

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

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

ITA No. 5407/DEL/2019 [A.Y. 2016-17]

M/s Duxton Hills Builders [P] Ltd  
85, Pushpanjali, Vikas Marg  
New Delhi

Vs.

The A.C.I.T.  
Circle -7(2)  
New Delhi

PAN: AACCD 3537 A

(Applicant)

(Respondent)

Assessee By : Shri Rakesh Gupta, Adv  
Shri Somil Agrawal, Adv

Department By : Shri Vivek Kumar Upadhyay, Sr. DR

Date of Hearing : 05.12.2023  
Date of Pronouncement : 08.12.2023

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-**

This appeal by the assessee is preferred against the order of the  
ld. CIT(A) - 3, New Delhi dated 10.06.2019 pertaining to A.Y. 2016-17.

2. The solitary grievance of the assessee is that the Id. CIT(A) erred in confirming the action of the Assessing Officer in making disallowance of Rs. 1,42,29,999/- being short term capital loss claimed on sale of listed securities.

3. Briefly stated, the facts of the case are that the assessee electronically filed its return of Income on 17.10.2016 declaring loss of Rs. 1,42,24,334/-. Return was selected for scrutiny assessment through CASS and accordingly, statutory notices were issued and served upon the assessee.

4. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has shown short term capital loss of Rs. 1,41,29,989/-. The assessee was asked to furnish details.

5. The assessee explained that it has sold equity shares of Sidharth Business Ltd and AF Enterprises Ltd, both listed companies of Bombay Stock Exchange, on which the assessee has incurred loss.

6. The contention of the assessee did not find any favour with the Assessing Officer who was of the firm belief that the assessee has

booked bogus short term capital loss through manipulation of stock price and disallowed the claim of loss of Rs. 1,41,29,999/-.

7. The assessee carried the matter before the ld. CIT(A) but without any success.

8. Before us, the ld. counsel for the assessee vehemently stated that the allegation of the Assessing Officer that the assessee has booked loss by bogus transaction is baseless as the assessee had returned loss of Rs. 1,42,24,334/- and even after disallowing loss of Rs. 1,41,29,989/-, the assessee still has loss of Rs. 94,345/-. Therefore, the assessee has derived no benefit by the allegation of the Assessing Officer. It is the say of the ld. counsel for the assessee that transaction has been done through Bombay Stock Exchange and the same cannot be stated to be bogus.

9. Per contra, the ld. DR strongly supported the findings of the Assessing Officer.

10. We have carefully perused the orders of the authorities below. The Assessing Officer and the ld. CIT(A) have been carried away with the decision of the Hon'ble Supreme Court in the case of Durga Prasad

More 82 ITR 540 and Sumati Dayal 214 ITR 801 but have completely ignored that no prudent person would convert his accounted money into unaccounted money by booking losses for which no benefit is derived.

11. The Revenue has grossly failed in bringing cogent material on record to demonstrate that the assessee has benefitted by booking the alleged bogus loss whereas material on record shows that the transaction has been done through Bombay Stock Exchange on which STT has been paid and cannot be considered as sham or bogus transaction. Considering the facts in totality, we direct the Assessing Officer to allow loss of Rs. 1,41,29,989/-.

12. In the result the appeal of the assessee in ITA No. 5407/DEL/2019 is allowed.

The order is pronounced in the open court on 08.12.2023.

**Sd/-**

**[ASTHA CHANDRA]  
JUDICIAL MEMBER**

**Sd/-**

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 08<sup>th</sup> December, 2023.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. 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	
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