

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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA No.6142/Del/2019
Assessment Year: 2014-15

M/s. Avisha Credit Capital Ltd., 606, Kailash Building, KG Marg, New Delhi	Vs.	ITO, Ward-3(4), New Delhi
PAN :AAACA5715D		
(Appellant)		(Respondent)

Appellant by	None
Respondent by	Sh. Om Prakash, Sr. DR

Date of hearing	21.07.2022
Date of pronouncement	29.07.2022

ORDER

This is an appeal by the assessee against order dated 30.04.2019 of learned Commissioner of Income Tax (Appeals)-1, New Delhi, for the assessment year 2014-15.

2. When the appeal was called for hearing, none appeared on behalf of the assessee. Perusal of record reveals that, though, on multiple occasions the appeal was fixed for hearing earlier but, assessee never appeared. Since, sufficient opportunities have been granted to the assessee to represent its case, which the assessee

failed to avail, I deem it appropriate to proceed with the appeal ex-parte qua the assessee after hearing learned Departmental Representative and based on the materials available on record.

3. The dispute in the present appeal is in relation with addition of an amount of Rs.6,00,000/- made by the Assessing Officer in an order passed under section 154 of the Income-tax Act, 1961 (in short 'the Act').

4. Briefly the fact are, the assessee is a resident corporate entity. For the assessment year under dispute, the assessee filed its return of income on 31.03.2015 declaring income of Rs.95,580/-. Assessee's case was selected for scrutiny and assessment was completed under section 143(3) of the Act vide order dated 11.11.2016 accepting the income returned by the assessee. Post completion of assessment, the Assessing Officer issued a show-cause notice to the assessee seeking to rectify the assessment order by exercising power conferred under section 154 of the Act. In the show-cause notice, the Assessing Officer observed that interest on income tax amounting to Rs.7,172/- was inadvertently allowed, though, it is not an eligible business expenditure. Further, he observed, loss on sale of shares of VKJ Infra Developers Ltd. amounting to Rs.6,00,000/- debited to the profit and loss account

was wrongly allowed as the shares were held as investment and not as stock in trade. In reply to the show-cause notice, though, the assessee accepted the mistake insofar as deduction of interest on income tax amounting to Rs.7,172/-, however, insofar as claim of loss of Rs.6,00,000/-, the assessee submitted that it does not come within the purview of rectifiable mistake. The Assessing Officer, however, rejected the explanation of the assessee and proceeded to pass an order under section 154 of the Act on 31.07.2017 adding back the amounts of Rs.7,172/- and Rs.6,00,000/- respectively. Though, the assessee contested the addition of Rs.6,00,000/- before learned Commissioner (Appeals), however, the addition was sustained.

5. I have heard learned Departmental Representative and perused the materials on record. Undisputedly, the loss from sale of shares was debited to profit and loss account as trading loss. While completing the assessment under section 143(3) of the Act, the Assessing Officer obviously has accepted the claim. The Assessing Officer has initiated proceeding under section 154 of the Act qua the claim of loss on the ground that the shares were held as investment and not as stock in trade. It is observed, in reply to show-cause notice issued under section 154 of the Act, the

assessee has clearly and categorically submitted that the shares were held as stock in trade and the issue was examined in course of scrutiny assessment. Thus, from the aforesaid facts, it is patent and obvious that the issue, whether the loss on sale of shares claimed by the assessee is a trading loss or capital loss is a highly debatable issue. That being the factual position emerging on record, in my considered opinion, proceeding under section 154 of the Act could not have been initiated by the Assessing Officer to rectify the so called mistake as it is not a mistake in the nature of mistake apparent on the fact of record. Therefore, I delete the addition of Rs.6,00,000/-. Ground raised is allowed.

6. In the result, the appeal is allowed.

Order pronounced in the open court on 29th July, 2022

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 29th July, 2022.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi