



IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

ITA no.224/Mum./2013
(Assessment Year : 2009-10)

M/s. Saigal Sea Trade
B-203, Neelam Centre
Hind Cycle Road, Worli
Mumbai 400 030
PAN - AAASF6920K

..... Appellant

v/s

Addl. Director of Income Tax
Range-18(1), Piramal Chambers
Lalbag, Parel, Mumbai 400 012

..... Respondent

Assessee by : Shri Jitendra Jain
Revenue by : Shri Sunil Kumar Agarwal

Date of Hearing - 24.02.2016

Date of Order - 29.02.2016

ORDER

PER SAKTIJIT DEY, J.M.

Instant appeal of the assessee is directed against the order dated 9th October 2012, passed by the learned Commissioner (Appeals)-29, Mumbai, for the assessment year 2009-10. Assessee has raised the following effective grounds:-

"1. The Commissioner of Income Tax (Appeals) - 29, Mumbai [hereinafter referred to as CIT(A)] erred in confirming the disallowance of Rs.9,48,785/- being fees paid

under Portfolio Management Scheme(PMS) as not deductible expenditure u/s 48(1) of the I.T. Act against Short Term Capital Gain (STCG) computed by the Appellant during the year under consideration.

The Appellant submits that PMS fees of Rs.9,48,785/- is directly related to purchase and sale of shares and securities and hence the same ought to have been allowed as deductible expenditure while computing STCG.

2. The CIT(A) erred in confirming the disallowance of depreciation of Rs.9,49,005/- (Rs. 751,579 + Rs. 197,426/-) and society charges of Rs.1,62,567/claimed by the Appellant on residential premises used by the staff members of the Appellant for its business purpose.

Your Appellant submits that the residential premises were provided to the staff members in the course of carrying on its business activity and the AO ought to have allowed depreciation on the residential premises as claimed by the Appellant.

Your Appellant further submits that the depreciation of Rs. 197,426/- claimed on addition to the premises in the year under consideration was solely for the purpose of the business and the AO ought to have allowed the same as claimed by the Appellant.

3. The learned CIT(A) erred in confirming the ad-hoc disallowance of ₹ 1,04,564, being 5% of various expenses aggregating to ₹ 20,91,282 debited to the Profit & Loss account as incurred for non-business purpose.”

2. As far as ground no.1 is concerned, briefly the facts are, in the course of assessment proceeding, the Assessing Officer noticed that the assessee during the year has shown short term capital gain of ₹ 3,42,973 and short term capital loss of ₹ 1,88,72,253 and declared net short term capital loss of ₹ 1,85,29,281. After examining the details called for, the Assessing Officer noticed that the assessee had claimed

deduction of ₹ 9,48,785 on account of expenditure incurred on the portfolio manager under the portfolio management scheme (PMS) while computing short term capital loss. Observing that expenditure incurred on PMS was neither incurred wholly and exclusively for the transfer of capital asset nor cost for the acquisition or improvement of asset he disallowed the expenditure claimed. While doing so, he followed his reasoning for assessment year 2007-08 and 2008-09. Though, the assessee challenged the disallowance before the first appellate authority, but it was unsuccessful.

3. Learned Counsel for the assessee fairly submitted that the issue in dispute has been decided against the assessee by order of the Tribunal in assessee's own case for assessment year 2008-09. In this context, he referred to Para-6 and 7 of the order passed in ITA no.7282/Mum./2011 dated 17th June 2015.

4. Learned Departmental Representative also submitted that issue is decided against the assessee.

5. We have considered the submissions of the parties and perused the material available on record. It is noticed that this is issue recurring from the earlier assessment years. It is further observed that the Tribunal while deciding the issue in assessee's own case for the

assessment year 2008–09 in the order referred to above, followed its earlier order in assessee's own case for the assessment year 2006–07 and held that PMS expenditure is not allowable while computing income from short term capital gain. Respectfully following the consistent view of the Tribunal in assessee's own case, we decide the issue against the assessee by dismissing ground raised.

6. In ground no.2, assessee has challenged the disallowance of depreciation of ₹ 9,47,005 and society charges of ₹ 1,62,567.

7. Briefly stated the facts are, the Assessing Officer in course of assessment proceedings, while examining assessee's claim of depreciation noticed that depreciation of ₹ 9,49,005 was in relation to premise other than office. He also found that the assessee had paid society charges of ₹ 1,62,567. He further found that these deductions claimed were not allowed in the earlier assessment year. He, therefore, called upon the assessee to explain why the deduction claimed should not be disallowed. Though, the assessee objected to the proposed disallowance but the Assessing Officer rejecting the claim of the assessee, disallowed the deduction claimed.

8. The learned Commissioner (Appeals) also confirmed the disallowance.

9. Learned Authorised Representative submitted, similar issue also arose in the assessee's own case for the assessment year 2008-09 and the Tribunal restored the matter back to the file of the Assessing Officer for considering afresh. In this context, he drew our attention to Para-22 of the order passed by the Tribunal as referred to above. The learned Departmental Representative also agreed that the matter should be restored back to the Assessing Officer for deciding afresh in terms of direction of the Tribunal in assessment year 2008-09.

10. We have considered the submissions of the parties and perused the material available on record. It is observed, while deciding similar issue in assessee's own case in ITA no.7282/Mum./2011, dated 17th June 2015, for assessment year 2008-09, the Tribunal held as under:-

"22. The issue in ground of appeal no. 4 is against the disallowance of depreciation on residential premises of Rs.7,91,136/- the claim of the assessee before the authorities below was that it had provided the said residential premises but its employees who were working with the assessee for the past several years. The AO further, denied the said claim of the assessee as no evidence was produced by the assessee in support thereof. The CIT(A) also upheld the order of CIT(A) for the absence of any evidence having been filed by the assessee merely because depreciation was allowed in the earlier years, was denied to the assessee in the present year in the absence of any details. The assessee is in appeal against the such disallowance of depreciation on residential building, which is claimed to be being used by the employees of the assessee.

Similar issue of claim of depreciation on the said asset arose in Assessment Year 2001-02 wherein the premises were allotted

to one of the employee of the assessee firm and depreciation on the said asset was allowed by the AO vide order passed under section 143(3) of the Act, dated 19.02.2004, the said residential flat is as per assessee, still being used by the employees and the per quest on account of the said residential accommodation is added in the hands of the employees. The claim of the assessee was denied by the authorities below in the absence of the particulars of the person having not been provided by the assessee. In all fairness we are of the view that the matter needs to be looked into by the AO, in order to verify claims of the assessee. Following the principles of natural justice we may it fit deem to the restore this issue back to the file of the AO to verify the names of the employees to whom the premises have been allotted and in whose hands the perk has been offered. Reasonable opportunity of hearing shall be afforded to the assessee. The ground of appeal no. 4 raised by the assessee is thus allowed for statistical purposes."

11. As there is no material difference in facts, respectfully following the aforesaid view of the Tribunal, we restore the matter back to the file of the Assessing Officer with similar direction. This ground is allowed for statistical purposes.

12. In ground no.3, assessee has challenged ad-hoc disallowance of ₹ 1,04,564 being 5% of various expenses aggregating to ₹ 20,91,282.

13. While completing assessment, the Assessing Officer made ad-hoc disallowance of 5% on various expenditure claimed by the assessee for want of supporting details and vouchers. Though the assessee challenged the disallowance before the learned Commissioner (Appeals), he also confirmed the disallowance.

14. Learned Counsel for both the parties agreed that the issue in dispute is decided against the assessee by the Tribunal in order passed for assessment year 2008-09. On a perusal of the order of the Tribunal referred to above, it is noticed that while deciding the issue of ad-hoc disallowance of 5% out of various expenses, the Tribunal did not interfere in the matter and upheld the disallowance. Following the order of the Tribunal, we uphold the disallowance by dismissing the ground raised by the assessee.

15. In the result, appeal stands partly allowed.

Order pronounced in the open Court on 29.02.2016

Sd/-
RAMIT KOCHAR
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 29.02.2016

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Dy./Asstt. Registrar)
ITAT, Mumbai