

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

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

ITA No.6923/Del/2018
Assessment Year: 2015-16

ACIT Central Circle-13 New Delhi	Vs.	Electrical & Electronics India Ltd. Business Communication Centre, 21 PARSI Church Street, Opp. 18 Ezra Street, Kolkata West Bengal - 700001 PAN No.AAACE5419J
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Vivek Upadhyay, Sr. DR
Respondent by	Sh. Salil Aggarwal, Advocate Sh. Madhur Aggarwal, Advocate Sh. Shailesh Gupta, CA

Date of hearing:	06/11/2023
Date of Pronouncement:	10/11/2023

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the revenue is preferred against the order of the CIT(A)-26, New Delhi dated 27.08.2018 pertaining to A.Y.2015-16.

2. The grievance of the revenue read as under :-

1. Whether on the facts and in the circumstances of the case, Hon'ble CIT(A) is erred in deleting the addition to

Rs.5,63,34,120/- u/s 56(2)(viiia) of the Income Tax Act, 1961.

2. Whether on the facts and in the circumstances of the case, Hon'ble CIT(A) is erred in deleting the addition of Rs.16,06,000/-on account of business loss incurred on sales of Shree Shaleen Textiles Ltd.

3. Whether on the facts and in the circumstances of the case, Hon'ble CIT(A) is erred in deleting the addition of Rs.1,59,777/-on account of business loss on the valuation of shares of M/s Cressanda Solution Ltd.

4. The order of Ld. CIT(A) is erroneous and not tenable in law and on facts.

5. The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.

3. Briefly stated the facts of the case are that the assessee filed its return of income electronically on 30.09.2015 showing loss of Rs.65,73,749/-.

4. The return was selected for complete scrutiny and accordingly statutory notices and served upon the assessee.

5. During the course of the scrutiny assessment proceedings the AO noticed that the assessee has invested in shares of other companies and it is noted that in most of the cases the investments were made at lesser value than the fair market value of such shares.

6. The assessee was asked to furnish the details of the purchase of shares, cost per share and fair market value of each shares. Assessee furnished the necessary details and explained that it is a company in which public are substantially interested and, therefore, provisions of section 56(2) (viiia) do not apply.

7. The AO examined the details furnished by the assessee in the light of the provisions of section 56(2) (viiia) of the Act. The AO found that the listing status of the assessee company was shown as "suspended". Since the listing of the shares was suspended in Calcutta stock exchange, the AO was of the firm belief that the assessee is not a company in which public are substantially interested and applying the provisions of section 56(2) (viiia). The AO made the addition of Rs.57372600/-.

8. Proceeding further the AO found that the assessee has claimed set off of loss in shares against income from interest. The assessee was asked to furnish the details of the shares. The assessee furnished the necessary details and on perusal of the same the AO found that the loss was incurred on sale of shares of "Shree Shaleen Textiles Ltd." The AO found that the name of this company was in the list of the Directorate of Investigation and this company was used for arranging accommodation entries by the entry operators for providing exempt income or desired losses to set off from taxable income.

9. Taking a leaf out of the investigation report of the investigation wing Calcutta the AO formed a belief that the losses are not bonafide and are outcome of dealing in penny stock and

accordingly disallowed the loss and made addition of Rs.1765777/-.

10. Assessee carried the matter before the CIT(A) and vehemently contended that even if the listing of the shares/trading of the shares is suspended on the Calcutta stock exchange. It cannot be said that the assessee is a company in which public are not substantially interested. It was strongly contended that merely because SEBI suspended the trading operation company has not been delisted.

11. After considering the facts and the submissions the CIT(A) was convinced that mere suspension of the assessee company cannot invoke provision of section 56(2)(viiia) of the Act. The CIT(A) further found that the suspension was revoked and the assessee company again started trading on the stock exchange.

12. On these facts the CIT(A) deleted the addition of Rs.56334120/-

13. Before us the DR strongly supported the findings of the AO and read the operative part. The Counsel for the assessee reiterated what has been stated before the lower authorities.

14. We have carefully considered the orders of the authorities below. There is no dispute that the assessee is a company in which public are substantially interested. We are of the considered view that merely because there was a suspension on the Calcutta stock exchange provision of section 56(2)(viiia) of the Act would not get attracted. There could be many reasons for the suspension for example non filing of certain documents with the

stock exchange or non filing of annual returns or payment of some fees may result in to suspension but that do not mean that the company is delisted from the stock exchange and becomes a company in which public are not substantially interested.

15. In the case in hand the assessee company remained listed on the Calcutta stock exchange and, therefore, remained outside the purview of section 56(2)(viiia) of the Act, therefore, no interference is called for in the findings of the CIT(A). Ground No.1 is dismissed.

16. Coming to the 2 ground we find that the assessee has done trading in the shares of Shree Shalin Textile Limited wherein it incurred losses of Rs.159777/-. The assessee had also invested in the shares of Cressanda Solutions Limited. At the end of the year since the shares of Cressanda Solutions Limited were part of the inventory, the assessee valued the shares at cost or market price whichever is less and since the market price was lesser the shares were valued at the market price. This method of valuation was consistently followed by the assessee since past many years.

17. We find that the AO has simply believed on the report of the Investigation Wing Calcutta in respect of the shares of Shree Shalin Textile and disallowed the loss of Rs.159777/- without bringing any demonstrative evidence to show that Shree Shalin Textile Limited is a penny stock company. There is no evidence brought on record to show that the assessee purchased loss by paying cash to the alleged entry operators. We do not find any error or infirmity in allowing the loss of Rs.159777/- by the

CIT(A). Further the loss of Rs.1606000/- is only a loss on valuation of inventory of shares of Cressanda Solutions Ltd. which is the result of the consistent method of valuation followed by the assessee. The loss is a genuine loss and has been rightly allowed by the CIT(A). We decline to interfere. Ground No.2 is also dismissed.

18. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 10.11.2023.

**Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

**Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER**

NEHA

Date:-10.11.2023

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI