

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.942/DEL/2020
[Assessment Year: 2016-17]**

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| Rupali Hotels Private Limited, R-10, Green Park Main, New Delhi-110016 | ACIT, Circle-21(2), Delhi |
| PAN: AADCR9947H | |
| Assessee | Revenue |

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|-------------|---|
| Assessee by | Shri Pradeep Dinodia, CA & Shri R. K. Kapoor, CA |
| Revenue by | Shri Vivek Vardhan, Sr.DR |

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|------------------------------|-------------------|
| Date of Hearing | 12.02.2024 |
| Date of Pronouncement | 14.02.2024 |

ORDER

PER AMIT SHUKLA, JM,

Present appeal has been filed by the assessee against an order passed by the learned CIT(Appeals)-7, New Delhi in Appeal No. 10263/CIT(A)-7/Del/2018-19 dated 10.01.2020. The assessee in its Memorandum of Appeal has raised following Grounds of Appeal:

- i) *The CIT(A) erred in law and on facts in confirming the disallowance of loss of Rs.1,47,17,633/- suffered by the appellant on genuine share trading and of Rs.8,77,743/- being direct expenses incurred in respect of the said trading alleging the same to be bogus ignoring the facts and evidences placed on record. Thus, the disallowance so made should be deleted.*

- ii) *The CIT(A) erred in law and on facts in confirming the disallowance of Rs.1,04,16,353/- being the expenses incurred for the business of the assessee merely on surmises ignoring the facts and evidences placed on record. The said disallowance must be deleted.*
- iii) *The CIT(A) erred in law and on facts in confirming the addition of Rs.1,17,200/- on account of Annual Lettable Value (ALV) of the Defence Colony property sold during the relevant period in July 2015 which was kept compulsorily vacant for the purpose of sale ignoring the evidences and submissions placed on record. Thus, the addition so made should be deleted.*
- iv) *The appellant craves the leave to add, substitute, modify, delete or amend all or any ground of appeal either before or at the time of hearing.*

2. The facts in brief as noted from the orders of the authorities below are that the assessee company e-filed its Return of Income on 30.09.2016 declaring a total income of Rs.10,64,26,790/-. On being put to scrutiny, the Assessing Officer called for various details along with the supporting documents as noted by the Assessing Officer. The assessee is in the business of real estate and has also earned income from interest etc. The Assessing Officer made various additions and determined the taxable income at Rs.13,41,23,530/-. The learned CIT(A) has allowed partial relief on account of miscellaneous expenses such as salaries to staff and the income declared under the head "House Property" and has upheld the

balance additions made by the Assessing Officer. Hence this appeal by the assessee.

3. Both the parties have been heard.

4. The learned Authorised Representative Mr. Pradeep Dinodia appearing on behalf of the assessee has filed Short Synopsis as well as a detailed Paper Book which have been placed on record.

5. The 1st Ground of the Appeal raised by the assessee pertains to the addition made by the learned Assessing Officer and upheld by the CIT(A) on account of loss claimed to have been suffered by the assessee on the share trading business along with certain direct expenses associated with said share trading business such as brokerages etc. amounting to Rs.1,47,17,633/- and Rs.8,77,743/- respectively.

6. The Assessing Officer has discussed this issue in the Assessment Order at Pages 2 to 5 of his order in Para 3 to 3.6. It has been observed by the Assessing Officer that the assessee had reported purchase of shares in its Profit & Loss Account amounting to Rs.11,44,25,390/- against which sales have been shown at Rs.9,97,07,757/- which has resulted into a loss of Rs.1,47,17,633/-. On account of these transactions, other expenses on account of brokerage, loss on jobbing of shares, STT paid etc. have also been shown at Rs.8,77,743/-.

7. On being put to notice, the assessee was required to file the contract notes etc. as also the copies of bank statements justifying these transactions for purchase and sale of shares. The assessee in response to such requirement submitted that these transactions have been conducted through the demat account of SGS InfratechLand Sunny Holiday Lounges Pvt. Ltd. but mainly through SGS Infratech Ltd. This clarification by the assessee basically triggered the suspicion in the mind of the Assessing Officer and Assessing Officer opined that the main line of the business of the assessee is operations in the hospitality services. However, no revenue has been made from the said business but despite having substantial transaction of sale-purchase of shares, assessee has not opened a demat account. According to the Assessing Officer, opening of a demat account is just a few clicks away and maximum it can take 15 to 20 days. The Assessing Officer was of the view that the assessee's contentions that there was some administrative difficulties in opening demat account are not acceptable.

8. Another reason given by the Assessing Officer in the Assessment Order was that there was no one-to-one co-relation of the share-purchase sale transactions and the bank statement and all the amounts have been settled by the issuing a cheque on account of loss incurred on 31st March, 2016. The learned Assessing Officer also observed that apart from this year the assessee is having no shares transaction in any other year and the loss

claimed to have been incurred by the assessee is only to reduce its tax liability. It was further observed that since the transaction done by the SGS Infratech Ltd. cannot be differentiated from the transaction as done by assessee company in its own name, it is, in the views of Assessing Officer only a fiction created by the assessee and assessee had no intention of buying or selling any shares and it is a case of buying of loss. Yet another reason given by the learned Assessing Officer that no prudent business entity would indulge into such activities of doing transaction on behalf of some other company without any remuneration. In other words, there was no remuneration which the SGS Infratech Ltd. or the other company would get. It was also alleged by the Assessing Officer that the agreement between the assessee and SGS Infratech Ltd., which admittedly is an associate company of the assessee, was not notarized.

9. Thereafter the learned Assessing Officer referred to the judgement of **McDowell& Co Ltd. Vs CTO 154 ITR 148 (SC)** and held that the transaction of incurring loss or for that matter expenses claimed on this account are bogus and the same were disallowed.

10. The submissions made by the assessee before the learned Assessing Officer along with documents were reiterated before the learned CIT(A), who upheld the views of the Assessing Officer and confirmed the addition made by the Assessing Officer.

11. The learned Counsel Mr. Pradeep Dinodia submitted that the learned Assessing Officer or for that matter CIT(A) had not appreciated the facts pertaining to the transaction in correct perspective. It has been submitted that even in the audited Balance Sheet duly certified by the auditors this fact has been clarified by way of a Note to which our attention was drawn and is available at Paper Book Page-48 as under:

The share trading business is carried out by using the trading and D-Mat accounts of group companies since the accounts in the name of the company could not be opened during the year due to administrative reasons.

12. Similarly it is observed from the Synopsis filed that an agreement which has been entered between the assessee and said SGS Infratech Ltd., available at Paper Book Page-77 to 78 wherein it was agreed as per Clause 4 of the said agreement that if the transaction of sale-purchase of shares resulted in profit then 10% of such profit shall be given to SGS Infratech Ltd. as its remuneration.

13. It is also argued that the learned Assessing Officer's contentions that it is a case of buying loss at the yearend is based on suspicious and surmises because day to day ledger of sale and purchase of shares and day today accounting entries were passed. The learned Authorised Representative drew our attention to **Paper Book Pages 51 to 52** wherein day today entries were passed for purchase and sale of shares. Such books of accounts were

duly audited reflecting the sale and purchase of shares. Similarly, the assessee's accounts in the books of SGS Infratech Ltd. has been filed at **Pages 53 to 54** of the Paper Book. The books of accounts of both the entities had been duly audited and certified by the Auditors of the Company as true and fair, it was submitted. The Auditors in their wisdom had also given a Note to this effect as has already been referred to and reproduced hereinabove from **Paper Book Page 48**. It has been submitted that although the Assessing Officer had treated the transaction as bogus, but has not rejected the books of accounts either of the assessee or that of the SGS Infratech Ltd. Therefore, making the final payment on account of loss incurred before the end of financial year cannot be adversely viewed especially when transactions of purchase and sale of shares have been recorded on day today basis in the regular books of accounts maintained by the assessee and SGS Infratech Ltd.

14. The learned Authorised Representative has further submitted that Assessing Officer's contention that no prudent person does such type of transaction unless he gets some compensation is also misleading. It is noted from agreement between parties, 10% of the profit was to go to SGS Infratech Ltd. or the other company and therefore it was not as if these services of buying and sale of shares was being conducted by SGS Infratech Ltd. for no consideration. It is a different matter that at the end of

the day there were losses and nothing came to be shared by SGS Infratech Ltd.

15. It has also been submitted by the learned Authorised Representative that so far as SGS Infratech Ltd. it had incurred a loss of Rs.11.54 Crores from the sale and purchase of shares. By referring to the Assessment Order of SGS Infratech Ltd. placed in the **Paper Book at Pages 73 to 76**, it has been submitted that such loss has also been accepted by the Department in an Order u/s 143(3) of the Income Tax Act vide Order dated 11.12.2018. All the transactions in the books of accounts of SGS Infratech Ltd. including the transaction undertaken with the assessee for sale and purchase of shares including reimbursement of other expenses on account of such trading were duly incorporated in the books of SGS Infratech Ltd. and had been accepted by the Assessing Officer of SGS Infratech Ltd. It has further been submitted that Assessing Officer's contention that the assessee bought this loss to reduce its taxable income is also not correct. It is claimed that if such was the intention of the assessee, then looking to the loss on share trading to SGS Infratech Ltd. at Rs.11.54 Crores, the assessee should have acquired much more loss as assessee has returned taxable income of more than Rs.10 Crores, which could have been further reduced but it was not the case. On the contrary, it has been submitted that whereas the assessee has paid taxes in spite of such loss, the assessment of SGS Infratech Ltd. has

been conducted at a loss of Rs.11.63 Crores. This single fact proves that all the transactions for sale and purchase of shares on behalf of the assessee by SGS Infratech Ltd. or for that matter other entity were bonafide and genuine and it was a pure commercial arrangement and the learned Assessing Officer has completely misappreciated the facts on the issue and has disallowed the loss.

16 It has been further submitted that it is not the case of the Assessing Officer as if no loss has been incurred on the sale and purchase of shares. The only reason for the Assessing Officer for making the addition is that the assessee should have opened a demat account in its own name. It has been submitted that this fact can at best give a reason to suspect but looking to the actual facts of this matter, such suspicion also gets dispelled and remains a suspicion. It has further been submitted that the law on this issue is well settled that suspicion and surmises, howsoever strong, cannot be the ground for making addition. For this legal proposition, the assessee has relied upon one of the judgement on this proposition is that of **CIT vs. Daulat Ram Rawatmull** reported in **53 ITR 574 (SC)** as noted from the Synopsis filed.

17. Finally the Authorised Representative submitted that Assessing Officer's action of making addition on this account is not maintainable and has urged upon the Bench to delete the same.

18. The learned DR appearing on behalf of the Department has relied upon the Orders of authorities below.

19. It has been submitted by the learned DR that the Assessing Officer has thoroughly examined this transaction and has arrived a valid conclusion that it was a case of buying of loss and not the actual sale and purchase transaction of shares. It has been submitted that nothing stopped the assessee from opening a demat account in its own name he read out **paras 3.2 and 3.3** of Assessment Order in support of his arguments.

20. On a query from the Bench to this effect, it has been submitted that the assessee has not done sale and purchase transaction of shares and this is the only year in which this transaction is claimed to have happened. The Authorised Representative of the assessee submitted that assessee just wanted to explore this business but did not succeed in the first year itself.

21. As a rejoinder to the learned DR submissions, the learned Authorised Representative submitted that the losses itself have not been treated as bogus because loss only to the extent it was on account of assessee has not been met by assessee. It is not a case where transactions of sale and purchase have been alleged as bogus. It has also been submitted that books of accounts have not been rejected.

