

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI**

**BEFORE N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 6808/Del/2017
Asstt. Year: 2013-14

Jatinder Kumar Suri H-22, Masjid Moth, Greater Kailash-II, New Delhi – 110 048 PAN ABIPS8265Q	Vs.	DCIT, Circle-3(1)(2), International Taxation New Delhi.
(Appellant)		(Respondent)

Assessee by:	None
Department by :	Shri Vivek Vardhan, Sr. DR
Date of Hearing	01/02/2023
Date of pronouncement	01/02/2023

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the assessee is directed against the order dated 31.08.2017 of the Ld. Commissioner of Income Tax (Appeals) – 43, New Delhi (**"CIT(A)"**) pertaining to Assessment Year (**"AY"**) 2013-14.

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

- "1. a) *The Ld. CIT(A) has erred in confirming the addition of Rs. 89,49,665/- made by the AO on the ground that the appellant had failed to deduct TDS on the Professional Fees paid without considering the fact that the provisions of Section 194J of the Income Tax Act, 1961 are applicable to an individual whose accounts are audited u/s 44AB of the Income Tax Act, 1961 in the immediately preceding year. Since the books of accounts of the assessee were not audited in AY 2012-13, the*

provisions of Section 194J are not applicable. The same be considered and the additions be deleted.

b) The Ld. CIT(A) has assumed that the Professional Fees of Rs. 89,49,665/- paid to M/s Quest Profin Pvt. Ltd is towards the Income from Share Trading without appreciating that the said expense is incurred in relation the Income from Consulting and not in relation to Income from Share Trading. Hence the same be considered and the additions be deleted.

2. *a) The Ld. CIT(A) has erred in disallowing the loss claimed by the assessee on account of decrease in value of the shares purchased and held as stock-in-trade as at 31.03.2013 and considering the same as a sham transaction. The same be considered as a genuine transaction and the loss be allowed.*

b) The Ld. CIT(A) has disallowed the loss of Rs. claimed merely concluded that the Share Trading business of the appellant is a sham transaction merely due to the fact that the assessee did not have a demat account and the purchase of shares were routed through a third party. Further the Ld. CIT(A) has failed to understand that advisory services provided by the appellant were in connection with the business of Viraj Profile. These assumptions be quashed and the additions made be deleted.

c) The Ld. CIT(A) has failed to understand that the market prices of the shares acquired by the appellant are not influenced by any activity of the appellant. Moreover these were acquired in the month of July 2012. The Ld. CIT(A) has failed to appreciate that merely due to the fact that the appellant claimed a loss on the net realizable value at year end did not entail the transaction to be sham one. The same be considered and genuine and the loss be allowed.

3. *a) The Ld. CIT(A) has erred in disallowing the following expenses on the belief that these pertain to the Sham Transaction without considering the facts and circumstances of the case. The same be considered and the expenses be allowed*

Sr. No	Particulars	Amount (Rs)
1.	Professional Fees Paid to Adarsha Consultancy & Management Services Pvt. Ltd	1,686/-
2.	Professional Tax paid	2,500/-
	TOTAL	4,186/-

b) The Ld. CIT(A) has failed to understand that the aforesaid expenses are not directly related to any source of income. Further the Ld. CIT(A) has failed to appreciate that the appellant had received professional fees and loss on share transaction.

c) The Ld. CIT(A) has not been able to substantiate with any evidence how the aforesaid expenses are considered to be in relation to sham transactions. The additions therefore be deleted.

4. *The Ld. CIT(A) has erred in making an addition on account of Interest expense of Rs. 8,63,174/- on Loan taken from MMFSL without considering the facts and circumstances of the case. The same be allowed.”*

3. Briefly stated, the assessee is non-resident individual engaged in the business of management consultancy and advisory services and business of share trading. For AY 2013-14, he filed his return on 25.09.2013 declaring income of Rs. 41,28,650/-. Subsequently on 28.03.2015 revised return declaring income of Rs. 41,38,650/- was filed. His case was selected for scrutiny under CASS. During assessment proceedings, the assessee filed details with respect to the questionnaire issued. After discussion with the Authorised Representative of the assessee, the Ld. Assessing Officer (**“AO”**) computed the total income of the assessee at Rs. 3,47,56,880/- including therein profits and gains from business or profession of Rs. 1,34,67,942/-; income from other sources (bank interest) of Rs. 2,10,88,941/- and addition on account of unexplained expenditure of Rs. 2,00,000/- under section 69C of the Income Tax Act, 1961 (**the “Act”**) in the assessment order passed under section 143(3) of the Act on 29.03.2016.

4. On appeal filed by the assessee before the Ld. CIT(A) the assessee got part relief. Still dissatisfied, the assessee is in appeal before the Tribunal.

5. Hearing was fixed for 24.03.2022; 08.06.2022; 31.08.2022; 14.11.2022; 15.11.2022 and 01.02.2023. None attended for the assessee on all the above dates. We, therefore, proceed to decide the appeal on merits after hearing the Ld. DR. The grounds of appeal raised by the assessee are being considered herein below.

6. Ground No. 1 relates to addition of Rs. 89,49,665/- made by the Ld. AO which has been sustained by the Ld. CIT(A). The Ld. AO has discussed the issue in para 20 of the assessment order. The Ld. AO found that the assessee claimed expenses of Rs. 89,49,665/- against professional receipts and in support filed an invoice of an equivalent amount raised by Quest Profin Advisors Pvt. Ltd. with the narration "fees for advisory services" rendered. The payment to the said company as per ledger account was of Rs. 20,00,000/- on 05.10.2012; Rs. 9,84,495/- on 09.10.2012; Rs. 40,00,000/- on 11.10.2012 and Rs. 19,65,170/- on 15.10.2015. According to the Ld. AO, the assessee failed to deduct the TDS on the said payment of professional fee of Rs. 89,49,665/- and pay to the Central Govt. He, therefore, disallowed the impugned expenditure and added the same to the income of the assessee.

7. Before the Ld. CIT(A) the assessee submitted that during the year the assessee earned professional fee of Rs. 1,20,00,000/-. The TDS deducted by Viraj Profile was on the entire amount including service tax of Rs. 14,83,200/- and the Ld. AO erred in assuming that the said service tax payable to the Central Govt. is the income of the assessee which is evident from para 19 of his order. It was also submitted that prior to Circular No. 1/2014 dated 13.01.2014 of the CBDT the deductor was required to deduct TDS on the entire amount including service tax. Accordingly, the deductor has deducted TDS on Rs. 1,34,83,200/- which is including service tax. In para 3.3 to 3.6 the Ld. CIT(A) recorded his finding as under:-

“3.3 *The Assessing Officer has made two additions on the above grounds. AO has made an addition of Rs 89,49,665 on the ground TDS was not deducted on payment of Rs.89,49,665 made to M/s Profin Advisor Pvt. Ltd. The AO has held that the detail of services rendered by M/s Quest Profin Advisor Pvt. Ltd has not been by the assessee. It was also stated that the assessee did not provide copy of agreement with M/s Quest Profin Advisor Pvt. Ltd to indicate nature of services. Further the TDS on the same payment was also deducted. In the absence of deduction of TDS the AO has stated that since out sourcing of work was actually liable to TDS u/s 194C or the expense for the payment cannot be allowed. The assessee in his submission states that the provisions of section 194J required that assessee (being and HUF or an Individual)*

should have Gross Receipt Turnover from business exceeding monetary limitations u/s 44AB only in such cases liability to deduct TDS would arise. In the case in AY 2012-13 the accounts were not auditable u/s 44AB and therefore TDS was not required to be deducted. On the substantive of the applicability of sec.194C/ 194J and whether the payment was genuine or not, it is seen that the assessee claims that the rendered were principally of an advisory nature. The assessee in his return shows only one receipt of professional fees of Rs.1.2 cr. This received from one entity M/s Viraj Profiles Pvt. Ltd. A write up of rendered by the assessee and his professional income and also services received by the assessee has been submitted by the assessee which is reproduced here under:

“Mr. Jatinder Suri has been a trader and has immense knowledge of the Commodity market, share market and real estate market from the experience of years together. He has knowledge of prospective buyers, sellers and their associates in the field of Commodity, Share and Real Estate Market. His networking and contacts in the world market is very strong. He had some communication/Association with Viraj Profile wherein he has been advising them on an ongoing basis on the prospective buyers and sellers for their business based on his expert knowledge & experience. Due to all these connections and his association, he had received the Consultancy income from Viraj on an ongoing basis. As he did not have sufficient staff members for doing all these work, he had also undertaken outsourcing of his business assignments for which he had entered into an agreement with Quest Profin Advisor Pvt. Ltd and to whom he would pay Professional Fees.

Now under that agreement, Quest Profin Advisor Pvt. Ltd had rendered Advisory Services to the assessee as per requirements and specifications certain events, the assessee could also ask Quest Profin Advisor Pvt. Ltd to render services beyond the scope of activities which the parties contemplate as part of Advisory Services. All the activities of agreement involves mutual co-operation from ioftZ parties. Hence the assessee also had equal involvement furnishing information, data, documents etc. as may be required for providing services.

For agreed Advisory Services the assessee had paid to Quest Profin Advisor Pvt. Ltd on a fixed contract basis and for additional services, additional compensation was paid. As Quest Profin Advisor Pvt. Ltd is appointed by the assessee, he is responsible for payment of all applicable sales, use, value added, property and other taxes including duties and similar mandatory payments. During the pendency of agreement and even after the agreement the assessee had a right to ask for confidentiality of trade secrets, information, data records documents, business plan, client list, business arrangements etc. provided by him to Quest Profin Advisor Pvt. Ltd in the course of performing their duties under that agreement. In case of any loss, the assessee had a right to get indemnified from the other party. Under the agreement entered, the assessee had a right to terminate the agreement by giving prior notice in writing.

Hence as essence to the agreement it can be said that while identifying and exploring business opportunities, the assessee has availed Financial Advisory Services of Quest Profin Advisors Pvt. Ltd for reducing risk factor involved in finance sector. Also with that he had used his own experience and immense knowledge which he gained during his work in that field.”

3.4 *Before deciding the issue of the allowability of payment made M/s Quest Profin, the conduct of the business of the assessee is The AO has disallowed a loss of Rs 2,01.00,000 on account of valuation of shares purchased by the assessee during the year and held stock for the purposes of his business by treating the transaction as a transaction. The assessee has given a detailed submission claiming transaction was genuine which has been quoted above. The submission the assessee income indicates some very interesting features.*

- a. The assessee is supposedly an experienced Investment Advisor and earning a lot of professional income from such investment advice and is a trader and has immense knowledge of the Commodity market, share market and real estate market from the experience of years together.*
- b. However, this experienced Investment Advisor with immense knowledge of the share market does not even have a DEMAT Account with any Financial institution which he can use for the purpose of his own investments.*
- c. For making personal investments the assessee has stated that he entered into contract with one M/s Blossom Dealcom Pvt. Ltd. who would purchase the shares on behalf of the assessee in*
- d. The purchase of shares on one entity M/s CCL International was made by M/s Blossom Dealcom Pvt. Ltd. on various dates between 19.7.12 and 28.3.2013. These shares at the time of purchase were valued at Rs.2,80,00,000.*
- e. The same shares purchased through M/s Blossom Dealcom Ltd by this experienced Investment Advisor (who is giving professional advice to clients on purchase and sale), in a less than 8 months, dropped drastically in value and were Rs 79,00,000 at the close of FY i.e. 31.03.2013. Just as an interesting fact it is pointed out that the BSE Sensex which is indicator of share pricing moved upwards from 17447 in 2012 to 18,500 in March 2013. Thus there was no crash in the market per se.*
- f. As a result a loss of an amount of Rs.2,01.00,000 accrued to assessee from this transaction one share scrip. And that too share transaction which was executed in the name of a third*

- g. *The shares were not purchased in the assessee's name, they were held by the assessee through an agreement with the same person i.e. Blossom Dealcom Pvt. Ltd.*

3.5 *However the assessee was a beneficiary or an unfortunate beneficiary of a loss of over Rs. 2.01 Cr in one assessment year for a transaction in one script. This loss has been used by the assessee to off his income from other sources as well as income from fees. This loss, prima facie on the basis of the strange character of transactions set out above appears to be a loss which has been purchased by the assessee from a third party. For the purpose of any investment or for business purposes it is reasonable to expect that purchase of shares should be made to the assessee in his own name the same should have been held by the assessee in his own name and thereafter sold by him. Neither of these basic activities were done by assessee. A simple agreement with M/s Blossom Dealcom Pvt. Ltd. signed. Truthfulness and veracity of the agreement was absolutely in question. The assessee who claims to be the proficient investor could scarcely give his own self such poor advice which would result in loss of more than Rs. 2.01 Cr. in a single year. The whole transaction M/s Blossom Dealcom Pvt. Ltd. appears to be a sham transaction, only intention of which was to reduce the taxable income. Holding of assets or purchasing assets or property by any person (M/s Blossom Dealcom in this case), where the consideration is given by some person (i.e. the assessee) who is the beneficiary of such property, also require action under the Benami Transaction Prohibition Act. The entire loss claimed by the assessee on this ground is disallowed the transaction is treated as a sham transaction.*

3.6 *In this context, the fees or charges paid by the assessee which supposedly charges for investment advice given to M/s Quest Profin Advisor Pvt. Ltd are also not for the purpose of business since there are other business transactions apart from the one transaction of shares which is discussed above. Therefore even though the AO made basic disallowance of Rs. 89,49,665 on the ground that TDS was to be deducted and such ground was not correct, the facts clearly indicate that payment of professional fees by the assessee for business purposes has not been established to be warranted. The assessee's argument that the professional work received from Viraj Profiles Pvt. Ltd was outsourced to M/s Quest Profin has also not been supported by any evidence. The entity M/s Viraj Profiles is a manufacturer of steel parts and the assessee's write up indicates, payment has been made for advising the client advising them on an ongoing basis on the prospective buyers and sellers for their business based on his expert knowledge * experience. The entity M/s Quest however does not have any such work profile. Therefore the payment as well as its link to the assessee's business is in question. The disallowance of expense of Rs. 89,49,665 is required to be made from the assessee's income on the basis of the prima facie relationship of the expense and business of the assessee established. The assessee has only entered into a single sham transaction of purchase of shares which is discussed above and therefore any payments or expenses incurred for such transaction are also not allowable."*

8. As revealed from the grounds taken before us, the contention of the assessee is that the provisions of section 194J of the Act are applicable to an individual whose accounts are audited under section 44AB of the Act in the immediately preceding year. Since the books of the account of the assessee were not audited in AY 2012-13, the provisions of section 194J are not applicable. The assessee has also contended that the Ld. CIT(A) has incorrectly assumed that the profession fee of Rs. 89,49,665/- paid to M/s. Quest Profin Pvt. Ltd. is towards income from share trading. The fact of the matter is that the said expenditure has been incurred by the assessee in relation to income from consultancy.

9. We have given our careful thought to the issue and discussed the matter with the Ld. DR. We are of the view that the submissions made by the assessee before the Ld. CIT(A) and his contentions raised before us require verification by the Ld. AO. We therefore, set aside the order of the Ld. AO/CIT(A) and direct the Ld. AO to verify the submissions/contentions of the assessee and decide the issue afresh in the light of the result of his verification and consideration. He shall allow reasonable opportunity to the assessee to present his case before him. We order accordingly.

10. Ground No. 2 relates to disallowance of loss claimed by the assessee on account of decrease in value of the shares purchased and held as stock-in-trade as on 31.03.2013 considering the same as sham transaction. The Ld. AO has discussed this issue in para 10 to 17 of his order. On appeal, the Ld. CIT(A) has recorded the submission of the assessee on this issue in para 3.2 at page 5-7 of his appellate order. He has recorded his findings in para 3.3 to 3.6 of his order which we have already extracted earlier.

11. Aggrieved, the assessee is in appeal before the Tribunal. The contention of the assessee as revealed from the grounds of appeal is that the impugned disallowance of loss has been made merely for the reason that the assessee did not have a Demat account and purchase of shares were routed through a third party. Moreover, the Ld. CIT(A) did not appreciate

that advisory services provided by the assessee were in connection with the business of Viraj Profile. It is also the stand of the assessee that the Ld. CIT(A) did not appreciate that the market prices of the shares acquired by the assessee are not influenced by any activity of the assessee. These were acquired in the month of July, 2012. Further, the Ld. CIT(A) failed to appreciate that a loss on the net realisable value at year-end did not entail the transaction to be sham one. It has been urged that the transaction be considered as genuine and loss be allowed.

12. We have perused thoroughly the order of the Ld. CIT(A)/AO. Both of them have recorded cogent reasons to hold that the impugned transaction is sham and hence disallowed the claim of loss. In the absence of any material/evidence brought on record by the assessee, we endorse the findings of the Ld. AO/CIT(A). Accordingly, finding no substance in the contentions of the assessee in this regard, we reject ground No. 2 of the assessee.

13. Ground No. 3 relates to disallowance of expense of Rs. 1686/- being profession fee paid to Adarsh Consultancy and Management Services Pvt. Ltd. and disallowance of Rs. 2500/- being professional tax paid, made by the Ld. AO which has been maintained by the Ld. CIT(A). The Ld. AO discussed these issues in para 21 of his order. On appeal, the Ld. CIT(A) recorded his finding in para 4.3 of his appellate order which is reproduced below:-

“4.3 Ground Nos.3 & 4 related to expenses on account of professional tax and professional fees. The amount of professional tax is statutory payment and the assessee has indicated that the same has been paid on 16.11.2012 to SBI. The assessee shows professional income therefore the expense is held to be permissible to an extent of Rs 2500. However, the other expenses are related to the basic sham transaction on account of purchase of loss with M/s Blossom Dealcom Pvt. Ltd. In view of the same, both the expenses are not eligible to the assessee. The disallowance made by the AO is correct.”

14. As revealed in the ground of appeal, the contention of the assessee is that the impugned disallowances have been made on the belief that these pertain to sham transaction.

15. There is nothing on record to controvert the findings of the Ld. AO/CIT(A). We, therefore, decline to interfere.

16. Ground No. 4 relates to addition on account of interest expense of Rs. 8,63,174/- on loan taken from Mahindra and Mahindra Financial Services Ltd. (MMFSL). The Ld. AO discussed this issue in para 3.3. of his order. According to the Ld. AO the said interest paid is not for earning the interest income. The assessee has not declared any income from the utilisation/application of loan funds. He, therefore, made the impugned disallowance. Before the Ld. CIT(A), the assessee relied on the decision of Agra Bench of the Tribunal in Ajay Singh Deol vs. JCIT. The Ld. CIT(A) was not convinced. According to him, there are numerous decisions holding that it is essential to establish nexus in order to allow an expenditure claimed under section 57(iii) of the Act which is lacking in the case of the assessee. He quoted the decision of Hon'ble Madras High Court in Addl. CIT vs. Madras Fertilizers 122 ITR 139 (Mad.); Hon'ble Calcutta High Court decision in CIT vs. New Central Jute Mills Co. Ltd. 118 ITR 1005(Cal.) as also the decision of Hon'ble Supreme Court in V.P. Gopinathan 248 ITR 449(SC). Following the decisions (supra), the Ld. CIT(A) recorded his finding in para 5.9 of his order as under:-

“5.9 It is clearly seen that the aforesaid decisions of the honorable Supreme Court and High Courts do not affirm the decision taken by Agra Tribunal. Another distinguishing factor in the present case is the assessee has, at no point of time indicated what the purpose of borrowing is. In such a case, if the borrowing is for a personal purpose then allowing interest which is due on such borrowing against it under the other sources or any other head of income of the assessee would be contrary to the basic principles of Income Tax. The interest by any assessee on a borrowing for personal purpose can in no terms be allowed as expenditure under any provision against an income to tax under the Act. Putting a certain amount in a fixed deposit and availing loan against the same fixed deposit which results in a net pay out of interest in the hands of the assessee cannot be held an allowable expenditure if the

borrowing is for personal purpose, say a wedding. Therefore, the loss is envisaged under the Head of 'Other Sources' by the assessee which is due to the result of an unspecified borrowing (for unspecified reason) cannot be allowable expenditure, personal reasons can therefore not be the source of loss which is permitted to be set off against taxable income. Therefore the of Rs.8,63,174/- on account of interest is not held to be allowable the interest income shown by the assessee of Rs.2,10,58,653 /-."

17. The assessee is aggrieved and is before the Tribunal.

18. It is revealed from the ground taken by the assessee that no contention at all has been raised in this regard.

19. We, therefore, hold that the assessee has nothing to say in the matter. Consequently, we uphold the finding of the Ld. CIT(A) and reject this ground of the assessee.

20. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 1st February, 2023.

sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

sd/-
(ASTHA CHANDRA)
JUDICIAL MEMEBR

Dated: 01/02/2023

Copy forwarded to-

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	

Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	