

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “SMC”: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 9494/DEL/2019**

**[Assessment Year: 2014-15]**

Vikas Jain, House No. 1652/5, Old Anaj Mandi, Rohtak, Haryana-124001	<u>Vs</u>	Income-tax Officer, Ward-5, Rohtak.
PAN- ACAPJ9273J		
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	<b>None</b>	
<b>Respondent by</b>	<b>Sh. Sanjiv Mahajan, Sr. DR</b>	
<b>Date of hearing</b>	<b>28.02.2022</b>	
<b>Date of pronouncement</b>	<b>09.03.2022</b>	

**ORDER**

**PER KUL BHARAT, JM:**

This appeal, by the assessee, is directed against the order of learned CIT(Appeals), Rohtak dated 30.09.2019, pertaining to the assessment year 2014-

15.

2. The assessee has raised following ground of appeal:

*“1.That the Order passed by the Ld. CIT (Appeals), Rohtak is perverse, biased and not based on true facts and figures. The Ld. CIT (Appeals), Rohtak also overlooked certain important points of fact and law which has resulted in gross injustice to the appellant. It is, therefore bad in law and not sustainable in the eyes of law.*

2. That the Ld. CIT (Appeals), Rohtak, although framed different point (total no. 5) for her consideration according to the Grounds of Appeal taken by the appellant in his appeal; but she totally ignored Ground No.4 and did not discuss it at all in her Judgement although it was one of the key points, involved in the appeal. The Ld. CIT (Appeals), Rohtak should have decided this "Ground No.4" in favour of the appellant and against the AO as provisions of Section 44AB read with Section 44AD of the Income Tax Act were not at all applicable to the facts of the present case, inter alia, on the grounds -

- i. That the total turnover of the assessee/appellant as has been calculated by the AO himself during the "penalty Proceedings" against him under Section 27IB of the Income Tax Act, was just Rs.4930283.00 i.e. well below the "Applicability Limit" of Rupees One Crore; and
- ii. That according to the own findings of the AO, the net result of the whole Share Business alleged to have been done by the assessee/appellant during the relevant year was a loss of Rs.4,04,858.00; while Section 44AB and Section 44AD of the Income Tax Act are applicable only in case there is a profit or gain in the business.

Therefore there was no question of Section 44AB read with Section 44AD of the Income Tax Act being applicable on the present case of the assessee/appellant.

3. Re.: Addition of Rs.77325.00 on account of buy-back of shares

*That the Ld. CIT (Appeals) erred in law and in fact in holding that the Share Transaction with regard to 100 shares of STERIA (INDIA) LIMITED was covered under Section 46A of the IT Act and hence the difference between cost of acquisition and value of consideration received by the shareholders shall be deemed to be the capital gain. In fact, it was not a case of "Buy Back" of shares by the company; rather it was a case where the Company sought Reduction in its Capital as per the provisions contained under Sections 100 to 105 of The Companies Act, 1956 - the permission of which was granted to it by the Hon'ble High Court of Allahabad vide Orders dated 28.05.2013 and dated 07.05.2013. As per these Orders, the company*

*was directed to pay to its shareholders an amount of Rs.800.00 per share as accumulated Dividend, generated on account of this reduction in Capital. Consequently the company distributed this amount amongst its shareholders and as a consequence thereof paid Income Tax on this amount as Dividend Distribution Tax (DDT) on 31.01.2014 vide Challan No. ITNS 280. Thus this amount of Rs.800.00 per share was not taxable in the hands of the assessee/appellant, inter alia, on two grounds*

- i. The requisite Income Tax on this amount had already been paid by the Company and any imposition of tax on the assessee on this amount would tantamount to “DOUBLE TAXATION” which is not permissible under law;*
- ii. This amount would, even otherwise, be exempt under Section 1150 of the Income Tax Act.*

*The appellant duly produced cogent evidence in this regard by way of a communique dated 14.06.2018 received from the company, which was never considered by the Ld. CIT (Appeals). A copy of this letter is, once again, being attached herewith.*

*4. That both the AO as well as the Ld. CIT (Appeals) lost sight of one of the most important aspects in the present case that is that the assessee never claimed any Loss incurred by him in his share business done during the relevant year and as such AO acted in a most unlawful manner by adopting a “Pick and Choose” policy in as much as he chose to pick up two entries which reflected “Profit” in his this Share Business i.e. STERIA (INDIA) LIMITED and JOLLY PLASTIC INDUSTRIES LIMITED amounting to **Rs.77325.00** and **Rs.18586.00** respectively and discarded the loss of **Rs.4,04,858.00** altogether. The assessee/appellant sincerely feels that either the net result of the whole Share Business should have been taken into consideration or it should have been discarded as a whole.*

*5. That the appellant craves leave of this Hon’ble Tribunal to permit the appellant to add, amend or alter any of the “Grounds of Appeal” and also to dispense with the filing of certified copies of any document for the time*

*being. The appellant undertakes to file Certified Copy of any document whenever so required.*

3. Facts giving rise to the present appeal are that the assessee filed its return declaring income of Rs. 7,11,450/-. The case was taken up for scrutiny assessment and the assessment u/s 143(3) of the Income-tax Act, 1961, hereinafter referred to as the "Act", was framed, thereby the Assessing Officer made addition on account of long term capital gain of Rs. 77,325/-. Further, the Assessing Officer made addition of Rs. 18,586/- in respect of the capital gain that was not disclosed by the assessee. Hence, the Assessing Officer assessed the total income of the assessee at Rs. 8,07,361/- as against the returned income of Rs. 7,11,450/-.

4. Aggrieved against this the assessee preferred appeal before the learned CIT(Appeals), who, after considering the submissions, partly allowed the appeal, thereby the learned CIT(Appeals) confirmed the addition of Rs. 77,325/- and deleted the addition of Rs. 18,586/-. Now the assessee is in further appeal before this Tribunal.

5. At the time of hearing request for adjournment was made. However, looking to the facts and the grounds of the assessee, the request was rejected and the appeal was taken up for hearing.

6. Learned Sr. DR relied upon the orders of the authorities below and submitted that there is no illegality into the impugned order.

7. I have heard learned Sr. DR and perused the material available on record. It is seen from the record that the assessee had raised various grounds before the learned CIT(Appeals). Ground no. 4 taken before the learned CIT(Appeals) reads as under:

*“4. That the AO has erred in law and facts in initiating proceedings u/s 271B of the act. The provisions of sec. 44AB of the act are applicable on business whereas the appellant is an investor and not a share trader. Even if, it is considered as business the loss was incurred in F&O segment where the net result is considered for turnover purpose and not the total transaction.”*

8. However, this ground of assessee’s appeal was not adverted by the learned CIT(Appeals).

9. Furthermore, in respect of ground no. 2 before the learned CIT(Appeals), the assessee had filed certain evidences, which the learned CIT(Appeals) did not admit. Before this Tribunal the assessee has filed an order by the Hon’ble Allahabad High Court in the matter of Sterla (India) Limited in Company Petition No. 4 of 2013. Therefore, looking to the order of the Hon’ble Allahabad High Court and the submissions of the assessee, the impugned order on the issue of addition of Rs. 77,325/- made on account of buy back of shares is set aside and restored to the learned CIT(Appeals) for decision afresh.

10. Further, I find merit into the contention of the assessee on the ground raised against initiating proceedings u/s 271B and applying the tax audit as per provisions

of Section 44AB read with Section 44AD of the Act. On both the issues the learned CIT(Appeals) would pass a speaking order after giving reasonable opportunity to the assessee.

11. Assessee's appeal is allowed for statistical purposes.

**Sd/-**  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

**Dated: 09.03.2022.**

**\*MP\***

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI