

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI 'SMC' BENCH, NEW DELHI**

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 248/DEL/2019
[Assessment Year: 2015-16]

PARESEE LEASING & FINVEST LIMITED, Vs. ITO, WARD 19(1),
E-10, PRASHANT VIHAR, NEW DELHI
ROHINI, NEW DELHI-85
(PAN: AAACP6846N)
[Appellant] [RESPONDENT]

Assessee by: Sh. Rajiv Jain, CA
Revenue by : Sh. Manoj Kumar Chopra, Sr. DR.

ORDER

This appeal by the assessee is preferred against the order of the Ld. Commissioner of Income Tax [Appeals]-7, New Delhi dated 29.10.2018 pertaining to assessment year 2015-16 on the following grounds:-

1. That on the facts and in the circumstances of the appellant's case, the Id. CIT(A)-7, New Delhi was wrong in upholding the undated assessment order passed by the Id. AO for A.Y. 2015-16 u/s 143(3) of the Act, in so far as it related to the disallowance of business loss of Rs. 28,59,109/- and the addition of Rs. 1,42,955/- as undisclosed income, completely disregarding the credibility of the documentary evidences and the related judgments of the higher authorities furnished/cited in the course of assessment as well as appellate proceedings.
2. That where Id AO while completing the assessment, referred to and heavily relied upon the investigation material/ report of the Investigation Wing of the Income Tax Department

and the orders of the SEBI which demonstrated the abuse of the process of various regulators/ agencies, stock exchange, the high court etc. in designing and implementing the penny stock scheme to create a fictitious market on the public portal of BSE and where the assessee company executed genuine share transactions through legal means, the Id CIT(A)-7 New Delhi was wrong in sustaining the conclusions of the Id AO and treating the share transactions of the assessee company as sham and bogus in the guise of circumstantial evidence and applying the principle of preponderance of probabilities citing several judicial pronouncements not relevant to the case of the assessee company, without bringing any specific adverse material, related to the assessee company, on record and without demonstrating any indulgence of the assessee company therein.

3. That where the assessee company has placed on record sufficient independent evidences in the form of contract notes, brokers statements etc. evidencing share transactions resulting into loss, the Id CIT(A) was wrong in upholding the order of the Id. AO in labeling the otherwise genuine share transactions as sham in a generalized manner presuming all investors in the concerned stock as beneficiary of the alleged penny stock scheme without conducting any assessee specific enquiry and consequently, disallowing a sum of Rs. 28,59,109/- incurred as loss by assessee company thereof.

4. That where Id AO heavily relied upon and used the investigation report and the statements of various unidentified persons/material to build his case and arriving at his conclusions and despite specific request made in this behalf, he failed to provide cross examination to the assessee company, the order of the Ld. CIT(A) holding that the AO was under no obligation to allow cross examination of persons, is not tenable in the eye of law.

5. That the Ld. CIT(A) was wrong in upholding the allegation of the AO that the assessee company had rerouted its own unaccounted money to generate loss which was based purely on surmises and conjectures and was without any substance or material brought on record against the assessee company.

6. That the Ld. CIT(A) further erred in upholding the addition made by the AO by estimating and adding commission of Rs. 1,42,955/- (@5% on Rs. 28,19,109/- thereof) alleged to have been paid for availing the loss.

7. That the appellant crave leave to this Court to add, amend, alter or withdraw any ground at the time of hearing.

2. The brief facts of the case are that assessee filed its e-return of income on 28.09.2015 declaring loss of Rs. 50,450/-. The case of the assessee was selected for scrutiny through CASS and order u/s. 143(3) of the Income Tax Act, 1961 (in short "Act") was passed on 26.12.2017 wherein the AO assessed the income at Rs. 30,52,510/- after disallowance of business loss under penny stock scheme of Rs.

28,59,109/- and disallowance of Rs. 1,42,955/- on account of commission paid to the entry operators @5% of Rs. 28,59,109/-. Against the assessment order, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 29.1.2018 has dismissed the appeal of the assessee. Against the impugned order dated 29.1.2018, assessee is in appeal before the Tribunal.

3. At the time of hearing, Ld. Counsel for the assessee drew my attention towards Paper Book filed by the assessee containing pages 1-43 in which the assessee has attached the copy of show cause notice dated 5.12.2017; copy of letter dated 11.12.2017 filed before the AO; statement showing details of purchases / sales of shares made during the year 2014-15; copy of stock summary; copy of financial ledger and contract note of broker M/s Rajgul Securities (P) Ltd. in evidence of sale of shares of M/s Turbotech Engineering Ltd; copy of financial ledger and contract notes of broker M/s Pee Aar Securities Ltd. in evidence of purchase and sale of shares of M/s Cressanda Solutions Ltd; copy of Dmat account statement for the year 2014-15; stock price quotations of M/s Turbotech Engineering Ltd. and M/s Cressanda Solutions Ltd. on relevant dates extracted from the BSE portal; copy of relevant bank statement in evidence of payment / receipt of purchase and sale consideration of shares; copy of written submissions furnished before the Ld. CIT(A)-7, New Delhi and copy of ITR-V alongwith computation of income for AY 2015-16. In addition to the Paper Book, Ld. Counsel for the assessee also filed Note on distinguishing facts of the case Suman Poddar vs. ITO decided on 22.11.2019 by the Hon'ble Supreme Court of India in SLP(C) No. 26864/2019 (arising out of impugned final judgment and order dated 17.9.2019 in ITA No. 841/2019 passed by the Hon'ble High Court of Delhi at New Delhi) and various case laws delivered by the Hon'ble Delhi High Court and the Tribunal. He requested that the short term capital loss claimed by the assessee is a genuine and deserve to be allowed by accepting the appeal filed by the assessee.

4. On the contrary, Ld. DR relied upon the order passed by the Ld. CIT(A). Ld. DR also filed the written submission supported by various decisions rendered by the Hon'ble High Court and the Hon'ble Supreme Court of India as well as ITAT, Delhi Benches including the Hon'ble Delhi High Court decision dated 08.3.2019 in the case of Udit Kalra vs. ITO in ITA No. 220/2019 & CM No. 10774/2019 and the Hon'ble Supreme Court decision dated 22.11.2019 in the case of Suman Poddar vs. ITO decided in SLP(C) No. 26864/2019. In addition to his written submissions and the judgements, the Ld. DR has also filed the copy of ITAT, 'E' Bench Delhi order dated 14.6.2019 passed in the case of Sh. Sanat Kumar vs. Asstt. Commissioner of Income Tax, Circle 36(1), New Delhi passed in ITA No. 1881/Del/2019 (AY 2014-15). He also draw my attention towards the findings of the Bench and stated that in the present case M/s Cressanda Solution Limited is a Company from where the assessee has purchased and sold the shares and claimed short term capital loss which was suspended by the Bombay Stock Exchange in February, 2013 and business of this company is revoked w.e.f. March, 2013 meaning thereby that this Company is non-existent at the time of purchasing of shares by the assessee. Therefore, this is a sham transaction only to evade the tax and he requested that the appeal filed by the assessee may be dismissed.

5. I have heard both the parties and perused the orders of the revenue authorities including the judgment of the various Benches of the Tribunal, Hon'ble Jurisdictional High Court and the Hon'ble Supreme Court of India especially the ITAT, 'G' Bench decision dated 25.7.2019 passed in the case of Suman Poddar vs. ITO, Ward 39(5), New Delhi in ITA No. 1006/Del/2019 AY 2014-15 in which the undersigned was the Co-Author of the said order dated 25.7.2019 which has been upheld by the Hon'ble Supreme Court of India in the appeal filed by the assessee on 22.11.2019 in the case of Suman Poddar vs. ITO decided in SLP(C) No. 26864/2019. Similarly I have also gone through my order dated 8.1.2019 passed in the case of Udit Kalra vs. ITO in ITA No. 6717/Del/2017 which has been upheld by the Hon'ble Delhi High Court vide decision dated

08.3.2019 in the case of Udit Kalra vs. ITO in ITA No. 220/2019 & CM No. 10774/2019. I have also examined the orders passed by the revenue authorities especially the order of the AO in which the details of shares purchased and sold by the assessee from these 02 companies has been mentioned vide para no. 4, page no. 2 of the assessment order. For the sake of convenience, the relevant para no. 4 is reproduced as under:-

"4. As per details filed by the assessee following transactions held during the year in penny stock namely M/s Cressanda Solutions Limited and M/s Turbotech Engineering Limited in which business losses has been appended:-

	No. Of Shares	Sale of shares		Cost of shares		Business loss
		Date	Sale price	Date	Cost price	
Cressanda Solutions	63000	17.3.15.	6,34,634	30.4.14 & 23.5.14	34,61,695	-28,27,061
Turbotech Engineering	12,800	09.4.14	2,23,952	No detail filed	2,56,000	-32,048/-
	Total	8,58,586			37,17,695	-28,59,109

5.1 After perusing the aforesaid details filed by the assessee for the sale and purchase of shares from Cressnada Solution Limited and Turbotech Engineering and the total loss caused amounting to Rs. 28,59,109/- caused by the assessee, but the sale and purchase of shares of M/s Cressnda Solution Limited details as reproduced above i.e. amounting to Rs. -28,27,061/-, I am supporting my view for disallowing this loss with the decision passed by the ITAT 'E' Bench Delhi order dated 14.6.2019 in the case of Sh. Sanat Kumar vs. Asstt. Commissioner of Income Tax, Circle 36(1), New Delhi passed in ITA No. 1881/Del/2019 (AY 2014-15) in which the Bench has observed that "Investigation Wing has called information u/s. 133(6) of the Act from Bombay Stock

Exchange Company namely Cressanda Solution Ltd. Whose shares have been purchased and sold by the assessee to claim loss was suspended for trade within last 3 years. The AO was specifically replied from the Bombay Stock Exchange i.e. separate record available with Stock Exchange that "as per record available with the exchange, trading in the securities of the Company, Cressanda Solution Ltd. was suspended on account of reduction of capital", thus had become clear that it was merely providing accommodation entries in the form of bogus LTCG/STCG in order to evade the taxes. The contention of the assessee is that she has purchased the shares from banking channels and as such when the purchase is genuine then the sale cannot be questioned itself, because the entire transaction of sale and purchase is to be seen in entirety in the light of attending circumstances is not tenable keeping in view of the facts and circumstances of the present case more particularly when trading of the company i.e. Cressanda Solution Ltd. Was suspended by the Bombay Exchange in February 2013 and revoked w.e.f. March, 2013.

5.2 Keeping in view of the facts and circumstances as explained above as well as the chart of sale and purchase of shares of M/s Cressanda Solution Ltd., I am of the view that assessee has purchased shares of Cressanda Solution Ltd. Shares after suspension /revocation i.e. after February, 2013 and March, 2013, as indicated in the aforesaid Table. Hence, no plausible explanation as well as documentary evidence has been provided by the assessee to contradict this finding. Therefore, the business loss on account of sale and purchase of shares M/s Cressanda Solution Ltd. Rs. -28,27,061/-, is bogus and therefore, the action of the Ld. CIT(A) is hereby affirmed on this issue. As regards commission @5% on this amount is concerned, the same is also confirmed.

5.3 As regards the balance loss of Rs. 32,048/- for the sale and purchase of sales of Turbo Engineering (12,800 shares). After considering the written submissions alongwith the documentary evidences filed by the assessee and some chart filed by the assessee showing the business loss, I am of the view that AO has not asked specifically for the

reasons for causing the loss with supporting evidences and Assessee has also not filed the details to explain the reasons for causing the loss. I am of the view that it would be in the interest of justice, if this issue of business loss Rs. 32,048/- on account of sale and purchase of shares of Turbotech Engineering (12,800) shares be set aside to the file of the Assessing Officer to examine the same as per law, after giving full opportunity to the assessee with the clear directions to the AO to call for the reasons for causing the loss on account of sale and purchase of shares of two companies with the supporting documentary evidences. If the AO is satisfied with the explanation given by the assessee with the supporting evidences, then the AO is at liberty to decide the same, as per law, after giving full opportunity to the assessee to substantiate its claim. I hold and direct accordingly. As regards commission @5% on this amount is concerned, the same is also set aside to the AO with the aforesaid similar directions.

6. In the result, the Appeal of the Assessee is partly allowed for statistical purposes.

The order pronounced on 20.01.2020.

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Dated: 20-01-2020

SRB

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi