

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri Shamim Yahya, Accountant Member

I.T.A. No. 4326/Mum/2019
(Assessment Year 2014-15)

Mona Developers Pvt.Ltd. Om Heera Panna Shopping Mall, 3 rd Floor, Opp. City International School Andheri(W) Mumbai-400 053 PAN : AAECM0008M (Appellant)	Vs.	ITO-10(2)(4) Room No.703, C/10 Pratyakshkar Bhawan BKC, Bandra(E) Mumbai-400 051 (Respondent)
--	-----	--

Assessee by	None
Department by	Shri Abhirama Karthikeyan
Date of Hearing	14.12.2021
Date of Pronouncement	25.02.2022

O R D E R

Per Shri Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-17 dated 20.03.2019 and pertain to assessment year 2014-15.

2. Grounds of appeal read as under:-

1. On the Facts & Circumstances of the case as well as in law, the Learned CIT (A) erred in confirming disallowance / addition of Rs. 9,83,649/- being loss in share trading. He has failed to understand that:
 - a. The learned A.O. has not brought on record any material to prove that the transaction were non genuine.
 - b. The learned A.O. has not given cognisance to documents submitted to prove the fact that transaction were genuine

- c. The learned A.O. has not confronted the appellant with the documents relied upon by the Learned A.O.
- d. The order passed by the learned A.O. was bad in law and against the principles of natural justice.
2. On the Facts & Circumstances of the case as well as in law, the Learned CIT (A) erred in passing the order without giving proper and sufficient opportunity of being heard.

3. Brief facts of the case are that AO noted that assessee is engaged in the business of builder and developer. That assessee has claimed loss in share trading activity from three script. That there is information in the system that assessee is engaged in the trading into penny stock. AO noted that details of assessee's transactions are as under:-

“The details of the transaction carried out by assessee in this segment in the entire financial year are as under:

Script Name	Date of purchase		Date of Sale		Gain or Loss
	No	Rate	No.	rate	
Dhenu Buildcon infra	On 2000	@1.4Rs.	17/04/2013 2000	@54.18	loss
	10/10/2013 4500	@4.78	13/01/2014 24500		
	15/10/2013 2000	@4.51		@5.29 and @5.24	gain
Radglobal	24/05/2013	@85.20	19/08/2013	@33.4	loss
SRK Industry Ltd.	06/12/2013 2000	@184.02	24/03/2014 6150	@35	loss
	13/12/2013	@195.23			
	14/01/2014	@165.69			

4. Thereafter, AO referred to the modus operandi and examination of the Director by Investigation Wing regarding the three scripts. The entire reference was in a context of huge capital gains booked in the shares. Thereafter, AO referred to the statement of brokers, this also referred to booking of huge long term capital gain. After referring to the same, AO held that the claim of loss from penny shares as discussed above is disallowed.

5. Against the above order, assessee appealed to the Id.CIT(A).

6. Ld.CIT(A) also confirmed the order of AO and referred to the same Investigation Wing report. However, Ld.CIT(A) referring to the Investigation Wing report held that from the above it can be concluded that shares of above mentioned companies have been used/providing entry of bogus LTCG/STCG or LTCL/STCL. A reading of the above reference by the Ld. CIT(A) or AO to the said report, nowhere mentions the booking of bogus long term capital loss or short term capital loss. From, where Id.CIT(A) has obtained this new found knowledge that the investigation revealed bogus booking of loss has not been brought on record. Moreover, I note that assessee has submitted that assessee has not been given adequate opportunity. Hence, in the interest of justice, I remit the issue to the file of the AO. AO shall consider the issue afresh in light of the observations hereinabove. AO shall give adequate opportunities to the assessee.

7. In the result, assessee's appeal is allowed for statistical purpose.

Pronounced in the open court on 25 .02.2022

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 25 .02.2022

Thirumalesh, Sr.PS

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,

(Assistant Registrar)
ITAT, Mumbai