

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER**

**AND**

**SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER**

**ITA NOs. 933, 935 & 936/MUM/2024  
(A.Ys: 2016-17, 2015-16 & 2014-15)**

<b>ACIT-19(1)</b> Room No 506, 5th Floor Piramal Chambers, Lalbaug Mumbai , Maharashtra , 400012	v.	<b>ADICHEMESHREE FINANCIAL</b> 11-B, 5 <sup>th</sup> Floor Rockside Apartment Walkeshwar Road, Mumbai Maharashtra - 400006  <b>PAN: AAXFA8211E</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee Represented by</b>	:	<b>Shri Suchek Anchaliya &amp; Shri Tushar Nagori</b>
<b>Department Represented by</b>	:	<b>Shri Ajay Chandra</b>
<b>Date of conclusion of Hearing</b>	:	<b>30.05.2024</b>
<b>Date of Pronouncement</b>	:	<b>05.06.2024</b>

**ORDER**

**PER NARENDRA KUMAR BILLAIYA (AM)**

1. ITA Nos. 936, 935 & 933/MUM/2024 are three separate appeals by the revenue preferred against three separate orders of National Faceless Appeal Centre, Delhi [hereinafter in short "Ld. CIT(A)"] dated 02.01.2024 pertaining to A.Ys. 2014-15, 2015-16 and 2016-17 respectively.

**2.** Since common grievance is involved in the captioned appeals they were heard together and are disposed off by this common order, for the sake of convenience and brevity.

**3.** The common grievance in the captioned appeals is related to the deletion of entire disallowance of loss claimed by the assessee incurred in trading of various penny stocks which are non-genuine and fictitious in nature as held by the Assessing Officer. The claim of loss may differ in the captioned appeals and also the scrips may also be different but the underlying facts is identical in all the three appeals.

**4.** Representatives of both the sides were heard at length, case records perused, relevant documentary evidences brought on record duly considered and the judicial decisions relied upon by both the sides carefully perused. Since the underlying facts are identical in all the appeals we heard the representatives on the facts of A.Y.2014-15.

**5.** Assessee is a partnership firm dealing in share trading business. Before proceedings further it is pertinent to understand the Trading Profit and Loss Account of the assessee for the year ended 31.03.2014 which is as under: -

**M/S. ADIHEMSHREE FINANCIAL**

**Trading Profit and Loss Account for the Year Ended 31<sup>st</sup> March, 2014**

<b>INCOMES</b>	<b>SCHEDULE</b>	<b>CURRENT YEAR</b>
Sales	I	1,330,445,014.81
Closing Stock	I	1,249,043,833.72
Dividend Income	J	4,367,879.00
Speculation Profit / (Loss)	K	19,509,823.11
Future & Option Trading		117,497,717.33
		<b>2,720,864,267.97</b>
<b><u>EXPENDITURES</u></b>		
Opening Stock	I	----
Purchase	I	2,637,083,715.78
Depreciation	F	228,522.60
Auditor's Remuneration		39,326.00
Interest Paid on Loan	L	72,309,132.96
Administration & General Exp.	M	320,698.93
share Trading Expenses	N	8,331,579.74
		<b>2,718,312,976.01</b>
<b>Net Profit / (Loss) Transferred to Capital Account</b>		<b>2,551,291.96</b>
Accounting Policies & Notes to the Accounts	0	

**As per our report of even date**

**FOR HIREN PAREKH & ASSOCIATES  
CHARTERED ACCOUNTANTS**

Sd/-

(H.G. Parekh)

Proprietor

M.NO. 119966

FRN: 126335W

**FOR ADIHEMSHREE FINANCIAL**

Sd/-

Partner

Sd/-

Partner

**Place: Mumbai**

**Date: 05/09/2014**

**Place: Mumbai**

**Date: 05/09/2014**

**6.** It can be seen from the above, the turnover from the business is at ₹.133 crores. The details of share trading are at Page No. 25 to 27 of the Paper Book. The assessee is not only engaged in trading in shares but has also shown profit from speculation which included currency trading in F&O segment. The assessee is also engaged in Future and Option trading. In a nut shell, the assessee is extensively engaged in the stock-market. During the year under consideration, the assessee has claimed business loss on sale of ten (10) shares totaling to ₹.11.77 Corers and as per the norms the assessee has claimed the set-off of loss against the business income earned during the year.

**7.** Taking a leaf out of the report of Investigation Wing, Kolkata / SEBI / Investigation Wing, Mumbai, the Assessing Officer formed a belief that the promoters / brokers / operators have in collusion rigged the prices of shares to give accommodation entries of Long Term Capital Gain / Short Term Capital Gain to the beneficiaries and entries of loss to the exist providers.

**8.** Referring to the statement of Shri Hemanth Javari who happens to be one of the partner of the assessee, the Assessing Officer came to the conclusion that assessee's partner is experienced in share business and

as a prudent person he will not buy a shares of such companies at higher rate. Referring to the Investigation Agencies Report and statements of several operators / brokers, the Assessing Officer was of the opinion that that the rigging in share prices took place in collusion through their jamakharchi parties and the prices of shares were increased for the purpose of giving accommodation entries of long term capital gains to the beneficiaries and subsequently the sudden fall in prices of shares immediately after availing of benefits of Long Term Capital Gain by beneficiaries shows that the exit providers who purchased the prices at the peak, booked the losses to set-off their income.

**9.** Referring to the financials of the companies traded by the assessee, the Assessing Officer opined that these companies did not have any past performance nor they have huge reserves to command high prices at which the shares were purchased and then sold at meager prices.

