आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी" चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL,
CHANDIGARH BENCH 'B, CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकर अपील सं./ **ITA No.450/Chd/2019**
निर्धारण वर्ष / Assessment Year : 2015-16

Sharma Buildwell Private Limited, Bawari Street, Noharia Bazar, Sirsa, Haryana.	बनाम	The Income Tax Officer, Ward-1, Sirsa, Haryana.
स्थायी लेखा सं./PAN NO: AAICS7681J		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by: Shri Sudhira Sehgal
राजस्व की ओर से/ Revenue by: Shri Arvind Sudarshan, JCIT DR

सुनवाई की तारीख/Date of Hearing : 18 .03.2020
उदघोषणा की तारीख/Date of Pronouncement:. 21/05/2020

आदेश/ORDER

Per Annapurna Gupta, Accountant Member:

The above appeal has been preferred by the assessee against the order of the Commissioner of Income Tax (Appeals)-5, Ludhiana [(in short referred to as 'CIT(A)'] dated 22.02.2019, relating to assessment year 2015-16, passed u/s 250(6)) of the Income Tax Act, 1961 (hereinafter referred to as 'Act'.

2. The assessee has raised the following grounds:

"1. That the order of Ld. CIT (A) as well as Income Tax Officer is against law and facts.

2 That the Ld Commissioner of Income Tax (Appeals), Hisar as well as Ld Income Tax Officer was grossly erred both in law and , on facts in denying the claim of loss in the stock business on surmises and conjecturers.

3. That Ld Commissioner of Income Tax(Appeals), has erred on facts in confirming the addition of Rs. 2,06,39.101 /- by not accepting the well accepted system of stock, wherein there is a pakka arthtia and other is stockiest .

4. That the Ld Commissioner of Income Tax (Appeals) has failed to appreciate the evidence tendered by the appellant to support the claim of loss incurred and hence , findings recorded on borrowed inference in disregard of evidence and based on irrelevant and extraneous considerations are misconceived and, misplaced.

5. That the Ld Commissioner of Income Tax (Appeals) has erred in confirming the above addition and denied loss by not appreciating the detailed explanation of appellant and also documentary evidence furnished during assessment proceedings and therefore order so made is in disregard of principles of natural justice is vitiated.

6. That the Ld Commissioner of Income Tax (Appeals) has further erred in treating the stock business as speculative loss by stating that that the goods were not purchased by the assesssee and no delivery of goods taken place, where as in stock business, it is very old and well accepted system of business that the goods remained with the arhtia. Hence, order so made is in disregard of principles of well accepted system of stock business.

7. That the Ld Commissioner of Income Tax (Appeals) has erred in sustaining the addition on account of interest paid to various persons by not appreciating the fact that the interest was paid on unsecured loans which were taken for the use of the business and the interest expense were rightly claimed in the profit and loss account.

8. That the furthermore the Learned Commissioner of Income Tax (Appeals) has sustained the addition on mere speculations, generalized statements, theoretical assumptions and allegations, assertions and also on preponderance of possibilities, Without there being any supporting evidence and is therefore not in accordance with law.

9. That the Ld Commissioner of Income Tax (Appeals) while sustaining the above addition has arbitrarily, and mechanically rejected the explanation and evidence tendered by the appellant and confirmed the addition and denied the claim of loss as well as interest expenses by *drawing subjective, premeditated and preconceived inferences therefore the same is not sustainable.*

10. That the Ld Commissioner of Income Tax (Appeals) have grossly erred in applying the judgment of Hon'ble Supreme Court in case of Davenport & Co. Pvt. Ltd. Vs. CIT, West BENGAL, whereas facts of this case is entirely different from as that of assessee case.

11. That the appellant craves leave for any addition, deletion or amendment in the grounds of appeal on or before the disposal of the same.

3. The learned counsel for the assessee stated that the solitary issue involved in the present appeal relates to disallowance of claim of loss from commodity stock trading amounting to Rs.2,06,39,101/-.

At the outset itself, the learned counsel for the assessee stated that identical issue has already been dealt with by the ITAT in the case of Smt.Anju Sharma Vs. ITO, Ward-I in ITA No.451/Chd/2019 vide their order dated 6.11.2019, allowing the assessee's appeal. Copy of the order was placed before us. Ld. counsel for the assessee contended that the facts and the issue involved in the case of Smt.Anju Sharma(supra) were identical to that in the present case.

Drawing out attention to the facts of the present case, learned counsel for the assessee stated that the assessee had claimed set off of commodity stock trading loss of Rs.2,06,39,101/- against Long Term Capital Gains of Rs.2,80,71,062/- earned during the year. That the Assessing Officer(AO) had scrutinized this claim of loss of the assessee during the assessment proceedings and had denied the same noting that the assessee had not indulged in such transactions either in the preceding year or the succeeding year, that the scope of the company did not included trading in commodity, that the change in object had not been intimated to any authority, that no concrete document to support the rate of purchase and sale of commodities had been filed by the assessee and the assessee's explanation for selling the commodities at a loss on account of the same being infected was not believable. That accordingly the AO held that the assessee was not eligible to the loss on account of commodity trading and disallowed the same. The Ld.CIT(A),it was pointed out, upheld the order of the AO. The learned counsel for the assessee thereafter drew out attention to the order of the Ld.CIT(A) at page 9 and pointed out that the Ld.CIT(A) had noted that identical type of bogus loss had been claimed in another assessee of the group, namely Smt.Anju Sharma and had observed that it pointed towards the fact that the assessee group was in the habit of adopting of such unscrupulous method of tax avoidance. The learned counsel for the assessee stated that evidently the issue in the present case had been noted by the Ld.(CIT(A) to be identical to that in the case of Anju Sharma(supra) which already stands decided in favour of the assessee by the aforestated order of the ITAT. He thereafter took us through the order of the ITAT in the case of Anju Sharma(supra) and drawing our attention to the facts of the case enumerated at para 3 of the order pointed out the parity of the facts and the issue in that case with the present case. Referring to para 3 he pointed out that in the case of Anju Sharma(supra) also the assessee had declared stock loss of Rs.75,31,781/- and set off the same against the income from Long Term Capital Gain of rs.78,83,716/-. That the loss had been explained to be on account of purchase and sale of wheat which had been sold at loss on account of insect infestation. That the AO had treated the transactions as bogus and manipulated by the assessee to avoid the levy of capital gains tax. The learned counsel for the assessee thereafter took us through the findings of the ITAT allowing the claim of the assessee, at para 8 of the order as under:

> *"8. We have considered rival submissions and gone through the recent carefully. According to the Assessing Officer, the assessee has sold office space in Gurgaon for Rs. 2.00 crores which has given rise to long term capital gain of Rs. 78,83,716/-. Therefore, the assessee has a motive to reduce tax liability by adopting certain strategy. He investigated the claim of the assessee about loss in wheat trading with this angle. The question before us is , whether the assessing officer to able to bring sufficient evidence demonstrating the fact that version put forth by the assessee was false and she has not carried out any alleged trading in wheat. Let us evaluate the evidence submitted by the assessee as well as investigation carried out by the assessing Officer.A perusal of para No 3 of the assessment order extracted (Supra) would indicate that the assessee has given specific details of purchase of wheat, copies of bills, vouchers etc. She has compiled all these details in tabular form which exhibits amount transmitted by the assessee through RTGS, rate at which wheat was purchased. Commission, brokerage, labour charges, packaging etc. The assessing Officer did not call for any of the alleged "Pakka Arhtias"or entries from whom the wheat was purchased. He simply put a doubt on the basis of circumstances. First suspicion is that*

incidence of long term Capital gain occurred to the asseessee on 21.07.2014, and thereafter, the asseessee has booked purchase of wheat, its infestation and sale. The infestation has happened in all these seven godowns. This was not acceptable to the Assessing Officer. To our mind , it is one of strong circumstance and corroborative factors to disbelieve the claim of the assessee, but it is a just suspicion and it should have been cross-verified by the Assessing Officer before disbelieving it. He ought to have at least issued summons to these entities and to verify whether this activity was actually undertaken by the assessee or not. Suspicion however may be strong, but only on the basis of the suspicion claim of the assessee cannot be rejected. For buttressing the aspect, we would like to decisions of Hon'ble Supreme Court in the case referred by the Ld Counsel for the assessee in his synopsis viz Omar Salary Mohamed Sait Vs. CIT,37 ITR 151, CIT Vs. Daulat Ram Rawatmull, 87 ITR 349 (SC). In both these decisions, Hon'ble Supreme Court propounded that claim of the assessee cannot be rejected on surmises, suspicion and conjecture. It is for the assessing Officer to prove that apparent is not real. Similarly, as far as findings of the CIT(A) that the alleged loss is speculative loss, we are of the view that the Ld CIT(A) has based his findings on the ground that actual delivery was not taken. The Ld CIT (A) failed to appreciate that delivery taken by the "Pakka Arhtias" in the capacity of agent of the assessee is to be construed as actual delivery taken by the assessee. Therefore, in view of the above discussion we are of the view that Ld Revenue authorities have failed to bring conclusive evidence for falsifying the claim of the assessee. We allow the appeal of the assessee and direct the Assessing Officer to accept the loss of Rs. 75, 31,781/- disclosed by the assessee on Stock-loss of wheat, and there after compute the income of the assessee."

4. Referring to the same the learned counsel for the assessee pointed that the ITAT on evaluating the evidences before it as well as the investigation carried out by the AO, had noted that the assessee had given specific details of purchase and sale of wheat alongwith necessary documentary evidences of bills, vouchers and detail of transfer of amount through RTGS, total commission brokerage etc. That the ITAT further noted that the AO made no enquiries from the pucca Arhtias or entities from

whom wheat was purchased but merely suspected the transaction with no basis at all. The ITAT held that suspicion, however strong, cannot be the sole basis for rejecting the claim of the assessee and accordingly allowed the appeal of the assessee. The learned counsel for the assessee further pointed out from the order of the ITAT that the Ld.CIT(A) had held in that case that even if the claim of the assessee was genuine, the transaction in commodity stock was a speculative transaction with no actual delivery of goods and, therefore, also the loss incurred on account of the same was not allowable as per statute. The learned counsel for the assessee pointed out from the order of the ITAT that this issue was also dealt with by the ITAT noting that the delivery taken by pucca arhtias in the capacity of agent of the assessee is to be construed as actual delivery taken by the assessee and, therefore, it cannot be treated as speculative transaction.

The learned counsel for the assessee thereafter took us through the facts of the present case and drawing our attention to the Paper Book filed before us pointed out that all details of the loss on stock had been filed to the AO in the form of copy of account of the same alongwith confirmed copy of account of all parties through whom the transaction had been undertaken and also documents evidencing consignment purchase and consignment sale of the stock. Our attention was drawn to the following documents filed at Book page Nos.4 to 34 as under:

1.	Copy of Loss on Stock Account as per the books of accounts of the Assessee.	**4**
2.	Copy of Confirmed Ledger Accounts as issued by M/s Sat Narain Gupta & Sons.	**5**
3.	Copy of Confirmed Ledger Accounts, Consignment Purchase and Consignment sale documents as issued by M/s P.R traders	**6-8**
4.	Copy of Confirmed Ledger Accounts, Consignment Purchase and Consignment sale documents as issued by M/s Kunj Bihari Food Sales India.	**9-11**
5.	Copy of Confirmed Ledger Accounts, Consignment Purchase and Consignment sale documents as issued by M/s Gauri Shanker Trading Co.	**12-14**
6.	Copy of Confirmed Ledger Accounts, Consignment Purchase and Consignment sale documents as issued by M/s Panmeshwati Dass Yogesh Kumar	**15-19**
7.	Copy of Confirmed Ledger Accounts, Consignment Purchase and Consignment sale documents as issued by M/s Lal Chand Jai Narain	**20-25**
8.	Copy of Confirmed Ledger Accounts, Consignment Purchase and Consignment sale documents as issued by M/s Anita Industries.	**2&28**
9.	Copy of Confirmed Ledger Accounts, Consignment Purchase and Consignment sale documents as issued by M/s Singhal Traders.	**29-31**
10.	Copy of Confirmed Ledger Accounts, Consignment Purchase and Consignment sale documents as issued by M/s Chhavi Sales Corporation.	**32-34**

5. The learned counsel for the assessee contended that in view of the evidence filed by the assessee regarding its transaction of purchase sale of commodity stock evidencing the loss incurred in the same and the Revenue having no basis for disallowing the claim except suspicion, the facts of the present case were identical to that case of Anju Sharma(supra) and accordingly the issue in the present case stood squarely covered in favour of the assessee by the aforesaid order. The learned counsel for the assessee accordingly pleaded that the appeal of the assessee be allowed.

6. The Ld.DR though vehemently relied upon the order of the AO but was unable to upset the factual contention of the learned counsel for the assessee, nor the Ld.DR was able to draw our attention to any distinguishing facts in the present case from that in the case of Anju Sharma(supra).

7. Having heard both the parties and having gone through the orders of the authorities below in the present case and after having perused the order of the ITAT in the case of Anju Sharma(supra), we are convinced with the arguments of the learned counsel for the assessee that the facts and issue involved in the present case are identical to that as in the case of Anju Sharma(supra) as in the present case also the loss on account of consignment stock of Rs.2,06,39,101/- has been denied by the revenue authorities treating the same as bogus but the assessee in the present case, we have noted had filed sufficient documentary evidences to substantiate its claim of purchase and sale of commodity stock in the form of documents as noted at para 4 above giving details of all commodity stock transactions entered into, copy of account of the parties with whom transaction had been entered alongwith consignment purchase and consignment sale documents. The Revenue, on the other hand, we find, has based its findings of the transaction being bogus merely on the basis of suspicion and there is no concrete evidence, nor any investigation carried out

by it on the findings submitted by the assessee, to arrive at this conclusion. In view of the same, therefore, as held by the ITAT in the case of Anju Sharma(supra) on identical facts and circumstances, we are unable to agree with the findings of the Revenue that the transaction could be held to be a bogus transaction. Further as held by the ITAT, in the case of Anju Sharma(supra) delivery taken by arhtias in the capacity of agent of the assessee is to be construed as actual delivery taken by the assessee, the transaction therefore cannot be treated as speculative also. The decision rendered by the ITAT in the case of Anju Sharma(supra), we hold, squarely applies in the present case. Accordingly, we hold that the assessee be allowed its claim of loss of commodity transaction .

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

Order pronounced on 21/05/2020.

Sd/-
संजय गर्ग
(SANJAY GARG)
न्यायकि सदस्य/Judicial Member

Sd/-
अन्नपूर्णा गुप्ता
(ANNAPURNA GUPTA)
लेखा सदस्य/Accountant Member

दिनांक /Dated: 21 May, 2020
रती

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :
1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar