

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

**BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER &
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 506/Ahd/2024
(निर्धारण वर्ष / Assessment Year : 2015-16)

Shree Vishvamurte Trad Invest Private Limited D-123, Ghantakaran, Mahavir Market, Sarangpur, Ahmedabad, Gujarat, 380001	बनाम/ Vs.	ITO Ward 4(1)(3), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACV6247M		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Deepak R Shah, AR
प्रत्यर्थी की ओर से/Respondent by :	Shri C Dharnidas V.S, Sr. DR

Date of Hearing	21/08/2024
Date of Pronouncement	04/09/2024

ORDER

PER SHRI NARENDRA PRASAD SINHA, AM:

This appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi, (in short ‘the CIT(A)’) dated 18.03.2024 for the Assessment Year 2015-16.

2. The brief facts of the case are that the assessee company is engaged in trading of shares and securities. The return of income for A.Y. 2015-16 was filed on 26.09.2015 declaring total income of Rs.3,33,040/-. The case was selected for scrutiny under CASS and statutory notices were issued. During the year, the assessee had incurred business loss of Rs.54,09,97/- on trading in shares of certain companies. The AO disallowed this loss by holding that the purchase and sale of shares of the companies in which the losses were incurred, were sham transactions. Further, the expenses pertaining to these bogus losses were also proportionately disallowed. Accordingly, addition of Rs.57,04,623/- was made on account of disallowance of losses and disallowance of expenses. The assessment was completed under Section 143(3) of the Income Tax Act, 1961 (in short 'the Act') on 28.12.2017 at total income of Rs.60,37,664/-. Aggrieved with the order of the AO, the assessee has filed an appeal before the First Appellate Authority which has been decided vide the impugned order. The disallowance of loss and the addition on account of proportionate expense as made by the AO was confirmed by the Ld. CIT(A).

3. Now, the assessee is in second appeal before us. The assessee has taken following grounds in this appeal:

- “1. The CIT(A) erred in law and in the facts of the case in confirming the order of the AO in making disallowance of business loss of Rs.54,09,979/-.
2. The CIT(A) erred in law and in the facts of the case in confirming the order of the AO in making disallowance of expenditure of Rs.2,94,644/-.”

4. Shri Deepak R. Shah, Ld. AR appearing for the assessee submitted that the business of the assessee itself is trading in shares and securities. The loss incurred by the assessee was on account of valuation of closing stock and was genuine admissible business loss. He explained that all the transactions were done through the stock exchange on which STT was paid. The transactions of purchase and sales were carried out through SEBI registered intermediary on the floor of authorized stock exchange, the payments were made/received through account payee cheques and delivery of shares were made through de-mat account. Thus, all the transactions made by the assessee were genuine. The Ld. AR submitted that AO was not correct in treating the share trading transactions of the assessee as sham or bogus; as the brokers and entry providers had nowhere implicated the assessee in the alleged accommodation entry of any LTCG/STCG. The assessee never had any transaction with the share brokers/entry providers who had made those statements. Further, no specific evidence of any accommodation entry transaction was brought on record by the AO. Therefore, the

disallowance of loss as made by the AO was not correct. He further submitted that the Ld. CIT(A) was also not correct in confirming the action of the AO by merely relying upon the decision of Hon'ble Calcutta High Court in the case of *Swati Bajaj* and without examining the facts of the case. The Ld. AR further submitted that the disallowance of expenses as made by the AO was also not correct. According to the Ld. AR the loss in the account of the assessee was normal trading loss and there was no LTCG loss claimed by the assessee. He relied upon the decision of this Tribunal in the case of *Shree Mallikarjun Trade Invest Pvt. Ltd. in ITA No.551/Ahd/2023*, wherein an identical issue was involved and the relief was allowed by this Tribunal.

5. Per contra, Shri C. Dharnidas V.S, Ld. Sr. DR strongly supported the orders of the AO and the Ld. CIT(A). He submitted that the AO had relied upon the report of Kolkata Investigation Directorate and the statements of share brokers/entry providers who had stated that the shares of the companies, in which the assessee had incurred losses, were utilized for providing bogus accommodation entries in the form of bogus LTCG/STCG. He further submitted that the assessee had never sought any opportunity to cross examine the brokers/intermediaries who had given those statements. The Ld. Sr. DR submitted that merely because the transactions were made through stock exchange it doesn't establish that the transactions were genuine.

6. We have carefully considered the rival submissions. The first ground taken by the assessee is against disallowance of business loss of Rs.54,09,979/-. The losses were incurred by the assessee in the trading of the following shares:

<i>S.No.</i>	<i>Scrip</i>	<i>Loss/Reduction in value of Cl.Stock</i>
<i>1</i>	<i>Indinfo</i>	<i>131486</i>
<i>2</i>	<i>Kappac Pharma</i>	<i>229803</i>
<i>3</i>	<i>Shreenath</i>	<i>827</i>
<i>4</i>	<i>Anukaran Com</i>	<i>864191</i>
<i>5</i>	<i>Blazon Marble</i>	<i>1110087</i>
<i>6</i>	<i>Unno Industries</i>	<i>3073585</i>
	<i>Total Loss</i>	<i>54,09,979</i>

7. The AO had disallowed the loss for the reason that transaction of purchase and sale of shares as referred above were sham transactions. According to the AO, these transactions were only pre-arranged in order to enable the beneficiaries for entry/exit transactions to book their Long Term Capital Gain / Long Term Capital Loss. According to the Revenue, these scrips were utilized by the entry providers for providing accommodation entries and that the transactions carried out by the assessee were part of such operation.

8. We have carefully gone through the order of the AO and are of the opinion that the transactions were held as sham/bogus transactions on the basis of mere conjuncture and presumptions and without bringing any concrete evidence to establish that the

assessee had provided accommodation entries in respect of these transactions. The AO has discussed in detail the modus operandi of providing accommodation entry for bogus losses and has relied upon the statements of share brokers of Kolkata. However, no evidence has been brought on record to establish that the assessee had provided any accommodation entry in respect of the shares as transacted by him. Further, the assessee was nowhere implicated in any of the statements of the share brokers/entry operators of Kolkata as relied upon by the AO. It is found that the assessee was trading in shares and securities and income from sale of shares of Rs.62,66,30,600/- was disclosed in the P&L account. Thus the assessee was a regular dealer in shares and was not an investor/beneficiary of any accommodation entry in respect of LTCG/LTGL. The assessee had not shown any long term capital gain and claimed exemption u/s 10(38) of the Act. The loss as disclosed by the assessee was also not long term capital loss. Under the circumstances the allegation of accommodation entry on the part of the assessee in respect of bogus LTCG/LTCL is not sustainable at all.

9. In the scrip of Indinfo, the assessee had incurred loss of Rs.1,31,486/- whereas in another transaction of the same share, the assessee had shown profit of Rs.38,88,767/-. It is not the case that the only transaction in the share of Indinfo had resulted into loss. The assessee had also made profit in another transaction of Indinfo. The AO was not correct in disallowing loss of

Rs.1,31,486/- without considering the profit of Rs.38,88,767/- made in the another transaction of the same share. Merely because the assessee had made off market purchase of shares, the profit earned in the transactions cannot be held as 'income from other sources'. It is thus found that the AO had disallowed the loss of Rs.1,31,486/- in the transaction of Indinfo without considering the totality of the transactions. Therefore, the loss of Rs.1,31,486/- as disallowed by the AO in respect of share of Indinfo is liable to be deleted.

10. Regarding the loss incurred in other shares, it is found that there was no actual loss in the transaction of the shares and the loss was due to reduction in the value of closing stock. In the case of Unno Industries, the assessee had purchased 46,91,786 shares, out of which 25,75,974 shares were sold during the year and 21,15,812 shares remained in the closing stock. This closing stock was valued at lower of cost or market value, which resulted in valuation loss of Rs.35,52,333/-. As the assessee had made profit of Rs.4,78,749/- in the other transactions of this scrip sold during the year, the net loss in this script was Rs.30,73,584/- only. It is, thus, found that the entire loss in the scrip of Unno Industries was on account of valuation of closing stock. Same is the situation in respect of other scrips as well. Thus, the entire loss of Rs.52,78,493/- in respect of other 5 shares was not actual loss on account of trading of shares but this loss was due to reduction in the value of closing stock. In view of this fact, the

loss as declared by the assessee could not have been held as sham or bogus as no actual loss in trading of the shares was incurred and the purchase and sale of shares were never disputed. The AO was, therefore, not correct in disallowing this loss of Rs.52,78,493/- as well.

11. The Ld. CIT(A) has erred in confirming the disallowance of losses without examining the facts of the case. He has merely relied upon the decision of Hon'ble High Court of Calcutta in the case of *Swati Bajaj* without considering that the facts of this case were totally different. That the losses in this case were primarily on account of valuation of closing stock. It is found that similar matter was involved in the case of *Shree Mallikarjun Trad Invest Pvt. Ltd. vs. ITO in ITA No.551/Ahd/2023, dated 15.03.2024* and the Co-ordinate Bench of this Tribunal had held that the AO was not correct in disallowing the loss on the identical facts and circumstances of the case. In view of the above facts and the judicial precedent, **the loss of Rs.54,09,974/- as disallowed by the AO is deleted.**

12. The next ground pertains to disallowance of proportionate expenditure of Rs.2,94,644/-. The AO had made this disallowance for the reason that the trading in the scrips were treated as bogus and the losses were disallowed. Accordingly, the AO had disallowed the proportionate expense in respect of these shares. As already held above, the addition on account of disallowance

of loss has been deleted. Therefore, the very basis of disallowance of expense no longer exists. Accordingly, the **proportionate disallowance of expenditure of Rs.2,94,644/- as made by the AO, is also deleted.**

13. In the result, appeal preferred by the assessee is allowed.

This Order pronounced on **04/09/2024**

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Ahmedabad; Dated 04/09/2024
S. K. SINHA

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

True Copy

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad