

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC” BENCH, AHMEDABAD**

BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER

**ITA No.258/Ahd/2023
Assessment Year: 2014-15**

Shree Mallikarjun Trad Invest Private Limited, 20 UL Skylon Shopping Centre, Opp. Polytechnic, Ahmedabad – 380 001. [PAN – AACCS 0918 G]	Vs.	The Income Tax Officer, Ward – 4(1)(3), Ahmedabad.
(Appellant)		(Respondent)
Assessee by	Shri P.B. Parmar, AR	
Revenue by	Shri Urjit B. Shah, Sr. DR	
Date of Hearing	25.04.2024	
Date of Pronouncement	28.06.2024	

ORDER

This appeal is filed by the assessee against order dated 20.02.2023 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2014-15.

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

- “1. The Ld. CIT(A) has erred in law and on facts in confirming addition made by the Ld. AO of loss amounting to Rs.6,58,200/- incurred out of share transaction under Section 68 of the Act, thereby holding that the appellant could not prove the identity, creditworthiness and genuineness of such transaction.
2. The Ld. CIT(A) has erred in law and on facts in upholding the invocation of S. 68 of the Act. In the facts and circumstances of the case, S. 68 is not at all applicable and therefore, addition so made by AO may kindly be deleted on this short ground.
3. The Ld. CTT(A) has erred in law and on facts in simply presuming that onus was on Appellant to prove his claim without taking into account various details and evidences that were placed on record time and again.

4. *The Ld. CIT(A) and the Ld. AO have erred in law and on facts in not considering the details furnished and necessary supporting evidences submitted by the Appellant and consequently made disallowance, which is in violation of the principles of natural Justice.*
5. *Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which sought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.*
6. *The Ld. CIT(A) has erred in law and on facts of the case in confirming action of the Ld. AO in initiating penalty u/s. 271(1)(c) of the Act."*

3. The assessee filed its return of income on 30.09.2014 declaring total income of Rs.6,68,327/-. The return of income was processed under Section 143(1) of the Income Tax Act, 1961, accepting the total income as returned income of the assessee. The case was selected for scrutiny. During the course of assessment proceedings, the assessee was asked to furnish the details of shares purchased and sold during the year. The Assessing Officer observed that the assessee carried out share transactions in the scrip of Dhenu Buildcon Infra Limited which were admittedly used by the entry providers for providing accommodation entry on Long Term Capital Gain (LTCG) and Short Term Capital Loss (STCL)/business loss etc. The assessee was asked to explain as to why the loss of Rs.6,58,200/- shown could not be treated as not genuine and disallowed. In response to the same, the assessee furnished its submission before the Assessing Officer. After taking cognisance of the said explanation of the assessee, the Assessing Officer observed that the shares involved was admittedly controlled by the entry providers during the relevant period and considering the modus operandi followed by the entry providers, all the trades during such period are pre-arranged trades wherein the buyers and sellers are pre-decided though the trades are executed on recognised stock exchange through depository participants at different locations. Thus, the Assessing Officer held that the transaction of purchase and sale of shares of Dhenu Buildcon Infra Limited were sham transaction and, therefore, the amount of Rs.6,58,200/- claimed as loss on

trading in these shares were treated as bogus and added back to the total income of the assessee.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the assessee is engaged in the business of trading in shares and securities. The closing stock of shares is valued at cost or market value whichever is lower. There is no deviation in the method of valuation of closing stock. The Ld. AR submitted that during the Assessment Year 2013-14, i.e. preceding year, the assessee purchased 10000 shares of Dhenu Buildcon Private Limited on 06.02.2013 for Rs.16,34,069/- which was valued at Rs.6,61,000/- on 31.03.2013. Thus, the difference of Rs.9,73,069/- was calculated as business loss by the assessee. The return of income for Assessment Year 2013-14 was filed on 28.09.2013 and the claim of the said loss of Rs.9,73,069/- was not disturbed at all by the AO/Revenue Authorities. During the present Assessment Year, i.e. Assessment Year 2014-15, the opening stock of Dhenu Buildcon Private Limited was Rs.6,61,000/- and no further shares of Dhenu Buildcon Private Limited was purchased during the present Assessment Year. The shares were sold for Rs.28,800/- on 25.11.2013. Thus, there was difference of Rs.6,32,200/- which was claimed as business loss. The assessee has given the documentary evidences before the Revenue Authorities such as Tax Audit Report, Annual Accounts, Stock Register of Dhenu Buildcon Private Limited for Assessment Year 2013-14, Invoice with receipt to purchase of Dhenu Buildcon Private Limited in Assessment Year 2013-14 as well as Stock Register of Dhenu Buildcon Private Limited for Assessment Year 2014-15 and Invoice with respect to sale of Dhenu Buildcon Private Limited in Assessment Year 2014-15 alongwith ledger of the assessee in books of broker, ledger of broker in assessee's books, Stock Register (opening, inward, outward, closing), Acknowledgement of ITR and computation of income for A.Y. 2013-14 and Audited Financial Statements for A.Y. 2013-14. The Ld. AR submitted that having accepted the larger business loss of Rs.9,73,069/- incurred in the preceding year on account of the very same transaction, the Revenue was not justified in

disturbing partial business loss of Rs.6,58,200/- incurred in the year in question in view of principles of consistency. The Ld. AR relied upon the following decisions:-

- 1) *CIT vs. Excel Industries – 358 ITR 295 (SC)*
- 2) *Radhaswoami Satsang vs. CIT – 193 ITR 0321 (SC)*
- 3) *Bharat Sanchar Nigam Limited vs. UOI – (2006) 283 ITR 273 (SC)*

5.1 The Ld. AR further submitted that the addition has been merely on the basis of general observation being as to Dhenu Buildcon Private Limited being a penny stock without bringing any cogent material on record with respect to assessee's case to demonstrate any nexus or live link between assessee and the so-called entry operators. The Ld. AR submitted that it is well settled principle that in the absence of any specific finding against the assessee based on any independent inquiry by the Assessing Officer, the assessee cannot be held to be linked to the wrong acts merely on the basis of surmises and assumptions. The Ld. AR relied upon the following decisions:

- 1) *Shree Suprinit Tradinvest P. Ltd. Vs. ITO – ITA 550/Ahd/2023;*
- 2) *PCIT vs. Champalal G. Agarwal – 155 taxmann.com 66 (Guj);*
- 3) *PCIT vs. Divyaben Parmar- Tax Appeal 812 of 2023 (Guj);*
- 4) *PCIT vs. Muktaben N. Patel – (Tax Appeal 294 of 2021 (Guj);*
- 5) *PCIT vs. Smt. Krishna Devi – (2021) 431 ITR 361 (Delhi);*
- 6) *CIT vs. Sumitra Devi - (2014) 49 taxmann.com 37 (Raj);*
- 7) *CIT vs Udit N Agarwal – 213 taxman 178 (Allh)*
- 8) *CIT vs. Anirudh Agarwal – 219 Taxman 126 (Allh)*

5.2 The Ld. AR submitted that Section 68 deals with an entry credited in books of accounts and, therefore, is not applicable to business loss. Thus, the CIT(A) was not justified in confirming the said addition when the assessee has discharged its onus. The Ld. AR further submitted that opportunity of cross-examination was also not given as the Assessing Officer has relied on the statements which were not placed before the assessee.

6. The Ld. DR submitted that the assessee did not prove the identity, creditworthiness and genuineness of the share transaction of Dhenu Buildcon Private Limited amounting to Rs.6,58,200/- and the assessee failed to discharge

its onus as envisaged in Section 68 of the Act. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

7. Heard both the parties and perused all the relevant material available on record. It is pertinent to note that the Assessing Officer as well as the CIT(A) has not disputed the purchase of scrip of Dhenu Buildcon Private Limited. The transaction was conducted through regulatory dealing with securities as the assessee's main business is trading in securities only. The Assessing Officer in the Assessment Year 2013-14 has accepted the business loss and in fact there was no doubt created by the Revenue in the earlier Assessment Year. In fact, from the perusal of the Assessment Order, it can be seen that dealing with entry providers has not at all been established by the Revenue that it is with the assessee but it is only on conjecture and surmises that the Assessing Officer made the addition. The invocation of Section 68 will not be applicable in the present case as the assessee has given the direct nexus related to his transaction as well as his business loss and there was no documentary evidence which was produced by the assessee before the Assessing Officer created any doubt regarding genuineness of the transaction. The assessee carried out the transaction with the brokers from the registered stock market and in fact was holding scrip for a short period of time and when the scrip was not gaining any profit, the assessee sold the same and, therefore, the assessee has rightly claimed short term capital loss/Business loss in the present scenario. Thus, addition made by the Assessing Officer as well as confirmed by the CIT(A) is not justifiable. Hence, appeal of the assessee is allowed.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on this 28 th June, 2024.

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 28th June, 2024

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Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad