - Dipnarayan Management Pvt. Ltd.
2. The Respondent- ITO, Ward-6(1), Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A), Kolkata [sent through email]
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata [sent through email]
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Assistant Registrar,
I.T.A.T, Kolkata Benches,
Kolkata.