**10.** Once again, referring to the Investigation done by SEBI the Assessing Officer found that share of these companies were banned in the stock-market and concluded by holding that the assessee has not

been able to prove the unusual rise and fall of share prices to be natural and is based on the market forces. The Assessing Officer was of the strong belief that the transactions entered by the assessee involved a series of preconceived steps, the performance of each of which is depending on the others being carried out. The true nature of such share transactions lacked commercial contents, being artificially structured transactions, entered into with the sole intent, to evade taxes.

**11.** According to the Assessing Officer the assessee had devised a colorable scheme by creating artificial losses in respect of shares of the companies only for the purpose of adjustment of said losses against income thereby reducing the taxable income and to give it a color of legitimate transactions. Strong reliance was placed on the decision of the Hon'ble Supreme Court in the case of *Mc. Dowel Ltd.*, [154 ITR 148]. Reference was also made to the decision of the Hon'ble Supreme Court in the case of *Sumati Dayal* [214 ITR 804]. The Assessing Officer concluded by disallowing the losses.

**12.** Assessee strongly agitated the matter before the Ld. CIT(A). It was strongly contended that the assessee is a regular trader in

stock-market and is having turnover in hundred crores. It was also contended that the name of the assessee was not there in any of the enquiries made by the Investigation Wing, Kolkata, Investigation Wing, Mumbai / Investigation done by the SBEI. Strong reliance was placed on the decision of the Tribunal in the case of the sister concern of the assessee M/s. Munish Financial in ITA Nos. 2637 & 2638/MUM/2022 wherein on identical facts though on different scrips the Tribunal has decided the issue in favour of assessee and against the revenue. After considering the facts and the submissions and finding parity of facts with the facts of M/s. Munish Financial (supra), the Ld. CIT(A) deleted the disallowance of loss made by the Assessing Officer.

**13.** We have given a thoughtful consideration to the orders of the authorities below. The undisputed fact is that the name of the assessee is nowhere in the Investigation Report be it Investigation Wing, Kolkata, Investigation Wing, Mumbai or Investigation Wing of SEBI. It is equally true that even the broker of the assessee is not in any of the Reports. As mentioned elsewhere looking the financials of the assessee we do not find any reason to doubt the losses only in respect of ten (10) shares when the turnover of the assessee is more than hundred crores. As mentioned elsewhere, the assessee is involved in the stock-market and

is well aware of the price fluctuations in the market. Merely because some share brokers / operators colluded in the alleged rigging of share prices and merely because the assessee was benefited indirectly cannot be a reason to disallow the claim of the assessee on the alleged ground that the assessee has also participated in rigging the share price. It is not the case of the revenue that the assessee has purchased shares Off-Market, all the transactions have been done Online. The payments have been made through banking channels. The Assessing Officer has heavily relied upon the decision of the Hon'ble Supreme Court in the case of Sumati Dayal (supra) and referred to the preponderance of probability. Hon'ble Supreme Court in Padmasundra Rao v. State of Tamilnadu [255 ITR 147] has held that circumstantial flexibility, example, one additional or different fact, make a world of difference between conclusions in two cases. The relevant findings read as under:-

*"Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington Vs. British Railways Board (1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."*

*The Hon'ble Karnataka High Court in the case of "Flipkart India (P.) Ltd. v/s Assistant Commissioner of Income-tax",*

*[2017] 79 taxmann.com 159 (Karnataka) has observed that considering the fact that this blind appreciation of a precedent is a frequent occurrence, in catena of cases, the Hon'ble Supreme Court has clearly opined that a judgment should not be read as a provision of law. A judgment is confined to the facts and circumstances of its own case. It is only when the facts and circumstances in two cases are similar that the ratio of the former case becomes applicable to the latter case."*

**14.** In the light of the above, the decision relied by the Ld. DR in the case of Pr.CIT v. Swati Bajaj [446 ITR 56 (Calcutta)] is misplaced for the primary reason that in the case of Swati Bajaj sale/purchase was not from the Demat Accounts. In most of the cases the purchases were through private placements. Whereas, in the case on hand, the trades were made on the stock exchange. Further, in the case of Swati Bajaj (supra) there were statements recorded from the brokers of the assessee, who had agreed to price manipulation and therefore adverse view was taken. In the case on hand, neither the broker of the assessee was examined nor his name is surfaced in any of the Investigation Report.

**15.** In our considered opinion, price rigging is done to rig the benefit by purchasing the shares at a meagre prices and selling them at a very exorbitant and high prices thereby booking substantial profit and since the Long Term Capital Gains was exempted from tax without paying any

tax the beneficiaries used to bring in their unaccounted money. But in the case in hand, the allegation is just the opposite in as much as the assessee has claimed set off of losses. In our considered view no prudent person would purchase losses to set off with accounted income and convert it into black money.

**16.** We have carefully considered the underlying facts from all possible angles in the light of the nature and volume of the business of the assessee in stock market and we are of the opinion that the losses incurred by the assessee are in the regular course of its business and deserved to be set-off against the regular business profit. We therefore do not find any error or infirmity and any reason to interfere with the findings of the Ld. CIT(A). Since the basis of disallowance of loss is identical in all the three appeals for the reasons discussed hereinabove, the captioned appeals are dismissed.

**17.** In the result, all the appeals filed by the revenue are dismissed.

Order pronounced in the open court on 05<sup>th</sup> June, 2024.

**Sd/-**  
**(SANDEEP SINGH KARHAIL)**  
**JUDICIAL MEMBER**

Mumbai / Dated 05.06.2024

**Sd/-**  
**(NARENDRA KUMAR BILLAIYA)**  
**ACCOUNTANT MEMBER**

Giridhar, Sr.PS

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**