

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
&
SHRI PRADIP KUMAR CHOUBEY, HON'BLE JUDICIAL MEMBER

I.T.A. No. 432/Kol/2023
Assessment Year: 2014-15

Karuna Financial Services Pvt. Ltd. C/o Subhash Agarwal & Associates, Advocates Siddha Gibson 1, Gibson Lane, Suite 213 2 nd Floor Kolkata - 700069 [PAN : AACCK1654M]	Vs	Asstt. Commissioner of Income Tax, Central Circle - 2(1), Kolkata
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Siddarth Agarwal, Advocate
Revenue by :	Shri Nicolash Murud, Addl. CIT D/R

सुनवाई की तारीख/Date of Hearing : 02/05/2024
घोषणा की तारीख /Date of Pronouncement: 06/06/2024

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The present appeal is directed at the instance of the assessee against the order of the learned Commissioner of Income Tax (Appeals), Kolkata - 20, (hereinafter the "ld. CIT(A)") dt. 23/03/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for Assessment Year 2014-15.

2. Brief facts of the case are that the assessee is a private limited company and is a member of Bombay Stock Exchange (BSE) and furnished return for Assessment Year 2014-15 on 29/09/2014 declaring income of Rs.1,63,110/-. Subsequent to validly serving of notice u/s 143(2) and 142(1) of the Act, scrutiny proceedings carried out and after

making various additions, assessment completed on 29/09/2016. Addition was challenged before the Id. CIT(A) who gave part relief to the assessee.

3. Now, the assessee is in appeal before this Tribunal.

4. The Id. Counsel for the assessee made detailed submissions for each of the issues and also referred paper book containing 59 pages.

The Id. D/R, on the other hand, vehemently argued supporting the orders of the lower authorities.

5. We have heard rival contentions and perused the material placed before us. The first issue for our consideration is addition of Rs.1,40,621/- made on account of disallowance of insurance claim written off. We observe that the assessee in the course of carrying out its activities as a member of BSE carried out the purchase and sale transactions on behalf of its clients. On account of an inadvertent mistake committed by the employee, the system entry of instruction slip was wrongly done for the client M/s. Syndicate Nirman Pvt. Ltd., as a result of which, delivery failed. For such failure, BSE penalized for an amount of Rs. 2,88,560/-. The assessee made a claim with the insurance company under the policy covering such transactions, but was able to get the claim only at Rs.1,47,939/-. The remaining amount was 1,40,621/- was claimed as insurance claim written off.

5.1. We notice that the Id. Assessing Officer firstly observed that the penalty imposed by BSE is liable to be disallowed u/s 37 of the Act. This observation of the Id. Assessing Officer as well as the Id. CIT(A) is not correct because the penalty imposed by the BSE for wrong entry in the

system cannot be equated to the penalty referred in explanation (1) to Section 37 of the Act levied for offences in violation of law. Therefore, the charges levied by BSE is not disallowable under explanation (1) to Section 37 of the Act. Further since the said expenditure has been incurred in the regular course of business and the assessee has also not been able to get certain amount of insurance claim against the said penal charges, the balance amount of Rs.1,40,621/- is a loss incurred in regular course of business and has rightly been written off in the profit and loss account. However, the nomenclature of the alleged expenditure should not be "insurance claim written off" and it should have been "charges paid to BSE". Thus, the addition of Rs.1,40,621/- is hereby deleted and Ground No. 1 raised by the assessee is allowed.

6. Ground No. 2 is against the addition of Rs. 13,112/- u/s 14A r.w.r. 8D. We notice that the Id. Assessing Officer made disallowance of Rs.85,725/-. Further, the Id. CIT(A) in view of the settled judicial precedents has sustained the addition only to the extent of exempt income of Rs. 13,112/-. Thus, the finding of the Id. CIT(A) requires no interference. Accordingly, Ground No. 2 raised by the assessee is dismissed.

7. Ground No. 3 is regarding the addition made on account of the commission of Rs. 1,71,998/- received on alleged transactions of penny stock. We note that the assessee is a stock broker of BSE and had made purchases on behalf of its clients. In the audited financial statement placed at page 3 of the paper book, we note that under the gross receipts, assessee has disclosed brokerage receipts of Rs. 79,76,650/- and also

account maintenance charges at Rs.17,16,757/-. This depicts that all the transactions routed through the assessee on BSE have already been subjected to levy of brokerage as per the rates applicable to such brokers. Now, the Id. Assessing Officer has alleged that some of the companies, namely, M/s. Welcom Procon Pvt. Ltd. and M/s. Electo Coal Pvt. Ltd., had made transactions in selected penny stock companies through the assessee broker. Based on this observation, certain transactions of purchase and sale of the alleged penny stock companies having been carried out by the above referred two companies with the assessee broker, the Id. Assessing Officer has estimated that the assessee may have earned commission @0.5% amounting to Rs.1,71,998/-. We fail to find any justification in such addition and it seems to be made only on surmises and conjectures as there is no evidence with the Id. Assessing Officer that apart from receiving the brokerage of purchase and sale of equity shares assessee has also earned extra income from commission. When the assessee company is itself showing the brokerage income from all transactions carried out through the portal of BSE, it has to be presumed that the transactions carried out by the two companies, namely, M/s. Welcom Procon Pvt. Ltd. and M/s. Electo Coal Pvt. Ltd., have also been routed through the normal channel and brokerage at normal rates should have been charged on the contract notes issued by the broker. We thus, fail find any merit in the findings of the Id. CIT(A) and the same is set aside. Accordingly, the addition of Rs.1,71,998/- is deleted and Ground No. 3 raised by the assessee is allowed.

8. Ground No. 4 is general in nature.
9. In the result, appeal of the assessee is partly allowed.

Order pronounced in the Court on 6th June, 2024 at Kolkata.

Sd/-

**(PRADIP KUMAR CHOUBEY)
JUDICIAL MEMBER**

Sd/-

**(DR. MANISH BORAD)
ACCOUNTANT MEMBER**

Kolkata, Dated 06/06/2024

30.6.24

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata