

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH,
MUMBAI

BEFORE SHRI ABY T. VARKEY, JM

आयकर अपील सं/ I.T.A. No.1528/Mum/2020
(निर्धारण वर्ष / Assessment Years: 2014-15)

Rajiv Rameshchander Babbar Flat No. 1, Amar Niletan, J. B. Nagar, Andheri East, Mumbai-400059.	बनाम / Vs.	ITO-16(1)(5) Room No. 439, Aayakar Bhavan, M. K. Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABPB9241M		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Kiran Mehta
Revenue by:	Smt. Nayana K. Kumar

सुनवाई की तारीख / Date of Hearing: 30/11/2022
घोषणा की तारीख /Date of Pronouncement: 31/01/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-04, Mumbai dated 17.01.2020 for the assessment year 2014-15.

2. Three effective grounds raised by the assessee are as under: -

- 1) "In the facts and circumstances of the case and in law, the learned CIT(A) erred in not allowing loss of Rs. 41,64,684/- incurred by the Appellant in trading in shares of M/s Shaleen Textiles and claimed as business share trading loss. The Learned CIT(A) erred in disallowing the above loss relying, inter-alia, on the decision of Hon. Bombay HC in the case of Shri Sanjay Jain while completely ignoring the submissions made by the Appellant distinguishing the said case. The learned CIT(A) also erred in relying on various case laws which were distinguishable while ignoring the case law cited which were applicable to the case of the Appellant.



ITA No.1528/Mum/2020

A.Y. 2014-15

Rajiv Rameshchander Babbar

- 2) The learned CIT(A) erred in confirming an addition of Rs. 41,647/- made u/s 69C
- 3) The learned CIT(A) erred in confirming disallowance of Rs. 2,25,080/- made u/s 14A. The Learned CIT(A) gravely erred in not accepting the contention of the Appellant that in view of the decision of Hon. SC in the case of Maxopp Investments, at the highest only Rs. 31,200/- could be disallowed u/s 14A.”

3. The first ground is against the action of the Ld. CIT(A) confirming the disallowance of Rs.41,64,684/- which assessee claimed to have incurred loss of Rs.41,64,684/-.

4. Brief facts as noted by the Ld. CIT(A) is as under: -

“4.1. During the course of assessment proceedings, the AO, on perusal of the AIR statement, noticed that during the year under consideration appellant had dealt in penny stock transaction in the shares of company M/s Shree Shaleen Textiles Ltd. The AO further observed that the appellant had taken business loss on sale of shares of M/s Shree Shaleen Textiles Ltd of Rs. 41,64,684/-. Accordingly, the AO asked the appellant to file various details regarding transaction. After analysing the facts of the case and properly gathering data and evidence regarding the scrip of M/s Shree Shaleen Textiles Ltd., the AO issued a show cause to the appellant. The appellant in reply claimed that he had done genuine business transaction and he did not know any parties mentioned in show cause. After analysis and due examination of records, the AO noticed that Long term capital loss Rs. 41,64,684/- show in the return as sale of shares of M/s Shree Shaleen Textiles was a pre-arranged method employed by the appellant in connivance with operators to evade taxes. The AO observed that the prices were jacked up so that the LTCG beneficiaries could book the profits. Thereafter, the price was made to fall freely so that interested beneficiaries who had booked at high market



ITA No.1528/Mum/2020
A.Y. 2014-15
Rajiv Rameshchander Babbar

price could avail bogus short term capital loss. The appellant held the shares for only one month and sold the shares at Rs. 28/-. It was gathered that such activity of providing bogus LTCG/STCG was alleged to have been done in the company in earlier year also. From the chart showing price and volume movement of the shares of the company from 01.04.2010 to 31.03.2014 the AO noticed that M/s Shree Shaleen Textiles Pvt. Ltd., had net worth between Rs. 0.93 crore to Rs. 18.14 crore during the past 4 years i.e. between March, 2010 to March, 2014. The total assets during the period were between Rs. 0.92 crore to Rs. 18.95 crore. Thus, it was clear that the net worth of the company were negligible. Though the net worth of the company and the business activity of the company was negligible, the share prices had been artificially rigged by the group of operators to accommodate beneficiaries seeking long term capital gain and losses. According to the AO, no prudent businessman and particularly trader or investor in stock would invest in such penny scrip which was defunct and inoperative.”

5. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to confirm the same, therefore, the assessee is before us.

6. I have heard both the parties and perused the records. I note that the assessee has been regular trader in share market in the earlier years as well as in the succeeding years. The assessee filed documents to prove that the assessee has been regularly trading in shares (other shares). The Ld. AR drew our attention to page no. 7 to 37 of PB which gives the details of the assessee’s share transaction for AY. 2015-16 to AY. 2022-23. It is noted from the computation of income for AY. 2015-16 that no business or share loss was carried forward for AY. 2015-16 of the relevant assessment year viz AY. 2014-15. In AY.



ITA No.1528/Mum/2020

A.Y. 2014-15

Rajiv Rameshchander Babbar

2016-17, the business loss and unabsorbed depreciation loss of AY. 2016-17 were carried forward. The loss carried forward of AY. 2016-17 was set off with the business income for AY. 2017-18. For AY. 2018-19, the business loss and unabsorbed depreciation of AY. 2018-19 was carried forward. And the business loss of AY. 2018-19 was set off in AY. 2019-20. And for AY. 2020-21, business loss and unabsorbed depreciation for AY. 2020-21 was carried forward. And AY. 2021-22, business loss carried forward from AY. 2018-19 and AY. 2020-21 was set off. In AY. 2022-23, loss for AY. 2022-23 and unabsorbed depreciation were carried forward.

7. Thus, it is noted that neither any loss for relevant AY. 2014-15 was carried forward nor was such loss set off in subsequent years. [Refer page no. 72 of the PB which is the computation of income for AY. 2014-15 from which it is discerned that no business loss for AY. 2014-15 was carried forward].

8. The assessee has brought to the notice of the AO that share of M/s. Shree Shaleen Textiles Ltd [in short M/s. SSTL] were purchased on the floor of the exchange through SEBI registered broker. In order to prove, the veracity of the transaction, the assessee has filed contract note for purchase and sale of shares reflecting the details of Trade No., Trade Time, etc., and the purchase and sale of the shares of Shree Shaleen Textiles Ltd. is reflected in the assessee's Demat Account pursuant to delivery from the broker. It is noted that the consideration for purchase and sale of this scrip have been through the banking channel/account payee cheque which fact is reflected in the bank statement of assessee. Moreover, it is noted that the AO had sought



*ITA No.1528/Mum/2020
A.Y. 2014-15
Rajiv Rameshchander Babbar*

confirmation of the transaction in question from registered broker viz M/s. Indira Securities Pvt. Ltd. which carried out the purchase and sale of the shares of M/s. SSTL on the floor of the stock exchange; and pursuant to the same, the assessee has attached the copy of transaction statement Demat Account (Client ID: 00172520 & DP ID:12017000) maintained with M/s. Indira Securities Pvt. Ltd. (DP of CDSL) for FY. 2013-14 relevant to AY. 2014-15 which reflects purchase and sale of shares of the M/s. Shree Shaleen Textile Ltd.

9. It was also brought to the notice of the AO that the assessee has purchased and sold the shares during the year under consideration and there is no Short Term Capital Gain(STCG)/Long Term Capital Gain (LTCG)/Short Term Capital loss claimed in the return. Thus, according to the assessee the transaction carried out by the assessee in regard to the share of M/s. SSTL are genuine and bonafide and therefore fully allowable. However, according to assessee, the AO/Ld. CIT(A) has not appreciated the facts in the right perspective and has disallowed the **business loss** of the assessee while trading in this scrip. It is found that Assessee is a trader in shares which fact has been discerned from the facts discussed (supra). Therefore, the shares traded are his stock-in-trade. And once assessee is found to be a trader, the loss incurred during business need to be allowed as business loss. And therefore the AO is directed to allow the business loss of Rs.41,64,684/-.

10. Next ground of appeal of the assessee is against the action of the Ld. CIT(A) confirming the addition of Rs.41,647/- made u/s 69C of the Act. Since ground no. 1, has been allowed this ground is



ITA No.1528/Mum/2020
A.Y. 2014-15
Rajiv Rameshchander Babbar

consequential in nature and therefore is allowed and the addition of Rs.41,647/- is directed to be deleted.

11. Ground no. 3 is against the action of the Ld. CIT(A) in confirming the disallowance of Rs.2,25,080/- made u/s 14A of the Act.

12. The AO at para no. 7 of his order has noted that the assessee has made investment in assets which are earning exempt income. The AO asked the assessee to furnish the details of the same in view of the provisions of Section 14A r.w. Rule 8D of the Income Tax Rules, 1962 (hereinafter "the Rules"). And the assessee filed the computation u/s 14A of the Act. Accordingly, the AO disallowed an amount of Rs.2,25,080/-. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) wherein the assessee has raised ground no. 5 wherein it stated that the AO has made disallowance of Rs.2,25,080/- and Rs.15,939/- u/s 14A r.w. Rule 8D of the Rules. And the Ld. CIT(A) noted that the assessee has earned tax free income by way of dividend income of only Rs.31,200/- which he claimed exempt u/s 10(34) of the Act and the assessee claimed to have incurred very less amount as expenditure for earning such income. And therefore, pleaded no disallowance u/s 14A of the Act. However, the Ld. CIT(A) was pleased to confirm the additions made by the AO. And therefore, the assessee is in appeal before this Tribunal challenging the disallowance of Rs.2,25,080/- and pleaded that disallowance if any, cannot exceed Rs.31,200/- which was earned by the assessee and claimed as exempt. For such a proposition has relied on the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. Vs. CIT 402 ITR 640 (SC). Since the assessee earned exempt income of only Rs



ITA No.1528/Mum/2020
A.Y. 2014-15
Rajiv Rameshchander Babbar

31,200/-, I find force in the contention of the assessee, so I restrict the disallowance to only Rs.31,200/- and thus the AO is directed to give relief accordingly. Thus, this ground of assessee is partly allowed.

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

Order pronounced in the open court on this 31/01/2023.

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 31/01/2023.
Vijay Pal Singh, (Sr. PS)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai