

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

**BEFORE SHRI S.RIFUAR RAHMAN (ACCOUNTANT MEMBER) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No.774/MUM/2019
(Assessment Year: 2014-15)**

Jt. Commissioner of Income Tax (OSD), Central Circle-7(1) R. No. 676B, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai – 400 020	Vs.	M/s Hillview Impex Pvt. Ltd. 118/120, 3 rd Floor, Ashok House, Opp. Khara Kuwa, Zaveri Bazar, Mumbai – 400 002
---	-----	---

PAN No. AACCH2338F

(Revenue)

(Assessee)

Assessee by	: Shri Vivek Shah, A.R
Revenue by	: Shri Gurbinder Singh, D.R

Date of Hearing	: 12/08/2021
Date of pronouncement	: 29/09/2021

ORDER

PER RAVISH SOOD, J.M:

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-49, Mumbai, dated 19.11.2018, which in turn arises from the order passed by the A.O u/s 143(3) of the Income Tax Act, 1961 (for short 'Act'), dated 30.12.2016 for A.Y 2014-15. The revenue has assailed the impugned order on the following solitary ground before us:

“On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in allowing the appeal when the loss of Rs.4,00,08,550/- booked by the assessee in manipulated penny stocks is sham and bogus in nature.”

2. Briefly stated, the assessee company which is engaged in the business of trading and investment in shares and securities had filed its return of income for A.Y 2014-15 on 30.09.2014, declaring a loss of (-) Rs.4,00,72,252/-. Subsequently, the case of the assessee was selected for scrutiny assessment u/s 143(2) of the Act.

3. During the course of the assessment proceedings, it was observed by the A.O that as per the information received from the Kolkata Investigation Directorate the assessee had traded in penny stocks of M/s Shreenath Commercials and M/s Tuni Textiles Mills in Bombay Stock Exchange (BSE) and had fraudulently booked 'Short Term Capital Loss' (STCL) of Rs.3,86,56,040/-, as under :

Scrip Name : 12105 Shreenath commercials & 31411 Tuni Textiles								
	Buy				Sell			
Scrip code	quantity	rate	Amount		quantity	rate	Amount	Loss
12105	100000	39.68	Rs. 3967920		100000	8.71	Rs. 871000	(-) 3096920
31311	1460500	25.65	Rs. 37457770		1460500	1.30	Rs. 1898650	(-) 35559120
							Business Loss : Rs. 3,86,56,040/-	

After exhaustively referring to the findings of the Investigation wing and the modus operandi that was adopted by the operators for facilitating booking of accommodation entries in the form of LTCG/STCL, the A.O concluded that the business loss that was booked by the assessee was nothing but a prearranged method that was adopted by him to evade taxes. Backed by his aforesaid observations, the A.O added the loss of Rs.3,86,56,040/- as an unexplained cash credit u/s 68 of the Act. Resultantly, the A.O vide his order passed u/s 143(3) after making the aforesaid addition scaled down the returned loss of the assessee company to an amount of (-) Rs.14,16,212/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). It was submitted by the assessee before the CIT(A) that the A.O had failed to appreciate the correct factual position and had most erroneously made an

addition of Rs.3,86,56,040/- u/s 68 of the Act. It was submitted by the assessee that it had during the year suffered a business loss of Rs.4,01,11,372/- out of which loss of Rs.4,00,68,550/- had arisen due to change (i.e decrease) in the value of inventory. Backed by the aforesaid facts, it was submitted by the assessee that the A.O had made a glaring error in treating the business loss that was suffered by it due to change in value of inventory as a loss due to sale of shares. Considering the aforesaid factual position, it was observed by the CIT(A) that the assessee had not undertaken any trading during the year. It was further observed by the CIT(A) that the loss returned by the assessee was on account of diminution in the value of inventory and not a trading loss or a capital loss. In the backdrop of the aforesaid facts, the CIT(A) was of the view that it was not only beyond comprehension as to from where the A.O had inferred that the assessee had suffered a loss from trading of the scrips, but also as to on what basis he had worked out the said impugned loss at an amount of Rs. 3,86,56,040/-. It was categorically observed by the CIT(A) that the assessment order was totally silent on how the figure of loss was arrived at as well as when the shares under consideration had been sold by the assessee. Noticing that the shares in question were still held by the assessee in the succeeding assessment year i.e A.Y. 2015-16, the CIT(A) observed that it could not be understood that as to how the A.O had concluded that the assessee had made a loss from the sale of shares of the above referred two scrips, which thereafter as per him had been set-off against his other income. Taking note of the fact that the assessee had not sold the shares in question and the loss returned by him was on account of diminution in the value of inventory and not a trading loss or capital loss, the CIT(A) vacated the addition made by the A.O.

5. The revenue being aggrieved with the order passed by the CIT(A) has carried the matter in appeal before us. The Id. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities. On being confronted that

as to on what basis the A.O had concluded that the assessee had made a loss from the sale of shares of the above referred two scrips and also the basis for quantification of the same, the Id. D.R failed to come forth with any reply.

6. Per contra, the Id. Authorized Representative (for short 'A.R') relied on the order of the CIT(A). It was submitted by the Id. A.R that the A.O had on the basis of a glaringly incorrect and misconceived facts made an addition of Rs. 3,86,56,040/- u/s 68 of the Act, which thereafter had rightly been vacated by the first appellate authority.

7. We have heard the Id. Authorized Representatives for both the parties, perused the orders of the lower authorities and the material available on record. As observed by us hereinabove, the assessee company which is engaged in the business of trading and investment in shares and securities had been holding scrips of three companies, viz. M/s Royal India Corporation Ltd. (5,30,000 shares); M/s Shreenath Commercials and Finance Ltd. (1,00,000 shares); and M/s Tuni Textiles Mills Ltd. (14,60,500 shares) as stock-in-trade of its aforesaid business of trading in shares and securities. The shares of M/s Shreenath Commercials & Finance Ltd. (1,00,000 shares) and M/s Tuni Textiles Mills Ltd. (14,60,500 shares) were purchased by the assessee in the financial year 2012-13 at the rates prevailing on the relevant dates and were recorded at cost. The aforesaid shares were valued on 31.03.2013 and thereafter on every 31st March of each financial year at the rates prevailing on the relevant dates. During the A.Y 2014-15, the abovementioned shares not having been traded at all by the assessee were thus valued as on 31.03.2014 at the rates prevailing as on that date. As is discernible for the records, we find that the price of the aforesaid shares had drastically fallen during the year under consideration i.e A.Y. 2014-15, details as regards which are culled out as under:

Particulars	Purchase Cost	31.03.2013	31.03.2014
M/s Shreenath Commercial &	Rs.39.60 (26.02.2013)	Rs.20.80	Rs.8.32

Finance Ltd. (now known as Proaim Enterprises Ltd.)			
M/s Tuni Textiles Mills Ltd.	Rs.27.35 (01.03.2013) Rs.26.90 (04.03.2013) Rs.26.00 (06.03.2013) Rs.25.60 (07.03.2013) Rs.25.20 (08.03.2013) Rs.24.80 (11.03.2013) Rs.24.45 (12.03.2013)	Rs.20.30	Rs.1.25

Accordingly, it was on the basis of the aforesaid drastic fall in the price of the aforesaid shares that the assessee had suffered a loss of Rs.4,00,08,550/- on account of valuation of inventories. As is discernible from the order of the CIT(A), we find that it was observed by him that the assessee had returned a loss of Rs.4,00,72,252/- (out of which the loss of Rs.4,00,08,550/- was on account of valuation of inventories). Accordingly, taking cognizance of the aforesaid incorrect and misconceived facts on the basis of which the A.O had concluded that the assessee had booked a bogus loss of Rs. 3,86,56,040/- on sale of the aforesaid shares and added the same u/s 68 of the Act, the CIT(A) had vacated the aforesaid addition by observing as under :

“7.0 The second and third grounds of appeal are against the addition of Rs.3,86,56,040/- as sale proceeds of shares u/s. 68 of the IT Act. The AO observed in the assessment order that the return of income was filed by the assessee declaring a total loss of Rs.4,00,72,252/-. He thereafter went on to explain the modus operandi followed by certain entry operators in Kolkata. He referred to the information received from the Investigation Directorate of Kolkata and stated that the assessee has dealt in two penny stock shares, Shreenath Commercial and Finance Ltd and Tuni Textiles Mills Ltd. According to the AO, the assessee had fraudulently booked short term capital loss of Rs.3,86,56,040/- from sale of the scrips of these two companies. The details of the loss according to the AO are as under:

Business Loss on sale of shares in assessee's case:

Scrip name: 12105 Shreenath commercials & 31411 Tuni Textiles								
	Buy				Sell			
Scrip Code	Quantity	Rate	Amount		Quantity	Rate	Amount	Loss
12105	100000	39.68	3967920		100000	8.71	871000	(-) 3096920
31411	1460500	25.65	37457770		1460500	1.30	1898650	(-) 35559120
Business Loss Rs.3,86,56,040/-								

7.1 As seen from the above, on the one hand the AO states that the assessee booked short term capital loss of Rs.3,86,56,040/- while on the other hand in the table

which is a part of the assessment order, he shows the same amount as business loss. At para 5 of the assessment order, the AO discusses the modus operandi of how the long term capital gains/short term capital losses are booked/managed by certain assessees. At para 6 of the assessment order, the AO again states that the assessee has booked business losses on account of sale of shares in the current year and set it off against business profit from transactions in shares and securities. He further states that as the transactions in the above two scrips were found suspicious, detailed investigation was undertaken. Various tools which were available like ITD data, BSE data, money control website, taxman etc. were examined. At para 7 of the assessment order, he states that after examination of records the business loss of Rs.3,86,56,040/- claimed by the assessee from the sale of shares of Shreenath Commercial and Finance Ltd. and Tuni Textiles Mills Ltd, was not genuine and pre arranged to evade taxes, He further mentioned that the assessee has shown very negligible profit on account of sale of shares. He contradict himself when he says "no other substantial transactions were done during the year except these transactions". He made another absurd observation that the transaction in the shares of Shreenath Commercial and Finance Ltd. and Tuni Textiles Mills td, were at fag end and it shows that the assessee was having a clear idea **of profit** earned at the month of December, 2013, Hence, to avoid taxes, the assessee took bogus loans on account of purchase/safe of the scrips of Shreenath Commercial and Finance Ltd. and Tuni Textiles Mills Ltd. After a few more absurd and contradictory statements, the AO finally concluded that the business loss of Rs.3,86,56,040/- cannot be allowed and made an addition of Rs.3,86,56,040/- u/s- 68 of the IT Act.

7.2 During the course of appellate proceedings, the Learned Counsel for the appellant made the following submissions:

"Ground 2

1. The Assessment order contains an apparent: error passed by the Id. Assessing Officer. The id. Assessing Officer has failed to appreciate the true facts produced before him and without appreciating the true facts the Ld. Assessing officer has made the application for section 68 of Income tax Act, 1961 instead considering business loss on account of change in the value of inventories under section 145 of Income Tax Act, 1961.

The facts of the case are that during the F.Y. 2013-14 relevant to the A.Y. 2014-15, the Assessee Company has suffered business loss of Rs.4,01,11,372/- out of which loss of Rs.4,00,08,550/- has arisen due to Change (decrease) in value of inventories.

Therefore, the Id. Assessing Officer has made an apparent error by treating business loss arising due to change in inventory as loss due to sale of shares.

The copies of statement showing stock in trade for FY 2013-14 have been furnished to you which are enclosed herewith.

2. During the A.Y. 2014-15, Assessee Company has valued the dosing stock as per Accounting Standard 2 "Valuation of Inventories" as 'Cost or NRV, whichever is lower'. The valuation of dosing stock is also as per the provisions of Section 145 of the Income tax Act, 1961 which is in consonance with Accounting Standard 2. For this purpose the Assessee Company relies on the following citations:
 - ACIT, Circte-2 vs M/s Shantilal Nagardas And Co. held in ITAT "B" Bench (Ahmedabad)
 - M/s Sound Capital Markets Ltd. vs DCIT, 10(2) held in ITAT "I" Bench (Mumbai)

The facts of the case are that Inventories in case of Assessee Company comprises of Investment in shares of M/s Royal India Corporation Limited, M/s Shreenath Commercials & Finance Ltd. (Now known as Proaim Enterprises Ltd.) and M/s Tuni Textiles Mitts Ltd. The quoted shares are listed on Bombay Stock Exchange and they are subject to securities transaction tax. The shares of M/s Shreenath Commercials & Finance Ltd. (Now known as Proaim Enterprises Ltd.) and M/s Tuni Textiles Mitts Ltd. were purchased in the financial year 2012-13 at the rates prevailing on the relevant dates and were recorded at cost. The above shares were valued as on 31 -03-2013 and thereafter on every 31st March of each financial year at the rates prevailing on the relevant dates. During the A.Y. 2014-15, the abovementioned shares have not been traded at all and have only been valued as on 31-03-2014 at the rates prevailing as on that date. On perusal of records, the price of Quoted shares has drastically fallen down during the end of assessment year 2014-15.”

The table showing the fluctuation of the price of shares at each year end;

Particulars	Purchase Cost	31.03.2013	31.03.2014
M/s Shreenath Commercial & Finance Ltd. (now known as Proaim Enterprises Ltd.)	Rs.39.60 (26.02.2013)	Rs.20.80	Rs.8.32
M/s Tuni Textiles Mills Ltd.	Rs.27.35 (01.03.2013) Rs.26.90 (04.03.2013) Rs.26.00 (06.03.2013) Rs.25.60 (07.03.2013) Rs.25.20 (08.03.2013) Rs.24.80 (11.03.2013) Rs.24.45 (12.03.2013)	Rs.20.30	Rs.1.25

The copies of rates at which the securities were traded on Bombay Stock Exchange on the relevant dates have been enclosed herewith.

3. The Id. Assessing Officer in the Order stated that "the Assesses Company has booked business loss on account of safe of shares in the current year and setoff the same against: business profit from transactions in shares and securities. From the facts of the case, the transaction in the penny stocks of M/s Shreenath Commercials Si Finance Ltd. (Now known as Proaim Enterprises Ltd.) and M/s Tuni Textiles Mitts Ltd. were found suspicious and detailed investigation of this issue was undertaken. Various tools available were examined including FTD data, B5E data, (none/control website, taxmann, court rulings, internet as well as investigation wing report and findings of the SEBI”.

The Ld. Assessing Officer erred in appreciating the facts and submissions made by the Assessee Company and passed the order merely based on suspicions, findings of investigation wing, SEBI and various other toots as mentioned above.

High Court of Gujarat in case of Commissioner of Income-tax-1 Vs. Maheshchandra G. Vakil [2013] 40 taxmann.com 326 (Gujarat) held that where Assessee Company proved genuineness of share transactions by contract notes for safe and purchase, bank statement of broker, demat account showing transfer in and out of shares, as also abstract of transactions furnished by stock exchange. Assessing Officer was not justified in treating capital gain arising from sale of shares as unexplained cash credit.

The Assessee Company also relies on the following citation:

- Commissioner of Income-tax-I Vs. Himani M. Vakil [2013] 326 (Gujarat High Court)
- DCIT Vs. Sunita Khema [2011] ITA 714 to 718 (ITAT Kolkata)
- Tekchand Rambhiya HUF [2012] ITA 930 (ITAT Mumbai)
- Commissioner of Income-tax Vs. Smt. Sumitra Devi [2012] ITA 54 (Rajasthan High Court)

- ACITVs Shri Ravindrakumar Toshiwal [2008] ITA 5302 (ITAT Mumbai)
- ITO-24(3)(1) Vs. M/s Arvindkumar Jain HUF Held in ITAT "H" Bench (Mumbai)

The copies of contract notes of the above transactions and bank statement for the relevant period has been furnished to you your honor.

4. The Id. Assessing Officer erred in giving opportunity of being heard 35 per section 142(3) of the Income Tax Act, 1961.

The Ld. Assessing Officer erred in furnishing the information of the inquiry made on the basis of which show cause notice has been issued as requested by the Assessee Company in accordance with the provisions Section 142(3) of the Income Tax Act, 1961."

7.3 The assessment order, the submissions made by the Learned Counsel and the financial of the assessee have been examined. It is seen from the return of income filed by the assessee that he had filed return with a loss of Rs.4,00,72,252/-. Out of this, the loss of Rs.4,00,72,252/- is on account of valuation of inventories- While it is a fact that the assessee had invested in the shares of Shreenath Commercial and Finance Ltd. and Tuni Textiles Mills Ltd- along with of Royal India Corporation Ltd, it is equally a fact that the assessee had not sold any shares of Shreenath Commercial and Finance Ltd. and Tuni Textiles Mills Ltd. The assessee had purchased 14,60,500 shares of Tuni Textiles Mills and 1,00,000 shares of Shreenath Commercial and Finance Ltd. The rate of the shares has fallen from Rs.20.80/- to Rs.8.32/- in the case of Shreenath Commercial and Finance Ltd, and from Rs.20.35/- to Rs.1.25/- in the case of Tuni Textiles Mills Ltd. During the course of appellate proceedings, the Learned Counsel gave the rates as on 31st March, 2015 wherein the share of Shreenath Commercial and Finance Ltd. has fallen from Rs.8.32/- to Rs.3/- and the share price of Tuni Textiles Mills Ltd. has fallen from Rs.1.25/- to Rs.0.59/-. Besides these two scrips, the assessee was also holding 5,30,000 shares of Royal India Corporation Ltd., the share price of which fell from Rs.24.50/- to Rs.4/-. All these three scrips were held by the assessee as stock in trade as on last day of the financial year i.e. 31.03.2014. As these shares constituted the assessee's stock in trade, same were valued at cost or market price whichever is lower. The opening value of stock was Rs.4,47,86,175/- and as on 31.03.2014 the same had diminished to Rs.47,77,625/- resulting in a loss of Rs.4,00,08,550/-. This loss coupled with some administrative expenses resulted in a loss of Rs.4,00,72,252/-. There is no trading activity, whatsoever, which happened during the year. So the AO's contention that the assessee had set off the loss from sale of shares against income from sale of other shares is factually incorrect. The assessee had no business activity and there was no other receipt during the year. It is also not understood as to where from the AO obtained the figure Rs.3,86,56,040/-. The assessment order is silent on how this figure of loss has been arrived at or when these shares have not been sold by the assessee. The findings in the assessment order are contradictory to the facts as could be seen from the return of income and the financials filed by the assessee. The AO did not comment on the facts as per the return of income.

7.4 The facts, as could be seen from the return of income and the financials of the assessee are that the assessee has not undertaken any trading during the year. There is no business activity conducted by the assessee during the year. The assessee has been holding scrips of three companies Royal India Corporation Ltd., Shreenath Commercial and Finance Ltd. and Tuni Textiles Mills Ltd as stock in trade. The number of shares held by the company during the year are 5,30,000 of Royal India Corporation Ltd, 1,00,000 of Shreenath Commercial and Finance Ltd. and 14,60,500 of Tuni Textiles Mills

Ltd, These shares are still held by the assessee even in the succeeding assessment year i.e, AY 2015-16, In the absence of any sale made by the assessee, it is not understood as to how the AO can conclude that the assessee had made loss from the sale of shares of the above referred two scrips which has been set off against his other income. As the assessee has not sold these shares and as the loss returned by him is on account of valuation of inventory and not trading loss or capital loss, the addition made by the AO cannot be sustained- As already stated when the loss claimed by the assessee is Rs.4,00,72,252/- and the loss from valuation of inventory is Rs.4,00,08,550/, it is not understood as to where the figure of Rs.3,86,56,040/- is derived from by the AO. It is also not understood how a loss from sale of shares can be added u/s. 68 of the IT Act. In view of the above, the addition made by the AO of Rs.3,86,56,040/- is deleted. These grounds of appeal are allowed.”

We have given a thoughtful consideration to the aforesaid observations of the CIT(A), and concur with him that the A.O had absolutely on the basis of glaringly incorrect and misconceived facts made an addition of Rs.3,86,56,040/- u/s 68 of the Act. Admittedly, it is a matter of fact borne from the record that the assessee had during the year under consideration not traded in the shares of the aforementioned companies. Rather, the scrips in question, viz. (i). M/s Shreenath Commercials & Finance Ltd. (1,00,000 shares); and (ii). M/s Tuni Textiles Mills Ltd. (14,60,500 shares) were even held by the assessee in the succeeding year i.e A.Y. 2015-16. We are unable to comprehend that now when the assessee had not sold any of the aforementioned scrips during the year, then, how and on what basis the A.O had concluded that the assessee had booked a bogus loss on sale of shares, which thereafter had been set-off against its other income. As the loss suffered by the assessee company is on account of the valuation of inventory and not a trading loss or a capital loss, therefore, in our considered view the CIT(A) had rightly vacated the addition of Rs. 3,86,56,040/- made by the A.O u/s 68 of the Act. At this stage, we may herein observe that as the valuation of the ‘closing stock’ of the shares held by the assessee is as per the provisions of Sec. 145 of the Act and in conformity with the Accounting Standard 2 (AS-2), therefore, no infirmity qua the loss suffered by the assessee pursuant to the diminution in the value of the inventory therein arises. Backed by the aforesaid facts, we are of the considered view that as the A.O had framed the assessment

on the basis of glaringly misconceived and incorrect facts, the same, thus, had rightly been vacated by the CIT(A). Accordingly, finding no infirmity in the view taken by the CIT(A), we uphold the same. We, thus, finding no merit in the appeal of the revenue dismiss the same.

8. Resultantly, the appeal of the revenue is dismissed.

Order pronounced in the open court on 29.09.2021

Sd/-
(S. Rifaur Rahman)
ACCOUNTANT MEMBER

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Mumbai;

Dated: 29.09.2021

*PS: Rohit

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.

BY ORDER,
//True Copy//

(Sr. Private Secretary)
ITAT, Mumbai