

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI**

**BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No. 2472/Mum/2013
(Assessment Years: 2008-09)**

Amoha Traders P. Ltd., 28 Hamam House, A Doshi Marg, Mumbai – 400023.	बनाम/ Vs.	DCIT 3(1) R.No. 604, Aayakar Bhavan, M.K Marg, New Marine Lines, Mumbai - 20
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACA459Q		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Sanjay Parikh, AR
प्रत्यर्थी की ओर से/Respondent by :	Shri Sunil Deshpande, DR

सुनवाई की तारीख / Date of Hearing	17/11/2020
घोषणा की तारीख/Date of Pronouncement	02/12/2020

आदेश / ORDER

PER PAVAN KUMAR GADALE - JM:

The assessee has filed an appeal against the order of Commissioner of Income Tax (Appeals) -5, Mumbai passed u/s. 143(3) and 250 of the Income Tax Act, 1961.

At the time of hearing, the Ld. AR of the assessee has not pressed the ground of appeal Nos.7 and 8, and the same is treated as withdrawn and dismissed.

The effective grounds of appeal of the assessee are as under:

“1. The Ld. CIT(A) having accepted that the appellant had initiated legal proceedings in the court and has filed a complaint with EOW against Mrs. Madhu jhunjunwala erred in law in upholding the order passed by the Dy. CIT (AO) making an addition of Rs. 88,08,743/- on account of accrued interest on loan given to Mrs. Madhu Jhunjunwal by further holding that the appellant had not brought on record the latest position of the suit filed by them.

2. The appellant prays that the addition on account of accrued interest of Rs. 88,08,743/- as made by the AO and as upheld by the Ld. CIT(A) may be deleted.

3. The Ld. CIT(A) erred on facts and in law in upholding the addition made by the AO u/s 68 with respect to the loan taken by the appellant from Mr. R. Ramanlal amount to Rs. 50,000/- by holding that Mr. R. Ramanlal himself had admitted that he does not have sound financial status and hence the source of deposits by the cash creditor has not been proved.

4. The appellant prays that the addition u/s. 68 of Rs. 50,000/- on account of loan taken from Mr. R. Ramanlal may be held to be genuine and the addition made by the A.O u/s 68 and as confirmed by the CIT(A) may be deleted.

5. The Ld. CIT(A) erred on facts and in law in upholding the order of the AO in considering the trading loss amounting to Rs. 6,02,384/-

6. The appellant prays that your honours hold that the loss of Rs. 6,02,384/- is a trading loss.

2. The Brief facts of the case are that, the assessee is engaged in the business of dealing in shares, securities, commodity trading, futures and options. The assessee filed the return of income on 26.09.2008 with total income of Rs.(-)1,95,32,211/-. The assessee's case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act were issued. In compliance, the Ld. AR of the assessee appeared from time to time and submitted the details and the case was discussed. The A.O on perusal of the financial statements find that the assessee has disclosed the dividend income but there is no disallowance u/s 14A of the Act, therefore, the A.O made an addition under Sec 14A r.w.s Rule 8D of Rs.3,05,522/-. Further A.O. find that the assessee company has given an amount of Rs. 4 Crores to Mrs. Madhu Jhunjhunwala for investment purpose for a period of six months. As per the resolution, the money has to be invested in the equity shares at the discretion of Mrs. Madhu Jhunjhunwala and should yield minimum return of 20% of the investment. Whereas, the A.O wants to tax the estimated interest on such investments. The assessee has filed a detailed reply on 06.02.2010 explaining

that the company has not received any money by way of interest or dividend nor the investment amount was returned by the Mrs Madhu Jhunjunwala. Further, the assessee company has initiated legal proceedings in the court of law and filed complaint with Economic Offence Wing against the party Mrs Madhu Jhunjunwala for the return of principal amount, interest and for bouncing of cheques. Further, it was explained that the company is following mercantile system of accounting and no interest has accrued on the investments. The assessee submitted the copy of the complaint filed with the Economic Offence wing and affidavits filed before Hon'ble High Court. But, the A.O considered the fact that the investments were also made in earlier years and the interest income has to be taxed and calculated interest @ 20% and 24%pa and made addition of Rs.88,08,743/-. Similarly in respect of unsecured loans obtained by the assessee, the explanations were not satisfactory. The A.O found that the assessee has not discharged his burden of proof on loans and made addition of Rs. 5,50,000/- u/s 68 of the Act. The assessee also carried out trading in commodities, and on

verification of the profit and loss account, the A.O. found that Rs. 6, 02,384/- was debited to the profit and loss account as loss on trading in commodities. Since the assessee has not given the suitable reply, the A.O assumed that it should be treated as speculation loss and made the disallowance. Further, the A.O has disallowed the loss on rights premium of Rs.1, 55,000/- and assessed the total income of Rs. (-) 97,12,946/-and passed the order u/s 143(3) of the Act dated 20.12.2010.

3. Aggrieved by the order, the assessee has filed an appeal with the CIT(A), whereas the CIT(A) has confirmed the addition of accrued interest on investments made by the assessee and called for the remand report. In respect of addition u/s 68 of the Act unexplained cash credits of Rs. 5, 55,000/-. The assessee has obtained the unsecured loans from two persons Mr R. Ramnlal Rs. 50,000/- and Mr Manek Sukhadwall Rs. 5,00,000/-. The matter was remanded to the A.O on this particular issue for submissions of details on unsecured loans. The loan creditor has provided the details with cheque Nos. 955355 of Central Bank of India for Rs. 5,00,000/- dated

27.04.2007 and he was employee of New India Assurance Company and after taking VRS, out of the consolidated amount, the loan was provided to the assessee. The CIT(A) find that the explanations of the loan creditor are satisfactory and allowed the relief to the extent of Rs. 5,00,000/- referred at par 4.5 of the order and confirmed the addition of Rs. 50,000/- u/s 68 of the Act. Similarly, CIT(A) has dismissed the ground of appeal on speculation loss and partly allowed the appeal of the assessee. Aggrieved by the order, the assessee has filed an appeal with the Tribunal.

4. At the time of hearing, the Ld. AR of the assessee argued on the first disputed issue of addition on account of accrued interest, that the assessee has not received any interest income or dividend income out of the investments. The assessee has initiated legal proceedings in the court of law and filed a complaint in Economic Offence Wing against the recipient of investment money for the recovery of amount. In such circumstances, the addition made by the A.O on notional basis is bad in law.

4.1 Whereas, in respect of addition of Rs. 50,000/- loan obtained from R. Ramanlal, the contention of the Ld. AR that the additional evidence was filed before CIT(A), the Ld. AR supported with the account copy of loan creditor which was received towards share application money. Whereas in respect of addition on account of speculation loss, the Ld. AR submitted that the matter requires verification of facts that it is a business loss and not a speculation loss and prayed for allowing the appeal. Contra, Ld. DR supported the orders of the CIT(A).

4.2 We heard the rival submissions and perused the material on record. On the first disputed issue with respect to addition of accrued interest on the investments made by the assessee with portfolio management, where 20% assured income is guaranteed by the recipient of the amount. The Ld. AR contentions are that Rs.4 crore are given for investment in equity shares. Since, there is no interest income nor dividend income is received, the assessee has initiated legal proceedings in the court and filed a complaint with Economic Offence Wing. And taxing the assessee with interest income @ 24%

p.a on investment amount provided to the portfolio manager is without any basis. We find that the concept of real income will come into the picture and only real income will be taxable in the hands of the assessee irrespective of the assessee following mercantile system of accounting or cash system of accounting. In the present case, the assessee has made an investment of Rs. 4 crores and on the assurance that 20% of the assured income by investment in equity will be paid to the assessee. Since there is lapse on the part of the portfolio management person and no interest nor dividend income is received. The A.O has estimated the income on such investments. We found that the assessee has not received any income as per the financial statement nor any dividend income on investments has accrued. Further the assessee has initiated legal proceedings against the loan creditor and yet to recover the amount. We found in such circumstances, the A.O has not disputed the fact of filing of complaint and legal proceedings and also there is no real income accrued to the assessee. We are of view that no real income has accrued even though the

assessee follows the mercantile Accounting System. We support our view relying on the Hon'ble Supreme court decision of Godhra Electricity Co Ltd VS Cit (SC) 225 ITR 747 (SC) and CIT Vs Shoorji Vallabhdas &Co 46 ITR 144 (SC). Accordingly, the estimation of interest income is not tenable and the notional income cannot be hypothetical basis for making an addition by the A.O, and we set aside the CIT(A) order on this particular ground of appeal and direct the A.O to delete the addition and allow the ground of appeal of the assessee.

5. Whereas on the second disputed issue with respect to addition u/s 68 of the Act, we find that the CIT(A) on this disputed issue has granted the partial relief based on the evidences filed in the course of the appellate proceedings and remand report. Whereas, in respect of Rs. 50,000/-addition sustained by the CIT(A). Even before us, the assessee could not substantiate with any evidence of the sources. Accordingly, we find, there is no merits in the submissions of the Ld.AR and confirmed the order of the CIT(A) on this disputed issue and dismiss the ground of appeal of the assessee.

6. The third disputed issue is with regard to disallowance of trading loss treated as speculation loss. The LdAR submitted that the tax authorities have not considered the various facts, which were placed in the hearing proceedings and prayed for an opportunity to substantiate with evidences before lower authorities. We find this matter requires verification of facts and accordingly, we restore the disputed issue for limited purpose to the file of the A.O to verify and examine the facts on trading in commodities and allow the ground of appeal for statistical purposes.

7. In the result, the assessee appeal is partly allowed for statistical purposes.

Order pronounced in the open court on 02.12.2020

Sd/-

(PRAMOD KUMAR)
VICE PRESIDENT

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 02/12/2020

KRK, PS