22. We have carefully examined the reasoning given by the Assessing Officer, the arguments of the parties at dispute and perused the detailed Paper Book filed by the assessee. We are inclined to accept the contentions of the assessee that the loss incurred on the sale and purchase of shares was not a bogus transaction because it is only a fraction of total loss incurred by the group as a whole. The submissions of the learned Authorised Representative that if the intention was to reduce the tax impact then the transfer of loss, in fact, could have been much more because the overall loss incurred from the sale and purchase of shares was more than Rs.13 Crores has merit. Moreover the other contention that transaction of sale and purchase of shares including that of the assessee have been accepted as genuine in the books of SGS Infratech Ltd. where the loss was more than Rs.11 Crores and assessment had been framed under scrutiny also deserves acceptance. All the transactions have been accepted in the books of account of SGS Infratech Ltd. and there is no reason to suspect the genuineness of these transactions in the books of assessee specially when day today recording of sale and purchase of shares have been done in the books of both the assessee and SGS Infratech Ltd. Such books of accounts are duly audited and auditors have inserted a Note that transaction of sale and purchase of shares recorded in assessee's books were conducted through the demat account of sister concern. Not opening a demat account in its own account and conducting such transaction through the books of

SGS Infratech Ltd., to our mind does not come in the way of the assessee to claim the loss which has been incurred by the assessee although through the demat account of sister concern for which sister concern namely SGS Infratech Ltd. was to get a compensation of 10% of the profit but unfortunately in the transaction of sale and purchase of shares, there were substantial loss. Therefore nothing accrued to SGS Infratech Ltd. The reasoning given by the learned Assessing Officer in the Assessment Order are in the nature of doubts and suspicion and the opinion of the Assessing Officer as to how such transactions are normally structured. We are inclined to accept the contentions that a bonafide business arrangement between the sister concerns for which an agreement was signed between the parties, which agreement has not been treated as a shell or bogus even by the Assessing Officer or the CIT(A), does not convert the genuine transaction into bogus transaction as has been done by authorities below. It is not the case of the Assessing Officer or CIT(A) that losses have not been incurred. On the contrary losses incurred by SGS Infratech Ltd. have been assessed. Only such part of losses, which SGS Infratech Ltd. incurred on behalf of assessee and recovered from assessee have been added in the hands of assessee by holding that assessee should have opened a demat account in its own name in spite of the fact that based on an agreement between the parties. Transactions of sale and purchase of shares were recorded in the regular books of accounts on day today basis. Such books

of accounts are audited and accepted by the Department both in SGS Infratech Ltd. as well as assessee. On these facts, the views of the Assessing Officer or CIT(A) cannot be accepted and are reversed.

23. We therefore hold that the addition was made by the Assessing Officer without any sound legal basis and the facts supported the case of the assessee. The additions made towards Rs.1,47,17,633/- and that of Rs.8,77,743/- are hereby deleted.

24. Next Ground of Appeal pertains to disallowance of Rs.1,04,16,353/- on account of various expenses incurred by the assessee. The Assessing Officer in the Assessment Order has discussed this issue in **Para 4.0 to 4.3 at Pages 5 to 7 of his Order.**The Assessing Officer observed that the assessee has suo-moto disallowed 50% of expenses out of Directors' remuneration, legal and professional charges and membership fee as pre-operative expenses. Balance expenses have been claimed because the assessee is claimed to be engaged in the business of sale and purchase of shares. The sole reason for disallowing these expenses by the Assessing Officer appears to be that the transaction of share trading has been held to be bogus, hence balance expenses claimed by the assessee has also been disallowed as pre-operative in nature.

25. At the stage of learned CIT(A), the assessee reiterated its submissions and the learned CIT(A) allowed the salary and benefits to staff

and electricity and water charges because according to the learned CIT(A) when a company is in existence then some expenses are required to be incurred. He, however, upheld the balance disallowance which according to the assessee works out to be Rs.1,04,16,353/-.

26. The learned Authorised Representative, Mr. Pradeep Dinodia submitted that the major portion of such expenses is the Directors' remuneration. All such remuneration is fully taxed in the hands of the Directors although the assessee itself has disallowed 50% of such remuneration in the hands of the assessee company. If the disallowance is sustained then it would tantamount to taxing the same income twice – once in the hands of the Directors and again the hands of the assessee. Similarly it has been submitted that once the learned CIT(A) has allowed the remuneration i.e. salaries etc. of the staff including electricity charges etc. there was no reason to disallow the expenses paid to employees on account of travelling and conveyance incurred by the employees. It has been submitted that the real test for allowing an expense is as to whether the expense has been incurred wholly and exclusively for the purposes of business of the assessee. Admittedly the assessee was engaged in the business of hospitality and trading of shares for which expenses are required to be allowed.

27. The learned DR on the contrary relied upon the order of the authorities below and has submitted that the approach of the Assessing Officer as upheld by the learned CIT(A) is correct because the assessee does not deserve any allowance and there was no need to incur such expenses.

28. We have heard the rival contentions, perused the Assessment Order as well as CIT(A)'s Order on this issue. In our views, the sole reason for the Assessing Officer to make the disallowance is that the transaction of sale and purchase of shares trading business was held to be bogus by the learned Assessing Officer. Since we have already held that the arrangement of sale and purchase of shares is not bogus and therefore we have no hesitation in allowing this ground of appeal to the assessee, The addition of Rs.1,04,16,353/- is hereby directed to be deleted.

29. **Last Ground** of Appeal raised by the assessee is the addition of Rs.1,17,200/- on account of income of house property. The Assessing Officer noted that the assessee owned a property for which rental income has not been declared by the assessee. He computed the rental income at Rs.12,60,000/- based on the fair market rent of such property as noted by the Assessing Officer from the information downloaded from the online portal for the property situated in that locality where the property was situated.

30. Before the CIT(A), the assessee submitted that the residential property was the only property and the same property was available with the assessee only for about 3 months. This property in fact has been sold during the year on which the assessee returned substantial capital gain and paid tax on such capital gain. The assessee submitted that no rental income can be computed from such property and in any case as per the municipal valuation, the maximum rent that could be attributed worked out as a taxable amount could not exceed at Rs.4,68,750/- for which 3 months ALV worked out to be Rs.1,17,200/-. The learned CIT(A) restricted the disallowance to Rs.1,17,200/-.

31. The learned Authorised Representative of the assessee submitted that as per the provisions of section 23(2), one residential property for an assessee cannot be brought to tax as the same is required to be treated as the self-occupied property and action of the learned CIT(A) to that extent is incorrect and not as per the provisions of law. The learned Authorised Representative submitted that the property was being held by the assessee for resale and has actually been sold during the year under consideration. He submitted that the property was being held for part of the year i.e. only for 3 months and no notional value can be brought to tax. It is submitted that the property was not held as stock in trade but as a capital asset. He

referred to the provisions of section 23(2) which for the sake of ready reference are reproduced:

(2) *Where the property consists of a house or part of a house which –*

(a) *is in the occupation of the owner for the purposes of his own residence; or*

(b) *cannot actually be occupied by the owner by reason of the fact that owing to his employment, business or profession carried on at any other place, he has to reside at that other place in a building not belonging to him,*

the annual value of such house or part of the house shall be taken to be nil.

32. The learned DR relied upon the orders of authorities below.

33. We are of the opinion that for the purposes of computing the income from house property u/s 22 of the Income Tax Act, the ALV is required to be computed at per section 23. Section 23 is a deeming provision and taxes are required to be paid by an assessee if it is found to be the owner of such property. Admittedly, the assessee is owner of such property although for the part of the year. The provisions of section 23(2) have two sub-clauses (a) and (b). Admittedly clause (b) of section 23(2) is not attracted on the facts of the assessee's case. As far as clause (a) is concerned, the same can be invoked only if the assessee as an owner is in occupancy of such property for his own residence. It is not the case of the assessee that the

property was kept for its own residence and the assessee claims that the same was held for sale. Property held for sale cannot be treated as occupied for one's own residence.

34. Upon these facts and upon the aforesaid interpretation of provisions of law on this issue, we are of the opinion that no interference in the order of learned CIT(A) is called for and the order of the learned CIT(A) on this issue is upheld and addition of Rs.1,17,200/- is confirmed.

35. In the result, appeal of the assessee is partly allowed as above.

Order pronounced in the open court on 14th February, 2024

Sd/-
[M. BALAGANESH]
ACCOUNTANT MEMBER

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

Dated: 14.02. 2024.

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi