

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, KOLKATA**

**Before Shri Rajesh Kumar, Accountant Member
&
Shri Sonjoy Sarma, Judicial Member**

**I.T.A. No. 614/KOL/2023
Assessment Year: 2014-2015**

**Jajodia Finance Limited,.....Appellant
20, Mullick Street, 4th Floor,
Kolkata-700007, West Bengal
[PAN:AAACJ8457D]**

-Vs.-

**Income Tax Officer,.....Respondent
Ward-9(3), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
5th Floor, Room No. 21,
Kolkata-700069**

Appearances by:

*Shri Shri Miraj D. Shah, A.R., appeared on behalf of the
assessee*

*Shri B.K. Singh, JCIT, Sr. D.R., appeared on behalf of the
Revenue*

Date of concluding the hearing : December 14, 2023

Date of pronouncing the order : February 29, 2024

O R D E R

Per Shri Rajesh Kumar, Accountant Member:-

The assessee is in appeal before the Tribunal against the order of ld. Commissioner of Income Tax (Appeals), Lucknow-3 dated 24.04.2023, which is arising out of the order under section 143(3) of the Income Tax

Act, 1961 for A.Y. 2014-15 framed by Income Tax Officer, Ward-9(3), Kolkata.

2. The sole grievance raised by the assessee in various grounds of appeal is against the confirmation of addition of Rs.1,97,94,148/- by ld. CIT(Appeals) as made by the ld. Assessing Officer by rejecting the loss from trading in shares/securities.

3. The facts in brief are that the assessee filed the return of income on 29.11.2014 declaring total income of 'NIL', which was processed under section 143(1) on 15.06.2015 and a refund of Rs.22,83,940/- was granted to the assessee. Thereafter the case of the assessee was selected for scrutiny through CASS and the statutory notices were issued and duly served upon the assessee. The assessee is a NBFC Company and is involved in trading and investment in shares, advancement of loans on interest etc. During the year, the assessee received interest on loan of Rs.2,45,85,201/- and net result of trading in shares was loss of Rs.1,97,94,748/-. The assessee after deducting business expenditure, computed the net income at Rs.14,48,008/-, which was fully set off against brought forward loss. The ld. Assessing Officer in para 2 at page 2 noted that the said transactions raises suspicion about the loss claimed by the assessee, which appears to be sham and bogus. The A.O. noted that claim of the set off of the loss from

trading in shares against interest income was intended to escape the tax liability as the assessee traded in shares in the script of Private Limited Companies only in the off market. Besides ld. Assessing Officer noted that information was received from Directorate of Investigation, New Delhi that M/s. Jajodia Finance Limited is an entry operator and involved in giving bogus entries for purchase and sale of investments, share application etc. on commission basis. Finally ld. Assessing Officer after giving show-cause notice added back the loss as bogus share trading loss of Rs.1,97,94,148/- and after allowing brought forward loss of Rs.41,00,221/-, the income was assessed at Rs.1,71,41,936/- in the assessment framed under section 143(3) vide order dated 16.12.2016.

4. The order of ld. Assessing Officer was also affirmed by the ld. CIT(Appeals) when there was no compliance from the assessee's side to various notices issued as mentioned in para 4.1 of the impugned appellate order. Against the order, the ld. CIT(Appeals) dismissed the appeal of the assessee after giving his finding on this issue.

5. After hearing the rival contentions and perusing the material available on record, we find that in this case, the ld. Assessing Officer has received information from Directorate of Investigation, New Delhi that the assessee

is an entry operator engaged in the business of providing accommodation entries by trading in purchase and sale of shares and advancing unsecured loans. The ld. Assessing Officer on the basis of said information recorded a finding in para 2 at page 2 of the assessment order that the transactions of shares appears to be suspicious without carrying out any investigation on the information received from DIT(Investigation), New Delhi. The relevant contract of A.O.'s order is as under:-

“From the above, an apparent suspicion arises that, the assessee company acquired this loss from share trading to set off its interest income to escape tax. It is found from details submitted during the course of hearing that the entire trading in shares was in the script of Private Ltd. Companies which is traded off market”.

5.1. vWe also find that the ld. Assessing Officer has not conducted any inquiry/investigation into the evidences filed by the assessee during the course of assessment proceedings. We note that a search and seizure operation was carried on in the premises of KLJ Group and consequential survey had taken place in Kolkata in the office of M/s. Jajodia Finance Limited. The ld. Assessing Officer further noted that Shri Rajesh Kumar Surana the director of the assessee company was issued summon u/s 131 of the Act and a statement on oath, wherein he admitted that the assessee company M/s. Jajodia Finance Limited is an entry operator and involved in giving bogus entries for purchase and sale of investments and share application etc. in consideration of brokerage

and commission and, therefore, the loss claimed by the assessee amounting to Rs.1,97,94,748/- was disallowed. In the present case, we observe that the assessee has filed the evidences before the ld. Assessing Officer as called for during the course of assessment proceeding. However, the ld. Assessing Officer has not done any inquiry and has merely harped on the statement of Shri Rajesh Kumar Surana recorded on 18.06.2013 by recording a finding in para 2 at page 2 of the assessment order that the transactions of the assessee raises suspicion and, therefore, cannot be accepted. We also note that no cross objection was even allowed to the assessee. We note that in this case, the statement given on oath has even been retracted on 22.03.2016 by filing an affidavit and, therefore, it has no evidentiary value as the authorities below have not brought any corroborative evidence to that effect. In our opinion it is settled legal position that a confession given during survey has no evidentiary value unless corroborative evidences are there. Moreover, the ld. Assessing Officer has not brought on record any substantive facts and finding are based on the DIT(Inv.) report alone. In absence of any substantive finding on various evidences filed by the assessee and Assessing Officer making addition as suspicious basis, we are unable to subscribe to the conclusion of the authorities below. The case of the assessee finds support from the High Court's decisions in the cases of Kailashben Manharlal Chokshi Vs CIT (2010)

328 ITR 411 (Guj), Shree Ganesh Trading Co.-Vs.- CIT (2013)257 CTR (Jharkhand)159 and ITO-Vs.- Vijay Kumar Kesar (2010) 327 ITR 497 (Chatisgrh). Consequently we set aside the order of Id. CIT(Appeals) and direct the Id. Assessing Officer to delete the addition on account of rejection of loss.

6. In the result the appeal of the assessee is allowed.

Order pronounced in the open Court on 29/02/2024.

Sd/-

Sd/-

Sonjoy Sarma
Judicial Member

(Rajesh Kumar)
Accountant Member

Kolkata, the 29th day of February, 2024

Copies to : (1) Jajodia Finance Limited,
20, Mullick Street, 4th Floor,
Kolkata-700007, West Bengal

(2) Income Tax Officer,
Ward-9(3), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
5th Floor, Room No. 21, Kolkata-700069

(3) Commissioner of Income Tax(Appeals),
National Faceless Appeal Centre (NFAC), Delhi;

(4) Commissioner of Income Tax-;

(5) The Departmental Representative

(6) Guard File

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.