

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No. 1072/Del/2019
(Assessment Year : 2003-04)

All Grow Finance & Investment Pvt. Ltd. Shop No.118, Tikona Park New Delhi-110 020 PAN No. AAACA 4941 P (APPELLANT)	Vs.	DCIT Circle – 10(1) New Delhi (RESPONDENT)
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Assessee by	--None--
Revenue by	Shri Kanv Bali, Sr. D.R.

Date of hearing:	02.05.2023
Date of Pronouncement:	09.05.2023

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order dated 18.12.2018 of the Commissioner of Income Tax (Appeals)-34, New Delhi relating to Assessment Year 2003-04.

2. Brief facts of the case as culled out from the material on record are as under:-

3. Assessee is an investment company stated to be engaged in the business of finance and investment activities. Assessee filed its return of income for A.Y. 2003-04 declaring total income of Rs.55,01,686/-. The case of the assessee was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 29.03.2006 and the total taxable income after adjustment of brought forward losses was determined at Rs. Nil and income from other sources was determined at Rs.55,01,686/-.

4. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 18.12.2018 in Appeal No.303/14-15 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now before the Tribunal and has raised the following grounds:

- “1. That the learned CIT(Appeals) has erred both in law and on facts by sustaining the disallowance of long term capital loss of Rs.75,35,065/- made by the learned Assessing Officer.*
- 1.1. That the learned CIT(Appeals) ought to have appreciated the fact that the appellant gave complete explanation with supporting documents in relation to the acquisition of the shares sold.*
- 2. That the learned CIT(Appeals) has erred both in law and on facts in sustaining the addition of Rs.6,41,542/- made by the learned Assessing Officer on account of notional interest on dues receivable from a party in the normal course of business by wrongly treating the same as inter-corporate deposit.*

3. *That the appellant reserves to itself, the right to add, alter, amend, substitute and/or withdraw any Ground(s) of Appeal on or before the date of hearing.”*

5. The case file reveals that the appeal was listed for hearing on 28.12.2021, 28.02.2022, 04.05.2022, 20.07.2022, 09.11.2022, 09.02.2023 and 02.05.2023. On all the occasions, the assessee did not appear before the Tribunal despite notices issued through RPAD nor any application was filed seeking for adjournment. The Ld. D.R. filed a report dated 12.07.2022 wherein it has stated that once the notice was sent to M/s. All Grow Finance and Investment Pvt. Ltd., at the given addresses “Okhla, New Delhi” but the same was returned back with a comment “Refused”. It is further stated that notice of hearing sent to “Faridabad” and “Greater Kailash” addresses were also returned back with a comment “Left”. Further, the notice issued by the Registry through RPAD was returned unserved with the postal remarks “refused”. Assessee has not filed any document informing the change of address. Considering the aforesaid facts, we have no option except to dispose of the appeal on merits, after hearing the Ld. D.R.

6. **Ground No.1 and its sub ground** is with respect to the disallowance of Long Term Capital Loss of Rs.75,35,065/-.

7. During the course of assessment proceedings and on perusing the computation of total income, AO noted that assessee has claimed Long Term Capital Loss of Rs.72,47,870/-. Assessee

was asked to produce documentary evidences to support the claim. Assessee filed the submissions but the same was not found acceptable to AO. AO noted that the details submitted by assessee did not establish the year of acquisition of shares of M/s. Escorts Limited on the sale of which assessee has claimed Long Term Capital Loss. AO also noted that assessee has not produced any proof regarding year of acquisition of shares as well as the value of shares in the year of acquisition. He therefore disallowed the Long Term Capital Loss of Rs.75,35,065/- on account of shares of Escorts Ltd. and disallowed the same. Aggrieved by the order of AO, assessee carried the matter before CIT(A). CIT(A) upheld the order of AO by observing as under:

