

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “B” BENCH AHMEDABAD

BEFORE SHRI PRAMOD KUMAR, ACCOUNTANT MEMBER,
AND SHRI S. S. GODARA, JUDICIAL MEMBER.

ITA Nos. 943/Ahd/2005 & 927/Ahd/2006
(Assessment Years: 2001-02 & 2002-03)

Sanket Estate & Finance Ltd.
2661/2, Opp. Central Bank of India,
B/h. Rudra Complex, Ambawadi, Ahmedabad

Appellant

Vs.

ACIT,
Circle-8, Ahmedabad

Respondent

&

ITA Nos. 1256/Ahd/2005 & 2735/Ahd/2006
(Assessment Year: 2001-02)

ACIT,
Circle-8, Ahmedabad

Appellant

Vs.

Sanket Estate & Finance Ltd.
2661/2, Opp. Central Bank of India,
B/h. Rudra Complex, Ambawadi, Ahmedabad

Respondent

PAN: AAAJS0005P

आवेदक की ओर से / By Assessee : Shri Vijay Ranjan, A.R.

राजस्व की ओर से/By Revenue : Shri Vilas V. Shinde, Sr.D.R.

सुनवाई की तारीख/Date of Hearing : 18.08.2016

घोषणा की तारीख/Date of

Pronouncement : 20.10.2016

ORDER

PER S. S. GODARA, JUDICIAL MEMBER

This is a batch of four appeals. First assessment year 2001-02 involves three cases comprising of two quantum cross appeals ITA Nos.943 & 1256/Ahd/2005 filed by assessee and the Revenue against CIT(A)-XIV, Ahmedabad's order dated 02.02.2005 passed in case no. CIT(A)/XIV/ACIT C.8/56/2004-05. The latter party has further instituted ITA No.2735/Ahd/2006 assailing correctness of the CIT(A)-XIV, Ahmedabad's order dated 18.09.2006 in case no. CIT(A)/XIV/AC. C 8/34/2006-07. Next assessment year 2002-03 contains assessee's appeal ITA No.927/Ahd/2006 arising from CIT(A)-XIV, Ahmedabad's order dated 07.02.2006 in case appeal no. CIT(A)/XIV/ACIT C.8/69/2005-06. Relevant proceedings in all cases except ITA No.2735/Ahd/2006 are u/s.143(3) of the Income Tax Act, 1961; in short 'the Act' whereas the above stated appeal involves proceedings u/s.271(1)(c) of the Act.

We proceed assessment year-wise for the sake of convenience and brevity.

Assessment Year 2001-02

2. This assessment year comprises of three appeals as clarified hereinabove in opening paragraph. Assessee's appeal ITA No.943/Ahd/2005 raises three substantive grounds inter alia pleading that the CIT(A) has erred in confirming Assessing Officer's action making Section 14A interest disallowance of Rs.1,27,74,382/-, treating its loss of Rs.1,20,741/- as speculation loss and further assessing its commission income of Rs.86.50 lacs received from M/s. Vimpon Agencies and declared as business income to be income from other sources; respectively. The assessee does not press for its

last substantive ground in the course of hearing after stating that the same is revenue neutral. Ld. Departmental Representative does not object to the said prayer. We accordingly reject assessee's third and last substantive ground as not pressed.

3. We now advert to Revenue's former appeal ITA No.1256/Ahd/2005 challenging correctness of the lower appellate order deleting Section 14A apportioned interest disallowance of Rs.26,62,673/- out of the total disallowance figure of Rs.1,54,37,055/-. Its latter appeal ITA No.2735/Ahd/2006 seeks to revive Section 271(1)(c) penalty of Rs.27lacs imposed by the Assessing Officer vide order dated 07.03.2006 as pertaining to the above three quantum issues summarized in assessee's appeal hereinabove i.e. Section 14A disallowance, speculation loss and commission income (supra).

4. Both parties state at the outset that their quantum cross appeals hereinabove raise first common issue of Section 14A disallowance of Rs.1,54,37,005/- as upheld in the lower appellate proceedings to the tune of Rs.1,27,74,382/- (supra) in relation to assessee's exempt income from dividend amounting to Rs.62,57,998/-. The Assessing Officer framed a regular assessment on 30.03.2004 making the above disallowance qua assessee's interest expenses stated to have been incurred for earning exempt income by parking its funds in share activities. We find that the CIT(A) follows his order in assessee's own case for assessment year 1999-2000 as follows:

"I have carefully considered the assessment order and the above submissions. I have also perused the appellate order dt: 31-01-2003 for A.Y. 1999-2000 passed by the C.I.T (A) IX, Mumbai in appellants own case. I find that the assessee has been earning on business of trading in share. In the course of this business the assessee has made investment in shares as also has acquired shares as stock in trade. The dividend has been received on such shares. Only reason for making disallowance of interest is that the appellant has invested funds in share trading activity and investment and income from shares by way of dividend is exempt. The

case of Laxmi Agents reported at 125 ITR 227 it seen that it was with reference to deduction u/s. 80M. The CIT(A) Mumbai in his order, supra has held that in respect of interest not connected with dividend income, sec. 14A would not be applicable and has accordingly confirmed the disallowance u/s. 14 A with reference to shares on which dividend is received. As the facts mentioned in A.Y. 1999-2000 are similar, the appellant was requested to furnish necessary details for the same, which were duly furnished. On a perusal of the same, I find the following facts:-

		Cost
A	List of shares which are purchased & sold during the year.	
	Bajaj Auto Ltd.	18,58
	Morgaon Stanley Units	423,430
	Reliance Industries Ltd.	13940750
	Total	14382748
B	Shares on hand at the end of the year on which no dividend is received	
	Gujarat Alkalies & Chemicals Ltd.	807
	Modilut Ltd.	3,036,619
	Vedant Fincap Pvt. Ltd.	30,000
	OCPS of Vivro Financial Services Pvt. Ltd.	7,490,500
	Digital Equipment India Ltd.	42,732
	DSQ Bio Tech Ltd.	273,090
	Khandwala Securities Ltd.	45,684
	Total	10,919,432
C	Other Investment on which dividend is received.	
	Morgan Stanley Units (sold)	423,430
	Gujarat Narmada Valley Fertilizers Ltd.	11,442
	Nirma ltd.	9,576,900
	Shree Rama Multitech Ltd.	125,760,881
	The Royal Co. op. Bank Ltd. (sold)	15,000
	DSQ Software Ltd. Total	815,000
	Total	136,602,653
	Total (A+B) on which dividend not received	25,302,180
	Total (A+B+C)	1,61,904,833
	Amount of interest for the year	17,038,044
	Working of interest on which no dividend is received. $17038044 \times 25302180/161904833$	2,662,673

According to this working, it can be seen that interest of Rs. 26,62,673/- is not connected with dividend income and thus sec. 14 A would not apply on this apportionment of interest. Therefore, keeping in view the facts of the case and following the appellate order for A.Y. 1999-2000, I allow a relief of Rs. 26,62,673/-, out of disallowance of Rs. 1,54,37,055/- and the remaining addition of Rs. 1,27,74,382/- is confirmed.”

5. The assessee files before us a copy of this tribunal's order in its own case ITA Nos. 2962 & 2963/Ahd/2003 decided on 11.09.2015 holding that Section 14A disallowance is not exigible since the assessee had made investments yielding the impugned exempt income in group companies for acquiring controlling interest. Ld. coordinate bench places reliance on case law CIT vs. Srishti Securities Pvt. Ltd. (2010) 321 ITR 498 (Bombay) as well as this tribunal's decision in M/s. Questar Investments Ltd. vs. ACIT in ITA No.6332/Mum/2004 and M/s. Interglobe Enterprises Pvt. Ltd. vs. DCIT ITA Nos. 1362 & 1032/Delhi/2013. The Revenue fails to dispute this factual and legal position. It has already come on record that there is no exception in the relevant factual backdrop of these two assessment years. We accordingly delete the remaining Section 14A disallowance component of Rs.1,27,74,382/-. The assessee's first substantive ground raised in its appeal is accepted whereas Revenue's corresponding sole substantive ground in its appeal ITA No.2735/Ahd/2006 as well as the main case itself fails.

6. We now come to assessee's second substantive ground assailing correctness of both the lower authorities order treating a sum of Rs.1,20,741/- as speculative loss. The CIT(A)'s findings under challenge discuss relevant facts as well as Assessing Officer's observations as under:

6. *The next ground of appeal relates to addition Rs.1,20,741/- on account of disallowance of speculation loss on sale of shares by invoking section 73 of the Act. The Assessing Officer has stated that the appellant's own fund of Rs. 34.90 Lacs and other funds are interest bearing funds, it is stated that the borrowed funds are used for share transactions and therefore interest is to be apportioned to share trading activity. He has accordingly worked out such interest at Rs. 16,00,989/- i.e the total interest expenditure of Rs.1,70,38,044/- as reduced by the interest of Rs. 1,54,37,055/- disallowed u/s. 14A. He has adjusted this interest of Rs. 16,00,989/- against the profit of Rs. 14,80,248/- on sale of shares and worked out the loss of Rs, 1,20,741/- which has been considered as trading loss from share trading activity and is disallowed as speculation loss u/s.73. He has stated that the assessee has itself show the entire income as business income, and. therefore, it is not She company whose total income is chargeable under*

the head 'Interest on securities', income from house property, capital gains and income from other sources.

With reference to this disallowance the appellant has filed written submissions dated 06.01.2005 the following lines.

- (i) *Explanation below section 73 is not applicable to its case. It is stated that when the assessee has not incurred any loss from trading activity, question of applying section 73 does not arise. The Assessing Officer has computed loss u/s. 73 by notionally allocating interest expenditure to the trading activity. But what is envisaged is that the assessee should have incurred loss from purchase and sale of shares.*
- (ii) *It is further submitted that explanation enacts a deeming provision in respect of companies other than those being investment and finance companies. Hence such explanation has to be considered strictly, the explanation refers to the business which "consists of the purchase and sale of such shares". The words "consists of" do restrict the scope only to the purchase and sale of share. This is because these words are not defined in the Income Tax Act and in the common parlance they did not cover the items of the nature of connected etc. It is, therefore, submitted that this explanation applies to only the purchase and sale of shares (that is direct loss or profit arising from purchase and sale of shares. Interest paid on borrowed funds cannot be part of purchase and sale of shares. Hence, interest attributable to such borrowings cannot be part of purchase and sale of shares.*
- (c) *The appellant referred circular no. 204 dated 24.07.1976 with reference to (the said explanation and stated that the Board has also explained that the said explanation covers the loss from shares trading only. The appellant also referred to the words "extent to which the business" and stated that it is restricted to purchase and sale only. The appellant also referred to the speculation transaction defined in section 43(5) and stated that it includes only transactions of purchase and sale of shares and thus, it is submitted that interest attributable to purchase and sale of share cannot be part of speculation loss.*
- (6.2) *I have considered the assessment order and the submissions as advanced by the counsel of the appellant. On perusal of facts, it is seen that the appellant is having business activity and at the same time has earned on purchase and sale of shares. Considering these facts, I hold that the A.O was justified in invoking Explanation to Section 73 and its case does not fall in exceptions to said Explanation. As the borrowed funds are used for share acquisition, the proportionate interest referable to share purchase and sale is justifiably added in computation of speculation loss. This ground of appeal is accordingly dismissed."*

7. Shri Ranjan submits at the outset that the above extracted interest sum sought to be disallowed already forms part of Section 14A interest

disallowance figure of Rs.1,54,37,055/-. We don't find any force since the CIT(A) in his order extracted hereinabove already adjusts the remaining interest figure of Rs.16,00,989/- out of gross interest expenses of Rs.1,70,38,044/-. Ld. counsel at this stage invites our attention to the fact that both the lower authorities treat its consultancy and commission receipts aggregating to Rs.86.50lacs (supra) as income from other sources forming subject matter of third substantive ground not pressed hereinabove. Shri Ranjan takes us to exempt income figures of Rs.62,57,998/- (supra) alongwith interest of Rs.70,568/- as revealed from schedule 10 & 11 of the balance sheet in page 32 of the paper book. His submission accordingly is that Section 73 explanation inserted in the Act w.e.f. 01.04.1997 itself exclude from operation of the main provision those companies whose gross total income consists mainly of income which is chargeable as "income from other sources". It is thus contented that both the Assessing Officer as well as the CIT(A) have erred in applying the above explanation to Section 73 of the Act in its case.

8. Learned Departmental Representative strongly supports CIT(A)'s order under challenge.

9. Heard both sides. Relevant finding perused. There is not dispute about the fact that the assessee had already proved that its main income has already been treated to be under the head "income from other sources". The Assessing Officer's findings in assessment order as affirmed in the CIT(A)'s opinion deny application of above explanation in assessee's case mainly on the ground that its statement of income is entirely under the head "business income". We reiterate that these two authorities have themselves treated the said receipts under the head "income from other sources". There is thus no substantive reason for not treating the assessee as an entity covered by

Section 73 explanation hereinabove in these peculiar facts and circumstances. We accordingly delete the impugned disallowance/addition of speculation loss of Rs.1,20,741/-. The assessee succeeds in its second substantive ground. Its appeal ITA No.943/Ahd/2005 is partly accepted.

10. This leaves us with Revenue's remaining appeal ITA No.2735/Ahd/2006 seeking to revive Section 271(1)(c) penalty of Rs.27lacs pertaining to above three quantum issues raised in the impugned assessment year. The assessee has already succeeded on the first two issues of Section 14A disallowance and that of speculation loss. We notice that third issue is of head of income wherein the assessee declares an amount of Rs.86.50lacs received from M/s. Vimpson Agencies as its business income. Both the lower authorities treat the same to be income from other sources after holding that the correspondence transaction are between group entities with an intent to reduce tax liability. The very factum of the impugned payments being received is not an issue. We hold in these peculiar facts that this is neither a case of concealment nor furnishing of inaccurate particulars of income inviting Section 271(1)(c) penal action. We thus confirm CIT(A)'s order under challenge. Revenue's appeal ITA No.2735/Ahd/2006 is declined.

11. We are now left with assessment year 2002-03 involving assessee's appeal ITA No.927/Ahd/2006. The assessee raises three substantive grounds in challenging the CIT(A)'s order inter alia upholding Section 14A interest disallowance of Rs.1,11,83,862/-, partly confirming Assessing Officer's view that a sum of Rs.99,48,915/- out of Rs.1,18,80,055/- (24,38,052+94,42,003) deserves to be treated as speculation loss and further upholding assessment findings denying maintenance expenses of Rs.2,31,560/- in view of standard deduction already allowed u/s.24 of the Act. Learned counsel submits not to press for the third substantive ground keeping in mind smallness of the

maintenance amount involved. The same is thus dismissed as not pressed. We now proceed to adjudicate the remaining substantive two issues.

12. Both parties are ad – idem in the course of hearing qua first substantive ground of Section 14A interest disallowance of Rs.1,11,83,862/- is squarely covered by our findings on the corresponding first issue in preceding assessment year 2001-02 in absence of any distinction on facts involved therein. We refer to our discussion in preceding paragraphs on the very issue holding that Section 14A does not apply in case of investments being made for acquiring controlling interest in group companies and direct the Assessing Officer to delete the impugned disallowance. This first substantive ground stands accepted.

13. We now come to second substantive ground raising the issue of speculation loss hereinabove. There is no dispute that the assessee is a company engaged in construction and investment business activities. It raised two loss claimed of Rs.16,71,900/- and Rs.94,42,003/- on sale of 17000 shares of M/s. Nirma Ltd. sold @ Rs.465/- and due to reduction in the value of stop of shares; respectively. The Assessing Officer quoted Section 73 explanation for observing that former loss claimed had to be disallowed. He further held the assessee's loss figure pertaining to the former head as incorrect. The assessing authority thereafter adverted to "Nirma Shares" book value of Rs.95,76,900/-. It drew support from its corresponding observations on Section 14A disallowance issue that the assessee did not have any interest free funds for carrying out share trading activity and therefore, the impugned loss must also include its interest expenses incurred for purchase of the shares in question. It thus took into account assessee's interest paid qua unsecured loans of Rs.1,20,18,610/- to compute proportional interest outgo to arrive at a figure of Rs.7,66,152/- as pertaining

to the above sum of Rs.95,76,900/-. The Assessing Officer would add this amount to above stated figure of Rs.16,71,900/- thereby arriving at a gross sum of Rs.24,38,052/-.

14. This case file indicates that the Assessing Officer then proceeded to invoke Section 73 explanation. His view was that assessee's statement of income revealed the same to be having the entire income under the head 'business income' bringing it out of the ambit of exception provided in the above explanation. He drew support from CIT(A)'s order dated 02.02.2005 pertaining to the immediate preceding assessment year. The Assessing Officer further held in assessment order that the assessee satisfied second condition of applicability of the above explanation since its income from sale purchase of shares found part of the total income. He then adverted to assessee's computation claiming the impugned loss. The Assessing Officer invoked deeming fiction that the assessee was carrying out speculation business requiring it to prepare a separate P&L account.

15. The assessee appears to have filed its reply on 21.02.2005 inter alia pleading that Section 73 spoke of purchase and sale of shares only to object to disallowance of Rs.7,66,152/- (supra), its claim to have purchased "Nirma Shares" as investment which would in turn result in long term business loss and not capital loss. The Assessing Officer still went by his original observation narrated hereinabove to decline this explanation. He proceeded to disallow set off of Rs.24,38,052/- against assessee's business income.

16. We notice that the Assessing Officer thereafter proceeded to treat assessee's loss claim of Rs.94,42,003/- due to reduction in value of shares and stock as its speculation loss in view of Section 73 explanation. All this resulted in disallowance of gross loss sum of Rs.1,18,80,055/-.

17. The CIT(A) deals with the issue in the following manner:

“4.1 Grounds No. 4, 5 & 6 are regarding treatment of a sum of Rs. 24,38,052/- as speculation loss by treating it as attributable to the sale of 17000 shares of Nirma Ltd. The A.O. has found that the assessee had shown loss of Rs 16,17,900/p on sale of 17000 shares of Nirma Ltd. He further calculated the interest expenses attributable to the investment in the shares and calculated the interest cost @ 8% amounting to Rs. 7,66,152/- and thus the total loss in transaction of the shares came to Rs. 24,38,052/-. The A.O. held that explanation to sec. 73 is applicable to the assessee's case and hence this loss was treated as speculation loss.

4.2 The appellant has submitted that that the explanation to sec. 73 is not applicable in its case and the amount of Rs. 24,38,052/- should not be treated as speculation loss, but should be treated as business loss. The AO. Was also not justified in calculating the interest cost amounting to Rs. 7,66,152/- and treating it as part of loss. After carefully considering the facts of the case and the submissions of the appellant. I find that the appellant's income from house property is Rs. 1,20,065/-. The rest of the income is from shares amounting to Rs. 19,31,140/- and interest received of Rs. 1,22,100/- Thus, explanation to sec. 73 is very much applicable to the appellant's case, as the exemption clause provided in explanation to Sec. 73 is not applicable to the appellant. Therefore, when it is held that sec. 73 is applicable, the loss from the share transaction is to be held as speculation loss. Hence, the action of A.O was justified. The A.O. was justified in calculating the interest cost, as this also becomes loss to the appellant from the share transaction. Hence this ground is also rejected. It is also relevant that in earlier asst. year , the CIT(A) has also held that explanation to sec. 73 is applicable to the appellant's case and similar grounds were rejected in earlier years, vide his order dt. 21-10-2004 for AY. 2001-02.

5. The ground No. 7 is regarding treating the sum of Rs. 94,42,003/- as speculation loss attributable to the reduction in market value of shares held by the assessee as stock in trade. The assessee claimed loss of Rs. 94,42,003/- due to reduction in market value of stock. The AO has held that explanation to sec. 73 is applicable to the assessee. Hence the loss is a speculation loss. The appellant has submitted that should be treated as speculation, as the amount is very much a business loss. I have considered the submission of the appellant. As per the discussion in earlier ground, explanation to sec. 73 is applicable in appellant's case and hence the A.O. was justified in invoking explanation to sec 73 of the Act in appellant's case. Once it is done, the loss arising out of shares held as stock in trade, whether due to sale or due to change in value of closing stock becomes speculation loss and the A.O. was justified in treating it as speculation loss. This ground is, therefore, rejected.

During the appellate proceedings, the appellant made an alternative, submission that once it is taken as speculator loss, the income form share dealing amounting to Rs.19,31,140/- should be set off against this loss as the profit from shares trading will also become a speculation profit. The appellant's this contention is accepted and the A.O. is directed to adjust this profit with the speculation loss.”

18. Shri Ranjan vehemently argues in the course of hearing that assessee's share transactions are regular in nature and there is no reason on Assessing Officer's part to treat the same as speculative ones by invoking Section 73

explanation. He states that both the lower authorities have erred in holding assessee's consequential loss as speculation loss so far as former claim is concerned. The assessee then submits qua latter claim that the impugned sum of loss amounting to Rs.94,42,003/- has arisen on account of reduction in value of shares without any transaction involved at all.

19. Learned Departmental Representative strongly relied upon CIT(A)'s finding extracted hereinabove on the impugned issue of speculation loss.

20. We have heard rival contentions. The assessee's case admittedly is that neither of the two losses arising from sale of shares and reduction in the value of Nirma's shares amounts to speculative business. We find that the coordinate bench of this tribunal through one of us i.e. Accountant Member in Paharpur Cooling Towers Ltd. vs. DCIT (2003) 85 ITD 745 (Kolkata) has already decided the very issue in Revenue's favour by holding that Section 73 is specific provision dealing with speculative losses set off along with Sections 70 r.w.s. 72 of the Act and the latter two provisions are general in nature. The said bench applies legal maxim "generalia specialibus non derogant" in view of hon'ble apex court's decision in Union of India vs. India Fisheries (P.) Ltd. (1965) 57 ITR 331 (SC). We deem it appropriate at this stage to reproduce the said findings on this issue reading as under:

"12. We now come to assessee's plea that as to what will constitute 'speculation loss' for the purpose of section 72 of the Act, will be governed by the provisions of section 43(5) of the Act. We may mention that as per provisions of section 43(5) of the Act, "In sections 28 to 41 and in this section, unless the context otherwise requires "speculative transaction" means a transaction in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips". In substance, the proposition thus canvassed is that the expression 'speculation business', for purposes other than section 73 of the Act, is to be governed by the definition contained in section 43(5), as read with section 28 (Explanation 2), of the Act. However, this proposition also proceeds on a fallacy i.e., that the definition under section 43(5) and definition under Explanation to section 73 are competing and mutually exclusive. In our considered view, however, definition of speculation loss, as given under Explanation to section 73, is supplementing and has application only in

the cases of certain companies but such a definition is not to the exclusion of definition assigned under section 43(5). Even when provisions of Explanation to section 73 apply in a case, such a situation will not imply that the provisions of section 43(5) will not apply in that case. While computing income under the head 'income from business and profession', profits from transactions in the nature of 'speculative transactions', defined by section 43(5) is, in all cases, required to be treated as speculation profits. In addition to this provision, in the cases of companies profits from a business, which fulfils the conditions specified under Explanation to section 73, are also required to be taken as profits from speculation business. In our considered view, therefore, there is no conflict in these two provisions, namely provisions of section 43(5) and of Explanation to section 73. As far as scope of Explanation to section 73 is concerned, it may be relevant to quote from the Central Board of Direct Taxes Circular No. 204 dated 24-7-1976 which inter alia states as follows :

"Section 73 provides that any loss computed in respect of speculation business carried on by an assessee will not be set-off except against the profits & gains, if any, or another speculation business. Further, where any loss, computed in respect of a speculation business for an assessment year is not wholly set-off in the above manner in the said year, the excess shall be allowed to be carried forward to the following assessment year and set-off against the speculation profits, if any, in that year, and so on. The Amending Act has added an Explanation to section 73 to provide that the business of purchase and sale of shares by companies which are not investment or banking companies or companies carrying on business of granting loans or advances will be treated on the same footing as a speculation business. Thus, in the case of aforesaid companies, the losses from share dealings will now be set-off only against profits or gains of a speculation business. Where any such loss for an assessment year is not wholly set-off against profits from a speculation business, the excess will be carried forward to the following assessment year and set-off against profits, if any, from any speculation business."

13. In any event, as observed by a co-ordinate bench in the case of Executor of the Estate of Bhagwan Devi Sarogi (supra) a "special provision must be read as a proviso to the general provision and the general provision, insofar as it is inconsistent with the special provisions, must be deemed not to apply". Therefore, provisions of section 73 are required to be read as proviso to section 72 and, to the extent carry forward of speculation losses is concerned, section 72 will not have application in the matter. In this view of the matter, we reject the contention that, for the purpose of section 72 of the Act, the question as to what will constitute 'speculation loss' will be governed only by the provisions of section 43(5) of the Act. We also see no substance in learned counsel's reliance on the words 'for the purpose of this section' appearing in Explanation to section 73 because once specific provisions under section 73 are to be applied first, i.e., before the application of general provisions of section 72, only non-speculation loss will be subject-matter of carry forward under section 72 and, therefore, definition of 'speculation loss' will indeed not be relevant for the purpose of section 72. In fact, entire arguments proceed on the foundation that application of section 72 will have precedence over application of section 73 and once that basic foundation is found to be unsustainable in law, we see no substance in ingenious, but fallacious, arguments of the assessee.

14. We may also mention that Honble jurisdictional High Court, in the case of CIT v. Jayashree Charity Trust (1986) 159 ITR 280 (Cal) has inter alia observed that "to

resolve this controversy, regard must be had to the language that has been employed and also to the object of the statute. It is well-settled that, if possible, the words of a statute must be construed so as to give a sensible meaning to them. The words ought to be construed ut res magis valeat quam pereat". Similarly, Hon'ble Supreme Court, in the case of CIT v. Teja Singh (1959) 35 ITR 408 (SC) has also observed as follows :

"A construction which leads to such a result must, if that is possible, be avoided, on the principle expressed in the maxim, "ut res magis valeat quam pereat". Vide Curtis v. Stovin and in particular, the following observations of Fry, L.J., at page 519 :

The only alternative construction offered to us would lead to this result, that the plain intention of the legislature had entirely failed by reason of a slight inexactitude in the language of the section. If we were to adopt this construction, we should be constructing the Act in order to defeat its object rather than with a view to carry its object into effect."

Vide also Craies on Statute Law, page 90 and Maxwell on The Interpretation of Statutes, Tenth Edition, pages 236-237. "A statute is designed", observed Lord Dunedin in Whitney v. Commissioner of Inland Revenue, "to be workable, the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable."

15. In case we are to accept the contentions of the learned counsel, Explanation to section 73 has to be treated as otiose because, if this provision cannot be put into service for determining what is 'speculation loss' for the purpose of 'carry forward and set off' of losses, this provision cannot be put into service for any other purpose at all. This construction will, therefore, tantamount to obliterating the provision from the statute and will, accordingly, be clearly contrary to the principle of ut res magis valeat quam pereat approved by the Honble Supreme Court in Teja Singh case (supra) and by the Honble jurisdictional High Court in Jayshree Charity Trust case (supra). It as, however, an altogether different matter that since we have rejected the interpretation, canvassed by the assessee, on merits and for the detailed reasons set out above, this aspect of the matter, strictly speaking, ends up being of somewhat academic interest.

16. We now move on to the assessee's alternate contention that the that loss in share dealings was only on account of fall in value of shares held as closing stock and, therefore, the loss so suffered cannot be said to be loss on account of 'purchase and sale of shares' within meanings of section 73. However, we find that there is nothing on record to substantiate the factual elements embedded in this proposition and this plea, being taken for the first time at this stage, seems to be a new twist to the assessee's case. On the contrary, there is a categorical and uncontroverted finding by the assessing officer that the assessee has sold some shares which were held by it as stock in trade and that the assessee incurred loss of Rs. 1,41,60,772 on such transactions. Our careful perusal of the assessee's paper-book also reveals that, as evident from computation of 'profit/(loss) from the business of dealing in shares and securities' at page 10 of the paper-book, during the year in appeal, the purchases of securities by the assessee amounted to Rs. 11,41,72,539 and assessee's sale of the securities amounted to Rs. 7,46,51,708. It is thus clear that the assessee's contention is contrary to the admitted facts on record. Learned counsel for the assessee has also not brought on record any material to substantiate the factual elements embedded in the proposition canvassed by him.

17. We are also of the considered view that even if the loss is only on account of fall in value of stock, it is still in the nature of loss incurred from that business. A careful perusal of Explanation to Section 73 indicates that this Explanation lays down that the expression 'speculation business', under the specified circumstances, will cover assessee's business 'to the extent to which the business consists of the purchase and sale of such shares'. The definition thus sought to be placed is of the 'speculation business' and not 'speculation profits'. As to what will constitute profits from such speculation business, this is to be essentially governed by the normal accounting principles and business practices. Unlike the definition under Section 43(5) which defines 'speculative transactions' per se, the deeming provisions of Explanation to Section 73 lay down the circumstances in which, and the extent to which, a business is to be deemed as 'speculation business'. The thrust of the provisions under Explanation to Section 73 is on the nature of 'business', rather than nature of 'transaction'. It is thus immaterial as to whether profit is, or is not, on account of sale and purchase of shares but, in our considered view, to the extent it is arising out of 'business of purchase and sale of shares', it will be hit by the provisions of Explanation to Section 73. As held by Hon'ble Supreme Court in the case of Chainrup Sampatram (*supra*) loss on account of fall in value of stock is to be treated as loss of that business on the ground of prudence, fully sanctioned by the custom. Their Lordships of Hon'ble Supreme Court *inter alia* observed that, "...valuation of unsold stock at the end of an accounting period is a necessary part of the process of determining the trading results of that period, and can in no sense be regarded as source of such profits (or losses)". In this view of the matter, the loss on valuation of closing stock of shares, in the present case, cannot be treated any different than a normal trading loss; such a loss is, as is the settled legal position, an integral part of the loss on trading, i.e., purchase and sale, of shares.

18. Accordingly, in our considered view, the proposition advanced by the learned counsel is neither supported by admitted factual position or the settled legal principles. For these reasons, we reject the alternate contention also.

19. Before parting with this issue, we may also briefly touch upon the assessee's plea, against literal interpretation of the provisions, taken up before the authorities below. Suffice to say that we are in considered agreement with the observations of the learned assessing officer to the effect that the wordings of the statute are plain and simple and, as held by Hon'ble Supreme Court in the case of Vegetable Products Ltd. (*supra*). If the language is plain, the fact that the consequence of giving effect to it may lead to some absurd results is not a factor to be taken into account in interpreting a provision. It is for the legislature to step in and remove the absurdity." We are also in considered agreement with the assessing officers reliance on Hon'ble Supreme Court observation in the case of Alladi Kuppaswamy (*supra*), that "where the phraseology of a particular section of the statute takes within its sweep the transaction which is taxable, it is not for the court to strain and stress the language of the section so as to enable the tax payer to escape the law". In view of these discussions, we support the action of the authorities below, also on the principles governing interpretation of related legal provisions, and we see no need to interfere in the matter.

20. To sum up, we reject all the above contentions advanced by the assessee and hold that the CIT(A) was justified in confirming 'the loss from purchase and sale of shares and securities of Rs. 1,41,60,772 as speculation loss as per Explanation to section 73 of the Act. We thus decline to interfere in the orders of the authorities below.'

21. Learned Departmental Representative at this stage informs that hon'ble Kolkata high court in the very assessee's appeal ITA No.256 of 2002 decided on 05.10.2010 has upheld the above tribunal's decision. Shri Ranjan fails to rebut this factual and legal position. We thus find no reason to interfere with the learned CIT(A)'s order under challenge. This assessee's ground fails. Its appeal ITA No.927/Ahd/2006 is partly accepted.

22. We rely on our discussion in preceding paragraphs to partly allow assessee's both appeals ITA Nos. 943/Ahd/2005 and 927/Ahd/2006 whereas Revenue's both appeals ITA Nos.1256/Ahd/2005 and 2735/Ahd/2006 are dismissed. Ordered accordingly.

[Pronounced in the open Court on this the 20th day of October, 2016.]

Sd/-
(PRAMOD KUMAR)
ACCOUNTANT MEMBER
Ahmedabad: Dated 20/10/2016

Sd/-
(S. S. GODARA)
JUDICIAL MEMBER

True Copy

S.K.SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।