

Sum incurred towards leasehold improvements in a rented premise is a revenue exp.

Summary – The Chennai ITAT in a recent case of Anush Shares & Securities (P.) Ltd., (the Assessee) held that Loss suffered by assessee-broker on account of mis-deals on purchase and sale of shares by trading in derivatives in a recognized stock exchange could not be speculative loss and same was to be set off as business loss

Where expenditure was incurred towards certain civil works in rented premises of assessee, same was revenue in nature

Facts - I

- The assessee was a domestic company, engaged in the business of broking and trading in stocks and securities.
- The Assessing Officer made certain disallowances by treating the same as speculative loss and thereby denying the benefit of set off of business loss claimed by the assessee.
- On appeal, the Commissioner (Appeals) confirmed the order of the Assessing Officer.
- On second appeal:

Held - I

- It is clear that by virtue of section 43(5)(d) trading in derivatives carried out in a recognized stock exchange shall not be deemed to be a speculative transaction. Further, *Explanation* to section 73 only refers to the assessee being a company (other than the company whose gross total income consist mainly of income which is chargeable under the heads 'interest on securities', 'Income from house property', 'Capital gains', or a company the principal business is banking, granting of loans and advances) whose business consists of purchase and sale of shares of other companies shall deemed to be carrying on a speculation business to the extent to which the business consists of the purchase and sale of shares.
- Considering the nature of the activity carried out by the assessee-company the scope of *Explanation* to section 73 will not be applicable because the assessee had not resorted to such device mentioned by the Wanchoo Committee. Therefore, the profit or loss derived from the purchase and sale of shares transacted by the assessee-company cannot be deemed to be income from speculation business. Moreover, section 43(5)(d) also provides that, trading in derivatives in a recognized stock exchange shall not be deemed to be speculative transaction. Thus, from the above chronology of the provisions of the Act the loss suffered by the assessee on account of mis-deals or purchase and sale of shares by actual delivery, or trading in derivatives in a recognized stock exchange cannot be considered to be loss on account of speculation, conversely it has to be treated as the business loss

of the assessee. Moreover it is pertinent to mention that mis-deals happen involuntary during the course of the assessee's business activities which is beyond the control of the assessee. Purchase and sale of shares is not the business of the assessee-company because all such purchase and sale of shares are made on behalf of the clients of the assessee-company earning brokerage towards the same. In arriving at this conclusion, support is drawn from the decision cited by the assessee. Accordingly this issue is decided in favour of the assessee.

Facts – I

- The Assessing Officer noticed that the assessee had incurred expenses towards interiors to its new rented office. The Assessing Officer after examining the nature of expenditure found that an amount needed to be capitalized because it pertained to civil works, electrical works, carpentry works, painting, cabling etc. and accordingly disallowed the same as revenue expenditure.
- The Commissioner (Appeals) confirmed the action of Assessing Officer.
- On second appeal:

Held - I

- It is apparent from the facts of the case and it is not disputed that the expenditure were incurred towards fixing false ceiling, painting, electrical cabling and certain civil works etc., in the rented premises of the assessee. Various judicial authorities has held that in such circumstance the expenditure has to be treated as revenue expenditure. From the decisions and the facts it is held that the expenses has to be treated as revenue expenditure and deduction on account of the same has to be allowed. It is hereby decided accordingly.