

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.1817/Kol/2019
Assessment Year: 2014-15**

M/s. CICAGO COMMODITIES PRIVATE LIMITED, Office no. 3A, 7 th floor, Gate No. 2, Poddar Court, 18, Rabindra Sarani, Kolkata-700001. (PAN: AACCC0176A)	Vs.	Deputy Commissioner of Income-Tax, Circle-1(1), Kolkata.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri B. Bhushan, AR
Respondent by : Shri Vijay Kumar, Addl. CIT, Sr. DR

Date of Hearing : 23.11.2022
Date of Pronouncement : 09.02.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A)-10, Kolkata vide Appeal No. 153/CIT(A)-10/Cir-1(1)/2014-15/2018-19/Kol dated 02.04.2019 passed against the assessment order by DCIT, Circle-1(1), Kolkata u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 26.12.2016.

2. Grounds raised by the assessee are reproduced as under:

"1 The Learned CIT(A) is not justified in treating the sum of Rs.2,36,94,753/- as bogus loss believing on report of investigation conducted by Investigation Wing, Kolkata Via EFS module of ITD which find out that these are penny stock. As regards sale of demated

shares, the sales were made in electronic plat forms of recognized stock exchanges through reputed brokers with whom various assessee are maintaining trading account. The assessee paid STT on all the transactions. The moment sales were effected, the demat accounts were debited. It is submitted for kind consideration that sale through a recognized stock exchange which were electronically made cannot be manipulated. So also debit and credit entries in the Demat account which were maintained by reputed DPs.

It may further be mentioned here that all the sale transactions were done through exchanges, STT was' paid, sale proceeds were realized by account payee draft/cheque. Therefore, merely because the stocks were of low value, per se, would not lead to a conclusion that the transactions were not genuine. It is submitted that suspicion, however, strong cannot take the place of proof as held by the Apex Court in many cases.

The AO has not brought out any clear cut material to show that the assessee was involved in price manipulation except relying on presumption.

Nothing cogent and concrete have been mentioned in the assessment order to indicate as to how the appellant was in league with the brokers in the transaction of specific scrips. Even in course of recording the statements of these brokers, no question was put to elicit any answer.

Assessee maintains all the records relating to purchase and sale of scrips. The bank details of purchase and sale are available on the bank statement. Assessee maintains contract Note of purchase and sell of scrips. Mere on the basis of investigation done by DIT (Inv.) , Kolkata cannot be relied that assessee has claims the bogus loss

So above facts clarifies that loss earned through the scrips Global Securities turbotech and Dhenubuildcon should not be treated bogus and added back to the income. Mere on the basis of investigation done by Investigation Wing, Kolkata cannot be relied that assessee has claims the bogus loss.

2. The Ld. CIT(A) is not correct in disallowing investment u/s. 14A r w rule 8DD. Disallowance under section 14A of the Act should not be made when there is no exempt income earned by the assessee during the relevant previous year.”

3. Brief facts of the case are that assessee is a Non-Banking Finance company (NBFC) providing financial services, trading in shares, securities and commodities. It filed its return on 30.11.2014 reporting total income of Rs.41,69,256/-. Its case was selected for scrutiny through CASS for which statutory notices were served on the assessee which were complied with.

3.1. During the assessment proceedings, Ld. AO noted that assessee has transacted in the shares of three companies viz., Dhenu Buildcon, Turbotech & Global Securities which have been claimed to have been penny stock companies by the Ld. AO. In the year under consideration, assessee had done share trading in the above three scrips, details of which is tabulated below:

Sl. No.	Name of Scrip	Date of purchase	No. of share	Total amount	Date of sale	No. of share	Total amount	Loss
1	Dhenu Buildcon	20.03.2013	13000	989325	07.10.2013	13000	65130	924195
2.	Turbotech	11.03.2013 13.03.2013 14.03.2013 15.03.2013 18.03.2013 19.03.2013 20.03.2013 21.03.2013 25.03.2013 26.03.2013 28.03.2013	830 1400 1650 4400 3150 4750 6850 4250 4200 4300 4600	3634570 621446 737951 1961916 1396338 2087266 2908371 1894655 1900933 1894043 2097186	05.03.2014 06.03.2014	30011 17639	831304.7 478898.9	19824471
3.	Global Securities	13.03.2013 14.03.2013	11800 9500	1649404 13324455	02.10.2013 12.11.2013 20.11.2013 21.11.2013 22.11.2013 25.11.2013 26.11.2013 27.11.2013 28.11.2013 28.11.2013	375 2900 2000 1650 2990 100 5300 2500 2600 885	3618.75 26970 15900 12474 21498.1 682 36040 15450 15288 5734.8	2828203

3.2. On the above share trading, Ld. AO had received a report on tax evasion through penny stocks, from the Investigation Wing, Kolkata via EFS Model of ITD for which it was reported that these three scrips have been used for accommodation entry by booking long term capital gain/loss. Being not satisfied with the explanation offered by the assessee, Ld. AO completed the assessment by disallowing the loss on trading of these scrips and added it back to the total income of the assessee. The total disallowance of loss in this respect is of Rs.2,35,76,869/-. While adding this, Ld. AO held that transaction relate to trading in these three

scrips of Dhenu Buildcon Infra Ltd., Global Securities Ltd. and Turbotech Engineering Ltd. are bogus, coloured and not genuine. He further held that these have been done to accommodate the unaccounted money of the assessee in the regular books of accounts and facilitate in the scheme of accommodation entry through penny stock. Aggrieved, assessee went in appeal before the Ld. CIT(A), who found no infirmity in the order of the Ld. AO and confirmed, holding of claim of loss to be bogus and thus, dismissed the ground taken in this respect. Aggrieved, assessee is in appeal before the Tribunal.

4. We have heard the rival contentions and carefully gone through the material available on record. We find that there are large number of assessees, who have transacted with equity shares of the above named three scrips and claimed benefits under the provisions of the Act. Apart from these scrips, there are other scrips also in Kolkata, who were found to be penny stock and transactions on papers only. Hon'ble Calcutta High Court has recently considered this aspect in its judgment in the case of Swati Bajaj & Others (2022) 139, taxmann.com 352(Cal.). In a number of appeals, Coordinate bench of ITAT, Kolkata has rejected the claim of the assessees, where the assessee transacted in the shares of such companies. All these transactions have been held as bogus by the Hon'ble Jurisdictional High Court. Therefore, respectfully following the decision of the Hon'ble Calcutta High Court, we affirm the view taken by the Revenue Authorities who have rejected the claim of the assessee and

made the additions. We do not find any merit in this appeal. Accordingly, it is dismissed.

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

Order is pronounced in the open court on 09th February, 2023.

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 09th February, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent:.
 3. CIT(A)-10, Kolkata.
 4. The Pr. CIT, , Kolkata
 5. DR, ITAT, Kolkata Bench, Kolkata
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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata