

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

BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER)
AND
SHRI RAJESH KUMAR (ACCOUNTANT MEMBER)

I.T.A. No.6286/Mum/2019
(Assessment year 2011-12)

DCIT-9(1)(1), Mumbai	vs	M/s Aarohee Management Consultancy Pvt Ltd,9, Shri Gurchhaya, Tejpal Scheme Road No.02, Vile Parle (E), Mumbai-400 057 PAN : AAAECA8306N
APPELLANT		RESPONDENT

Appellant by	Smt. Smita Verma, DR
Respondent by	Shri Rajiv Khandelwal, AR

Date of hearing	01-07-2021
Date of pronouncement	29-07-2021

ORDER

Per : Saktijit Dey (JM):

This is an appeal by the revenue against order dated 23-07-2019 of learned Commissioner of Income Tax (Appeals)-16, Mumbai for the assessment year 2011-12.

2. Briefly the facts are, the assessee is a resident company engaged in the business of dealing and trading in shares and securities. For the assessment year under dispute, assessee filed its return of income on 29-09-2011 declaring total income of Rs.44,85,363/-. Subsequently, based on information received from the Investigation Wing at Ahmedabad that the assessee has availed the benefit of short

term capital loss of Rs.1,16,417/- from sale of shares of M/s Devika Proteins Ltd, alleged to be a shell company, the assessing officer reopened the assessment under section 147 of the Act. In course of assessment proceedings, the assessing officer, after issuing a show cause notice to the assessee as to why the short term capital loss of Rs.1,16,417/- being the loss from sale of shares of M/s Devika Proteins Ltd should not be disallowed, ultimately completed the assessment by adding back the amount of Rs.1,16,417/-. Assessee contested the aforesaid addition by filing appeal before learned Commissioner (Appeals). After considering the submissions of the assessee in the context of facts and materials on record, learned Commissioner (Appeals) deleted the addition made by the assessing officer.

3. We have considered rival submissions and perused materials on record. It is evident, the Investigation Wing of the department at Ahmedabad had forwarded certain information to the assessing officer indicating that M/s Devika Proteins Ltd is a shell company and the assessee is a beneficiary of gain / loss derived from transacting in shares of the aforesaid company. However, it is evident, from the stage of assessment proceedings itself the assessee had very clearly and categorically stated that it has not transacted in any scrip of M/s Devika Proteins Ltd during the year. In support of such claim, assessee not only has furnished an affidavit but also a statement from the broker. Despite the assertion of the assessee that it has not transacted in the shares of M/s Devika Proteins Ltd, the assessing officer went ahead to disallow the alleged long term capital loss of Rs.1,16,417/- and added it back to the income of the assessee. However, being convinced with the submissions of the assessee that it had not

transacted in shares of M/s Devika Proteins Ltd, learned Commissioner (Appeals) has deleted the addition.

4. Before us also, learned counsel for the assessee has vehemently urged that during the year under consideration, neither the assessee had transacted in shares of M/s Devika Proteins Ltd nor has shown any loss from such transaction. On a perusal of materials on record and particularly from the observations of learned Commissioner (Appeals), we have observed that not only before the assessing officer, but even before learned Commissioner (Appeals), the assessee had furnished documentary evidence in support of its claim that it had not transacted in shares of M/s Devika Proteins. Even before us, the revenue has not been able to furnish any material to controvert the assertion of the assessee that it had not transacted in the shares of M/s Devika Proteins Ltd and has not booked any loss. That being the case, we are unable to interfere with the decision of learned Commissioner (Appeals). Grounds are dismissed.

5. In the result, both the appeal is dismissed.

Order pronounced on 29/07/2021.

Sd/-

sd/-

RAJESH KUMAR	SAKTIJIT DEY
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dt : 29/07/2021

Pavanan

Copy to :

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

/True copy/

By Order

Asstt. Registrar, ITAT, Mumbai