

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH KOLKATA**

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

**आयकर अपीलसं./I.T.A No.2454/Kol/2019**

**(निर्धारण वर्ष / Assessment Year: 2012-13)**

|   |            |                                 |
|---|------------|---------------------------------|
| <b>M/s Budge Budge Carbon Ltd.</b><br>6, Old Post Office Street, 4 <sup>th</sup> Floor,<br>Kol-1. | <b>Vs.</b> | <b>ITO, Ward-5(3), Kolkata.</b> |
| <b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCB2390J</b>  |            |                                 |
| <b>(Appellant)</b>  | <b>..</b>  | <b>(Respondent)</b>             |

Appellant by : Shri Manoj Kataruka, Advocate

Respondent by : Smt. Ranu Biswas, Addl. CIT

सुनवाई की तारीख/ Date of Hearing : 28/01/2020

घोषणा की तारीख/Date of Pronouncement : 21/02/2020

**आदेश / O R D E R**

**Per Shri S. S. Godara:**

This assessee's appeal for assessment year 2012-13 arises against the Commissioner of Income Tax (A) - 7, Kolkata order dated 09.09.2019 passed in case No.882/CIT(A)-7/Ward-5(3)/Kol/15-16 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's first and foremost ground challenges the correctness of both the lower authorities' action of disallowing/adding its short-term capital loss of Rs.24,62,290/- in the course of assessment as affirmed in the lower appellate proceedings. The CIT(A)'s detailed discussion to this effect reads as under:

*"4.4. I have considered the submission of the AR of the appellant in the backdrop of the assessment order. The issue in hand is whether the disallowance of Rs.24,02,290/- on account of short term capital loss is allowable or not in terms of the facts and circumstances of the case, I have carefully examined the details furnished by the appellant and the arguments put forth by it in support of its claim. On a perusal of the documentary evidences filed by the appellant, it transpires that the contract notes issued by M/s SK Khemka for purchase of 14500 shares of Kwality daily does not mention the essential*

*ingredients of a genuine contract note- i.e., Order No., Order Time, Trade No., Trade Time etc. The appellant states that the payments were made through RTGS. However, merely making the payment to the broker does not prove the genuineness of the transaction. It is also evident that the appellant had merely entered into an arrangement with the broker to book a bogus loss by obtaining a back-dated contract note when the price of the scrip was high. On a further perusal of the assessment order vis-a-vis the details furnished by the appellant, it transpires that the appellant had earned LTCG amounting to Rs.25,07,600/- on sale of unquoted shares of Amritesh Industries (P) Ltd. and the appellant is adjusting the said gains with the STCL of Rs.24,62,290/-. The appellant had clearly tried to colour a bogus transaction into a genuine transaction which is not acceptable. I am of the considered opinion that the AO has made an exhaustive enquiry in the said matter and the evidences filed by the appellant had no merit. In view of the foregoing, I find no infirmity in the order of the AO and this ground stands dismissed.”*

3. Learned Counsel’s only plea during the course of hearing is that both the learned lower authorities have gone by substantial than actual evidence whilst making the impugned disallowance despite the fact that the assessee’s voluminous documentary evidence have proved genuineness of the loss in issue.

4. Learned departmental representative fails to dispute that the assessee’s foregoing detailed evidence has not been considered before disallowing the impugned loss. And also that there is no material on record which could pin-point the corresponding lack of genuineness since the assessee had discharged its onus to this effect per se. I therefore deem it appropriate that the CIT(A) needs to re-examine the entire issue afresh as per law within three effective opportunities of hearing. The assessee is directed to appear before the CIT(A) on or before 31<sup>st</sup> of July 2020. Same order is to follow in assessee’s second substantive ground seeking to delete foreign travelling expenses disallowance of Rs.4,38,452/- in order to prove the commercial expediency element therein.

5. This assessee’s appeal is allowed for statistical purposes in above terms.

Order is pronounced in the open court on 21.02.2020.

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

कोलकाता /Kolkata;

दिनांक/ Date: 21/02/2020

RS

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. The Appellant - M/s Budge Budge Carbon Ltd.
2. The Respondent- ITO, Ward-5(3), 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.