



**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI "H" BENCH: NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT &  
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA Nos.3827 & 3572/Del/2019  
[Assessment Years : 2014-15 & 2015-16]**

Vishwas Marketing Services Pvt.Ltd., 4, Local Shopping Centre, Bhanot Apartment Madangir, New Delhi-110062. <b>PAN-AABCV3214D</b>	vs	ITO, Ward-26(4), New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Shri S.Krishnan, CA & Shri Harshit Chouhan, Adv.	
<b>Respondent by</b>	Shri Amit Katoch, Sr.DR	
<b>Date of Hearing</b>	12.09.2024	
<b>Date of Pronouncement</b>	06.11.2024	

**ORDER**

**PER S.RIFAUR RAHMAN, A.M. :**

These two appeals filed by the assessee are directed against the different orders passed by Ld.CIT(A)-24, New Delhi, dated 25.02.2019 and 21.02.2019 for the Assessment Years ("AYs") 2014-15 & 2015-16 respectively. Since the similar grounds have been raised, both appeals of the assessee are taken up together for hearing and are being decided by way of this consolidated order for the sake of brevity.

**ITA No.3827/Del/2019 [Assessment Year : 2014-15]**

2. We take up the appeal of the assessee for the Assessment Year 2014-15 i.e. **ITA No.3827/Del/2019** as a lead case.



3. Brief facts of the case are that the assessee filed its return of income on 30.08.2014, declaring loss of (-) INR 21,119/-. The return was processed u/s 143(1) of the Income Tax Act, 1961 ("the Act") on 15.12.2014. The case was selected for scrutiny through CASS and notices u/s 143(2) & 142(1) of the Act, were issued and served upon the assessee. In response thereto, Ld.AR of the assessee attended the proceedings from time to time and submitted the relevant information as and when called for.

4. The assessee company is engaged in the business as buyer, sellers, importers, exports marketing, stockists dealers, distributors agents, brokers, commission agents, forwarding and clearing agents. During the assessment proceedings, the Assessing Officer ("AO") observed that the assessee has declared dividend income during the year and accordingly, the assessee was asked to file scrip-wise details and transactions of shares alongwith primary documents of purchase and sales. In response thereto, the assessee has submitted the details of transactions of purchases and sales of scrips. The AO noticed that the assessee has purchased shares of SRK Industries Ltd. ("SRK") in the month of December, 2013 and sold the same in the month of March, 2014 which resulted in a loss of INR 1,71,72,155/-. In order to verify the above said transactions, the AO issued notice u/s 133(6) of the Act to SRK and asked to file the various information mentioned in the above notice. The notice issued by the AO is reproduced at page 4 of the assessment order. In response thereto, SRK has submitted the details vide letter dated 05.12.2016. After considering the above details, the AO observed that the details submitted



by SRK are incomplete and this scrip was used to get bogus exemption u/s 10(38) of the Act by various operators and according to AO, this transaction itself falls under accommodation entry in providing bogus Long Term Capital Gain (“LTCG”). The AO analyzed the scrips and *modus operandi* used to provide bogus LTCG by various operators and he analyzed the method of price rigging, further relied on the detailed investigation carried out by the Kolkata Investigation Wing, considering the unusual loss claimed by the assessee. He made the detailed analysis of SRK scrips and relied on the various statement recorded by Kolkata Investigation Wing from Shri Bidyoot Sarkar, Shri Sanjay Vora, Shri Jai Kishan and Shri Anil Kedia. He came to the conclusion fully relying in the investigation carried on by the Investigation Wing, Kolkata that scrip is a penny stock and accordingly, the assessee was asked to submit the details of the transaction. In response thereto, the assessee has submitted reply dated 26.12.2016, same is reproduced by the AO at pages 22-23 of the assessment order. In the reply submitted by the assessee, that the transactions carried on by the assessee are genuine and these transactions have been routed through banking channels. By rejecting the submissions of the assessee, the AO relied upon the decision of Hon’ble Supreme Court in the case of **Mac Dowell & Company** and **Sumati Dayal**. Cases to reject the claim of the assessee that all the transactions are routed through banking channels and the transactions are genuine. Accordingly, he applied the Human Probability Test and relied on several other decisions to disallow the losses claim by the assessee.



5. Aggrieved from the above order, the assessee preferred appeal before Ld.CIT(A)-24, New Delhi and filed a detailed submissions. After considering the detailed submissions of the assessee, Ld.CIT(A) dismissed the grounds of appeal raised by the assessee.

6. Aggrieved with the above order, the assessee is in appeal before us, raising following grounds of appeal:-

1. *“The order of the ld. CIT(A) is against the facts of the case and the applicable law, and therefore it is bad in law.*
2. *The ld. CIT(A) erred in upholding the order of the ld. A.O. that short-term capital loss of Rs. 1,71,72,155/- incurred on sale of shares of SRK Industries Ltd. is not admissible to the appellant in computing its income.*
3. *The ld. CIT(A) erred in not granting exemption u/s 10(38) on long-term capital gain earned by the assessee from sale of shares of Alliance Integrated Limited, while the conditions for such exemption had been fulfilled.*
4. *The ld. CIT(A) failed to appreciate that the ld. A.O. had recorded a clear finding that the appellant had shown long-term capital gain of Rs. 1,63,53,614/- on sale of shares of Alliance Integrated Limited on which STT had been paid and that such exempt specie of income cannot be set off against other taxable specie of income or loss.*
5. *The ld. CIT(A) erred in reversing this finding by mentioning that no evidence has been furnished that the shares of Alliance Integrated Limited were held for more than 12 months.*
6. *The ld. CIT(A) erred in recording this finding without giving any opportunity to the appellant to lead evidence before him that these shares were held for more than one year, particularly when the Ld.*



AO had accepted the case of the assessee on the basis of record available with him.

7. *These grounds are without prejudice to one another.*
8. *The appellant begs for leaves to add, delete, modify or substitute any ground in the course of hearing as permitted by law.”*

7. At the time of hearing, Ld. Authorized Representative of the assessee (“AR”) brought to our notice basic facts on record and observations of the AO and Ld.CIT(A). Further, he submitted as under:-

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10. “AO'S OWN ENQUIRIES HAVE CONFIRMED GENUINENESS OF TRANSACTIONS:

- a. *PB 78 to 95-SRK Industries Ltd. has duly confirmed genuineness of transactions of share purchase and sale as made by the Assessee. They have denied allotting any shares to the Assessee and confirmed that all purchases & sales were made through stock market.*
  - b. *PB 97 onwards - The Assessee's broker, ie. Share India Securities Ltd., has also confirmed the said transactions, filing copies of the relevant contract notes and client ledger. They have also confirmed that they have not received any notice as to trades conducted in SRK Industries Ltd.*
11. *Thus, as per the AO's own enquiries, and evidence collected by him, there is nothing to discredit genuineness of the transactions. The details as filed by third parties were in complete consonance with evidence initially led by the Assessee, at pages 45 to 49 of the original Paper Book. It is noteworthy that while the AO made enquiries in the matter, he was evasive as to results thereof. The documents referenced above have been obtained after numerous*



written requests for inspection of record, made over a year before the AO's office.

NONE OF THE MATERIAL REFERRED BY THE AO NAMES THE ASSESSEE

12. The said material stands made part of the assessment order itself. It merely refers to evidence stating that certain persons were working to manipulate the share price of SRK Industries Ltd. This does not and cannot mean that anyone watching the share price on system and transacting through exchange was part of the said process.

WHERE PURCHASE AND SALE ARE ON MARKET, PROFITS / LOSSES CANNOT BE HELD BOGUS MERELY ON GENERIC INFORMATION

13. The six judgments as forming part of case-law compilation present a clear view of the issue. Wherever purchase of shares is off-market, or of private limited companies which have later been juggled together into a listed company, the Hon'ble Courts have laid down a heavy onus on the Assessee to justify the transactions and share prices. However, where the said purchases and sales are all on-market, as in the present case, it has been held that any reports of investigation officers would require corroboration from evidence. The judgments in *PCIT v. Krishna Devi* [(2021) 431 ITR 361 (Delhi)] and *Karuna Garg v. ITO* [(2019) 178 ITD 463 (Del-ITAT)] are relied upon in this regard.
14. In view of the facts and averments as above, it is most respectfully prayed that the Assessee's appeal merits allowance.

SUBMISSIONS-GROUND 3, 4, & 5-10(38) - Rs.1.71.72.155/-

15. The AO has accepted the claim as genuine, and CIT(A) has merely denied intervention to revised computation filed before him during appeal proceedings (PB-02) because he is stated to not have evidence as to holding period of the said share (Page 15). The fact,



*apparent from the CIT(A)'s own conclusion, as well as the case record, is that the CIT(A) never asked for any details. The shares of Alliance Integrated Ltd. had been standing in the Assessee's balance sheet for preceding years. The claim could not have been rejected without examining the same. Directions in this regard are most respectfully prayed for.*

*Placed for the most favourable consideration.”*

8. On the other hand, Ld.Sr.DR for the Revenue submitted that the assessee has held the scrip of SRK less than six months and absorbed huge loss. In this regard, he brought to our notice page 16 of the assessment order wherein the statement of Shri Bidyoot Sarkar was recorded and stated that he involved in various scrips of SRK industries and provided bogus LTCG to various beneficiaries. He further submitted that Shri Bidyoot Sarkar has specifically mentioned about the prices of SRK scrips were rigged. He also brought to our notice page 6 of the assessment order wherein Kokata Investigation Wing has been carried out detailed investigation of SRK Industries and notices u/s 133(6) of the Act, were issued to them and these notices were returned back unserved with remark “no such company/person exist”. As per the Investigation Report, the AO made physical verification/inquiry and no such industries was in existence. Further, he brought to our notice page 13 of the assessment order wherein summons were issued to the Directors of the assessee company u/s 131 of the Act and it was specifically asked that why the assessee did not invest in shares of SRK after Assessment Year 2014-15.



9. In reply, they submitted that the main aim of the assessee was to invest in shares of SRK and the same are grouped under the head "*investment in its balance sheet*". In the statement, it was submitted that the investment was made, based on the past performances and financials of SRK. However, the Director was unable to tell profit/turnover of previous assessment year. Further, he submitted that the assessee again bought the shares in Assessment Year 2015-16. He submitted that the two statements are contradictory and all these losses recorded by the assessee are manufactured losses.

10. Ld.Sr.DR for the Revenue further submitted that there are no fundamentals in SRK shares even then the prices has gone up. The assessee has sold these shares at loss. Therefore, the transactions are itself questionable considering the conduct of the assessee.

11. In re-joinder, Ld.AR of the assessee objected to the above submissions of Ld.Sr.DR for the Revenue, he brought to our notice page 66 of the Paper Book which is letter dated 04.10.2023 and the request was made to the AO for copy of summons and statement recorded u/s 131 of the Act for AYs 2014-15 & 2015-16. Further, he brought to our notice at page 67 of the Paper Book where similar reminders were made to the AO however, he submitted that AO has not provided any information . Further, he brought to our notice at page 68 of the Paper Book wherein the assessee has applied through RTI for above information relating to summons issued to Shri Vikram Singh Rawat and collected relevant summons and statement through Public Relation Officer,



Income Tax, New Delhi. Further collected details submitted by the SRK Industries dated 05.12.2016, details relating to denial of allotment of shares to the assessee and Form 20B, certificate of registration, Memorandum of Association, further details of information received from Share India Securities Limited and the details of share investment by the assessee. He submitted that all these information are kept on record from pages 69 to 125 of the Paper Book.

12. Ld.AR for the assessee further submitted that all these crucial information are received by the AO before completion of the assessment order and kept on record without even discussing about this in the assessment order. AO merely relied upon the Kolkata Investigation Wing and applied Human Probabilities Test and proceeded to disallow the claim of the assessee. He further brought to our notice at page 24 of the Paper Book wherein contract note of purchase from Share India Securities Ltd. He submitted that the assessee has purchased shares from share market therefore, the transactions are genuine and he prayed that this issue may be remitted back to the file of AO in order to appreciate the proper facts on record.

13. Considered the rival submissions of both parties and perused the material available on record. We observed that in this case, the AO has observed from the statement of sale/purchases of scrips that the assessee has booked loss on sale of SRK scrips and merely relying on the Kolkata Investigation Wing report and the finances of the SRK, came to the conclusion that the assessee has involved in booking bogus loss without properly verifying



the transactions carried on by the assessee. This is clearly visible from the information collected by the assessee through Right to Information Act (“RTI”) wherein several important information are collected by him and not carried out proper verification/investigation before rejecting the claim of the assessee. As per the assessment record available on record, the AO has completed the assessment hurriedly without properly appreciating the various information collected by him during the assessment proceedings. We observe that the information collected by the assessee through “RTI” goes to the root of the investigation and the relevant addition proposed by the AO. Therefore, we deem it fit and proper to remit this issue back to the file of AO to redo the assessment *denovo* after giving proper opportunity of being heard to the assessee and to consider the information available in the assessment records itself. Grounds raised by the assessee are accordingly, allowed for statistical purposes.

14. In the result, the appeal filed by the assessee is allowed for statistical purposes.

**ITA No.3572/Del/2019 [Assessment Year : 2015-16]**

15. Now, we take up the appeal of the assessee for the Assessment Year 2015-16 i.e. ITA.No.3572/Del/2019.

16. Facts in this case are also identical and similar as in ITA No.3827/Del/2019 [AY 2014-15] except figures.



17. We have heard Ld. Authorized Representatives of both the parties and perused the material available on record. We find that the facts and grounds are similar and identical to the **ITA No.3827/Del/2019 [AY 2014-15]** except figures. Ld. Authorized Representatives of both the parties have adopted the same arguments in respect of grounds of appeal. Our decision in **ITA No.3827/Del/2019 [AY 2014-15]** would apply *Mutatis Mutandi* in this appeal filed by the assessee as well. Grounds raised by the assessee are accordingly, allowed for statistical purposes.

17. In the result, appeal of the assessee is allowed for statistical purposes.

18. In the final result, both appeals of the assessee in **ITA Nos.3827 & 3572/Del/2019** for the **Assessment Years 2014-15 & 2015-16** are allowed for statistical purposes.

Order pronounced in the open Court on 06<sup>th</sup> November, 2024.

**Sd/-**

**(SAKTIJIT DEY)  
VICE PRESIDENT**

**Sd/-**

**(S.RIFAUR RAHMAN)  
ACCOUNTANT MEMBER**

*\* Amit Kumar \**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI