

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “C” BENCH
(Conducted Through Virtual Court)
Before: Shri Mahavir Prasad, Judicial Member
And Shri Amarjit Singh, Accountant Member

ITA No. 2358/Ahd/2017
Assessment Year 2014-15

Edelweiss Broking Ltd. (on behalf of amalgamating company Edelweiss Financial Advisors Ltd.), Ahmedabad PAN: AABCE9421H (Appellant)	Vs	The ACIT, Circle1(3), Ahmedabad (Respondent)
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Revenue by: Shri L.P. Jain, Sr. D.R.
Assessee by: Shri Biren Shah, A.R.

Date of hearing : 09-08-2021
Date of pronouncement : 23-08-2021

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assessee’s appeal for A.Y. 2014-15, arises from order of the CIT(A)-10, Ahmedabad dated 28-08-2017, in proceedings under section 143(3) of the Income Tax Act, 1961; in short “the Act”.

2. The solitary ground of appeal of the assessee is directed against the order of Id. CIT(A)-10 Ahmedabad in sustaining the addition made by the Assessing Officer by treating the normal business loss of Rs. 1,92,268/- as speculation loss.

3. The relevant fact of the case is that return of income declaring income of Rs. 2,28,34,130/- was filed on 30th Sep, 2014. The case was subject to scrutiny assessment and notice u/s. 143(2) was issued on 28th August, 2015. During the course of assessment, the Assessing Officer observed that assessee has claimed expenses on account of loss of trading of securities. The Assessing Officer asked the assessee to show cause why losses of trading of securities should not be disallowed and treated as speculation loss. The assessee explained that loss of Rs. 1,92,268/- pertained to loss of account of error trade. The detailed explanation of the assessee has been reproduced by the Assessing Officer at page nos. 13 to 23 of the assessment order. The assessee has briefly stated that dealing error transactions mainly occur due to any of the following reasons:-

“5.3 Saudafer transactions (also known as dealing error transactions) may occur due to any of the following reasons:

(i) Wrong execution of orders i.e. sale order being executed as a purchase or vice-a-versa.

(ii) Purchase/sale of totally different scrip (for example Mid-West Leasing purchase/ sold instead of Mid-East Leasing);

(iii) Clients disown the transaction,

(iv) Non-delivery of shares to Exchange

(i) Incorrect execution of orders in relation to quantity or price limits

(ii) Auction of securities on account of assessee's failure to execute timely deliver

(iii) Wrong position taken by the client in F&O on account of assessee's mistakes

(iv) Loss suffered on account of technical problem in assessee's software

(v) *Script may have been moved to T 2 T segment but client was not informed*

However, the Assessing Officer has not accepted the submission of the assessee and stated that in the earlier assessment year 2006-07, 2011-12 and 2013-14, the similar claim was disallowed. Therefore, the Assessing Officer has disallowed the claim of loss of Rs. 1,92,268/- and added to the total income of the assessee treating the same as speculative loss.

4. Aggrieved assessee filed appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee following the observation of his predecessor pertaining to the same issue in assessment year 2013-14.

5. During the course of appellate proceedings before us, at the outset, the ld. counsel has contended that identical issue on similar facts pertaining to assessment year 2010-11 to 2012-13 have been adjudicated by the Co-ordinate Bench of the ITAT in favour of the assessee vide ITA Nos. 413, 445, 268, 318, 446/Ahd/2016 from A.Y. 2010-11 to 2012-13. The ld. Departmental Representative could not prove contrary to the contention of the ld. counsel that issue in the instant appeal is adjudicated in favour of the assessee by the Co-ordinate Bench of the ITAT as referred above.

6. Heard both the sides and perused the material on record. The relevant part of the decision of the ITAT as referred above is reproduced as under:-

“74. We heard the rival contentions of both the parties and perused the materials available on record. The first issue that arises for our consideration is whether the impugned loss incurred by the assessee relates to the sale and purchase activities carried out by the assessee for itself or it relates to the other clients of the assessee. It is a question of fact which can be verified based on the documentary evidence. Indeed, the assessee has not furnished the sufficient documentary evidence in support of his

contention. But looking at the amount of impugned loss in comparison to the volume of the brokerage business carried out by the assessee, we find that such loss is of negligible value. Furthermore, the tax audit report in form 3CD suggests that the assessee is engaged in the activity of stock broking only and not in the activity of sale purchase of securities. The copy of form 3 CD is placed on pages 133 to 165 of the Paper Book. Similarly, the AO has also recorded in his order the nature of business of the assessee i.e. stock broking. Even in the earlier Assessment Year 2006-07, the impugned loss was also treated as speculative in nature but the Learned CIT (A) deleted the same as the assessee was able to justify his contention based on the documentary evidence that such loss relates to its clients. This finding of the Ld. CIT-A, if analyzed in aggregation of other facts i.e. form 3CD report, profit & loss account, nature of the business as recorded by the AO, the fact emerges that the assessee is not carrying out share trading activities in its accounts.

75. On perusal of the financial statements placed on pages 59 to 132 of the Paper Book, it was observed that there was no transaction shown by the assessee as purchase and sale of the shares. In view of the above and after considering the details as discussed above we hold that the impugned loss incurred by the assessee does not pertain to its accounts rather it relates to the accounts of its clients. Accordingly, we conclude that the provisions of explanation to Section 73 of the Act cannot be applied to the case on hand. In holding so we find support and guidance from the order of this Tribunal in the case of *Parker securities Ltd versus DCIT* reported in 102 TTJ 235 wherein it was held as under:

"Explanation to Section 73 provides that where any part of the business of a company (other than certain specified companies as mentioned in the Explanation) consists in the purchase and sale of .-shares of other companies, such company shall, for the purposes of this Section, be deemed to be carrying on a speculation business to the extent to which the business consists of the purchase and sale of such shares. It is dear from the said provision that sale and purchase of shares of other companies, within the ambit of the Explanation, must be carried out as an activity of business. The term 'business' has been defined in Section 2(13). Noting the definition of 'business' from the view point of Explanation to Section 73, it has been observed by the Karnataka High Court in the case of *Mysore Rolling Mills (P.) Ud. v. CIT*[1992] 195 ITR 404/63 Taxmun 416 that any kind of venture would not fall within this inclusive definition. The venture or the adventure will have to be in the nature of trade, commerce or manufacture. Basically, the concept of business involves a frequent activity of a particular nature. Therefore, to find out that the assessee carried on purchase and sale of shares of other companies as its business in a given case, the facts of that case will have to be examined and the tests which could determine such situation are -(i) nature of assessee's business in general, (ii) the purpose behind the particular transaction, and (iii) the effect of the transaction etc. In the instant case, the nature of the assessee's business in general was to earn income as a broker of stock exchange and the purpose behind the transactions in regard to which the assessee had incurred loss was the purchase for and on behalf of certain clients to earn brokerage income therefrom. It was only an eventuality that some of the clients disowned only part of the transactions which under compulsion were to be taken by the assessee as its own. [Para 28] "

75.1 In view of the above, once it has been held that loss does not relate to the activity of sale/purchase of shares by the assessee for itself, then the provisions of

explanation to Section 73 of the Act cannot be applied. Hence, the ground of appeal of the Revenue is dismissed whereas the ground of appeal of the assessee is allowed.”

Vide the order of the Co-ordinate Bench of the ITAT as supra, similar issue on identical facts have been decided in favour of the assessee. Therefore, applying the finding of the Co-ordinate Bench of the ITAT as referred above on similar issue and identical facts, the appeal of the assessee is allowed.

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

Order pronounced in the open court on 23-08-2021

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER
Ahmedabad : Dated 23/08/2021

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद