

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Shri B.R. Baskaran (AM)

I.T.A. No. 678/Mum/2022 (A.Y. 2008-09)
I.T.A. No. 2424/Mum/2021 (A.Y. 2011-12)

Classic Share & Stock Broking Services Limited 121, Radha Bhuvan 1 st Floor, Nagindas Master Road, Fort Mumbai-400 023. PAN : AACCC5745P (Appellant)	Vs.	DCIT, Central Circle-7(1) Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
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Assessee by	Shri Rajiv Khandelwal & Shri Poojan Mehta
Department by	Shri P. Daniel
Date of Hearing	21.07.2022 & 17.08.2022
Date of Pronouncement	17.10.2022

ORDER

Both the appeals filed by the assessee are directed against the orders passed by the learned CIT(A)-49, Mumbai and they relate to A.Y.2008-09 & 2011-12. Since common issues are urged in these appeals, both the appeals are being disposed of by this common order, for the sake of convenience.

2. In both the appeals the assessee is aggrieved by the decision of the learned CIT(A) in confirming the disallowance of expenses claimed by the assessee on the ground that the assessee has not carried on any business activity during these years. In AY 2008-09, the assessee is aggrieved by the decision of Ld CIT(A) in upholding assessment of interest income under the head Income from other sources rejecting the claim of the assessee to assess the same under the head Income from business.

3. The facts relating to the case are that the assessee was carrying on business of broking and trading in shares and securities. The assessee was a member of National Stock Exchange of India limited (NSE) and Bombay Stock Exchange India Limited (BSE). The assessee belongs to the group of Shri Ketan Parekh. The SEBI conducted investigation into the role of Ketan Parekh and its associate concerns for alleged market manipulations in the securities market, particularly in the scrips like Himachal Futuristic Communications Limited, Lupin Laboratories Limited, Zee Telefilms Limited, Aftak Infosys Limited and Padmini Polymers Limited. Consequent thereto, SEBI debarred the assessee from undertaking any fresh business of stock broker or merchant banker w.e.f. 5th April, 2001. Since then, the assessee did not carry on the business and it was contesting the decision of SEBI in various legal forums. The order passed by SEBI came to be confirmed by the Hon'ble Supreme Court on 18-05-2007, when the Hon'ble Supreme Court dismissed the Civil Appeal No.4164 of 2006 filed by the assessee.

4. I shall first take up the appeal filed for AY 2008-09. This appeal emanates out of second round of proceeding. Since the assessee did not carry on any business, in the first round, the AO had rejected the claim of various expenses made by the assessee. The assessee had revalued its trading stock of shares and securities and claimed the loss arising on such revaluation. The same was also rejected by the AO. When the matter relating to AY 2008-09 reached the Tribunal in the first round, the ITAT restored the matter back to the file of the AO with the following observation:-

“5. In this matter, the order of SEBI had attained finality on 18-05-2007 and it is a question of fact to be decided whether there was business in existence till such date and any expenses are allowable as deduction till such date. Since the AO had not examined the said aspect, it has become imperative to examine the question of allowability of various expenses incurred by the assessee till 18-05-2007, in the context of conduct of any business by assessee till such date. It is a question of fact whether or not the business was carried out till 18-05-2007 and it so various expenses if incurred by the assessee is allowable as deduction and also the question of depreciation and interest relating to the particular period. We therefore, set aside the impugned order and remand the matter to AO to examine the

above matter of fact to reach a right conclusion on the issue of liability of the assessee.”

In the set aside proceeding, the AO took the view that the assessee has not brought on record any new fact and further, since the assessee did not carry on any business activity, the various expenses claimed by the assessee are not allowable as deduction. Accordingly, the AO retained the computation that had been made in the original assessment order.

5. The Ld CIT(A) granted partial relief to the assessee, i.e., the Ld CIT(A), vide paragraph 7.3.4 of the order, held that the expenses incurred to maintain corporate status of the assessee and also the legal expenses are allowable as deduction. He dismissed remaining grounds urged by the assessee. Still aggrieved, the assessee has filed this appeal.

6. The Ld A.R submitted that the Ld CIT(A) has accepted in principle that the expenses incurred to maintain corporate status of the assessee and legal expenses are allowable. However, the quantification of such expenses was not realistic and accordingly, the Ld A.R prayed that the quantification requires reconsideration. He submitted that the depreciation and all legal expenses claimed by the assessee are related to the maintenance of corporate status of the assessee. He submitted that the assessee had been carrying on various business activities, viz., share broking, merchant banking, share trading and consultancy. He submitted that the SEBI has suspended the share broking and merchant banking activity only, i.e., the business activities relating to share trading and consultancy have not been suspended by SEBI. Accordingly, he submitted that it cannot be said that the business activities of the assessee has completely banned as presumed by the tax authorities. He submitted that the trading stocks of the assessee were attached by the Government authorities and hence it cannot carry on trading activities. Further, the assessee has been facing various legal cases and hence most of the time has gone into managing those legal cases.

