

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 2170/DEL/2019
[Assessment Year: 2014-15]**

Narsi Iron & Steel Pvt. Ltd., 12, Ring Road, Lajpat Nagar-4, New Delhi-110024. PAN: AAACN3681P	<u>Vs</u>	ACIT, Central Circle-05, New Delhi.
APPELLANT		RESPONDENT
Assessee represented by	Sh. Sudesh Garg, Adv. & Sh. Salil Aggarwal, CA; and Sh. Utsav Garg, Adv.	
Department represented by	Ms. Sarita Kumar, CIT DR	
Date of hearing	01.11.2022	
Date of pronouncement	21.12.2022	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-24, New Delhi, dated 18.02.2019, pertaining to the assessment year 2014-15. The assessee has raised following grounds of appeal:

"1. The Ld. CIT(A) has erred on facts and in law in upholding the action of the AO of gross violation of principle of natural justice denying the cross examination of the persons and of not providing copies of the appraisal report and other evidences on which reliance was placed by the AO.

2. The Ld. CIT(A) has erred on facts and in law in confirming addition of Rs. 1,64,03,540/- on account of disallowance of business loss on share trading

without appreciating the fact that all the transaction for sale purchase of shares were carried out on real time basis through the stock exchange and the payment/receipt against the purchase/sales of shares were made through banking channel and also that the delivery and receipt of shares sold/purchased were made through a De-Mat account.

3. *The Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs. 1,64,03,540/- against of the appellant for the reason that "the persons who have sold the shares to the appellant were also examined and it has been clearly established from the reply of Shri Sanjeev Aggarwal and enquiries in the case of Pushpa Gulabchand Chedda that the sale of shares of the appellant is not genuine but is a managed transaction." which is indisputably contrary to facts on record.*

4. *The Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs. 1,62,41,129/- on account of treating short term capital loss as accommodation entry and assumed payment of commission of Rs. 1,62,411/- for the same, wholly on assumptions and presumptions, without an iota of evidence against the appellant indicating or alleging any receipt of cash against the alleged bogus short term capital loss or without identifying any person who allegedly provided the accommodation entry and who was allegedly provided commission of the same.*

5. *The Ld. CIT(A) has erred on facts and in law in not considering the numerous case laws (including from the jurisdictional High Court and the Tribunal) brought to his notice by the appellant.*

6. *The appellant craves for liberty to add fresh ground(s) of appeal and also to amend, alter, modify any of the ground(s) of appeal”*

2. Facts giving rise to the present appeal are that in this case the assessee had filed its return of income on 30.09.2014 declaring an income of Rs. 1,03,45,180/-. Subsequently, cse was selected for scrutiny assessment through CASS and assessment was framed vide order dated 30.12.2016 u/s 143(3) of the Income-tax Act, 1961 (in short “the Act”). The Assessing Officer while framing the assessment observed that the assessee company had

made trading in the penny stock shares of M/s SRK Industries . The shares were purchased between 20.12.2013 to 03.01.2014 on very high rate and sold the same on 24 & 25 March, 2014 at a very low price, resulting in booking huge loss that worked out to Rs. 1,62,41,129/-. The Assessing Officer, therefore, treated the loss as not genuine and only an accommodation entry. The Assessing Officer further observed that for getting such accommodation entry the assessee would have paid commission ranging from 1% to 2%. However, he treated 1% as the unexplained expenditure and added the same. Thus, the Assessing Officer made addition of Rs. 1,64,03,540/- and assessed income at Rs. 2,67,48,720/-. Aggrieved against this the assessee preferred appeal before the learned CIT(Appeals), who also sustained the addition. Now the assessee is in appeal before this Tribunal.

3. Apropos to the grounds of appeal, learned counsel for the assessee vehemently argued that the Assessing officer grossly erred in not providing the opportunity of cross-examination and also failed to supply the appraisal report which resulted into gross miscarriage of justice. He contended that the action of the lower authorities is in gross violation of natural justice despite a specific request for cross-examination was made by the assessee. He contended that the authorities below have proceeded on the premise that the transaction entered into by the assessee of purchase of shares was not genuine. He drew our attention to para 3(b) of the assessment order to buttress the contention that notices were issued by the Assessing Officer. He further drew our attention to para 3(e) of assessment order to demonstrate that the Assessing Officer had considered statement

of one Shri Sanjeev Agrawal who had surrendered long term capital gain. He further submitted that the statement of Mr. Rakesh Chand Madan Lal Jain, managing director of M/s SRK Company was recorded u/s 131 of the Act. He contended that the authorities below failed to appreciate the fact in right perspective and have made addition merely on the basis of whims and fancies which is not permissible under the law.

4. Learned CIT(DR) opposed the submissions and supported the orders of the authorities below. Ld. DR contended that reasonable opportunity was granted. The onus was on the assessee to prove the genuineness of the transaction.

5. We have heard rival contentions, perused the material on record and have gone through the orders of the authorities below. Undisputedly, the Assessing Officer has made addition on the basis of the statement recorded at the back of the assessee. The assessee had made request regarding cross-examination of the managing Director of M/s SRK Company and that of Shri Sanjeev Agrawal. Therefore, considering the totality of the facts and the material placed by the assessee, which need to be verified and the assessee be given adequate opportunity, to subserve the interest of natural justice, we hereby set aside the impugned order and restore the assessment to the file of the Assessing Officer to make assessment afresh after giving adequate opportunity to the assessee. The assessee would not seek any adjournment without any reasonable cause and shall furnish information/ details, as called for during the course of remanded assessment proceedings. Grounds raised in this appeal are allowed for statistical purposes.

6. Appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 21st December, 2022.

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER
MP

Copy forwarded to:

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

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI