

**IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, DELHI**

**BEFORE MS.MADHUMITA ROY, JUDICIAL MEMBER &
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 5565/Del/2017
(Assessment Year: 2013-14)**

Income Tax Officer Ward-17(4) Room No. 225D, CR Building, I.P. Estate New Delhi -2	Vs.	M/s Navya Securities Pvt. Ltd., B-2, Jangpura Extension, New Delhi – 110014
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No: AAACN3106H		
Appellant	..	Respondent

Appellant by :	Sh. Ruchesh Sinha, Adv.
Respondent by :	Sh. Amit Katosh, Sr. DR,

Date of Hearing	09.12.2024
Date of Pronouncement	09.12.2024

ORDER

PER MADHUMITA ROY, JM:

The matter relates to deletion of disallowance of Rs.56,63,700/- on account of ‘ loss of investment in shares’.

2. We have heard the rival submissions made by the respective parties and also perused the materials available on record.

3. The assessee filed its return of income declaring total income of Rs.24,21,770/- on 30.09.2013 which was selected for scrutiny under CASS and after due compliance of statutory formalities the assessment was finalized upon making addition of Rs.566,37,000/- under Section 143(3) of the Act on loss on shares investment made in KR Chawla Consultants Pvt. Ltd. There was a capital gain of the assessee arising out of the sale of property situated at Greater Kailash Part-I, Delhi amounting to Rs.526,48,479/- and further that there was a loss under the head 'income from business and profession' amounting to Rs. 566,37,000/- in respect to the subscribing of shares of M/s KR Chawla Consultant Pvt. Ltd. The said amount as share application money was forfeited by the said company and therefore, the assessee claimed loss on such share.

4. As per provision of Section 71(2) of the Act the assessee claimed the set-off of the said amount which was disallowed by the Ld. Assessing Officer with the observation that such loss made by the assessee was out of a sham transaction. Mr. M Chawala who is the director of the assessee company, holding 99.99% equity of the assessee company is a close relative of Mr. Harvansh Chawla, who is signatory authority in M/s KR Chawla Consultants Pvt. Ltd. Hence it's a preplanned transactions to evade taxes. The notices in respect to forfeiture of share application money were signed by the said Mr. Harvansh Chawla and therefore, the transaction was nothing but to adjust capital gain on sale of property with loss in investments made in shares during the year. Further that, there is no basis for valuation of share at high price of Rs.560 as has

been submitted by the assessee and no company would pay such huge premium for a loss making company. Therefore, the transaction was just designed to create losses in the books to adjust capital gains by drafting few documents and notices. Apart from that, the amount advanced by the assessee to the said M/s KR Chawla Consultants Pvt. Ltd; no interest was charged.

5. The contention of the assessee is as emanates from the replies along with the requisite documents filed by the assessee are as follows:

- a. The price of the shares was calculated as per the rule 11UA of the Income Tax Rules which pertains to the valuation of shares. The same has not been considered by the AO.
- b. At the time when the share was subscribed the said entity i.e. K R Chawla Consultant was a profit-making company.
- c. After the deposit of the share application money, the assessee came to know that KR Chawla Consultant was running into losses and hence, the assessee did not paid the call money. It is therefore not like that the assessee has invested in a loss-making company.
- d. The assessee submitted all the relevant details in the application for additional documents, for substantiating the transactions.
- e. The said company was having an immovable property at the prime location of Haryana and Delhi and major rental income was expected from the same.
- f. The investment made by both the parties has been duly disclosed in the income tax return by both the parties.
- g. The genuineness of the transaction has not been disputed by the AO.
- h. No evidence has been brought on record by the AO to assume that the transaction was a sham and bogus transaction.
- i. The other side of the transaction is duly accepted by the Revenue authorities in the case of K R Chawla Consultant.
- j. Even if there is relation between Ms. Namrata Chawla and Mr. Harwansh Chawla would not make the transaction as sham.

- k. The forfeiture of the shares are governed by the provisions of the Companies Act and the compliance of the same by giving intimation to the ROC was duly made.”

6. The Ld. CIT(A) while granting relief to the assessee observed as follows:

3.2.3. The facts of the case and the submissions of the appellant have been carefully considered. The assessee company has subscribed to the equity shares of M/s KR Chawla Consulting Pvt. Ltd. The valuation of shares is computed under rule 11UA of the Income Tax Rules, 1962. M/s KR Chawla Consulting Pvt. Ltd. had huge accumulated profits at the time of subscribing the shares and the immovable properties held by the said investee company and the advances made by it were towards the immovable properties at prime location of Haryana and Delhi having handsome market value and the company was expecting handsome rental income. The appellant as well as M/s KR Consulting Pvt. Ltd. both are regularly assessed to income tax and the investment by the appellant has been duly disclosed to the income tax department by both the parties. The genuineness of the transaction has not been doubted by the revenue authorities in the case of M/s KR Consulting Pvt. Ltd. The transactions between the assessee and M/s KR Consulting Pvt. Ltd. during the previous assessment years have also not been doubted by the revenue either in the case of the appellant or in the case of M/s KR Chawla Consulting Pvt. Ltd. The Assessing Officer has not brought on record any iota of evidence in holding the transaction to be a sham transaction or bogus transaction. No adverse material has been brought on record before making disallowance of the genuine claim of the assessee. The assessing officer in the impugned order has stated that the assessee company had advance recoverable from various parties (including KR Chawla Consulting Pvt. Ltd) amounting to Rs.5,27,22,729/- as on 31.03.2012 and the advances recoverable at the year ended 31.03.2013 aggregated to Rs.1,93,00,000/- and no interest has been charged. The assessing officer has failed to appreciate that these transactions executed between the parties have not been doubted by the revenue authorities either in the case of the assessee or in the case of M/s KR Chawla Consulting Pvt. Ltd. Pertinently the assessing officer has not doubted the transaction except stating that interest has not been charged. Merely because interest has not been charged by the appellant from KR Chawla Consulting Pvt. Ltd. cannot be sufficient basis for holding a genuine share investment transaction with a sister concern as sham transaction. Further the reasoning given by the assessing officer that during the FY 2012-13 the assessee had invested Rs. 8,09,49,880/- in HPC Finsec and a commitment to invest Rs. 11,36,80,000/- given to KR Chawla Consulting Pvt. Ltd. in total Rs. 19,46,29,880/- made/committed to make against the total assets of Rs. 5,27,22,729/- and unsecured loan of Rs. 4,15,35,000/- availed during the year is out of place and cannot be formed as basis for alleged sham transaction. Regarding losses suffered by M/s KR Chawla Consulting Pvt. Ltd. amounting to Rs. 9.52 crores

at the end of FY 2012-13, the company had accumulated profit of Rs. 4.36 crores as on 31.03.2012 and the losses suffered during that year aggregated to Rs. 0.32 crore only. At the time of subscribing to the shares the company did not suffer the losses, in fact the company had accumulated profit to the tune of Rs. 4.36 crores after netting off the loss of 0.32 crore during FY 2011-12. The assessing officer has failed to see that the losses of Rs. 9.52 crores were suffered after subscribing the shares. Thus, losses suffered by M/s KR Chawla Consulting Pvt. Ltd. subsequently to the investment by the appellant cannot be said to be a good reasoning to hold a transaction as sham. The assessing officer also referred to notices relating to forfeiture of shares signed by Mr. Harvansh Chawla a signing authority in M/s KR Chawla Consulting Pvt. Ltd. is a close relative of Ms. Namrata Chawla, one of directors and 99.99% equity shareholder of the investee company. It is not understood how signing by a person of the forfeiture notice of share application money of an investment company in which one of the relatives of the signing person is holding shares can be held as basis of sham transaction. The assessing officer has failed to appreciate that the investment in the sister concerns and amongst the holding and subsidiary companies are normal commercial expediency transactions and in the present case as well the investment was made by the assessee company in M/s KR Chawla Consulting Pvt. Ltd. and since both are sister concerns the shareholders, directors and signing authorities may be common and related to each other and such connections cannot be said as basis for holding a genuine transaction as sham unless adverse material is brought on record and in the present case no such adverse material has been brought on record by the assessing officer. Merely a relationship and nexus between the signing authority and the shareholders of the assessee company is discussed, which by no stretch of imagination can be said a reasoning to hold the present transaction as sham. The assessing officer in the impugned order has further stated that as per terms and conditions relating to share application money K R Chawla Consulting Pvt. Ltd. does not have any right to forfeit the shares. This observation of the assessing officer is also misplaced and misinterpreted. The forfeiture of shares is governed under the provisions of the Companies Act. The assessing officer has failed to appreciate the vital fact that the shares were ultimately forfeited by M/s KR Chawla Consulting Pvt. Ltd. and the intimation of the same to the Registrar of the Companies (ROC) and the procedure in this regard as required under the Companies Act and rules framed there under have been complied with by M/s KR Chawla Pvt. Ltd. The documentary evidence such as Form No. 20B 'Annual Return' e-filed by M/s KR Chawla Consulting Pvt. Ltd. to Registrar of Companies (ROC) under the provisions of section 159 of the Companies Act, 1956, for financial year ended 31.03.2013, evidencing forfeiture of shares allotted to the assessee company was obtained by the A.O. u/s 133(6) of the Act during assessment proceedings and is also enclosed as additional evidence listed at serial No. 3 of the List of additional evidence. Regarding non sufficiency of the funds I agree with the submissions of the appellant that the data compared is irrelevant as the present funds have been compared with the future commitments. The assessing officer has failed to appreciate that the present investments could have been matured in paying the balance call money had the bank account of the company not found subsequently as Non Performing Assets (NPA). Further, the assessing officer has failed to appreciate that the funds during the year under consideration has

increased by Rs. 4.39 crore (i.e. Rs. 12.57 crore as on 31.03.2013 as compared to Rs. 8.18 crores as on 31.03.2012). Similarly the funds could have been raised during the year as well had the bank account of the company not subsequently become a Non Performing Assets (NPA). The observations of the A.O. regarding non furnishing of any response with respect to notices issued for extension of time and proof of exchange of notices of reminders and forfeiture of shares are found factually incorrect as on perusal of the documents mentioned in the remand report and the submissions made during assessment proceedings it is noticed that the relevant documents were furnished and the same are however the same as admitted as additional evidence at serial numbers (3) to (7) of the application.

In view of the above discussions I am of the opinion that the transaction under consideration has been held by the assessing officer as sham transaction merely because the transaction has been entered into between two sister concerns which has resulted into loss. The same may be a good ground for investigating the transaction. But, that by itself, is not sufficient to hold the transaction as a sham transaction or a bogus transaction. The Assessing Officer has investigated the matter by calling the information under Section 133(6) from M/s KR Chawla Consulting Pvt. Ltd. and the detailed documentary evidence obtained is listed in the remand report dated 22.05.2017. The said documentary evidence obtained u/s 133(6) has not been confronted to the appellant and no reference to such obtaining of documents made in the impugned assessment order. The part documents have been discussed by the assessing officer in the impugned assessment order. However, despite of such enquiry, the A.O. has not found any material or evidence to justify his presumption that the transaction between the assessee and M/s KR Chawla Consulting Pvt. Ltd. was bogus transaction or sham transaction. It is established that the transaction of investment in shares and subsequently suffering of loss by the appellant is a genuine transaction and cannot be held as colorable device or as sham transaction to avoid tax and thus the judgment of McDowell Case (supra) is not applicable in the present case. The ratio laid down by the Hon'ble Apex Court, in the case of Union of India v. Azadi Bachao Andolan (supra) and in the Vodafone case (supra) that tax planning could be allowed as long as it does not amount to a colourable means is applicable in the present case of the appellant as it is established that the transaction of investment in shares and subsequent suffering of loss by the appellant is a genuine transaction. The ratio laid down by the Hon'ble Supreme Court in the case of AzadiBachaoAndolan (supra) and in the Vodafone case (supra) has been followed on similar facts of the case by the Hon'ble ITAT Delhi in the case of Consolidated Finance case (Supra), and the Hon'ble ITAT has held that the mere fact the last step resulted in capital loss for the assessee would not make the series of transactions a sham. This case law relied upon by the appellant also squarely covers the present case of the appellant and therefore, the addition made for disallowance of capital loss of Rs. 5,66,37,000/- is hereby deleted. Grounds of appeal nos. 2 to 9 are therefore, allowed.”

7. Having heard the Ld. Counsels appearing for the parties and having regard to facts and circumstances of the matter and the orders passed by the authorities below we find that the Ld. CIT(A) observed that the transaction can be viewed under suspicion as the same entered into between two sister concern resulting into a loss but in the absence of any cogent material in the hands of the revenue brought on record the transaction cannot be titled as “sham”. It is a fact that the Ld. Assessing Officer invoking the provision of Section 133(6) of the Act conducted enquiry in regard to the said transaction but the same was not confronted to the assessee. Further that, all the requisite details were duly confirmed by the M/s KR Chawla Consultants Pvt. Ld. Merely because the transaction entered between the two companies resulting a loss, the same cannot be doubted as the same is due to commercial expediency in the given facts and circumstances of the matter. Under this particular facts and circumstances of the matter, tax planning could be allowed as long as it does not amount to a colorable means as the ratio laid down by the Hon’ble Apex Court in the case of Union of India Vs. Azadi Bachao Andolan (2003) 184 CTR (SC) 450/(2003 263 ITR 706 (SC) has been rightly applied by the Ld. CIT(A) in the instant case as it is established that the transaction of investment in shares and subsequent suffering of loss by the appellant is a genuine transaction and deletion of addition, therefore, made by the Ld. CIT(A) in our considered opinion is just and proper so as not to warrant interference. Hence, this ground of appeal preferred by the revenue is rejected.

8. The appeal preferred by revenue is thus dismissed.

Order pronounced in the open court on 09.12.2024

Sd/-

(Renu Jauhri)
ACCOUNTANT MEMBER

Sd/-

(Madhumita Roy)
JUDICIAL MEMBER

Dated 09.12.2024
PS: Rohit

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI