

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "F" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA.No.3661/Del./2014
Assessment Year 2009-2010

The ACIT, CC-12, Room No.330, ARA Centre, Jhandewalan Extn., New Delhi.	vs	M/s. R J Corp. Ltd., F-2/7, Okhla Indl. Area, Phase-I, New Delhi. PAN AAACA2573R
(Appellant)		(Respondent)

For Revenue :	Smt. Shefali Swaroop, CIT-D.R.
For Assessee :	Shri Ved Jain, Advocate and Shri Ashish Goel, C.A.

Date of Hearing :	11.09.2018
Date of Pronouncement :	01.10.2018

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Revenue has been directed against the Order of the Ld. CIT(A)-XVIII, New Delhi, Dated 31.03.2014, for the A.Y. 2009-2010, challenging the Order of the Ld. CIT(A) in deleting the short term capital loss disallowed by A.O. amounting to Rs.30,14,64,010/-.

2. The facts of the case are that the assessee is a Company filed return of income declaring loss of Rs.11,75,90,460/-. The case was selected for scrutiny. Statutory notices were issued and duly complied with by the assessee by furnishing the required details in response to the queries raised by the A.O. during the assessment proceedings. The assessee-company is engaged in trading in beverages, ice cream, financing and investment etc. The A.O. noted that during the year, the assessee had capital gain of Rs.33,92,84,278/- from the sale of shares of Krizm Hotels Pvt. Ltd. The assessee has also claimed to have incurred an almost matching short-term capital loss of Rs.30,14,64,010/-. The assessee was asked to give the chart of transaction of sales and purchase of shares during the year, which assessee has filed and the same has been reproduced by the A.O. at page-2 of the assessment order. The A.O, therefore, noted that assessee has incurred loss of Rs.5.4 crores on the shares of Cryo Bank International Pvt. Ltd., loss of Rs.4.2 crores on the shares of Universal Airways Pvt. Ltd., a loss of Rs.15.55 crores

on Devyani Foods Indl. Pvt. Ltd., a loss of Rs.4.49 crores on the sale of shares of DG Agro Pvt. Ltd., All the above companies are related parties of the assessee-company and the assessee-company has invested in them in the month of August/September/November, 2008 accordingly. The sales of the same to the various sister concerns have happened in the month of March, 2009. The above transaction, therefore, appeared to be abnormal and with an intent of creating a loss. The assessee was asked to give the book values and NAVs of the company which is reproduced in the assessment order. The A.O, therefore, noted that nothing drastic has changed in the above entities from the date of subscription till the date of sale. A.O. noted that the holdings of shares has been maximum for a period of six months to eight months in most of the instances. The assessee-company has after showing this subscription of shares in various associate companies has sold these shares to associate concerns and has created a short-term capital loss. The assessee-company has to the effect has subscribed these shares of its various associate companies

either at very high value or has transferred these shares of these entities at a significantly low value which created a loss, The A.O, therefore, noted that assessee-company has effectively used the entities of the group and shifted capital from one entity to the other and has booked a loss. The assessee-company has failed to give any scientific reasons for the investments in these companies and also, the sudden desire to sell these investments at a very low price to other entities of the group. The transactions is carried out to create a short term capital loss in order to adjust long term capital gains accrued to the assessee-company. The assessee-company instead of paying the capital gain liabilities, has created a web of transactions in order to create a short term capital loss. The assessee-company has not given the details of bank statements of the various concerns and also the application of funds which were invested in the form of share application money. The purchase of shares have been made at a high premium despite net worth of the company of which shares are purchased has not matching value as compared to

the investments are made. The A.O, therefore, noted that capital loss have been shown to set-off the capital gain liability. Therefore, short term capital loss amounting to Rs.30,14,64,010/- was disallowed.

3. The assessee-company challenged the above addition before Ld. CIT(A). Detailed written submissions of the assessee-company is reproduced in the appellate order, in which, the assessee-company reiterated the facts submitted before A.O. It was also briefly submitted that A.O. conducted independent enquiries from the concerned parties by issuing notice under section 133(6) of the I.T. Act and all the transactions are confirmed by the respective companies along with required documents were filed. The A.O. has not pointed out any irregularity in any of the transactions conducted by the assessee-company. The A.O. in the assessment order has concluded that the assessee-company has subscribed to the shares at a very high value or has sold shares of the company at a consequently low value without appreciating the fact that

the shares were purchased at the price which was approximately the break-up value per share as per their latest balance-sheet and also shares were generally allotted at par value or in a case premium was charged, then, such premium was charged from all the share applicants and also the shares were sold at rate which was approximately equal to the break-up value per share and the balance-sheet of the companies were also filed before A.O. along with calculation of break-up value per share and therefore, there was no discrepancy whatsoever in the rates of purchase or sales. All the parties filed reply before A.O. under section 133(6) along with bank statements of the concerns to whom share application money was paid by the assessee. The A.O. failed to appreciate that sale/purchase of shares was on investment account and not in the business of sale/purchase of shares and hence, Explanation to Section 73 would not be applicable. The assessee-company is engaged in the business of trading in beverages, ice-cream, financing and also engaged in investment activities. As part of its investment activity, the assessee-company

makes investment in shares of various companies. The assessee-company has earned long term capital gains on sale of shares and land and building and also suffered short term capital loss on sale of shares of certain companies, details of which, were filed on record. The assessee-company as regards sale of the shares, filed the evidence before A.O. like copy of the relevant journal voucher, sale bill, statement showing break-up value of equity shares of respective investee companies, balance-sheet supporting the break-up value of the shares along with bank statements. Similarly, for purchase of shares, assessee-company filed documentary evidence like journal vouchers, Form No.2 – Return of allotment along with the list of allottees attached with the Form filed with the Registrar of Companies by respective companies, Share purchase bills raised by the seller parties on the assessee-company along with bank statements reflecting the purchase consideration paid by the assessee-company. All the details reproduced in the written submissions. All the parties confirmed transactions with the assessee-company in

response to the notice of the A.O. under section 133(6) of the I.T. Act. All the documentary evidences were also filed directly before A.O. by all the parties who have confirmed the transactions with the assessee-company. The documents filed by the parties have not been disputed by the A.O. The assessee-company also prayed for admission of the following additional evidence under Rule 46A of the I.T. Rules, 1961.

- “1. Copy of statement showing the market value of equity shares of M/s. Cryobanks India International Private Limited as per its Audited Balance Sheet as on 31.03.2009 along with copy of Audited Balance Sheet for Financial Year 2008-09.*
- 2. Copy of Statement showing the market value of equity shares of M/s. Universal Airways Private Limited as per its Audited Balance Sheet as on along with copy of Audited Balance Sheet for Financial Year 2008-09.*

3. *Copy of Statement showing. the market value of equity shares of M/s. Devyani Food Industries Private Limited as per its Audited Balance Sheet as on 31.03.2009 along with copy of Audited Balance Sheet for Financial Year 2008-09.*
4. *Copy of Statement showing the market value of equity shares of M/s. DJ Agri Industries Private Limited as per its Audited Balance Sheet as on along with copy of Audited Balance Sheet for Financial Year 2008-09.*
5. *Copy of Statement showing the market value of equity shares of M/s. Universal Dairy Products Private Limited as on 31.03.2009 along with copy of Audited Balance Sheet for Financial Year 2008-09.”*

4. The assessee submitted that there was sufficient cause for not filing the additional documents before A.O. and relied upon the decision of the Hon'ble Delhi High Court in the case of CIT vs. Virgin Securities and Credits Pvt. Ltd., (2011)

332 ITR 396 (Del.) and submitted that capital loss was incurred through genuine transaction and purchase/allotment of shares were duly supported by purchase bills/allotment advice. The A.O. made the addition merely on assumption. The A.O. cannot sit in the chair of businessman and dictate as to how the business is to be transacted. The assessee-company is a Public Limited Company and the terms and conditions for purchase and sale of investments were finalized in the best interest of the company. Therefore, A.O. should not have any adverse presumption against the assessee-company. The assessee-company relied upon the decision of Hon'ble Supreme Court in the case of S.A. Builders Ltd., vs. CIT (2007) 288 ITR 1 (SC) and Judgment of Delhi High Court in the case of CIT vs. Dalmia Cement (B) Ltd., (2002) 254 ITR 377 (Del.) and other decisions were also relied upon in support of the same contention.

5. The Ld. CIT(A) considering the explanation of assessee-company and material on record, called for the

remand report from the A.O. who, however, did not file remand report despite giving various opportunities. The Ld. CIT(A) admitted the additional evidences and on merit, deleted the addition. His findings in paras 4 to 6.28 of the Order are reproduced as under :

“DETERMINATION :

(4) I have gone through the finding of Assessing Officer in the assessment order and written submissions filed by learned Authorized Representative of the appellant from time to time. After considering the same, ground-wise issues are decided here under.

(5) Ground of Appeal No.1 is general in nature.

(6) At ground of appeal No. 2, the AO disallowed the short-term capital loss of Rs.30,14,64,010/- claimed by the appellant company, observing the following in the assessment order.

3.4) In view of the above facts, it is very clear and apparent that the assessee and the group entities have acted in concert and used the process of share subscription and its sale thereof as an instrument to create a capital loss in order to set off the capital gain liability of the assessee and thereby, to evade taxes accordingly.

The above is therefore a sham and a colourable transaction and a device which has been used by the assessee by taking active partnership of the associate concerns in order to evade taxes. Therefore, the short-term capital loss, as highlighted above, of amount of Rs.30,14,64,010/- is hereby disallowed accordingly.

6.1. *I have gone through the submissions made by the learned AR of the appellant company and the observations of the AO made in the assessment order. The appellant company during the year under appeal was engaged in the business of trading in beverages, ice-*

cream, financing and also engaged in investment activities. During the relevant year, the appellant company earned long term capital gain of Rs.33.92 Crores on sale of assets, land and building and short term capital loss of Rs.30.14 Crores on sales of shares.

6.2. The first issue in the aforesaid appeal is in respect of admission of additional evidences and this matter needs to be adjudicated first. The appellant company on 07.12.2012 filed certain documents as additional evidence along with application under Rule 46A of the Income Tax Rules. The documents filed as additional evidences consisted of the statement showing the market value of equity shares of various companies sold by the appellant company during the year along with the Audited Balance Sheet for Financial Year 2008-09 in support of the valuation of equity shares. The reason that the appellant company gave that such documents were not filed before the AO during assessment proceedings is that such

documents were not called for during assessment proceedings. The learned AR of the appellant company submitted that the AO in the assessment order concluded that the appellant company has sold the shares at a significantly low value and only due to such conclusion made by the AO, there was a necessity to file the aforesaid documents. The learned AR of the appellant company mentioned that the AO did not even once during the assessment proceedings required the appellant company to furnish the market value of the shares at the time of their sale and therefore there was sufficient cause for not filing the aforesaid documents before the A.O.

6.3. *On receipt of the prayer for additional evidence from the appellant, a letter dated 20.12.2012 was issued to the AO to furnish his comments in respect of such additional documents. However, no remand report or reply has been received from the AO till date i.e. 31.03.2014*

inspite of numerous reminders given to him as per details hereunder:-

a)	<i>CIT(A) - 18/Remand Report/2012-13/796 dated 20.12.2012 duly received by Assessing Officer on 31.12.2012</i>
b)	<i>CIT(A) - 18/Remand Report/2012-13/970 dated 19.03.2013 duly received by Assessing Officer on 31.03.2013.</i>
c)	<i>CIT(A) - 18/Remand Report/2013-14/61 dated 07.06.2013 duly received by Assessing Officer on 13.06.2013</i>
d)	<i>CIT(A) - 18/Remand Report/2013-14/145 dated 02.07.2013 duly received by Assessing Officer on 03.07.2013</i>
e)	<i>CIT(A) - 18/Remand Report/2013-14/630 dated 24.12.2013 duly received by Assessing Officer on 27.12.2013</i>
f)	<i>CIT(A) - 18/Remand Report/2013-14/701 dated 16.01.2014 duly received by Assessing Officer on 20.01.2014 - Remand Report.</i>

6.4. *On going through the chart give above, it will be clear that numerous reminders have been sent to the AO to furnish the remand report but the same has not been received by me till date i.e. last day of Financial Year ending 31-03-2014. The AR of the appellant company filed letter dated 20.12.2013 before me wherein it was mentioned that the additional evidence was primarily the Audited Balance Sheet of the various companies whose shares were sold by the appellant company at a loss during the year under appeal. The learned AR submitted that the aforesaid documents were already on record of*

the AO before passing the assessment order, as the aforesaid documents were directly filed by the investee companies pursuant to notice u/s 133(6) issued by the AO.

6.5. I had called for the assessment file for Assessment Year 2009-10 of the appellant company and the same was received from the office of DCIT, Central Circle 12, New Delhi and duly verified the contents of the file at the time of appeal proceedings on 29.01.2014. On going through the file, I have verified that notice u/s 133(6) was sent by the AO to the various companies and replies have been received from the following companies which included their Balance Sheet for year ended 31.03.2009 and bank statement along with other documents :-

- a) Cryobank International India Pvt. Ltd.,*
- b) Universal Airways Pvt. Ltd.,*
- c) Devyani Food Industries Pvt. Ltd.,*

d) *D.J. Agri Industries Pvt. Ltd.,*

e) *Universal Dairy Products Pvt. Ltd.,*

6.6. *I have gone through the matter and I am of the opinion that the additional evidence filed by the appellant company during the year under the appeal proceedings were already in possession of the A.O. while passing the assessment orders. It is only the statement prepared by the appellant company showing the market value of the shares based on the Balance Sheet of the company which was not available with the AO. However, the aforesaid statement has been prepared on the basis of the provisions of the wealth tax act and such exercise would have been performed by the AO also to compute the market value of the shares at the time of their sale by the appellant company.*

Furthermore, vide letter dated 2012-2013, learned Authorized Representative of the appellant has submitted that full details have been filed before Assessing Officer

and are available at different pages of paper book as under:-

We have gone through the additional evidences enclosed vis-a-vis the Paper Book already filed and find that the Audited Balance Sheet which was crucial for clearing the issues were already filed before the Assessing Officer by the respective companies pursuant to the Notice u/s 133(6) of the Income Tax Act which are placed in Paper Book - II already filed on 07.12.2012. The details of the Balance Sheet are as under :-

a.	Cryobanks International India Private	Paper Book page No. 1 (refer para 5)
b.	Universal Airways Limited,	Paper Book page No 19 (refer para 5)
c.	Devyani Foods Industries Private Limited.	Paper Book page No. 39 (refer para 5)
d.	D.J. Agri Industries Private Limited.	Paper Book page No. 47 (refer para 5)
e.	Universal Dairy Products Pvt. Ltd.	Paper Book page No. 58 (refer para 5)

Thus your honour will find that audited Balance Sheets were already filed by the respective companies before the Assessing Officer pursuant to his specific requirement as per notice u/s 133(6) and factually the same does not amounts additional evidence.

6.7. *Further such additional evidence is essential to compute the value of the shares which have been sold by the appellant company which according to the AO is very low. As per decision of the Hon'ble Delhi High Court in the case of CIT vs. Virgin Security and Credits Pvt. Ltd., Reported in 332 ITR 396 it has been held as under :-*

The aforesaid contention appears to be devoid of any merit. It is a matter of record that before admitting the additional evidence, the CIT (A) had obtained remand report from the Assessing Officer. While submitting his report, the Assessing Officer had not objected to the admission of the additional evidence, but had merely reiterated the contentions in the assessment orders. It is only after considering the remand report the CIT(A) had admitted the additional evidence. It cannot be disputed that this additional evidence was crucial to the disposal of the appeal and had a direct bearing on the quantum of claim made by the assessee, plea of the assessee which was

taken before the Assessing Officer remains the same. The Assessing Officer had taken adverse not because of non-production of certain documents to support the plea and it was in these circumstances, the additional evidence was submitted before the CIT(A). It cannot be said not is it the case of the revenue that additional evidence, Rule 46A of the Act permits the CIT(A) to admit additional evidence if he finds that the same is crucial for disposal of the appeal. In the facts of this case, therefore, we are of the opinion that on this aspect, no substantial question of law arises."

That where the additional evidence is crucial for disposal of the appeal then the same shall be admitted. Accordingly in the present appeal the additional evidence filed by the appellant company is being admitted under rule 46A due to the reason that the aforesaid documents were already in possession of the AO and also because such documents are crucial for the disposal of the appeal.

After admitting the additional evidence, ground is decided hereunder.

6.8. *On issue of the merits of the appeal first and foremost the purchase of shares by the appellant company and price at which the same have been purchased needs to be verified. The AO has concluded that the entire shares were purchased in the months of August, September and November, 2009. He has further concluded that such shares were purchased at a very high price. On going through the details and evidences filed by the appellant company it is seen that appellant has been allotted 9000000 shares of M/s. Cryobanks International (India) Pvt. Ltd. for a sum of Rs.9 Crores. Out of the aforesaid sum, the appellant company had made payment of Rs.2.32 Crores in Financial Year 2006- 07 and Rs.1.68 Crores in Financial Year 2007-08. Further the appellant company had purchased 7000000 shares of M/s. Universal Airways Limited at a cost of Rs.9.80 Crores. Out*

of the payment for the aforesaid shares, a sum of Rs.4.47 Crores was paid before 31.03.2008. Therefore, it cannot be said that the purchase of shares and sale thereof at a loss was merely a colorable device to offset the profit made on sale of shares of M/s. Krizm Hotels Pvt. Ltd. as the payments for the shares was made in preceding years i.e., much before the sale of shares of M/s. Krizm Hotels Pvt. Ltd.”

6.9. *I have also gone through the payments made for purchase/allotment of shares and verified that the full payment for such shares and have been duly made before the allotment of shares.*

6.10. *In this regard, it is seen in the case of Universal Airways Pvt. Ltd. @ Rs.14/- per share, that where shares are allotted to the appellant company, then such shares are allotted to other entities also at the same date and the same price and in the case of Devyani Food Industries Pvt. Ltd. @ Rs. 40/- per share which is lower than Rs.44.50*

being shares purchased from other parties in earlier period. Therefore, it cannot be said that the shares have been purchased at price which is higher than the market price. Further it is seen that in the cases Cryobank & D.J. Agri, the shares have been allotted to the appellant company at a face value of the shares i.e. Rs.10/- per share and it cannot be said that the shares have been purchased at a very high value.

6.11. Further, the purchases of shares are evidenced by purchase bill/return of allotment filed by the various companies before the Registrar of Companies. Further the share certificates have been issued to the appellant company in support of the purchase of the shares and such information has been directly verified by the AO from the various parties under section 133(6) of Income Tax Act which are available in the assessment folder duly verified by me and photocopies of covering letter from 5 parties taken and kept in the appeal file. Also the payment for the

aforesaid shares have been made by the appellant company by way of account payee cheques either in earlier years or during the year under appeal within reasonable time.

6.12. *The transaction of investments in shares has already been verified by the AO u/s 133(6) of Income Tax Act from the various investee companies and the companies have filed the following documents :-*

- a) Copy of share application form in support of subscription received from the appellant company and also the share certificates issued in favour of the appellant company.
- b) Extracts of shareholders register wherein the shareholding of the appellant company is duly reflected.
- c) Bank statement of the companies evidencing receipt of share application money from the appellant company by way of account payee cheques.

d) Copy of Balance Sheet, Tax Audit Report, Income Tax Return of the various companies showing that they are genuine companies.

e) Copy of Board Resolution passed in the Board Meeting of the investee company evidencing allotment / transfer of shares in favour of the appellant company and subsequently transfer of shares from the name of the appellant company to the name of the party to whom shares have been sold.

16.13. On going through the aforesaid, I am of the considered opinion that as regards the investments in shares is concerned the same have been made within the legal framework and the prescribed legal guidelines and at reasonable rates and no discrepancy have been found in this regard.

6.14. Now, coming to the transactions of sale of shares, the appellant company has filed the following documents:-

a) Copy of bills evidencing the sale of the shares

b) Statement showing the market value of equity shares of the respective investee companies.

c) Copy of audited Balance Sheet of the investee company supporting the market value of the shares.

d) Copy of bank statements evidencing the fact that the sale consideration of the shares has been duly received by the appellant company before the end of the relevant financial year by way of account payee cheques.

e) Copy of share certificates and register of members of the investee company showing that

the shares have been duly transferred in favour of the parties to whom the shares have been sold by the appellant company

6.15. *As regards the market value of shares of the investee companies at the time of sale of such shares by the appellant company, a summarized position of the market value of the shares have been provided by the appellant company and the same have been verified from the audited Balance Sheet of the investee companies and the chart is as under :*

Name of Investee company	Market value of shares as per Balance Sheet for FY 2008-09	Parties at which shares were sold by appellant company	Date of Sale
Cryobanks International India Private Limited	Nil	4.00	5/3/2009
Universal Airways Limited	2.40	8.00	5/3/2009
Devyani Foods Industries Private Limited	20.92	21.50	5/3/2009
D.J. Agri Industries Private Limited	1.38	1.00	5/3/2009
Universal Dairy Products Private Limited	5.08	4.00	23/9/2008

6.16. *On going through the aforesaid chart it will be seen that in most of the cases the price at which the shares have been sold by the appellant company is substantially higher to the market value of such shares. In few cases, the transaction for sale have been made at a price which is close to the market value and such transactions may have been made at that price due to business considerations after negotiations between the parties.*

6.17. *I have verified the assessment records for A.Y. 2009-10 and find that the Ld. AO to verify the market value of shares of 5 companies mentioned above issued notices u/s 133(6) dated 05.12.2011 to furnish the Balance Sheet for year ended 31.03.2009 along with other details and necessary replies dated 13/14/15 December, 2011 were duly received (a copy thereof obtained and placed in appeal file) and*

thus the market rate stands verified by independent enquiries.

6.18. *On going through the evidences as discussed above and also the calculation of market value at which shares have been sold by the appellant company, I am of the considered opinion that there is no abnormality or discrepancy in the transaction of sale of shares made by the appellant company.*

6.19. *The A.O. has made a observation that the short term capital loss has been incurred on share of group companies and such shares have also been sold to group companies in such a manner that the entire shareholding of the investee company remains with the promoters and at the same time loss has been incurred in the books of the appellant company which has been offset against profit made on the sale of shares of M/s. Krizm Hotels Pvt. Ltd.,*

6.20. *I have verified the submission and the assessment records and find that no discrepancy has been found in the transaction of purchase and sale of shares undertaken by the appellant company. Merely because the purchase and sale of shares have been made in the same financial year does not vitiate the genuineness of the transaction undertaken on the basis of commercial parameters and it cannot be said that there was an attempt to evade taxes.*

6.21. *I find that the following judicial pronouncement relied upon by the appellant company squarely cover the case of the appellant company.*

- a) ACIT vs Biraj Investment (P) Ltd. (210 Taxman 418)
- b) CIT vs M/s. Karam Chand Thapar and Brothers (P) Limited (176 ITR 535)
- c) CIT vs. Gillette Diversified Operations (P) Ltd. (324 ITR 226)
- d) CIT vs. Special Prints Ltd. in Tax Appeal No. 332 of 2013 dated 15.04.2013.

6.22. *Applying the ratio of the aforementioned decisions to the facts of the present case, it is not justified for the AO to conclude that merely because the shares under consideration have been sold by the appellant company to a group entity or that the shares under consideration belong to a group entity or that the purchase and sale of shares have been undertaken in the same financial year does not vitiate the genuineness of the transaction.*

6.23. *The A.O. in the assessment order has concluded that the appellant company has failed to give any scientific reason for the investment in these companies and also the certain desire to sell these investments at a very low price to other entities of the group. In this regard the appellant company has mentioned that the investment decisions in a business are purely governed by the commercial and market considerations. The AR has also mentioned*

that the AO cannot sit in the chair of businessman and dictate as to how the business is to be transacted. Relying on the order of the Hon'ble Supreme Court in the case of S.A. Builders Ltd. Vs. CIT reported in 288 ITR 1 and Hon'ble Delhi High Court in the case of CIT vs. Dalmia Cement (B) Ltd. 254 ITR 377, I hold that it is for the businessman to take such business decisions as are prudent for his business and the revenue cannot put itself in the armchair of the businessman or in the position of the Board of Directors.

6.24. *Therefore I conclude that the share transactions carried out by the appellant company resulting in short term capital loss of Rs.301464010/- represents genuine transaction and I delete the disallowance of loss of Rs.301464010/-.*

6.25. *As regards the contention of the AO that the loss on purchase of sale of shares would amount*

to speculation loss within the meaning of Explanation to Section 73 of the Income Tax Act, the learned AR of the appellant company has mentioned that the appellant company was carrying out investment in shares and was not engaged in the business of trading in shares. As per the contention of the learned AR of the appellant company, the Explanation to Section 73 of the Income Tax Act is applicable only when the assessee is engaged in share transaction as a business activity and not as an investment activity.

6.26. *I agree with the learned AR of the appellant company in this regard because the heading of Section 73 itself reads as “losses in speculation business”. The Section itself talks about the companies engaged in the business of purchase and sale of shares loss in share business to be treated as speculation loss. As the appellant*

company has shown share transaction as an investment activity therefore the Explanation to Section 73 will not be applicable to the appellant company. The orders of the Higher Authorities in the cases of Laxmi Feeds & Exports Ltd. v. Asstt. CIT [1997] 62 ITD 315 (Mum.); VIP Growth Fund Ltd. v. Asstt. CIT [1997] 95 Taxman 313 (Delhi)(Mag.) and Mysore Rolling Mills (P.) Ltd. v. CIT [1992] 63 Taxman 416/195 ITR 404 (Kar.) also supports the above view.

6.27. *Therefore, I am of the opinion that as in the case of the appellant company the shares have been held as investments and not as business activity therefore the Explanation to Section 73 of the Income Tax Act is not applicable in the present case.*

6.28. *Therefore, I conclude that the share transactions held as investments carried out by the appellant company resulting in short term capital*

loss of Rs.301464010/- and not a speculation loss represents genuine transaction and I delete the disallowance of loss of Rs.301464010/-. The appellant gets relief of Rs.301464010/-. Thus, ground of appeal No.2 is allowed.”

6. The Ld. D.R. relied upon the Order of the A.O. and submitted that Ld. CIT(A) has not seen whose shares were sold by assessee. The Ld. CIT(A) has not commented on the bank statement of the parties.

7. On the other hand, Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that assessee made investments in purchase of shares which were sold, on which, assessee suffered a loss. The A.O. merely on presumption made the addition. The A.O. did not challenge the genuineness of the transaction of the assessee. The Revenue did not challenge the admission of additional evidences by the Ld. CIT(A). All documents have been verified by the A.O. in which

no discrepancy have been pointed-out. Therefore, addition has been correctly deleted by the Ld. CIT(A).

8. We have considered the rival submissions and perused the material available on record. The assessee company is admittedly engaged in trading in beverages, ice-cream, financing and investment etc. The assessee-company filed certain additional evidences before Ld. CIT(A) under Rule 46A which consisted of statement showing the market value of equity shares of various companies sold by the assessee company during the year along with relevant audited balance sheet in support of the valuation of equity shares. The assessee-company submitted that such documents were not called for by the A.O. Ld. CIT(A) called for the remand report from the A.O. However, it was not filed. Ld. CIT(A) noted that additional evidences were primarily audited balance sheet of various companies whose shares were sold by the assessee-company at a loss during the year. On that basis, statement was prepared to compute market value of shares at the time of

sale. These documents are also part of the record because these parties have directly submitted these documents before A.O. in pursuance of notice issued under section 133(6) by the A.O. Ld. CIT(A) found the contention of assessee-company to be correct. Ld. CIT(A) also noted that the additional evidences are essential to compute the value of shares, which have been sold by the assessee-company, which according to A.O. is very low. The Ld. CIT(A) admitted additional evidences for disposal of the appeal. However, the Revenue has not filed any appeal against these findings of the Ld. CIT(A) in admitting the additional evidences. The Ld. CIT(A) considering the documents on record, noted observations of the A.O. and material on record. It is not in dispute that assessee-company filed all the requisite documents of purchase and sales of shares before authorities below in support of the contention that these were genuine transactions. All the concerned companies have confirmed transaction with the assessee-company directly to the A.O. in response to the notice under section 133(6) of the I.T. Act. The parties have also filed all the

documentary evidences before A.O. along with bank statements. The documentary evidences on record along with the reasons for sale have not been disputed by the A.O. and no discrepancy in any of the documentary evidences have been pointed out by the A.O. Copy of the statement showing market value of equity shares of the companies as per their audited balance-sheet, which were admitted as additional evidence, supported the claim of assessee that it had genuinely entered into purchase and sale of shares. Since the assessee-company is involved in investment in shares and has conducted actual transactions, therefore, it is not a case of speculation loss. The Ld. CIT(A) on verification of all the evidences on record and reproducing the details in his findings found that in most of the cases, the price at which shares have been sold by the assessee-company is substantially higher to the market value of such shares and in few cases, transaction of sale have been made at the price, which is close to the market value and as such, transaction may have been made at that price due to business consideration after negotiation between the parties.

The claim of assessee-company is supported by the documents on record. Therefore, Ld. CIT(A) rightly came to the finding that the assessee-company has genuinely entered into purchase and sale of shares and if any, loss have been suffered by the assessee-company, A.O. cannot treat the same as non-genuine due to extraneous considerations or irrelevant reasons in the assessment order. The assessee-company has given scientific reasons for investment in these companies which are supported by documentary evidences. The Revenue has only contended that Ld. CIT(A) has not seen whose shares are sold by the assessee-company. However, complete details of purchase and sales are mentioned in the orders of the authorities below supported by documentary evidences. Therefore, nothing could be attributed against the assessee-company in this regard. Considering the totality of the facts and circumstances of the case in the light of finding of fact recorded by the Ld. CIT(A), we do not find any merit in the Departmental Appeal. Findings of the Ld. CIT(A) have not been rebutted by the Revenue Department through any evidence or

material on record. Therefore, no interference is called for in the matter. We, therefore, confirm the finding of fact recorded by the Ld. CIT(A) and dismiss the appeal of the Revenue.

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

Order pronounced in the open Court.

Sd/-
(L.P. SAHU)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 01st October, 2018

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "F" Bench
6.	Guard File

// BY Order //

Asst. Registrar : ITAT Delhi Benches :
Delhi.