

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : 'A' : NEW DELHI**

**BEFORE SHRI R.S. SYAL, ACCOUNTANT MEMBER
AND
SHRI GEORGE GEORGE K., JUDICIAL MEMBER**

**ITA No.3123/Del /2013
Assessment Year : 2009-2010**

ACIT, Circle-33(1),
New Delhi

Vs.

Sh. Amarjeet Singh Sethi,
T-2336, Faiz Road, Karol Bagh
New Delhi-110005

(Appellant)

(Respondent)

Appellant by : Ms. Y. Kakkar, DR
Respondent by: Shri Gurjeet Singh Ananad, C.A.

ORDER

PER SHRI GEORGE GEORGE K, JM:

1. This appeal at the instance of the Department is directed against the CIT(A)'s order dated 28.02.2013. The relevant Assessment Year is 2009-10.
2. The solitary issue that arises for our consideration is whether the CIT(A) is justified in deleting the addition amounting to Rs.51,28,109/- made by the Assessing Officer on account of loss suffered on sale of shares.
3. The assessee is an individual. He is in the business of providing services in the field of Aviation Industries, retail trading of Fabrics and dealing in sale and purchase of shares For the assessment year in dispute, the assessee has filed

return of income on 30.9.2009, declaring total income of Rs.31,49,345/-. The assessment was taken up for scrutiny by issuing of notice u/s 143(2) of the I.T. Act, 1961 and scrutiny assessment u/s 143(3) of the Act was completed vide order dated 14.12.2011 fixing the total income of Rs.82,78,280/-. In scrutiny assessment completed, the Assessing Officer had added the loss suffered on account of trading of shares amounting to Rs.51,28,109/-.

3.1 The brief facts with reference to the addition of Rs.51,28,109/- are follows.

In the course of assessment proceedings, the Assessing Officer noticed that the assessee has suffered loss of Rs.51,28,109/- on purchase and sales of shares. This loss was treated as a business loss by the assessee and was debited to P&L a/c. According to the Assessing Officer, this loss only could be adjusted against profit on share transaction. Therefore, vide orders sheet entry dated 02.12.2011, assessee was show caused why the said loss on purchase and sale of shares transaction should not be disallowed. Since there is no compliance on the hearing date, the Assessing Officer disallowed the loss suffered on account of purchase and sale of shares amounting to Rs.51,28,109 and added the same to the income of the assessee.

4. The assessee being aggrieved, filed an appeal before the CIT(A). The CIT(A) after taking taken into consideration the assessee's submission and the material filed before the Assessing Officer held that the loss on account of sale

of shares is to be treated as a business transaction. The relevant finding of the CIT(A) reads as follows:-

“8.....

8.1.....

8.2 *On perusal of material on record, I find that the appellant had started the business of dealing in shares in the financial year 2007-08 relevant to assessment year 2008-09 and from this activity the appellant earned profit of Rs.7,73,143/- which was shown as business income and was taxed at a maximum tax rate of 30% in terms of scrutiny assessment completed u/s 143(3) of the Income-tax Act, 1961. It was stated that the appellant had sold most of the shares within a short interval during the financial year 2007-08 relevant to assessment year 2008-09, but as the prices of the shares dipped down, he had retained some shares in a hope that prices would go up at least to the extent of the price at which the appellant had purchased these shares. However, when the appellant lost all hopes to get the price recovered, he ultimately sold the remaining shares at loss of Rs.51,28,190/- during the assessment year under consideration. I find that the shares on which profit of Rs.7,73,143/- was earned in assessment year 2008-09 and shares on which the appellant suffered a loss of Rs.51,28,109/- in the assessment year under consideration i.e. 2009-10 were purchased from the same broker and almost at the same time. When the appellant had declared income from dealing in shares as business income in assessment year 2008-09, the Assessing Officer accepted the details filed by the appellant and assessed the same under the head “income from business and profession” in scrutiny assessment u/s 143(3) of the Income-tax Act, 1961. On the similar facts and identical nature of activity, in the scrutiny assessment for the year under consideration the Assessing Officer did not accept the details filed by the appellant, where an identical and similar activity resulted in loss from trading of shares. Without conducting any proper enquiry or without bringing any adverse material on record, addition cannot be made only on the basis that the appellant declared loss from the trading activity of shares. The Assessing Officer did not appreciate and examine the details filed by the appellant and record the reasons for not accepting the loss from the trading activity of shares shown by the appellant. When income from the share trading activity has been accepted by the Assessing Officer in the scrutiny of earlier*

assessment year i.e. 2008-09, it implies that the Assessing Officer would have examined the evidence filed by the appellant before concluding that the appellant earned profit on sale purchase of shares. In my opinion, the same reasoning and view point also should have been applied to the scrutiny assessment for the year under consideration, unless and until, on the basis of material available on record and on the scrutiny and analysis of the same, the Assessing Officer gave a finding as to why he is not accepting the loss shown by the appellant. From the record, it is seen that the appellant is not into speculative share transactions as the shares so purchased were delivered and subsequently traded. In view of this discussion, for a similar and identical nature of business activity, since the appellant suffered a loss, in such activity, the Assessing Officer was not justified in taking a different view for the year under consideration. In view of the above discussion, I hold that the Assessing Officer was not justified in disallowing the loss of Rs.51,28,109/- suffered by the appellant on sale of shares. Accordingly, the impugned addition of Rs.51,28,109/- made by the Assessing Officer is deleted.”

5. The Revenue being aggrieved is in appeal before us. The Ld. D.R. submitted that there is nothing on record to suggest that the assessee is engaged in the business of trading of shares. It was stated by the ld. D.R. that as per 3CD report submitted by the assessee, it had only mentioned aviation services business as assessee's business activities. Therefore, it was submitted that CIT(A) has erred in concluding that the loss on account of trading of shares is to be disallowed, while computing the profit and loss of business. On the other hand, the ld. A.R. reiterated the submissions made before the Income Tax Authority and supported the finding of the CIT(A).

6. We have heard rival submission and perused the material on record. It is not disputed that the assessee had started the business of trading in shares from A.Y. 2007-08. For A.Y. 2007-08, assessee had earned profit of Rs.7,73,143/- which has been declared as "business income" and had accordingly taxed at maximum margin rate of tax i.e. at 30%. When the department had accepted the stand of the assessee in the immediately preceding assessment year namely A.Y. 2008-09 (i.e. assessee had disclosed profits on trading of shares as business income) the department cannot take an inconsistent stand in the current assessment year for identical item of income. The CIT(A) in the impugned order had categorically found that the profits on sale of shares amounting to Rs.7,73,143/- declared as business income in the A.Y. 2008-09 and the shares of which the assessee has suffered a loss of Rs.51,28,109/- in the assessment year under consideration were purchased from the same broker and almost at the same time. It was also held by the CIT(A) that the business activities for the A.Ys. 2008-09 and 2009-10 with reference to trading in shares were identical. This finding of the CIT(A) has not been dispelled by the Revenue by placing on record any material/documents.

6.1 Before concluding, it is to be mentioned that the Id. D.R. submitted that as per tax audit report in Form 3CD report, assessee has not mentioned trading in shares as part of his business activities. Mere non mentioning of all business carried on by the assessee in Form 3CD may not lead the A.O., forming an

opinion that the dealing in shares was not amounting to business activity. The A.O. has to deal with substance of the activities carried on by the assessee and may not be unduly influence by the procedural technicalities. If this omission of non mentioning of business activity in tax audit report is to be taken as a grave, then the A.O. cannot have contrary view by holding loss from shares as non business income, while continuing to tax income from trading fabric as business income when both the activities were not mentioned in Form 3CD report. For the aforesaid reasons, we see no merits in the contentions raised by the Revenue. Therefore, we uphold the order of the CIT(A) as correct and in accordance with law and no interference is called for. It is ordered accordingly.

7. In the result, the appeal of the Revenue is dismissed.

The decision was pronounced in the open court on 10th October, 2014.

Sd/-
(R.S. Syal)
Accountant Member

Sd/-
(GEORGE GEORGE K.)
Judicial Member

Dated: 10th October, 2014.

Aks/-
Copy forwarded to
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Dy. Registrar, ITAT, New Delhi