

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

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER) AND
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)**

**ITA No. 4209/MUM/2019
Assessment Year: 2009-10**

M/s Shri Admor Pvt. Ltd.,
61, Prabha Mandir, Prabhadevi
Road,
Mumbai-400025.
PAN No. AAFCS 3748 F
Appellant

Vs.

ACIT-7(2),
6th floor, Aayakar Bhavan,
M.K. Road,
Mumbai-400020.
Respondent

Assessee by : None
Revenue by : Mr. Hoshang B. Irani, DR

Date of Hearing : 05/05/2022
Date of pronouncement : 05/05/2022

ORDER

PER OM PRAKASH KANT, AM

The assessee has preferred this appeal against the order dated 25.07.2018 passed by the Ld. Commissioner of Income-Tax (Appeals)-14, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2009-10 raising following grounds :

1. *The Assessing Officer has disallowed on ad-hoc basis the set off of business loss of Rs. 20,77,454/- against Capital Gains u/ s 71 and Income from Other Sources the provisions of the Income Tax Act without verifying the facts of the case;*
2. *The Assessing Officer has erred by qualifying in the Assessment Order passed u/ s 143(3) that the Appellant has not undertaken any business during the previous year. The Assessing Officer has also not recognized the fact that the Appellant has been persistently carrying the business of consultancy services over the last many years as shown in the Profit & Loss Account including that in the previous year;*
3. *The Assessing Officer has also not challenged that all the business expenditure incurred for the purpose of business against the Business Income in the previous year. However, the earnings were not commensurate with the expenditure incurred but all the expenditure aimed during the year is business expenditure allow able under the Income Tax Act as could be verified from the Profit & Loss Account.*
4. *The Appellant submits that the Assessing Officer be directed to delete the addition so made by him.*

2. At the outset, we may like to mention that despite notifying none attended on behalf of the assessee on the date of hearing nor any adjournment was filed. On perusal of the record, we find that no compliance of the notices issued by the Registry have been made by the assessee for hearing dated 17.03.2020, 01.12.2021 and

20.01.2022 also. In the circumstances, we were of the opinion that the assessee was not interest in prosecuting appeal and therefore same was heard *ex-parte* qua the assessee after hearing arguments of Ld. Departmental Representative (DR) and perusal of the material available on record.

3. We find from the record that the Registry has pointed out delay of 172 days in filing of the appeal. The Assessee vide letter dated 11.06.2019 submitted that delay was on account of shifting of the office of Authorized Representative of the assessee from Nariman Point and file was misplaced. In this respect, an affidavit has also been filed by the Director of the assessee-company, which reads as under :

"1. I, Jimmy Bhaskar Parikh, Director of Shri Admor Pt Ltd, aged about 40 years, son of Bhaskar Gopaldas Parikh identified by PAN AFUPP4721Q at present residing at 4302 - B Wing, Lodha Bellissimmo, N.M.Joshi Marg, Appollo Mill Compound, Mahalaxmi, Mumbai, Maharashtra - 400011 do solemnly affirm and state on oath as under:

2. *That the appeal filed by the Appellant Company before the Commissioner of Income-tax (Appeals)-14 was disposed of by order dated 25th July 2018 passed by Commissioner of Income-tax (Appeals)- 14 received on 23 October 2018.*

3. *That the time for filing of the appeal before the Tribunal had expired on 22nd November 2018.*

4. *That as our Chartered Accountants have been shifting their office from Nariman point to Andheri and in view of this the relevant files/ records were misplaced. Due to same, they were not able to file the appeal on time.*

5. *Nevertheless the appeal was filed before this Hon'ble ITAT on date 10th June 2019 accompanied by an application for condonation of delay as provided under section 5 of the LIMITATION ACT, 1963*

6. *That in this way there is a delay of 170 days for which an application under Section 5 of the Limitation Act has been filed along with memorandum of appeal.*

7. *That I had no intention to jeopardize the interest of the revenue by delaying the filing of the appeal”.*

4. The Ld. DR did not seriously object to condone in the delay in appeal. In view of the above explanation given by the assessee, as the delay in filing the appeal is not intentional and deliberate, in the interest of substantial justice, we condone the delay in filing of the appeal and admit the same for adjudication.

5. Briefly stated, facts of the case are that the assessee filed return of income on 30.09.2009 declaring total income of Rs.1,03,12,985/- which was subsequently revised at a total income of Rs.82,06,037/-. In the return of income, the assessee has claimed income from sale of long term capital asset amounting to Rs.1,01,35,146/- and Rs.1,48,344/- as interest income on FDR under the head 'income from other sources'. The assessee has further claimed business loss of Rs.20,77,454/-. The Ld. Assessing Officer during the scrutiny proceedings asked the assessee to justify the loss under the business security, however in absence of any supporting evidence, the Ld. Assessing Officer disallowed the claim of the business loss and denied setting off business loss against long term capital gain. On further appeal, the Ld. CIT(A) has sustained the disallowance observing as under :

"4. I have considered the submission made by the appellant and the reasons recorded by the AO.

The first ground of appeal is general in nature and no separate adjudication is required for the same.

So for as second ground of appeal is concerned, it is seen from the assessment order that the appellant did not make any submission before the AO to justify the claim of business loss even though a specific query to this effect was raised by the AO. Before the undersigned, the appellant has claimed that it is engaged in business of consultancy. Other activities of the company are investment activities which do not form part of the business of the appellant. If we examine the consultancy activities of the appellant, we find that the consultancy income earned by the appellant from AY. 2005-06 onwards is very nominal. Consultancy income from A.Y. 2010-11 to 2017-18 and corresponding expenses debited to the P&L A/c (as provided by the appellant) are as under :

A.Y.	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
Consultancy Income	10000	15000	15000	20000	25000	30000	35000	55000
Employee cost	180000	120000	120000	120000	Nil	360000	360000	410000
Finance Cost	545185	821164	645790	292816	89514	52601	Nil	552
Depreciation	14735	12125	9980	8216	6766	9026	6033	6033
Other Expenses	418471	414311	2283463	660434	430834	562360	650059	548020

If we examine the consultancy income of the appellant we find that consultancy is not a regular activity for the appellant. In the entire year, only one consultancy work has been done by the appellant (in most of the years) and even the receipts are very nominal. There is no evidence of any regular consultancy activity being done by the appellant. In fact, the consultancy receipts look more like a casual receipt from one off transaction during the year. If we examine the expenditure debited to the P&L A/c of the appellant, we find that the expenditure debited to the P&L A/c is disproportionately higher compared to the consultancy activity being carried out by the appellant. Moreover, the entire expenditure does not really pertain to the

consultancy activity. In fact, most of the expenditure relates to investment activity carried out by the appellant and but for the façade of consultancy business, the appellant would not be entitled for any deduction in respect of the same because income from investment activity is either taxable as income from other sources or it is taxable as long term / short term capital gain.

In view of these facts, I am of the opinion that consultancy is not a business activity of the appellant and no actual business is being carried out by the appellant in the name of consultancy. Consultancy receipts are only casual receipts and the expenditure debited by the appellant in the profit and loss account cannot be considered to have been incurred by it wholly and exclusively for earning consultancy income. Rather, most of the expenditure pertains to investment activities being carried out by the appellant and the appellant is not entitled for deduction in respect of the same against income from other sources/income from long term capital gain offered by it. Therefore, the AO has rightly disallowed the set off of business loss against income from other sources/long term capital gain. Accordingly, disallowance of Rs.20,77,454/- made by the AO is upheld and second ground of appeal is dismissed.”

6. In our opinion, in absence of any documentary evidence in support of business loss claimed by the assessee before the lower authorities, the Ld. CIT(A) is justified in disallowing the claim of the assessee of business loss as not genuine. Accordingly, we uphold the disallowance by the Ld. CIT(A) and the grounds raised by the assessee are accordingly dismissed.

7. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 05/05/2022.

Sd/-

**(RAHUL CHAUDHARY)
JUDICIAL MEMBER**

Sd/-

**(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;

Dated: 05/05/2022

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,

(Sr. Private Secretary)
ITAT, Mumbai