

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “F” BENCH: NEW DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER &
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No.3523/Del/2014

[Assessment Year : 2006-07]

M/s. Triple S Stock & Shares (P.) Ltd. Flat No.259 Sector-3 Pocket D-17 Rohini Delhi-110085. PAN-AABCT5743K	vs	ITO Ward-16(4) New Delhi.
APPELLANT		RESPONDENT
Appellant by	Shri Aditya Kumar, Adv.	
Respondent by	Ms. Anu Krishna Agarwal, CIT DR	
Date of Hearing	16.12.2024	
Date of Pronouncement	16.12.2024	

ORDER

PER PRADIP KUMAR KEDIA, AM :

The instant appeal has been filed at the instance of the assessee seeking to assail the First Appellate order dated 20.03.2014 passed by Ld. Commissioner of Income Tax (A)-XXXII, New Delhi [“Ld.CIT(A)”] arising from the assessment order dated 29.12.2008 passed u/s 143(3) of the Income Tax Act, 1961 [“the Act”] pertaining to assessment year 2006-07.

2. The assessee has raised following grounds of appeal:-

1. *“That the learned Commissioner of Income Tax (Appeals)-XXXII, New Delhi has grossly erred both in law and on facts in upholding disallowance of short term capital loss of Rs. 1,01,50,000/- incurred on sale of shares of M/s Magnum Steel Ltd. and M/s Magnum International Ltd.*
2. *That the disallowance has been sustained by the learned Commissioner of Income Tax (Appeals) on complete misconception of facts, misinterpretation of provisions of law, and, overlooking the documentary evidence on record including submissions of the appellant and as such the same is untenable.*
- 2.1 *That the learned Commissioner of Income of Income Tax (Appeals) has failed to appreciate that once the transaction of purchase and sale of shares was not disputed by the learned Assessing Officer, the disallowance made on subjective and irrelevant considerations was illegal, invalid and untenable.*

- 2.2 *That adverse findings recorded by the learned Commissioner of Income Tax (Appeals) to sustain the disallowance are factually incorrect, contrary to record, legally misconceived and as such untenable.*
- 2.3 *That the learned Commissioner of Income Tax (Appeals) has overlooked the pertinent fact that subsequent to the impugned order of assessment, an order dated 26.12.2011 for the instant assessment year u/s 153A/143(3) of the Act was made wherein the claim made by the appellant stood accepted and as such confirmation of disallowance in disregard of the aforesaid fact is misconceived, misplaced and untenable.*
- 2.4 *That the order so made by the learned Commissioner of Income Tax (Appeals) upholding the disallowance is based on surmises, conjectures and suspicion and as such, disallowance so confirmed is based on arbitrary considerations which are wholly irrelevant and as such, the disallowance so made is unwarranted.*

It is therefore prayed that, it be held that, disallowance made by learned Assessing Officer and, sustained by the learned Commissioner of Income Tax (Appeals) may kindly be deleted and appeal of the appellant be allowed.”

2. As per grounds of appeal, the assessee has challenged the disallowance of Short Term Capital Loss of INR 1,01,50,000/- arising on sale of shares of M/s. Magnum Steel Ltd. and M/s. Magnum International Ltd.

3. As per the facts emerging from assessment order framed under s.143(3) of the Act dated 29.12.2008 for AY 2006-07 in question, the assessee filed return of income at INR 4,51,313/-. The assessee *inter alia* claimed short term capital loss of INR 1,01,50,000/- which was set off short term capital gains of INR 1,05,72,796/-. The AO in the course of assessment found that the short term capital loss arising on sale of two unlisted companies namely M/s. Magnum Steel Ltd. and M/s. Magnum International Ltd. are not genuine. The AO accordingly, disallowed the short term capital loss claimed amounting to INR 1,01,50,000/-. The return income was accordingly enhanced to this extent.

4. Aggrieved, the assessee preferred appeal before the Ld.CIT(A). However, the Ld.CIT(A) did not find any merit in the plea of the assessee and accordingly confirmed the action of the AO.

5. Further aggrieved, the assessee preferred appeal before the Tribunal.

6. When the matter was called for hearing, the Ld. Counsel for the assessee pointed out at the outset that in the instant case, the assessment was framed under s. 143(3) vide order dated 29.12.2008 against the disallowances of short term capital loss made by the AO for which the assessee preferred appeal before the Ld.CIT(A) on 29.12.2008. During the pendency of the first appellate proceedings before the Ld.CIT(A), a search was initiated under s. 132(1) of the Act on 26.03.2010. In this backdrop, the Ld. Counsel for the assessee pointed out that in view of the search carried out, the assessment order passed under s. 143(3) of the Act stands abated since the appeal proceedings, which is continuation of assessment proceedings, was pending at the time of search. The Ld. Counsel for the assessee referred to the judgement by Hon'ble Supreme Court referred in the case of *Pr. CIT v. Abhisar Buildwell (P.) Ltd. [2023] 149 taxman.com 399 (SC)* to contend that the assessment framed under s. 143(3) required to be set aside and the additions if any, can be possibly made only in the proceedings under s. 153A of the Act since AY 2006-07 falls within six years period of the date of search. The Ld. Counsel for the assessee thus urged for appropriate relief in the matter. On being inquired by the Bench, the Ld. Counsel for the assessee submitted that he does not have anything to say to controvert the action of AO towards disallowances of short term capital loss on the aspects of merits.

7. The Ld. CIT DR for the Revenue relied upon the first appellate order and submitted that the ratio of *Pr. CIT v. Abhisar Buildwell (P.) Ltd.* (supra) does not apply in the facts of the case since the assessment should be completed at the time of search and thus the action of the AO is accord with provisions of the Act.

8. We have carefully considered the rival submissions and perused the material available on record. The assessee has challenged the jurisdiction of the AO to make additions in the proceedings under s. 143(3) in the wake of search carried out under s. 132 of the Act and subsequent proceedings under s. 153A coming into the motion.

8.1. It is the case of the assessee that as a result of search under s. 132 of the Act, the assessment order passed under s. 143(3) ceases to exist in view of the

judgement delivered by the Hon'ble Supreme Court in the case of *Pr. CIT v. Abhisar Buildwell (P.) Ltd.* (supra) and having regard to the scheme of the Act.

9. As noted from the facts on record, the assessment order was passed under s. 143(3) vide order dated 29.12.2008. The assessment for AY 2006-07 thus stood concluded at the time of search on 26.03.2010. Thus, in view of the plain language of section 153A of the Act, the assessment framed for AY 2006-07 stood concluded at the time of search and hence remains unabated. The pendency of appeal before the appellate authority in consequence of assessment order does not alter the position of law. What is required in law is pendency of assessment proceedings. If the assessment proceedings are pending only then the assessment proceedings shall abate and not otherwise. The proposition propounded on behalf of the assessee that assessment framed under s. 143(3) gets abated where the appeal is pending is contrary to both plain language of the Act as well as averment made in the judgement delivered in *Pr. CIT v. Abhisar Buildwell (P.) Ltd.* (supra). There is no substance in the plea raised on behalf of the assessee. Hence the appropriate recourse against additions/disallowances made in the unabated and surviving of assessment lies in the appeal proceedings provided under the Act. The assessee, however, has not addressed the Tribunal on aspects of merits despite specific query. Hence, all the issues raised in grounds of appeal stands concluded against the assessee.

10. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 16th December, 2024.

Sd/-

(VIMAL KUMAR)
JUDICIAL MEMBER

** Amit Kumar **

Copy forwarded to:

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

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI