IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 2.1.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE DR.JUSTICE ANITA SUMANTH

Tax Case No.413 of 2008

M/s.Twenty First Century Management Services Ltd.,
1st Floor, 158 Eldams Road,
Chennai 600 018. Appellant/Petitioner

Vs.

The Income-tax Officer (OSD),
Company Circle III(1),
Chennai 600 034.
Respondent/Respondent

Prayer: Tax Case filed under Sec. 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai, dated 31.10.2007 in ITA No.1974/Mds/2006 for the Assessment year 2003-2004, preferred against the order of the Commissioner of Income Tax (Appeals) III, Chennai dated 30.06.2006 made in I.T.A. 16/2006-2007/A.III, against the order of Income Tax officer(OSD), Company Circle III (1), Chennai dated 27/03/2006, made in GIR No./PAN.32262-7/AAACT2397L

For Appellant : Mr.V.S.Jayakumar

For Respondent : Mr.M.Swaminathan
Senior Standing Counsel assisted by
Ms.Premalatha

JUDGMENT

(Judgment of the court was delivered by DR.VINEET KOTHARI,J.)

The Assessee, an NBFC (Non Banking Financial Company) has filed this Tax Case under Section 260A of the Income Tax Act, aggrieved by the order of the learned Income Tax Appellate Tribunal, dated 31st October 2017 for the Assessment Year 2003-2004, disallowing the loss claimed by the Assessee Company on the purchase of Shares during the Previous Year to the extent of Rs.12.92 Crores on account of diminution value in the Shares. The said loss to the extent of about 50% of the purchase value of the Shares by the Assessee Company was deducted by the Appellant/Assessee claiming it as business loss to the Assessee Company.

2. The learned Tribunal as well as the two Authorities below concurrently held against the assessee that the same could not be claimed as business loss in the year in question. The relevant finding of the learned Tribunal in para 11 of the impugned order are quoted below for ready reference:-

> "Upon a careful consideration of the issue we find that the assessee in this case is claiming that out of the total purchases of shares made during the year, more than 50% thereof (Rs.12.92 crores in value) be allowed as loss of shares on physical verification as at the close of the year. Reference to diminution in the value of shares is a misleading nomenclature as rightly pointed out by the authorities below. In such a situation, we agree with the learned Departmental Representative that on these facts, the method of accounting and stock taking by the assessee cannot at all be relied upon and the resultant claim of loss is not justified. The learned Commissioner of Income Tax (Appeals) has passed an elaborate and well reasoned order. He has rightly held that on the facts of the case, the books of the assessee are liable to be rejected. The learned counsel of the assessee's contention that no fault has been found in the manner of physical verification is devoid of cogency as the system of accounting and book keeping by which more than 50% of the purchases became tracelss is not at all reliable in totality from any point of view. The assessee has vehemently contended that assessee's accounts are regularly and properly audited. In that case, the aspect that some loss of stock of shares might have happened in earlier years but detected during the current year does not come to the fore. Moreover, loss if any, pertaining to earlier period cannot be allowed and claimed in the current assessment year. Again, no case has been made out that there was theft etc. of the shares as no submission in this regard has been made. Moreover, in the absence of any complaint in this regard with concerned authorities, this aspect does not emerge for adjudication. The learned counsel of the assessee's reliance upon case laws regarding valuation of stock is not relevant here as there is no dispute that consistently followed method of stock valuation should be adopted and lower of cost or market value should normally be adopted. But, if the system gives unexplained loss of more than 50% of the purchases, such a system cannot be relied upon. In the context of aforesaid discussion, we do not find any infirmity

in the order of the learned Commissioner of Income Tax (Appeals). Hence, we uphold the same and decide the issue against the assessee."

3. A co-ordinate Bench admitted the present Tax Case on 25.6.2018 on the following substantial questions of law:-

"i) Whether the Tribunal was right in holding that the loss in question representing the diminution of valuation of shares is not allowable?

ii) Whether the Tribunal was right in ignoring the submissions made on behalf of the appellant that the loss in question did not arise out of the purchases made in the year of account but arose due to the diminution in valuation of shares held as on the first day of the previous year in question?"

4. Though the Tax Case was admitted on two questions of law, the learned counsel for the Assessee has not pressed the second question of law.

5. Having heard the learned counsel appearing for the parties, we are of the clear opinion that the findings arrived at by the Tribunal and the Authorities below are essentially the findings of fact and business loss in question as claimed by the Assessee by merely devaluing the book value of the Shares purchased by them, during the year in question could not have been claimed by the Assessee as business loss in the year in question.

6. The learned Tribunal, therefore, was justified in disallowing the same and therefore, the Tax Case filed by the assessee has no merit and it deserves to be dismissed. Accordingly, the Tax Case is dismissed and the aforesaid first question of law is answered against the assessee and in favour of the Revenue. No costs.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

ssk.

To

1. The Income Tax Appellate Tribunal
Madras 'C' Bench
Chennai.

2. The Commissioner of Income Tax
   Appeals(III) Chennai.

3. The Income Tax Officer(OSD)
   Company Circle III(1)
   Chennai 34.

+1 CC to Mr.V.S.Jayakumar, Advocate sr 231

SSV(CO)
SP(06/02/2019)