

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

**BEFORE SHRI C.N. PRASAD (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 2259/MUM/2019  
Assessment Year: 2014-15**

Memani Investment & Finance Pvt. Ltd., 2504, Shivshakti Apartments, Vastu Lane, Sundervan Complex, Andheri (W), Mumbai-400053. <b>PAN No. AADCM 3332 P</b> <b>Appellant</b>	Vs.	ITO-10(2)(4), Mumbai.  <b>Respondent</b>
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Assessee by	:	Mr. Narayan Atal, AR
Revenue by	:	Ms. Smita Verma, DR

Date of Hearing	:	07/01/2021
Date of pronouncement	:	12/01/2021

**ORDER**

**PER N.K. PRADHAN, A.M.**

This is an appeal filed by the assessee. The relevant assessment year is 2014-15. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-17, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the assessee read as under :

1. The Ld. CIT(A) erred in upholding the addition of Rs.2,38,047/- as income from undisclosed investments and Rs.3,45,809/-, being disallowance of loss claimed on the alleged undisclosed investments, aggregating to Rs.5,83,856/-.

The appellant submits that on the facts and circumstances of the case and in law the addition of Rs.5,83,856/- is not justified and ought to be deleted.

2. The Ld. CIT(A) erred in upholding the addition on the basis of wrong appreciation of the facts made by ITO, that the shares of few companies are not listed in the demat holding statement submitted during the course of assessment, on the basis of which he considered those shares as undisclosed investments.

The appellant submits that the shares are listed/reflected in the demat statement but the names of those few said companies were in abbreviation forms in the demat statement submitted to AO.

3. The Ld. CIT(A) erred in not giving proper opportunity to represent the case and passed the order ex-parte without taking into consideration all the facts leading to the addition of Rs.5,83,856/-.

3. Briefly stated, the facts of the case are that the assessee filed its return of income for the assessment year (AY) 2014-15 on 23.09.2014 declaring loss at Rs.8,46,852/-. The assessee is registered as an NBFC with Reserve Bank of India and engaged in business of investment & finance. As recorded by the AO, during the course of assessment proceedings, the assessee was asked to furnish details of long term capital loss declared at Rs.48,025,974/-. The AO issued notice u/s 133(6) to the Depository, HDFC Securities who furnished the Demat statement of the assessee from 01.04.2012 onwards. On perusal of the Demat statement received from HDFC Securities, the AO noticed that a few companies were not listed in the Demat holding statement, whereas the assessee had declared to have sold and booked long term capital gain/loss. In response to a query raised by the AO, the assessee filed copies of broker notes. However, the assessee failed to file the broker notes pertaining to the related stocks/scrips as recorded by the AO. Therefore, observing that the related shares have not been disclosed before the Department at the time of purchase, the AO added back the sale

consideration of Rs.2,38,047/- to the total income of the assessee as undisclosed investment and also disallowed the claim of loss of Rs.3,45,809/-.

4. The Ld. CIT(A) mainly dismissed the appeal filed by the assessee on the ground of total non-compliance.

5. Before us, the Ld. counsel for the assessee submits that the shares sold of various companies as per table on para 5.1 of the assessment order are reflected in the Contract-cum-Bill of the share broker as well as Demat holding statement with HDFC Bank. In this regard, he filed a *Paper Book* containing copies of relevant statements of the HDFC Depository and Broker Notes relating to the transfer and sale of the said shares.

It is explained by the Ld. counsel that the following table gives the corresponding entry in the Broker Note and the Demat holding Statement:

Sr. No.	Name of the Company	Page No. on which Transfer from Demat Account is reflected	Page No. on which sale in Broker Note is reflected
1	State Bank of Bikaner & Jaipur	5	21
2	IL & FS Transportation	3	16
3	National Radio Electric (NELCO Limited)	4	19 & 25
4	Pantaloon Retail (Pantaloon Fashion & Retail Limited)	9	14
5	Pantaloon Retail (Future Retail Limited)	8	12
6	Pipavav ship (Pipavav Defence and Offshore Eng. Co. Ltd.)	4	20
7	TNPL (Tamil Nadu Newscript & Papers Ltd.)	6	23

On the other hand, the Ld. Departmental Representative (DR) submits that the order of the AO has been rightly affirmed by the Ld. CIT(A).

6. We have heard the rival submissions and perused the relevant materials on record. In para 5.2 of the assessment order dated 28.12.2016, the AO has mentioned that the Broker Notes pertaining to the concerned stocks/scripts could not be filed by the assessee. Further, in para 5.3 of the said order, the AO has mentioned that the said scripts are not found in the holding list called for from the Depository, M/s HDFC Securities Ltd.

In the order dated 19.02.2019, the Ld. CIT(A) confirmed the order of the AO, mainly because of non-compliance by the assessee.

Having examined the relevant documents, we are of the considered view that the disputes in the present case could be resolved by an examination of the corresponding entry in the Broker Note and the Demat holding Statement. An essential ingredient in this context is the relevant statement of the HDFC Depository and Broker Notes relating to the transfer and sale of the concerned shares. To examine in this context would be, whether the shares sold of various companies as per table on para 5.1 of the assessment order are reflected in the Contract-cum-Bill of the Share Broker as well as the Demat holding Statement with HDFC Bank.

Thus considering the facts and circumstances of the case, we set aside the order of the Ld. CIT(A) and restore the matter to the file of the AO to make a *de novo* order after giving reasonable opportunity of being heard to the assessee. We direct the assessee to file the relevant documents/evidence before the AO.

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

**Order pronounced in the open Court on 12/01/2021.**

Sd/-  
(C.N. PRASAD)  
JUDICIAL MEMBER

Sd/-  
(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Mumbai;

Dated: 12/01/2021

Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Assistant Registrar)  
**ITAT, Mumbai**