Accordingly, the Ld A.R submitted that non-carrying on of business activities can be considered as a “temporary lull” in the business activities of the assessee and it cannot be considered as a case of stoppage of business altogether. Accordingly, he contended that various expenses incurred by the assessee are the expenses incurred in the normal course of carrying on business and hence all the expenses should be allowed.

7. The Ld Special Counsel representing the revenue submitted that the assessee has been barred from carrying on business activities by SEBI and the same has attained finality by the order passed by Hon’ble Supreme Court on 18-05-2007. The Ld Special Counsel further submitted that the co-ordinate benches have given clear finding in the earlier years, i.e., for the years prior to the above said date that the expenses incurred by the assessee till the date of order passed by Hon’ble Supreme Court should be allowed as deduction. In the order dated 29-05-2009 passed in ITA No. 5008 & 5009/Mum/07 in the case of KNP Securities P Ltd, the Tribunal has observed that the expenses incurred after 18-05-2007 may not be allowable as deduction. He submitted that the assessee itself has accepted that it cannot carry on business after 18-05-2007 before the Tribunal while arguing the cases of earlier years. Accordingly, he submitted that the assessee cannot change its stand now in the years under consideration.

8. The Ld A.R, in the rejoinder, submitted that the SEBI has barred only share broking and merchant banking activity of the assessee, which is very much clear from the orders passed by various authorities. When only a part of various activities carried on by the assessee is barred, it cannot be said that the entire business activities of the assessee have been barred. He submitted that the co-ordinate bench has not given a decision that the expenses incurred after 18-05-2007 are not allowable. It has only observed that “at the most it can be said that no expenses can be allowed from that year”.

9. I have heard rival contentions and perused the record. It is the submission of the assessee that it is carrying on different types of activities, viz., share broking, merchant banking, share trading and consultancy. It is the contention that the SEBI has barred only share broking and merchant banking activity, i.e., it is the claim of the assessee that the activities relating to share trading and consultancy have not been barred. However, on a perusal of the financial statements, I notice that the securities held as stock in trade has been attached by SEBI, meaning thereby, the assessee could not have carried on trading activities at all, even if the claim of the assessee is accepted on merits. This leads a situation that the assessee could not have carried on trading activities. Further, I notice that the assessee has not brought in fresh funds in order to continue to carry on share trading activities. Under these set of facts, I do not find any merit in the contentions of the assessee and accordingly, I hold that the assessee has not carried on any business activity during the financial year relevant to AY 2008-09.

10. However, it is a fact that the assessee company was required to maintain its corporate status, mainly to contest various legal cases foisted on it. Though the assessee has not carried on any share trading activity, yet it is submitted that the assessee can resume the activities any time in future. Hence, as rightly held by Ld CIT(A), the expenses incurred in maintaining the corporate status as well as legal expenses incurred in contesting various legal cases are required to be allowed. I notice that the revenue has also accepted the principle so expressed by Ld CIT(A). I noticed that the Ld CIT(A) has allowed part of expenses, but it is the contention of the assessee that the Ld CIT(A) has not allowed all relevant expenses, particularly depreciation and other relevant expenses. Hence, I am of the view that the expenses required to be incurred in order to maintain the corporate status, legal expenses and other necessary expenses which are required to be incurred invariably to run the company should be allowed as deduction in the hands of the assessee.

Accordingly, I modify the order passed by Ld CIT(A) on this issue and direct the AO to allow all expenses incurred to maintain corporate status, legal expenses and other necessary expense which are required to be incurred invariably in order to run the company. The assessing officer may decide the quantum of expenses after affording opportunity to the assessee.

11. With regard to the issue of the head of income under which the interest income is assessable, I restore this issue to the file of AO, since the AO has not made any discussion on the same. The nexus between the deposits and business compulsions should decide the head of income under which the interest income is assessable. Accordingly, the AO may examine this issue afresh after affording adequate opportunity of being heard to the assessee.

12. With regard to the revaluation loss claimed by the assessee, I am of the view the same should be allowed as deduction, since the revaluation of stock as at the yearend was the consistent practice followed by the assessee. Such revaluation will not fall within the scope of ban imposed upon the assessee with regard to share broking and merchant banking activity of the assessee. Accordingly, I direct the AO to allow loss arising on revaluation of stock of securities.

13. I shall now take up the appeal filed for AY 2011-12. The only issue urged in this appeal relates to the expenses claimed by the assessee. I restore this issue to the file of the AO for examining it afresh in the light of discussions made by me in the preceding paragraphs while disposing of the appeal filed for AY 2008-09.

14. In the result, both the appeals of the assessee are partly allowed.

Order pronounced in the open court on 17.10.2022.

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 17/10/2022

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

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