

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MS.JUSTICE K.B.K.VASUKI

TC(A) No.481 of 2015

The Commissioner of Income Tax
Chennai.

.. Appellant

v.

M/s.Anush Shares and
Securities Pvt Ltd.,
New No.39, Old No.9,
1st Floor Greenways Road,
RA.Puram, Chennai

..Respondent

Prayer:- Tax Case Appeal is filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras "D" Bench, Chennai dated 09.01.2015 passed in ITA.No.652/Mds/2014 against the order of the Commissioner of Income Tax(A)-1, Chennai dated 31.12.2013 made in ITA No.231/2013 -14 and against the order of the Assistant Commissioner of Income Tax, Company Circle, (3) Chennai dated 24.12.2010 passed in PAN No.AAACA9268R

For Appellant : Mr.T.Ravikumar

JUDGMENT

(Delivered by K.B.K.VASUKI, J)

The Revenue is the appellant herein.

2.The assessee is engaged in the business of broking and trading in stocks and securities. The assessee filed its income electronically for the year assessment year 2008-2009 on 19.09.2008 admitting a total income of Rs.87,41,225/-. On verification of profit and loss account, it was seen that under the head of loss of misdeals, an amount of Rs.26,63,131/- was debited and the same was represented under the head loss on account of purchase and sale of substantial quantity of shares during the relevant assessment year and the assessee also claimed deduction of expenditure towards interiors for his new office to the tune of Rs.30,77,279/-. The assessee was issued with notice under Section 143(2) on 14.08.2009 and notice under Section 142(1) dated 14.07.2010 and another notice on 21.09.2010 calling for details from the assessee, for the

purchase and sale of the shares and copies of the bills for the interior work done and the same were also produced by the assessee.

3.The Assessing Officer held that the loss of Rs.26,63,131/- suffered by the assessee on account of share trading as share broker is not a business loss, but speculative loss as per Explanation to Section 73 and as per Explanation 2 to Section 28 and set off against the income from the business of brokerage was not allowed thereby enhancing the taxable income by the amount of Rs.26,63,131/- and expenditure incurred towards interiors of new office to the tune of Rs.1,69,915/- was added to the taxable income and out of balance expenditure of Rs.29,07,364/-, Rs.72,924/- towards supply of venetian blinds, signage and supply of EB panel was treated as revenue expenditure and Rs.28,34,440/- was treated as repairs for creation of an asset and was considered as capital assets. The Assessing Officer thus reworked the computation of total income and arrived at total income of Rs.1,41,71,527/-.

4.Aggrrieved against the same, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), who vide order dated 31.12.2013, confirmed the findings of the Assessing Officer and dismissed the appeal. While arriving at such conclusion, the Commissioner of Income Tax (Appeals) has in para 6.2 dealt with the issue relating to loss sustained by the assessee by way of purchase and sale of shares and answered the same as follows :-

6.2. I have considered the AR's observations and the appellant's submissions in this regard. It is seen that AO has verified the complete details with regard to the loss claimed by the appellant. On verification, AO found that substantial quantity of shares have been purchased and sold by the appellant during the year which has resulted in loss of Rs.26,63,131/-. The AO has treated the said loss as speculation loss by virtue of explanation to sec.73 and explanation to sec.28. As the loss suffered by an assessee company on dealing its shares on its own account was a speculation loss, and therefore could not be allowed to be set off against brokerage income. In view of the above, the appellant's contentions are not accepted and the action of the AO in this regard is upheld. As a result, the grounds raised are dismissed.

5.The learned Commissioner of Appeals in para 7.2 of his order also dealt with the issue relating to the expenditure incurred for interior work in the rented premises and answered the same against the assessee. Questioning the correctness of the findings of the Commissioner of Income Tax (Appeals), the assessee filed an appeal before the Income Tax Appellate Tribunal. The Tribunal decided both the issues in favour of the assessee and allowed the appeal. Aggrrieved against the same, the Revenue is before this court by way of the present Tax case Appeal.

6.The Tax Case Appeal is admitted on the following substantial questions of law :

(i)Whether on the facts and circumstances of the case, the Tribunal was right in treating the expenditure for interiors in the rented premises as revenue expenditure even though there was a enduring benefit derived by the assessee?

(ii)Whether on the facts and circumstances of the case, the assessee being a share broker, the loss incurred from the transaction in shares is to be treated as a normal business loss ignoring the explanation appended to Section 73?

7.Heard the learned counsel for the appellant and perused the records.

8.As far as the transactions of purchase and sale of shares by the assessee company are concerned, it was argued on the side of the Assessee before the Tribunal that the assessee had wrongly purchased certain securities and future options and therefore the assessee was forced to sell the same and in doing the same, suffered loss, as such, these transactions are misdeals and purely a business loss incurred during the course of the business and such transactions will not amount to speculative loss by virtue of Section 43(5) of the Act. The assessee in support of such contention also relied on the following decisions: (i)ITAT Kolkatta in Dy.Ld.CIT v. Madanlal Ltd in (2012) 21 Taxmann.com 444 (kol) and (ii) ITAT Chennai in Dy. CIT V. Paterson Securities (P) Ltd (2010) 127 ITD 386 (chennai).

9.The original authority rejected such contention and was of the view that the assessee is a broker in shares and also engaged in the business of trading in shares and the loss sustained during the course of trading in shares is not a business loss, but loss on account of speculation by virtue of Section 73 and Explanation 2 to Section 28. The learned Assessing Officer, in support of such observation, also relied on the following decisions: (i)BLK Securities P. Ltd. ITAT (Del) (2009) 27 SOT 142 (ii)SPFL Securities Ltd - ITAT (Del) (2006) 6 SOT 562 and (iii)Priyasha Meven Fin. Ltd - ITAT (BOM) 24 SOT 422.

10.However, the Income Tax Appellate Tribunal, after going through the relevant provisions of Sections 43(5)(d) and 73(1) and Explanation to Section 73 of the Act and after examining as to why Explanation to Section 73 was inserted by the Act with effect from 1.4.1997, i.e., in order to have effective check on the dealings in shares of the company controlled by business houses controlling groups of companies as tax avoidance device, discussed the issue in para 4.7 and answered the same in favour of the assessee. For better appreciation, para 4.7 of the order of the Tribunal is extracted below:

"4.7. Considering the nature of the activity carried out by the assessee company the scope of Explanation to Section-73 will not be applicable because the assessee had

not resorted to such device mentioned by the Wanchoo Committee. Therefore, the profit or loss derived from the purchase and sale of shares transacted by the assessee company cannot be deemed to be income from speculation business. Moreover, Section 43(5)(d) of the Act also provides that trading in derivatives in a recognized stock exchange shall not be deemed to be speculative transaction. Thus, from the above chronology of the provisions of the Act, the loss suffered by the assessee on account of misdeals or purchase and sale of shares by actual delivery, or trading in derivatives in a recognised stock exchange cannot be considered to be loss on account of speculation. Conversely it has to be treated as the business loss of the assessee. More over it is pertinent to mention that misdeals happen involuntary during the course of the assessee's business activities which is beyond the control of the assessee. Purchase and sale of shares is not the business of the assessee. Purchase and sale of shares is not the business of the assessee company because all such purchase and sale of shares are made on behalf of the clients of the assessee company earning brokerage towards the same. In arriving at this conclusion, we have also drawn support from the decision cited by the assessee. Accordingly this issue is decided in favour of the assessee."

We find no reason to disagree with such findings of the Tribunal in this regard.

11. Next issue relates to deduction claimed for the expenditure incurred towards fixing false ceiling, painting, electrical cabling and certain civil works in the rented premises of the assessee. While according to the assessee, the same has to be treated as revenue expenditure, according to the Revenue, the same shall be treated as capital expenditure. Whereas, the Tribunal by relying on the decisions of our High court reported in (i) CIT v. Ayesha Hospitals Pvt. Ltd., (2006) 292 ITR 266 (Mad) and (ii) Thiru Arooran Sugars Ltd. V. Dy. CIT (2013) 350 ITR 324, held the expenses incurred as revenue expenditure and accordingly allowed deduction on account of the same. For better appreciation, para 5.3 of the order of the Tribunal is extracted hereunder:

"5.3. We have heard both the parties and carefully perused the materials available on record. It is apparent from the facts of the case it is not disputed that the expenditure were incurred towards fixing false ceiling, painting, electrical cabling and certain civil works etc., in the rented premises of the assessee. Various judicial authorities has held that in such circumstance the expenditure has to be treated as revenue expenditure. The

assessee has relied in the following two cases :-
(i) CIT vs. Ayesha Hospitals Pvt. Ltd., (2006) 292 ITR 266 (Mad).

Held : dismissing the appeal, that the assessee had spent a sum of Rs.1,85,557/- towards painting, re-laying of the damaged floors, partitions, etc. The co-owners were the directors of the assessee. But they were separate entities. The co-owners were admitting the rental income. They were also paying tax on the profits arising out of the hospital. The lease deed spoke of the normal requirements which the co-owners provided. The assessee was putting the building to a special use. No landlord would ever incur or undertake to bear the expenditure. The expenditure was incurred by the assessee on a leased property and had to be allowed as revenue expenditure.

(ii) Thiru Arooran Sugars Ltd. V. Dy.CIT (2013) 350 ITR 324.

Held : that the temporary structure by means of false ceiling and office renovation had not resulted in any capital expenditure.

From the above decisions and the facts before us we do not have any hesitation to hold that the aforesaid expenses of Rs.26,92,718/- has to be treated as revenue expenditure and deduction on account of the same has to be allowed. It is hereby decided accordingly."

In view of such settled proposition of law, the finding so rendered by the Tribunal warrants no interference by this Court and no substantial questions of law arise in this Tax Case Appeal.

12. In the result, the Tax Case Appeal is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

tsh/rk

To

1. The Commissioner of Income Tax, (A)-1, Chennai.
2. The Income Tax Appellate Tribunal 'D' Bench, Chennai.
3. The Assistant Commissioner of Income Tax, Company Circle-1(3), Chennai.

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