

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'G' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No. 8979/DEL/2019
[Assessment Year: 2016-17]

Shri Surpreet Singh Suri
C - 763, New Friends Colony
New Delhi

Vs.

The A.C.I.T.
Central Circle - 06
New Delhi

PAN: AOHPS 9046 K

[Appellant]

[Respondent]

Date of Hearing : 10.02.2020
Date of Pronouncement : 18.02.2020

Assessee by : Shri Sanjiv Sapra, FCA

Revenue by : Shri Saras Kumar, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the assessee is preferred against the order of the
CIT(A) - 24, New Delhi dated 21.10.2019 pertaining to assessment year
2016-17.

2. The first grievance of the assessee relates to denial of set off of trading loss of Rs. 63,76,709/- as claimed out of trading loss of Rs. 3 crores as incurred during the year by the assessee in commodity trading.

3. Second grievance relates to disallowance of short term capital loss of Rs. 2.43 crores.

4. Briefly stated, the facts of the case are that return of income for the year under consideration was E-filed on 18.10.2016, which was processed u/s 143(1) of the Income tax Act, 1961 [hereinafter referred to as 'The Act' for short]. Subsequently, the return was selected for scrutiny assessment through CASS and, accordingly, statutory notices were issued and served upon the assessee.

5. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has claimed loss due to commodity trading amounting to Rs. 3 crores and on perusal of documents submitted by the assessee, the Assessing Officer found that the transactions were done through commodity trading broker M/s Lazara Commodities Pvt Ltd.

6. On the basis of information received through Income Tax Business Application [ITBA], the Assessing Officer came to know that a search operation was conducted on some broker, namely, Ashish Bagwani Group, wherein the statement of Shri Vikas Kumar Agarwal was recorded by the search party and in his statement, Shri Vikas Kumar Agarwal admitted that he is providing accommodation entries and M/s Lazara Commodities Pvt Ltd is one of the companies used by him to accommodate various entry providing entities in the form of unsecured loan, commodity entries etc.

7. On the strength of the statement of Shri Vikas Kumar Agarwal and on his admission that he is providing accommodation entries through various companies, the Assessing Officer found that the broker of the assessee, namely M/s Lazara Commodities Pvt Ltd is one of such companies which is used as a conduit for generating commodity losses. The Assessing Officer issued show cause notice to the assessee asking him to show cause as to why the losses claimed by it should not be disallowed. The assessee was further asked to establish the genuineness of the transaction with M/s Lazara Commodities Pvt Ltd.

8. The assessee filed Income tax papers of M/s Lazara Commodities Pvt Ltd. On perusal of the details furnished by the assessee and on gathering further information from public domain, the Assessing Officer found that M/s Lazara Commodities Pvt Ltd has not filed its financial returns and its registered address is same as registered address of many companies held by Shri Vikas Kumar Agarwal. The Assessing Officer came to the conclusion that M/s Lazara Commodities Pvt Ltd has provided accommodation entries and the assessee is one of the beneficiaries and accordingly, added back the entire loss of Rs. 3 crores.

9. Subsequently, by a rectification order u/s 154 of the Act, the Assessing Officer rectified a mistake apparent from record and disallowed the loss of Rs. 63,76,709/-.

10. The assessee carried the matter before the Id. CIT(A) but without any success.

11. Before us, the Id. counsel for the assessee vehemently submitted that the entire assessment is based upon the statement of Shri Vikas Kumar Agarwal who is not at all related with the transactions of the

assessee. It is the say of the ld. counsel for the assessee that in his statement, Shri Vikas Kumar Agarwal may have admitted to be an accommodation entry provider, but the transaction of the assessee was done with M/s Lazara Commodities Pvt Ltd and only that transaction should have been examined by the Assessing Officer.

12. Per contra, the ld. DR strongly supported the findings of the lower authorities. It is the say of the ld. DR that the onus is upon the assessee to explain the genuineness of the transaction.

13. We have given thoughtful consideration to the orders of the authorities below. The undisputed fact is that the search operation was conducted in Kolkata in respect of Ashsi Bagwani and Group wherein the statement of Shri Vikas Kumar Agarwal was recorded u/s 131 of the Act on 18.05.2017. It is also not in dispute that in his statement, Shri Vikas Kumar Agarwal was confronted with a list of companies which were engaged in providing accommodation entries. It is true that M/s Lazara Commodities Pvt Ltd is one of those companies.

14. Facts on record show that the Assessing Officer did not make any enquiry from M/s Lazara Commodities Pvt Ltd and treated the entire transaction as non genuine and bogus on the strength of the statement of Shri Vikas Kumar Agarwal. We find that vide reply dated 25.12.2018, which is placed at pages 83-84 of the paper book, while submitting the financial and tax details of M/s Lazara Commodities Pvt Ltd, the assessee had made a specific mention that if any direct confirmation from the broker is required for the transactions done with it, the Assessing Officer may obtain directly from the broker by using his powers u/s 133(6) of the Act.

15. We find that the Assessing Officer has not made any independent enquiry from M/s Lazara Commodities Pvt Ltd and disallowed the claim of loss solely on the statement given by Shri Vikas Kumar Agarwal, some entry provider based in Kolkata. We are of the considered opinion that the Assessing Officer should have made enquiry directly from M/s Lazara Commodities Pvt Ltd. Therefore, in the interest of justice and fair play, we restore this issue to the file of the Assessing Officer. The Assessing Officer is directed to make necessary enquiries directly from M/s Lazara Commodities Pvt Ltd and after making necessary enquiries, the Assessing Officer may decide the issue relating

to transactions done by the assessee with M/s Lazara Commodities Pvt Ltd after giving reasonable and sufficient opportunity of being heard to the assessee. Accordingly, Ground No. 1 with all its sub grounds is treated as allowed for statistical purposes.

16. Facts relating to Ground No. 2 show that the assessee has purchased 27800 shares of Get Info Systems Pvt Ltd. for an amount of Rs. 2,46,50,000/- on 04.03.2014. The shares so purchased were sold on 02.12.2015 for total consideration of Rs. 2,78,000/- thereby resulting in short term capital loss of Rs. 2,43,72,000/-. The assessee was asked to substantiate the claim of loss.

17. In its reply, the assessee furnished a valuation report valuing the fair market value of share price of Get Info Systems Pvt Ltd as on 31.03.2015 @ 93 paise per share.

18. The Assessing Officer did not believe in the genuineness of the transaction and was of the firm belief that the shares purchased for total consideration of Rs. 2.46 crores on 04.03.2014 were sold for a meager amount of Rs. 27,800/- on 02.12.2015, and that too, to the mother of the assessee himself. According to the Assessing Officer,

this was a colourable transaction to claim short term capital loss to be set off against the long term capital gain. Accordingly, the loss was disallowed, which was confirmed by the ld. CIT(A).

19. Before the ld. CIT(A), the ld. counsel for the assessee stated that the fair market value of the share price of Get Info Systems Pvt Ltd as on 31.03.2015 is supported by valuation report which has been simply discarded by the lower authorities. It is the say of the ld. counsel for the assessee that the valuation is based upon Rule 11UA of the IT Rules, 1962.

20. Per contra, the ld. DR supported the findings of the Assessing Officer and reiterated that the entire transaction is a colourable device to claim set off of loss.

21. We have given thoughtful consideration to the orders of the authorities below. It is true that the shares purchased for a consideration of Rs. 2.46 crores on 04.03.2014 were sold for a meager amount of Rs. 27,800/- within 18 months from the date of purchase. The fact that the shares were sold to the mother of the assessee, raises a suspicion on the genuineness of the transaction.

22. We are surprised to find that when the shares were purchased, the Assessing Officer did not make any enquiry and at the time of sale, the Assessing Officer is questioning the purchase price of the shares. Further, Rule 11UA of the Rules contains rules for determination of fair market value and Rule 11UA(1)c)(b) of the Rules provides for determination of fair market value of unquoted equity shares. Though the assessee has furnished a valuation report, but whether the said report is in line with the relevant rules has not been examined by the Assessing Officer.

23. We, accordingly, restore this issue to the file of the Assessing Officer. The Assessing Officer is directed to examine the valuation report to determine whether the same is in line with Rule 11UA of the Rules. The Assessing Officer may also make necessary enquiries from the valuer and after giving reasonable and fair opportunity of being heard to the assessee, decide the issue afresh.

24. We would like to make it clear that at this stage, the Assessing Officer cannot go into the valuation of purchase price of shares and will only make enquiries in respect of selling price to decide the

issue afresh. This grievance is also treated as allowed for statistical purposes.

25. In the result, the appeal of the assessee in ITA No. 8979/DEL/2019 is treated as allowed for statistical purposes.

The order is pronounced in the open court on 18.02.2020.

Sd/-

Sd/-

**[SUCHITRA KAMBLE]
JUDICIAL MEMBER**

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 18th February, 2020.

VL/

Copy forwarded to:

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

Asst. Registrar
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
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