“4.4 I have considered the facts of the case, finding of the AO and submission of the appellant. Appellant has sold the Rs.1,31,957 shares of Escorts Ltd. during the year under consideration which was claimed by the appellant purchased by it in the A.Y. 1997-98. The AO has asked the appellant to produce any proof regarding year of acquisition of shares as well as the value of the shares in the year of acquisition. Appellant failed to furnish any proof regarding year of acquisition as well as value of shares. During the course of appellate proceedings, appellant has furnished the details as per books of accounts maintained by the appellant and again reiterated the same facts that shares sold by the appellant during the year was opening balance for the previous year 1996-97 relevant to A.Y. 1997-98. It is submitted by the appellant that CIT(A) has allowed its claim during the previous year 2001-02 on the basis that long term loss is to be allowed which pertains to equity shares held in the demat account, but there are discrepancies during the year in the detail of shares furnished by the appellant. It is observed that appellant has claimed to purchase Rs.15,67,240 shares in F.Y. 1996-97 but as per the detail furnished by the appellant it has purchased Rs.16,03,590 shares and shown 36,350 shares sold during the F.Y. 1996-97. As per the qualitative reconciliation of investment in equity shares of

Escorts Ltd. furnished by the appellant no sale of shares of Escorts Ltd. shown in F.Y. 1996-97. Similarly, there is discrepancy in reflecting the purchases of shares of Escorts Ltd. during the F.Y. 2002-03. As per the qualitative reconciliation of investment in equity shares of Escorts Ltd. It is shown at Rs.19,56,150 shares whereas it is admitted by the appellant It should be 22,96,927 shares.

4.5 There are various discrepancies in the account of shares maintained by the appellant and it also failed to furnish evidence in support of year of acquisition of shares of Escorts Ltd. as well as value of shares in the year of acquisition. It is admitted by the appellant that it could not claim this loss as It relates to AY 2003-04 and has already elapsed in AY 2011-12 after eight years. Further, by Finance Act, 2004 exempted long term capital gain on sale of listed securities which has suffered security transaction tax, therefore any further sale of investment by the assessee company in which it makes gain, will in any case be exempt and thus long term capital loss will actually left long term capital loss actually lapsed in its hands. Considering the above fact, long term capital loss claimed by the appellant could not be allowed and addition made by the AO on account of Long Term Capital Loss at Rs. 75,35,065/- Is hereby confirmed.”

8. Aggrieved by the order of CIT(A), assessee is now in appeal before Tribunal.
9. Before us, Learned DR took us through the findings of AO and CIT(A) and supported the order of lower authorities.
10. We have heard the Learned DR and perused the material on record. The issue in the present ground is about the disallowance of Long Term Capital Loss. We find that CIT(A) while upholding the order at para 4.4 of the order has given a finding that assessee could not reconcile the investment in equity shares as

claimed by it and as shown to have been purchased by it. CIT(A) has further given a finding that assessee has also failed to furnish evidence in support of year of acquisition of shares as well as value of shares in the year of acquisition. Before us, also assessee has not placed any material on record to controvert the findings of lower authorities. In such a situation, considering the fact that CIT(A) for the reasons noted in the order and reproduced herein above, we find no reason to interfere with the order of CIT(A) **thus the ground of assessee is dismissed.**

11. **Ground No.2** is with respect to the addition of Rs. 6,41,542/-.

12. AO on perusing the Balance Sheet noted that assessee has stated to given a Inter Corporate Deposits of Rs.49,34,945/- to Escorts Finance Ltd. The assessee was asked to show cause as to why the proportionate interest not be disallowed to which assessee *inter alia* submitted that the debt is a regular business debt and on identical facts in A.Y. 2001-02 addition was made by AO but deleted by CIT(A). AO noted that the opening balance receivable from Escorts Finance Ltd. was Rs.49,34,945/- and has stated to have received Rs.17,15,000/- but no date of payment was mentioned. Assessee was unable to give the date of receipt of the aforesaid payment. AO therefore considered Rs.49,34,945/- as the maximum outstanding interest free debt. AO on such maximum outstanding amount worked out the interest @ 13%

(being the interest paid on Inter Corporate Deposits) and worked out the interest at Rs.6,41,542/- being not for the purposes of business and disallowed the same. Aggrieved by the order of AO, assessee carried the matter before CIT(A). CIT(A) upheld the order of AO by observing as under :

“5.3 During the course of appellate proceedings, appellant has submitted that the addition made by the AO on the similar grounds in AY 2001-02 which was deleted by the CIT(A). Appellant has further submitted that debt of Rs. 32,19,945/- is due to the assessee company as a regular business debt and appellant has furnished the detail of the debts for the year ending 31.03.2003. No proof of payment made by the Escorts Finance Ltd. and date of payment was furnished by the appellant.

5.4 I have considered the facts of the case, finding of the AO and written submission of the appellant. Appellant has given interest free advance to Escorts Finance Ltd. of Rs. 49,34,945/- without charging any interest whereas it is paying interest @ 13% on inter corporate deposits received by it. The appellant has not furnished any other detail except stating that debts are regular business debts given to Escorts Finance Ltd. and on similar issue CIT(A) has deleted addition on notional charging of interest. Appellant failed to establish that inter corporate deposits for the purpose of business and it is having substantial Interest free funds out of which that interest free advances were given. It is held by Punjab & Haryana High Court in the case of Abhishek Industries Ltd. Vs CIT [2006] 156 Taxman 257 (Punjab & Haryana)/[2006] 286 ITR 1 (Punjab & Haryana)/[2006] 205 CTR 304 (Punjab & Haryana) that "once it is borne out from record that assessee had borrowed certain funds on which liability to pay tax is being incurred and on other hand, certain amounts had been advanced to sister concerns or others without carrying any Interest and without any business purposes, interest to extent that advance had been made without carrying any interest is to be disallowed under section 36(1)(iii)".

5.5 In the case of Punjab Stainless Steel Inds. Vs CIT Hon'ble Delhi High Court [2011] 196 Taxman 404 (Delhi)/[2010] 324 ITR 396 (Delhi) that in this case there was absolutely no finding recorded by Tribunal that interest free advances were made by

assessee to sister concern for its business purposes. It was also noticed that advances were extended out of borrowed funds and not out of any credit balance available with assessee- firm it was held that impugned order passed by authorities below was to be upheld.

5.6 Considering the above facts, addition made by the AO on charging interest on inter corporate deposits @ 13% at Rs. 6,41,542/- is hereby confirmed as appellant failed to establish the business necessity of giving Interest free inter corporate deposits to M/s Escorts Finance Ltd.

5.7 This ground of the appeal of the appellant is confirmed.”

13. Aggrieved by the order of CIT(A), assessee is now before us.

14. Before us, Learned DR supported the order of lower authorities.

15. We have heard the Learned DR and perused the material on record. The issue in the present ground is with respect to the disallowance of interest. We find that CIT(A) while upholding the order of AO has given a finding that no details were furnished by assessee about the amount the money being lent except stating that debts are regular business debts given to Escorts Finance Ltd. CIT(A) has further noted that assessee had also failed to establish that assessee had substantial interest free funds from which interest free advances were given. Before us, also assessee has not placed any material on record to demonstrate any fallacy in the findings of CIT(A) nor has placed any material on record to demonstrate that the amount which is stated to have been lent to

Escorts Finance Ltd. is a regular business debts and lent out in earlier years. Considering the totality of the facts, we find no reason to interfere with the order of CIT(A) and **thus the ground of assessee is dismissed.**

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

Order pronounced in the open court on 09.05.2023

Sd/-

**(YOGESH KUMAR US)
JUDICIAL MEMBER**

Date:- 09.05.2023

PY*/ *Kavita

Copy forwarded to:

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

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR
ITAT NEW DELHI