

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC” BENCH, AHMEDABAD**

BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER

**ITA No.63/Ahd/2022
Assessment Year: 2012-13**

Esthdev Financial Advisor Pvt. Ltd. vs. Central Circle-1(2),
419, 4th Floor, Ahmedabad.
Atlanta Estate,
Near Virwani Indst. Estate,
Maharashtra – 400 063.
[PAN – AACCG 9852 F]
(Appellant) (Respondent)

Appellant by : Shri Bhupendra Shah, AR
Respondent by : Shri N.J. Vyas, Sr. DR

Date of hearing : 30.08.2022
Date of pronouncement : 23.09.2022

ORDER

This appeal is filed by the Assessee against the order dated 29.11.2021 passed by the CIT(A)-11, Ahmedabad for the Assessment Year 2012-13.

2. The assessee has raised the following grounds of appeal :-

- “1) *In the fact and the circumstances of the above case and in law, the AO reopened the case only on the basis of information received from investigation wing of Mumbai and therefore rendering the whole assessment bad in law and also recording the reason wrongly by stating that appellant received bogus LTCG and therefore making the assessment order liable to be quashed.*
- 2) *In the fact and the circumstances of the above case and in law, the AO erred in disallowing loss in share trading of Rs.8,90,600/- u/s 43(5) in the share of VMS Industries Ltd. for which no show cause notice was issued and therefore making the whole disallowance null and void.*
- 3) *In the fact and the circumstances of the above case and in law, the AO erred in disallowing loss in share trading of Rs.8,90,600/- u/s.43(5) in the*

shares of VMS Industries Ltd. by overlooking the proviso to Section 73 and also rejecting documentary evidence filed before him.

- 4) *In the facts and the circumstances of the above case and in law, the AO erred in levying interest u/s.,234B*
- 5) *In the facts and the circumstances of the above case and in law, the AO erred in initiating the penalty proceedings u/s.271(1)(c).*
- 6) *In the fact and the circumstances of the above case and in law, the CIT(A) erred in confirming all the above grounds while passing the Appellate Order.”*

3. The assessee had filed its return of income under Section 139 of the Income Tax Act, 1961 on 21.09.2012 declaring therein total loss of Rs.1,67,356/-. The assessment was finalised on 30.03.2015. Thereafter information was received from the Investigation Wing that the assessee company has entered into certain transactions. Accordingly, the case was reopened after recoding reasons for reopening the assessment under Section 147 of the Act and notice under Section 148 was issued on 30.09.2019 through e-proceeding facility. Statutory notices were issued to the assessee and various details were called for. From the details furnished by the assessee, the Assessing Officer noticed that equity trade loss of Rs.8,90,000/- had been set off against the business profit. The Assessing Officer issued notice under Section 142(1) of the Act dated 19.11.2019 and the assessee was specifically asked to show cause as to why the speculation loss of Rs.8,90,600/- should not be disallowed and added to the total income of the assessee. After considering the reply furnished by the assessee, the Assessing Officer held that intraday trading of share is covered in speculative transaction as per Section 43(5) of the Act and loss of Rs.8,90,600/- claimed by the assessee is not allowable to set off against the income from Profit and gains as per Section 73(1) and accordingly disallowed the claim of speculation loss of Rs.8,90,600/- and not allowed the set off against income from profit.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the subsequent information received from the Investigation Wing regarding alleged tax evasion done by misusing capital share of Penny Stock Companies, Scan Steels Limited, VMS Industries Limited, Divine Multimedia (India) Ltd. is not justifiable. Ld. AR further submitted that in the absence of any details available on record, the Assessing Officer could not initiate assessment proceedings merely on the basis of information supplied by DCIT (Inv) that assessee had made certain bogus LTCTG and to the said extent income had escaped assessment. Ld. AR further submitted that notice under Section 142(1) was not properly issued and the notice under Section 142(1) should have been issued by the Department. The Ld. AR submitted that the assessee has furnished various details related to nature of business, copy of return of income along with computation, tax audit report, Profit & Loss account, Balance Sheet as well as copy of bank account, contract note, Demat account statement as well as ledger of Ashika Stock Broking Limited. As regards ground no.1, the Ld. AR submitted that the CIT(A) overlooked the fact that the Assessing Officer has not properly reopened the case and, therefore, the whole assessment itself is bad in law. The Ld. AR submitted that no show cause notice was issued in respect of shares of VMS industries Limited and, therefore, assessment was not justified. Ld. AR submitted that the CIT(A) as well as the Assessing Officer has overlooked the proviso to Section 73 of the Act and rejected the documentary evidence filed before the Assessing Officer.

6. The Ld. DR submitted that the Assessing Officer has rightly disallowed the claim of the assessee related to speculation loss and has not set off the same against income from profit and gain.

7. I have heard both the parties and perused all the relevant material available on record. It is pertinent to note that as regards the issue related to non-issuance of specific/separate notice under Section 142(1) of the Act, the contention of the Ld. AR cannot be taken into account as notice under Section 142(1) of the Act was issued and thereby the assessee has been specifically called upon for speculation loss whether it should be allowed and on what basis it should be disallowed. Thus, the issue related to notice under Section 142(1) of the Act not properly issued is rejected.

8. As regards to merits of the case is concerned, the Assessing Officer during the assessment proceedings noticed from the Profit & Loss account that equity trading loss had been set off against the business loss which was speculation loss as per Section 45(5) of the Act. The assessee is engaged in the business of share trading and arbiters and thus the business of the assessee is on the footing of speculation itself and related to share transactions. Once the Revenue authorities have accepted the business portfolio of the assessee they cannot say that the in income is not that of business income. Merely claiming speculation loss in respect of business income which is during the course of business of the assessee cannot be discarded by the Revenue without any basis. Therefore, the Assessing Officer as well as the CIT(A) was not right in disallowing the claim of the assessee in respect of speculation loss and was not right in disallowing the set off against income from Profit & gain. Ground nos.1, 2 & 3 of the assessee's appeal are allowed.

9. As regards ground nos.4 & 5 which are consequential and hence not adjudicated at this juncture.

10. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open Court on this 23rd day of September, 2022.

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 23rd day of September, 2022

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Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad