

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Girish Agrawal, Accountant Member**

**I.T.A. No. 1739/KOL/2019
Assessment Year: 2014-2015**

***Omang Trade & Management Pvt. Ltd.....Appellant
25A, Camac Street, 4th Floor,
Room No. 408A,
Kolkata-700016
[PAN: AAACO3174A]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-8(2), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069***

Appearances by:

N o n e, appeared on behalf of the assessee

*Shri P.P. Barman, Addl. CIT, appeared on behalf of the
Revenue*

**Date of concluding the hearing: December 29, 2022
Date of pronouncing the order : January 09, 2023**

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal against the order of Id. Commissioner of Income Tax (Appeals)-3, Kolkata dated 21.05.2019 passed for A.Y. 2014-15.

2. The assessee has taken five grounds of appeal, but its grievances revolve around a single issue, namely ld. CIT(Appeals) has erred in confirming the disallowance of short-term capital loss of Rs.6,60,500/-, which was disallowed by the ld. Assessing Officer by disbelieving the transaction of the assessee.

3. ITAT has issued number of notices to the assessee, but in response to notices, no one has come present on behalf of the assessee. With the assistance of ld. D.R., we have perused the record carefully and proceed to decide the appeal *ex parte qua* the assessee.

4. Brief facts of the case are that the assessee has filed its return of income on 21.08.2014 declaring total loss of Rs.8,84,736/-. The case of the assessee was selected for scrutiny assessment and a notice under section 143(2) was issued and served upon the assessee. On perusal of the accounts, it revealed to the ld. Assessing Officer that assessee-company had claimed short-term capital loss of Rs.6,60,500/- in the shares of M/s. SRK Industries Limited. The ld. Assessing Officer has directed the assessee to submit necessary details in support of the claim. The assessee has contended that it has purchased 8,000 shares of SRK Industries Limited from the Stock Exchange and sold them on real time basis at prevalent market price at BSE. The assessee has submitted

documentary evidence in support of the claim. In other words, it has purchased shares @ Rs.172.67 per share and sold these shares @ Rs.90.11. Thus a loss has been claimed. On an analysis of all the transactions, Id. Assessing Officer has observed that shares of this Company have been treated as a penny stock, which has been transacted in and around Kolkata. He disbelieved these transactions and disallowed the loss.

5. The Id. CIT(Appeals) has concurred with the Id. Assessing Officer. His order is running into 18 pages, out of those 18 pages, from pages no. 4 to 18, he has only made reference to the ratio of law laid down in different judgments. In other words, he has reproduced the Head Notes and other details of these judgments. The factual finding is available only in pages no. 2 & 3, which reads as under:-

“The issue is regarding the addition of Rs.6,60,500/- made by the AO by treating share trading loss, claimed as Short Term Capital Loss in the return, as bogus. It is observed from the assessment order that the appellant company has sold shares held under the head investment and claimed to have incurred losses on the same. The AO to ascertain the genuineness of the loss claimed by the appellant company from the aforesaid share transactions called for the details of sale and purchase of the scrips in a specific format. From the details submitted by the appellant company he observed that the appellant company has incurred a loss of Rs. 6,60,500/- on trading of following few particular shares/ scrip:

Sl. No	Name of Scrip	Opening Stock			Purchase			Sale			Closing Stock			Gain/Loss
		Qty	Rate	Value (Rs.)	Qty	Rate	Value (Rs.)	Qty	Rate	Value (Rs.)	Qty	Rate	Value (Rs.)	
1	SRK Industries				8000	172.67	Rs.1381380.01	8000	90.11	720880.00				660500.01

This stock, in which the appellant has incurred a loss, is a penny stock and the wide fluctuations in the prices, on account of systematic manipulation, has been discussed by the AO in the assessment order. Further the AO in the assessment order has brought out the salient features of such listed penny stocks which have been systematically used for circular trading and price rigging as follows:

- (1) Initial allotment of shares to beneficiaries is generally done through preferential allotment.*
- (2) The market value of shares of these companies rise to very high level within a span of the year.*
- (3) The trading volume of shares during the period, in which manipulation are done to raise the market price is extremely thin.*
- (4) Most of purported investors are returned with their initial investment amount in cash. Only small amount is retained by the operators' security as commission.*
- (5) Most of these companies have no business at all. Few of them, which have some business, do not have the credentials to justify the sharp rise in Market Price of their shares.*
- (6) The sharp rise in market price of the shares of these entities is not supported by fundamentals of the company or any other genuine factors.*
- (7) An analysis in respect of persons involved in transactions apparently carried out in order to jack up the share prices has been done in respect of 84 companies. It has been noted that many common persons/entries were involved in trading in more than LTCG companies during the period when the shares were made to rise which implies that they had contributed to such price rise.*
- (8) Names of most of the LTCG companies are changed during the period of the scam.*
- (9) Most of the companies split the face value of shares (this is probably done to avoid the eye of market analysis).*
- (10) The volume of trade jumps manifold immediately when the market prices of shares reach at optimum level*

so as to result in LTCG assured to the beneficiaries. The maximum is reached around the time when the initial allottees have held the shares for one year or little more and, thus their gain on sale of such shares would be eligible for exemption from Income-tax.

(11)An analysis of share buyers of some of LTCG companies was done to see if there were common persons/entities involved in buying the bogus inflated shares. It was noted that there were many common buyers [which were paper companies].

(12)The prices of the shares fall very sharply after the shares of LTCG beneficiaries have offloaded through the pre-arranged transactions on the Stock Exchange floor/portal to the Short Term Loss seekers of dummy paper entities.

(13)The shares of these companies are not available for buy/sell to any person outside the syndicate. This is generally ensured by way of synchronized trading by the operators amongst themselves and/or by utilizing the mechanism of upper/lower circuit of the exchange.

In view of the above the AO was not satisfied with the genuineness of the Short Term Capital Loss claimed by the appellant and therefore he disallowed the amount claimed of Rs.6,60,500/- by treating it as Bogus.

The appellant has filed before the AO the following documents in support of their claim:

(1) Demat Holding Statement.

(2) Contract notes of purchase and sale of shares.

(3) Bank Statement.

It has been contended that the shares in which the appellant has traded is listed on the Bombay Stock Exchange and all the purchase and sale transactions were made on the Online System of the Bombay Stock Exchange through the broker M/s. ISE Securities & Services Limited and M/s. Prabhat Kumar Jhunjhunwala. It has been contended that the AO has made the addition on suspicion, surmises and conjectures. It was further submitted that there was absolutely no evidence on record for linking the assessee with the alleged scam of manipulation in share pricing leading to Long Term Capital Gain/Short Term Capital Loss. Accordingly, it was argued that the loss being genuine in nature, should be allowed.

I find that all the submissions made by the appellant during the course of the appellate proceedings and during the course of the assessment proceedings point towards elaborate documentation i.e. the appellant has produced papers relating purchase/sale of the shares, the holding of the shares, the demat account, payments by cheque and the necessary bank statements. It is the contention of the appellant that they have provided copies of the bank statement, bank contract notes and delivery instructions to the broker by way of proof that all these transactions were genuine. However in my considered view of the matter, it is precisely this elaborate paperwork that strengthens the matter relating to the bogus losses in the said share transactions, which clearly has been pre-planned and executed in an organized manner with mala fide intentions. Therefore all these papers and documents are self-serving and do not have much evidentiary value. The whole gamut of transactions are natural highly suspicious, and therefore the rules of suspicious transactions do apply in the impugned case. There are grave doubts in the story propounded by the assessee before (the authorities below. None of the material produced before .he Ld AO by the appellant, are enough to justify the losses that have accrued in the share transactions. In my considerate view the banking documents are mere self-serving recitals”.

6. We have gone through the findings of both the Revenue Authorities. It is pertinent to observe that during investigation of Director of Investigation, the transaction in the sale and purchase of shares of M/s. SRK Industries was termed as a penny stock and recently Hon'ble Calcutta High Court has dismissed a large number of appeals, wherein more than 80 scrips were treated as bogus. This scrip is one of them and, therefore, after going through the finding of Revenue Authorities, we do not find any merit in it and it is dismissed.

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

Order pronounced in the open Court on 09 January, 2023.

Sd/-

**(Girish Agrawal)
Accountant Member**

Sd/-

**(Rajpal Yadav)
Vice-President (KZ)**

Kolkata, the 09 day of January, 2023

***Copies to :(1) Omang Trade & Management Pvt. Ltd.,
25A, Camac Street, 4th Floor,
Room No. 408A, Kolkata-700016***

***(2) Income Tax Officer,
Ward-8(2), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069***

***(3) Commissioner of Income Tax (Appeals)-3,
Kolkata;***

(4) Commissioner of Income Tax- ;

(5) The Departmental Representative

(6) Guard File

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.