

IN THE INCOME TAX APPELLATE TRIBUNAL,
NEW DELHI, BENCH ' G'

BEFORE SHRI DEEPAK R. SHAH, ACCOUTANT
MEMBER AND SHRI GEORGE MATHAN, JUDICIAL
MEMBER

ITA No.1348 /Del/2004
(Assessment Year 1997-98)

M/s. SRJ Securities Ltd.,
17, Netaji Subhash Marg,
Daryaganj,
New Delhi-110 002

Vs. ITO, Ward 9(2),
New Delhi

(Appellants)

(Respondents)

Appellant by: Shri Ved Jain, Ms.Rano Jain, CA
Respondent by: Shri Kishore B, Sr. DR

PAN / GIR No. 117-S

ORDER

PER GEORGE MATHAN, JM:

1. This appeal by the assessee has been preferred against the order of Ld./ CIT(A) XII, New Delhi in appeal No.72/2003-04 dated 27.01.2004 for the Assessment Year 1997-98 against the confirmation of penalty levied u/s 271(1)(c) of the Act. Shri Ved Jain and Ms. Rano Jian, CA represented for the assessee and Shri Kishore B, Sr. DR represented for the revenue.

A.



2. It was submitted by the Ld. A.R. that the assessee did not wish to press Ground No.5 in the assessee's appeal and consequently, the same is dismissed as not pressed.
3. In respect of the merits, it was submitted that the assessee is a company, which is doing the business of trading in shares as also earning brokerage/commission on the purchase and sale of shares. It was the submission that during the year, the assessee had claimed net loss to the P & L account on account of share trading at Rs.34,99,611/-. It was the submission that in the course of assessment the A.O. had invoked the provisions of Explanation to Section 73 of the Act and had treated the loss on account of purchase and sale of shares as speculation loss. The assessee had replied submitting that the loss of Rs.34,99,611/- was on account of delivery basis trading and the same was liable to be allowed to be adjusted against the business income and that the claim was not hit by Explanation to Section 73 of the Act. The A.O. had not accepted the explanation and had treated the loss as speculation loss. Aggrieved, the assessee had filed appeal before the Ld. CIT(A) and the ITAT. It was the submission that the assessee had not succeeded in the appellate proceedings and at present the appeal was pending before the Hon'ble High Court of Delhi. It was the submission that the A.O. had initiated penalty proceedings u/s

271(1)(c) of the Act and the assessee had also replied to the show cause notice issued. It was the submission that the issue as to whether the loss was speculation loss or a business loss was highly debatable issue and on such debatable issue no penalty was leviable. It was the further submission that the details of share purchased and sold was also available in the accounts as filed before the A.O. and along with the return. It was the submission that there was no concealment of income nor was there any furnishing of inaccurate particulars of such income. It was the submission that it was only on account of Explanation to Section 73 of the Act, which is a highly debatable provision that the loss as incurred by the assessee has been treated as speculation loss and the set off has been denied against the business income of the assessee. It was the submission that the provisions of Explanation to Section 73 provided for a deeming provisions and on such deeming provisions, penalty was not exigible. He placed reliance on the decision of Hon'ble Jurisdictional High Court in the case of Auric Investments & Securities Ltd. reported in 163 Taxman 533 to support his contention wherein it was held on similar treatment of business loss as speculation loss by the A.O. does not automatically justify inference of concealment of income. He further relied upon the decision of Hon'ble High Court of



Madhya Pradesh in the case of SPK Steels Pvt. Ltd. reported in 270 ITR 1556 (M.P.) to support his contention that when the assessee had filed preliminary details along with the return and the assessee is engaged in the business of commission agency, loss on account of trading in shares having been disallowed by invoking the provisions of Explanation to Section 73, no penalty was leviable. It was his prayer that the penalty as levied by the A.O. and as confirmed by the Ld. CIT(A) was liable to be deleted.

4. In reply, the Ld. D.R. submitted that the Explanation to Section 73 was clear and there was no bona fide explanation provided by the assessee. It was the submission that the penalty as confirmed by the Ld. CIT(A) was liable to be upheld. He vehemently supported the order of the A.O. and the CIT(A).
5. We have considered the rival submissions. A perusal of the computation of total income and the details filed with the return as found at pages 1 to 28 of the Paper Book, clearly shows that the assessee has placed all the details of share transaction done by the assessee. The audit report in the Form 3C,D as found at pages 15 to 19 of the Paper Book also do not talk of Explanation to Section 73 being applicable. The trial balance in respect of the trading of shares quantifying of loss of Rs.34.99 lacs was also placed before the A.O. A

perusal of the assessment order shows that the A.O. has invoked the provisions of Explanation to Section 73 of the Act to treat the loss incurred by the assessee on account of self trading in the shares to an extent of Rs.37,40,568/- as speculative loss. A perusal of the reply as filed by the assessee in the course of assessment proceedings also explains the reasons given by the assessee for the non-applicability of Explanation to Section 73 of the Act. The fact that the assessee has incurred a loss is not disputed. The quantum of the loss is also not disputed. The only issue is whether the deeming provisions of Explanation to Section 73 of the Act hit the assessee in so far as the business loss as incurred by the assessee is treated as speculation loss for the purpose of computation of taxable income. A perusal of the decision of Hon'ble Jurisdictional High Court in the case of Auric Investments & Securities P. Ltd. referred to supra, shows that the Hon'ble High Court had under similar circumstances where all the requisite information as required by the A.O. was furnished by the assessee and there is nothing on record to show that in furnishing its return of income the assessee has concealed his income or furnished any inaccurate particulars of such income, just on account of the treatment of business loss as speculation loss by the A.O. does not automatically warrant the inference of

concealment of income. Here as it is noticed that the facts in the assessee's case are identical to the facts of the case in the case of Auric Investments & Securities Pvt. Ltd. In the circumstances respectfully following the decision of Hon'ble Jurisdictional High Court in the case of Auric Investments & Securities Pvt. Ltd., we are of the view that the penalty levied u/s 271(1)(c) of the Act is not exigible. In these circumstances, the penalty as levied by the A.O. and as confirmed by the Ld. CIT(A) stands deleted.

6. In the result, the appeal of the assessee is partly allowed.
7. This decision was pronounced in the open court on ...11th Dec., 2009.

(DEEPAK R. SHAH)
ACCOUNTANT MEMBER

Dated: 11th Dec., 2009

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1. Appellant *By Hand*
2. Respondent
3. CIT
4. CIT(A)
5. Dy. Registrar



(GEORGE MATHAN)
JUDICIAL MEMBER

True copy By order

Assistant Registrar

Dy. Registrar, ITAT, New Delhi

Income Tax Appellate Tribunal

दिल्ली पीठ, नई दिल्ली

Delhi Benches, New Delhi