

**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.9/Del/2020
Assessment Year: 2016-17

ACIT Circle – 7 (1) New Delhi	Vs.	M/s. Deeksha Holding Ltd. 26-27, Ground Floor, World Trade Centre, Barakhamba Line, New Delhi-110001 PAN No.AAACD1703G
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. T. James Singson, CIT DR
Respondent by	Sh. U.N. Marwah, CA Sh. Praveen Goel, Advocate

Date of hearing:	28/11/2023
Date of Pronouncement:	13/02/2024

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the revenue is preferred against the order of the CIT(A)-3, New Delhi dated 14.10.2019 pertaining to A.Y.2016-17.

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

1. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 10,00,00,000/- made by the AO on account of unexplained sum*

credited to the books of account of the assessee, by ignoring the fact that genuineness of the transaction as well as immediate sources of funds was not proved with cogent evidences"

2. *"On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in restricting the addition to Rs. 11,40,351/ as against the addition of Rs. 47,77,835/- made by the AO u/s 14A r.w. Rule 8D of the IT Act, 1961, without appreciating the legal position that entire investments should be considered while computing the disallowance u/s 14A."*

3. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of expenses of Rs. 1,75,83,247/- made by the AO in absence of direct nexus between income earned and expenses incurred."*

4. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of long term capital loss of Rs. 2,90,32,823/- made by the AO, without considering the fact that the transaction of sale of shares was not genuine and the same was done only to claim set off against long term capital gain arising from sale of property."*

5 *"The appellant craves to add, amend or forgo any ground(s) of appeal at any time before or during the hearing of this appeal."*

3. Briefly stated the facts of the case are that the assessee was engaged in business of trading in shares, sale of paintings and other income includes sale of vegetables, car higher charges, income from Goa Villas and sale of old newspaper etc.

3. The return of income tax was filed on 17.10.2016 declaring income of Rs.4,63,32,670/-. The return was selected for scrutiny assessment and accordingly statutory notices were issued and served upon the assessee.

4. During the course of the scrutiny assessment proceedings the assessee was asked to furnish details of sum of Rs. 13.25 lacs credited in the NRO account of Jayant Nanda from whom advance of Rs. 10 crores has been received against sale of villas. It was explained that the assessee has received Rs.10 crores from Jayant Nanda who is a non resident and also submitted copy of agreements to sell two villas for which Jayant Nanda advanced Rs.10 crores and promised Rs. 2 crores within a period of 90 days. The AO found that the parties kept extending the time till 31.08.2018 when it was mutually agreed to cancel the agreement and returned Rs. 10 crores without interest. The AO doubted the genuineness of the transaction and formed a belief that Jayant Nanda is not a non resident and made the addition of Rs. 10 crores u/s. 68 of the Act r.w. 115BBE of the Act. Assessee challenged the addition before the CIT(A) and strongly contended that Jayant Nanda is the brother of Jyotsna Suri who is director of the company. It was explained that all the documents like PAN number, copy of ITR, bank statement, agreement for purchase of flats and passport of Jayant Nanda was produced before the AO in order to establish the genuineness of the transaction and the identity and credit worthiness of Jayant Nanda.

5. After considering the facts and the submissions the CIT(A) observed that Jayant Nanda is a non resident and has transferred the funds to the assessee from his NRE account maintained in HDFC bank being convinced with the genuineness and creditworthiness the CIT(A) deleted the addition.

6. Before us the DR strongly supported the findings of the AO and read the operative part.

7. The Counsel reiterated what has been stated before the lower authorities.

8. We have carefully considered the orders of the authorities below. In so far as identity of Jayant Nanda is concerned there should not be any doubt after considering the passport. The creditworthiness can be gathered from the bank account of Jayant Nanda in HDFC bank wherein the impugned transaction is reflected. The payments have been made out of clear credit balances and there is no evidence whatsoever to show that the Jayant Nanda deposited cash before issuing cheque to the assessee.

9. In our considered opinion the assessee successfully discharged the onus cast upon it by the provisions of section 68 of the Act and, therefore, the findings of the CIT(A) cannot be faulted. Ground No. 1 is dismissed.

10. Proceeding further the AO noticed that the assessee has made investments in shares and has claimed dividend income as exempt. Invoking the provisions of section 14A r.w.r. 8D. The AO computed the disallowance and made the addition of Rs.4777835/-.

11. The addition was challenged before the CIT(A) on the ground that most of the dividend has been received from 5 group companies. It was strongly contended that the disallowance u/s. 14A of the Act can be made only after considering those investments from which exempt income has been earned.

12. The CIT(A) was convinced with the contention of the assessee and found that the average of investments from which dividend income has been earned amounts to Rs.227779086/- and, therefore, the disallowance u/s. 14A comes to Rs. 1140351/- and since the assessee has suo-moto disallowed Rs. 510018/- the CIT(A) directed to restricted the disallowance to Rs.630333/-.

13. Before us the DR strongly contended that the computation of disallowance by the AO is correct, whereas the counsel reiterated that only those investments need to be considered which yield exempt income

14. We have given a thoughtful consideration to the orders of the authorities below. The Hon'ble High Court of Delhi in the case of Cargo Motors Private Limited 291 taxmann 208 has held that only

those investments were to be considered for computing average value of investments which yielded exempt income during assessment year. The same view was followed by the Hon'ble High Court of Delhi in the case of Caraf Builders and Constructions Private Limited 414 ITR 122 and also in the case of ACB India Limited 374 ITR 108. Respectfully following the ratio laid by the Hon'ble Jurisdictional High Court (supra) we do not find any reason to interfere with the findings of the CIT(A). This ground is also dismissed.

15. The third ground relates to the deletion of the addition of Rs.17583247/-.

16. The under lying facts reveal that the assessee has other income of Rs.86256643/- which also included dividend income of Rs.32738237/-. The AO was of the opinion that the assessee in fact had other income of Rs.53518406/-out of total profits of Rs.82461276/- which constitutes 65% of total income. The AO found that the assessee has claimed expenses of Rs.34401665/- and was of the firm belief that 65% of the same is attributable to income from house property and other sources and accordingly disallowed of Rs.17583247/-.

17. The addition was challenged before the CIT(A) and it was strongly contended that the assessee has already disallowed a sum of Rs.21432188/- in the computation of income. It was explained

that the expenses were in the nature of salary, rent, communication travelling etc which have been incurred for normal business purposes. After considering the facts and the submissions the CIT(A) found that in the earlier years no such disallowances were made and following the rule of consistency and also finding that the books of account have been thoroughly supported by bills and vouchers, the addition was deleted.

18. The DR could not point out any factual error in the findings of the CIT(A).

19. We have carefully considered the orders of the authorities below. The undisputed fact is that the expenses have been incurred for normal business purposes and the books of account were audited both under the companies Act and also under the income tax Act and no defect has been pointed out in the books of account and no such disallowances have been made in earlier assessment years.

20. Considering the facts in totality we decline to interfere ground No. 3 is also dismissed.

21. Ground No.4 relates to the deletion of the disallowance of long term capital loss of Rs.29032823/-.

22. The assessee was asked to explain / give complete details of long term capital loss on account of sale of 2 lakh equity shares of Kingfisher Airlines Ltd. the assessee furnished complete details and explained that it had 35,71,500 equity shares of Kingfisher Airlines Ltd. purchased at a total cost of Rs.250630012/-that is Rs. 70.17 per share. The assessee sold 2 lakh equity shares at Rs. 1 per share and claimed the loss.

23. The AO was of the opinion that since the assessee has not given the particulars of buyers to whom shares were sold the loss was disallowed. The action of the AO was challenged before the CIT(A). It was explained that the assessee has furnished complete details including name, address and PAN of the buyer alongwith bank statement / demat statement.

24. After considering the facts and the submissions and after verifying the documentary evidences the CIT(A) found that the assessee had sold shares through D-mat account to Virender Kumar Chanana and received the consideration on the same date. The CIT(A) further observed that the online trading in the shares of Kingfisher Airlines Ltd. was stopped in June, 2015. Being convinced the CIT(A) allowed the long term capital loss.

25. Before us the DR reiterated what has been stated in the assessment order and the Counsel read and relied upon the findings of the CIT(A).

26. We have carefully considered the orders of the authorities below. There is no dispute that the assessee has sold 2 lacs equity shares @ 1 per share to Virender Kumar Chanana at a price resolved by the BOD of the assessee. It is equally true that trading in shares of Kingfisher Airlines Ltd. was suspended since 22.06.2015 when the last traded price was low Rs. 1.26 and high Rs.1.38. Therefore, the determination of the share price at Rs.1 per share cannot be doubted. Since the assessee had purchased the shares @ 70.17 per share, the loss of the sale of share is a genuine loss and rightly allowed the CIT(A). No interference is called for. Ground No. 4 is allowed.

27. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 13.02.2024.

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

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

NEHA

Date:- 13.02.2024

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI