

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “C” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**ITA No.551/Ahd/2023
Assessment Year: 2015-16**

Shree Mallikarjun Trad Invest Pvt. Ltd., 20, UL, Skylon Shopping Centre, Opp. Polytechnic, Panjrapole Cross Roads, Ahmedabad – 380 015. [PAN – AACCS 0918 G] (Appellant)	Vs.	The Income Tax Officer, Ward – 4(1)(3), Ahmedabad. (Respondent)
Assessee by	Shri Deepak R. Shah, AR	
Revenue by	Shri Ashok Kumar Suthar, Sr. DR	
Date of Hearing	05.03.2024	
Date of Pronouncement	15.03.2024	

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER:

This appeal is filed by the assessee against order dated 09.06.2023 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2015-16.

2. The assessee has raised the following grounds of appeal :-

- “1. That the Ld. CIT(A) erred in law and in the facts of the case in confirming the order of the AO in disallowing long term capital loss of Rs.1,17,19,726/-
2. That the Ld. CIT(A) erred in law and in the facts of the case in confirming the order of the AO in disallowing expenses of Rs.76,915/-.
3. That the Ld. CIT(A) erred in law and in the facts of the case in confirming the order of the AO in not granting opportunity of cross examination of persons as demanded by the appellant.”

3. The return of income for the assessment year 2015-16 was filed on 26.09.2015 declaring total income at Rs.2,73,167/-. The assessee is engaged in

trading of shares and securities. The return of income was processed under Section 143(1) of the Income Tax Act, 1961. The case was selected for scrutiny under CASS and statutory notices under Section 143(2) of the Act dated 06.04.2016 and notice under Section 142(1) of the Act dated 23.06.2017 along with questionnaire were issued and served. In response to the notices, the Ld. AR of the assessee furnished the details and attended the assessment proceedings. The Assessing Officer observed that the transaction of purchase and sale of shares of Luminaire Technologies Limited and Unno Industries Limited were sham transactions. The Assessing Officer, therefore, disallowed the claim of the assessee amounting to Rs.1,17,19,726/- as loss on trading in shares and treated the same as bogus. The Assessing Officer also disallowed the expenses claimed by the assessee to the extent of Rs.76,915/-.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the Assessing Officer erroneously observed that the transaction in trading of shares through recognised stock exchange which aggregated to loss of Rs.1,17,96,641/- being non-genuine merely on the basis of suspicion and without any specific basis. The Ld. AR submitted that the explanation offered by the assessee along with the details categorically set out the transaction in shares of various companies including those of Unno Industries Limited and Luminaire Technologies Limited. The assessee has provided ledger account and invoices along with accounts of recognised brokers through whom the shares were traded by the assessee. All the documentary evidences were before the Assessing Officer but the Assessing Officer failed to comment on the very document and instead relied upon the statements of those Companies and their Directors in respect of which the assessee purchased the shares which has nothing to do with the assessee. The Assessing Officer also passed the Assessment Order solely upon the Investigation Report of Kolkata which has not given the details of assessee's connection with the penny stock/entry providers. The Ld. AR submitted that the assessee was not allowed to cross-examine the Directors' statement as well as the assessee was not allowed to confront the Investigation Wing's report and, therefore, the Assessing Officer merely on

suspicion and presumption has made the addition which is not permissible. As regards to disallowance of expenses of Rs.76,915/-, the Ld. AR submitted that the assessee is dealing with the business of trading in shares and securities for which the assessee has incurred the expenses for which the assessee has given the details but the same was not taken into account either by the Assessing Officer as well as by the CIT(A).

6. The Ld. DR submitted that the Assessing Officer has categorically mentioned that purchase and sale of the shares of unknown Company, i.e. Unno Industries Limited and Luminaire Technologies Limited, having no profile of financial growth risk factor etc. available with the assessee and the same was treated as sham transaction credited to get the bogus loss in connivance with the entry providers to evade tax. The Ld. DR relied upon the assessment order and the order of the CIT(A).

7. As regards to ground no.2, the Ld. DR relied upon the Assessment Order and the Order of the CIT(A). The Ld. DR also relied upon the decision of Hon'ble Kolkata High Court in the case of PCIT vs. Swati Bajaj, (IA No.GA/2/2022, order dated 14.06.2022).

8. We have heard both the parties and perused all the relevant material available on record. From the perusal of the assessment Order, the Assessing Officer while looking into the issue of loss on sale of shares and penny stock has solely relied upon the investigation carried out by the Directorate of Investigation, Kolkata as well as the statements recorded during the investigation at Kolkata on the Companies i.e. Unno Industries Limited and Luminaire Technologies Limited. All these three components upon which the assessee's case was dealt has not been confronted to the assessee at any juncture during the assessment proceedings. From the perusal of Assessment Order, the Assessing Officer has given the scrip-wise movement of both the Companies as well as the statements of those Directors but not even a single sentence has been taken into account related to assessee's actual transaction through its broker which was reflected in assessee's Client Sauda Summary as well as ledger account of the Companies of

which the assessee has taken the shares and also the assessee has given the details of day-wise trading not only in these two scrips but also to that of other trading. The Assessing Officer failed to take cognisance of the evidences produced by the assessee during the assessment proceedings about his trade in share transaction more specifically of those two companies' scrips. The CIT(A) has also not given any factual finding to the extent and how the assessee is involved in the manipulation of prices of the scrip which is lowest at the time of selling of those scrips. The decision of Hon'ble Kolkata High Court in the case of Swati Bajaj (supra) will not help Revenue's case as the facts of the assessee's case is not at all being discussed as to when the shares were purchased and when the shares were sold as well as to the extent of how the assessee has given the treatment of share trading which is the major business of the assessee in its books of accounts and whether the details are supporting the case of the assessee regarding the loss claimed by the assessee. Thus, the Assessing Officer as well as the CIT(A) was not right in disallowing the assessee's claim of loss on account of trade in shares. Hence, ground no.1 is allowed.

9. As regards to ground no.2, the assessee through the expenses and the details towards the payment of securities transaction tax and stamp duty incurred by the assessee has given the details to the Assessing Officer but the same was overlooked by the Assessing Officer as well as by the CIT(A). Thus, the expenses incurred by the assessee are in consonance with the assessee's trading activities and, therefore, the same should have been allowed. Hence, ground no.2 is allowed.

10. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on this 15th March, 2024.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 15th day of March, 2024
*PBN/**

Copies to:

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*