

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'A' BENCH: CHENNAI**

श्री जॉर्ज माथन, न्यायिक सदस्य एवं  
श्री रमित कोचर, लेखा सदस्य के समक्ष

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND**  
**SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1581/Chny/2018  
निर्धारण वर्ष /Assessment Year: 2012-13

M/s.Jayantha Foundations (P) Ltd.,  
No.588, School Road,  
Anna Nagar (West Extn.),  
Chennai-600 101.

v. The Dy. Commissioner of  
Income Tax,  
Corporate Circle-2(2),  
Chennai-34.

**[PAN: AABCJ 5958 N]**

**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by

: Mr.A.Kanagaraj, FCA

प्रत्यर्थी की ओर से /Respondent by

: Mr.AR.V.Sreenivasan, JCIT

सुनवाई की तारीख/Date of Hearing

: 17.03.2020

घोषणा की तारीख /Date of Pronouncement

: 17.03.2020

**आदेश / O R D E R**

**PER RAMIT KOCHAR, ACCOUNTANT MEMBER:**

This appeal filed by assessee is directed against appellate order dated 09.02.2018 passed by learned Commissioner of Income Tax (Appeals)-13, Chennai (hereinafter called "the CIT(A)"), in ITA No.79/CIT(A)-13/2012-13 for assessment Year (ay) 2012-13, the appellate proceedings before learned CIT(A) had arisen from assessment order dated 20.03.2015 passed by learned Assessing Officer (hereinafter called "the AO") u/s.143(3) of the Income-tax Act, 1961 (hereinafter called "the Act").

2. The grounds of appeal raised by assessee in memo of appeal filed with Income-Tax Appellate Tribunal, Chennai (hereinafter called "the Tribunal") read as under:-

1. *The order of the COMMISSIONER OF INCOME TAX(A)13 is contrary to Law, Facts and circumstances of the case and against Natural Justice.*

2. *The CIT(A) is not justified in confirming the order of the Assessing officer assessing the total income of the appellant company at Rs.3,01,46,067 as against Rs.2,78,60,010 returned by the Appellant.*

3. *The CIT(A) has erred in confirming the disallowance of loss of Rs.21,70,387 incurred by the appellant in silver trading stating that the appellant was required to produce the books of account before him to prove the silver transaction which he has never asked for. He has ignored the fact that full details of silver transaction was given in the written submission before him and also the fact that the assessment was made u/s.143(3) after scrutiny and the books of accounts were produced before the Assessing officer with supporting evidence for loss incurred in silver trading.*

4. *The CIT(A) is not justified in not accepting the plea of the appellant that the silver trading transaction entered by the appellant is "Adventure in the nature of Trade." and hence allowable as business loss.*

5. *The CIT(A) is not justified in not considering the alternate plea of the appellant that the loss incurred in silver trading should be allowed as Capital loss and should be allowed to be carried over for future adjustment.*

6. *The CIT(A) is not justified in confirming the disallowance of locker rent of Rs.9970, ignoring the fact the locker was hired for business purpose of the appellant to keep the property documents and other valuables of the company.*

7. *For these and other reasons that may be adduced at the time of hearing, it is prayed that Justice may be rendered to the Appellant by deleting the additions made by the Assessing officer."*

3. Briefly stated facts of the case are that the assessee is a Private Limited Company engaged in the business of building promoters and involved in construction of residential flats. The assessee had made investment in silver to the tune of 142.811 KGs of silver bars at a cost of Rs. 1 Cr. on 27.04.2011 which was sold on 16.02.2012 for a value of Rs. 78,21,613/- , which led to loss of Rs. 21,70,387/-. The assessee claimed said loss as business / trading loss on the grounds that it is an adventure in the nature of trade. This contention of the assessee was not supported

by main object clause of the assessee and the activities carried out by the assessee of being building promoters, while the assessee claimed that its objects as per other object clause in Memorandum of Association are to trade in silver and hence the aforesaid loss be allowed as capital loss. Both the authorities below rejected the contention of the assessee and have come to the conclusion that these are personal loss and cannot be allowed as deduction. The assessee also claimed as alternative plea that the said loss may be allowed as capital loss which plea was also rejected by authorities. There is another disallowance to the tune of Rs. 9,970/- towards locker rent as business expenses which was also disallowed by the authorities below although the assessee stated that the said locker was maintained for keeping the property documents and valuables. Thus, both the authorities viz. AO as well learned CIT(A) dismissed the claim of the assessee for both the deductions.

4. Aggrieved by dismissal of the appeal by learned CIT(A), the assessee is now in appeal before tribunal. We have heard both the parties who have made elaborate arguments.

5. We have considered rival contentions and perused the material on record. We have observed that the assessee is a Private Limited Company engaged in the business of promoters and construction of residential flats. The assessee has stated to have invested Rs.1 Cr. in 142.811 kgs of silver bars on 27.04.2011 out of surplus funds which was sold by assessee on

16.02.2012 for Rs. 78,21,613/- , leading to loss of Rs. 21,70,387/-. The assessee claimed said loss to be business loss or in alternative, without prejudice , to be allowed as capital loss but it was held to be personal loss by both the authorities below and deduction was denied to the assessee. We have observed that the assessee has its own Capital and Reserves to the tune of Rs.2,15,25,724/- as on 31.03.2012, which was earlier to the tune of Rs. 26,76,154/- as on 31.03.2011. As per audited financial statements filed by the assessee for the year ended 31.03.2012, there is a profit after-tax of Rs.1,88,49,570/- during the year under consideration. We have also observed that this is a solitary transaction under taken by the assessee in investing in silver bars and the assessee has neither invested in silver bars prior to this solitary transaction nor invested later in silver bars post completion of this transaction of sale of silver bar on 16.02.2020. In our considered view, based upon entire material on record, said investment made by the assessee is not a business transaction but rather it is an investment made by assessee to earn capital gains and the same is to be considered for taxation under the head 'Capital Gains'. We have also observed that the assessee is a company and not an individual and there is no question of any personal loss in the case of the company as it could not been shown that this transaction is for the benefit of the Directors or the shareholders and hence we held it to be capital investment, income and loss are to be brought to tax under the

head 'capital gains'. So far as locker rent is concerned, the assessee is a corporate entity and it is claimed that the documents and other valuables were kept in the locker for safe custody. We accept the contention of the assessee as the assessee is in business of builders and dealing with valuable property documents which needs safe keeping and we also accept the same keeping in view smallness of the amount. We order accordingly.

6. In the result, the appeal filed by assessee in ITA No.1581/Chny/2018 for ay: 2012-13 is partly allowed as indicated above.

Order pronounced on the 17<sup>th</sup> day of March, 2020 in Chennai.

**Sd/-**

(जॉर्ज माथन)

**(GEORGE MATHAN)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

**Sd/-**

(रमित कोचर)

**(RAMIT KOCHAR)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 17<sup>th</sup> March, 2020.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF