

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

SHRI OM PRAKASH KANT ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 4679/MUM/2018
(ASSESSMENT YEAR: 2002-03)

Dy. Commissioner of Income Tax,
Central Circile 7(1),
Room No. 653, 6th Floor,
Aayakar Bhavan, M.K. Road,
Mumbai - 400020

..... Appellant

M/s Classic Share & Stock Broking
Services Ltd., 121, Radha Bhavan,
Nagindas Master Road, Fort,
Mumbai - 400023
[PAN: AACCC5745P]

Vs

..... Respondent

Appearances

For the Respondent/Department : Dr. P. Daniel
Shri Soumendu Kumar Dash
For the Appellant/Assessee : Shri Rajiv Khandelwal
Shri Subham Ameria

Date of conclusion of hearing : 12.08.2022
Date of pronouncement of order : 01.09.2022

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Revenue has challenged the order, dated 16.05.2018, passed by the Ld. Commissioner of Income Tax (Appeals)-49, Mumbai, [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2002-03, passed under Section 154 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') whereby the Ld. CIT(A) had rectified the order

dated 13.01.2017 passed in appeal No. (CIT(A)-49/IT-424/2011-12).

2. The Revenue has raised the following grounds of appeal read as under:

1. Whether on the facts and in the circumstances of the case and in law, Ld CIT(A) was justified in allowing the speculation loss of Rs. 1,47,77,850/- as per provisions of section 73 of the Income Tax Act, which are not genuine in nature and the same shares are mentioned by the JPC in their report?

2. Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in deleting the disallowance of losses of Rs. 1,47,77,850/- without appreciating the fact that period under consideration in an extension of the scam period and the transactions were carried out off market?

3. The Ld. Special Counsel for the Revenue submitted that by way of present appeal, the Revenue has challenged the rectification order dated 16.05.2018 passed by the CIT(A), whereby the CIT(A) had rectified order, dated 13.01.2017, passed in appeal filed by the Assessee. The Revenue has aggrieved by the fact that the CIT(A) has replaced the word 'upheld' with the word 'deleted' in the last line of paragraph 5.33 of the order dated 13.01.2017 passed by the CIT(A) and has thereby allowed speculative loss of INR 1,47,77,850/- to the Appellant without appreciating that speculation loss of Rs. 1,47,77,850/- was not genuine in nature and the same shares were mentioned by the Joint Parliamentary Committee (JPC) in

its report. He relied upon the assessment order in support of the grounds raised in the appeal.

4. The Ld. Authorised Representative for the Assessee appearing before us submitted that the Tribunal has, vide order dated 18.04.2018 passed in ITA No. 2620/Mum/2017, dismissed the appeal filed by the Revenue against the order, dated 13.01.2017 passed by the CIT(A) under Section 143(3) read with Section 254 of the Act and rejected identical arguments raised by the Revenue. Therefore, the present appeal is also liable to be dismissed as being infructuous. He relied upon the order passed by the CIT(A) in support of his contentions.
5. We have considered the rival contentions and perused the material on record. The CIT(A) had rectified the order, dated 13.01.2017, after taking note of the fact that while in paragraph 5.3.3, the CIT(A) had concluded that loss of INR 1,47,77,850/- deserves to be allowed as speculation loss as per Section 73 of the Act, however, in the last line of the paragraph, it was inadvertently mentioned that the disallowance of INR 1,47,77,850/- is 'upheld'. Accordingly, the word 'upheld' was replaced by the word 'deleted' by way of rectification order, dated 16.05.2018. We note that the CIT(A) has granted relief to the Assessee by following the decision of the Tribunal in the case of the Assessee wherein in identical facts and circumstances, the Tribunal has vide order dated 23.10.2013 passed in ITA No. 2829/Mum/2013 pertaining to Assessment Year 2001-02 allowed the appeal of the Assessee against the order passed by Commissioner of Income Tax under Section 263 of the Act holding that the

order passed by the Assessing Officer under Section 143(3) read with Section 254 of the Act was not prejudicial to the interest of Revenue. In that case the Assessing Officer had accepted loss suffered by the Assessee on account of the delivery based and non-delivery based transactions as genuine after examining the all the details and documents furnished by the Assessee. The relevant extract of the decision of the Tribunal read as under:-

“ 11. As regards the non-delivery based loss, the Id. counsel for the assessee has invited our attention to the details of speculative transaction of the assessee placed at page 14 to 15 of the paper book which show that the loss was incurred during four settlement periods only and all the relevant details in respect of these four settlement periods were furnished by the assessee before the A.O. giving challan summary, details of shares traded and the relevant bank statements wherein these transactions were reflected. Even the copies of complete bills were furnished by the assessee before the A.O. In our opinion, all these details and documents furnished by the assessee were sufficient to prove the exact nature of the transaction entered into by the assessee resulting in delivery based and non-delivery based losses and the same were sufficient to support and substantiate the claim of the assessee for the said loss in pursuance to the direction of the Tribunal. As a matter of fact, a specific reference was made by the A.O. in his order passed u/s 143(3) r.w.s. 254 of the Act to all these details and documents furnished by the assessee in para 3 and it was also clearly mentioned that the audit report under the Companies' Act as well as the one obtained u/s 142(2A) of the Act was submitted by the assessee.

12. It is pertinent to note here that in its order dated 17-2-2010, it was noted by the Tribunal that special audit of the assessee's transactions was conducted but the report thereof was not placed on record. The assessee therefore filed a copy

of the said audit report before the A.O. which, as pointed out by the Id. counsel for the assessee, did not bear any adverse comment or qualification on the transactions of the assessee resulting in delivery based and non-delivery based loss. On the other hand, it was certified in the said report that the P&L account of the assessee company for the year under consideration gave a true and fair view of the loss incurred by it and this report was given by the auditors after taking into consideration the computerized books of account, software data, seized material and data supplied by the concerned stock exchange. We, therefore, find that all the details and documents required by the A.O. to examine/verify its claim for delivery based loss and non-delivery based loss as per the direction of the Tribunal were furnished by the assessee and after verifying the same, the claim of the assessee for the said loss was allowed by the A.O.

13. It is true that although the A.O. has made specific reference to all the details and documents furnished by the assessee in his order, there is no elaborate discussion made by him on this issue. He, however, has specifically mentioned in para 4 that the details and documents furnished by the assessee were duly explained and only after verifying and discussing the same with the authorized representative of the assessee, the assessee was held to be entitled to loss on delivery based and non-delivery based transactions by the A.O. In our opinion, this clearly shows that a categoric and definite conclusion was arrived at by the A.O. on this issue after discussing and verifying all the relevant details furnished by the assessee showing application of mind. It is thus not a case where the claim of the assessee was accepted by the A.O. in routine manner without verifying the relevant details as alleged by the Id. CIT in his impugned order. It was also not a case where the report of the special audit was not taken into account by the A.O. as alleged by the Id. CIT. As a matter of fact, the said report was in favour of the assessee inasmuch as there was no adverse comment or qualification made by the auditors in the said report on the transactions entered into by the assessee resulting in the impugned losses and the

profit and loss of the assessee was certified as giving true and fair view of the loss of the assessee. In the case of Anil Shah vs. ACIT, 162 Taxman 39 (Mum) the co-ordinate Bench of this Tribunal has held that if the A.O. allowed the claim on being satisfied with the explanation of the assessee on enquiry made during the course of assessment proceedings, the decision of the A.O. cannot be held to be erroneous on the ground that there is no elaborate discussion in that regard in his order. As regards the reference made by the Id. CIT in his impugned order to the report of SEBI and JPC, it is observed that while restoring the issue to the file of the A.O. with a direction to examine the nature of the transactions undertaken by the assessee, the A.O. was specifically cautioned by the Tribunal not to get affected/persuaded by the observations of the SEBI and JPC, unless they are found applicable to the facts of the assessee's case. In his impugned order, the Id. CIT has not given any basis whatsoever to show that any of the observations of the SEBI or JPC was found to be applicable by him to the facts of the assessee's case. As such, considering all the facts of the case, we are of the view that there was no error in the order of the A.O. passed u/s 143(3) r.w.s. 254 of the Act as alleged by the Id. CIT which is prejudicial to the interest of the Revenue and there was no justification on the part of the Id. CIT to set aside the same by exercising the powers conferred upon him u/s 263 of the Act. Accordingly, the impugned order passed by the Id. CIT u/s 263 of the Act is set aside and that of the A.O. passed u/s 143(3) r.w.s. 254 of the Act is restored." (Emphasis Supplied)

6. Further, the Tribunal has, vide order dated 18.04.2018 passed in ITA No. 2620/Mum/2017, dismissed the appeal filed by the Revenue against the order of CIT(A) allowing the loss of INR 82,69,632/- pertaining to delivery based transactions holding the same to the genuine vide order dated 13.01.2017.
7. In view of the above, we do not find any infirmity in the order passed by the CIT(A) on this issue. Respectfully following the

above decision of Co-ordinate Bench of the Tribunal we decline to interfere with the order passed by the CIT(A). Ground No. 1 and 2 raised by the Revenue are dismissed.

8. In result the appeal filed by the Revenue is dismissed.

Order pronounced on 01.09.2022.

Sd/-

(Om Prakash Kant)
Accountant Member

Sd/-

(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 01.09.2022
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार //(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai