

PIN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “ A ” BENCH – AHMEDABAD

**Before Shri R.P. Tolani, JM & Shri Manish Borad, AM.**

ITA No. 2125/Ahd/2013  
Asst. Year: 2008-09

Innovate Securities Pvt. Ltd., 1 <sup>st</sup> floor, Devashish, 39, Sardar Patel Nagar, Ellisbridge, Ahmedabad.	Vs.	ACIT, Circle-3, Ahmedabad.
Appellant		Respondent
PAN AAACI 4767R		

Appellant by	Shri Sanjay R. Shah, AR
Respondent by	Shri K. Madhusudan, Sr.DR

Date of hearing: 11/11/2016  
Date of pronouncement: 16/11/2016

O R D E R

**PER Manish Borad, Accountant Member.**

Assessee is in appeal for Asst. Year 2008-09 against the order of Id. CIT(A)-III, Ahmedabad, dated 21.6.2013 in appeal no.CIT(A)-III/236/ACIT.Cir.3/12-13 arising out of the order u/s 143(3) of the IT Act, 1961 (in short the Act) framed on 9/12/2010 by ACIT, Circle-3, Ahmedabad.

2. Assessee has raised following ground of appeal :-

1. The learned A.O. erred in law and on facts in rejecting the claim of the appellant for rebate u/s 88E for a sum of Rs.3,33,568/-. The learned CIT(A) erred in law and on facts in confirming the same. Your appellant submits that in the facts and circumstances of the case, the entire amount of

rebate of Rs.3,33,568/- is allowable to the appellant u/s 88E and the same may please be directed to be allowed.

Your appellant prays for leave to add, alter and/or amend all or any of the grounds before the final hearing of appeal.

3. Briefly stated facts of the case are that assessee is a private limited company engaged in the business of share broking, depository services and trading shares and securities. Return of income was e-filed on 30.9.2008 declaring total income at Rs.84,51,290/-. Case was selected for scrutiny assessment and notice u/s 143(2) of the Act was issued followed by notice u/s 142(1) of the Act along with detailed questionnaire. Necessary details were filed. Income was assessed at Rs.88,31,880/-.

4. Assessee got part relief in appeal before Id. CIT(A).

5. Now assessee is in appeal before the Tribunal raising solitary ground against the order of Id. CIT(A) not allowing rebate u/s 88E of the Act at Rs.3,33,568/-. Ld. AR submitted that assessee had positive income from sale of shares (subject to security transaction tax) security at Rs.39,54,393/-. In computation of income business loss in the form of diminishing in the value of shares at Rs.74.66.955/- as well as of loss from transaction in commodities at Rs.9,602/- were reduced from Rs.39,54,393. This resulted in net speculation loss at Rs.35,22,164/-. Assessee had considered the entire loss in accordance with explanation to 73 of the Act and therefore only for the benefit of limited purpose of computing profit from the speculation business it had reduced the diminishing value of shares from income

from sale of shares. Further for the purpose of section 88E income includes any profit and gains from business or profession which had arisen from taxable security transaction is Rs.39,34,393/- and therefore, assessee was eligible u/s 88E of the Act. Ld. AR also submitted that rebate is allowable on income chargeable under the head profits and gains of business or profession arising from taxable security transaction and therefore, Id. CIT(A) erred in not allowing the claim of rebate u/s 88E of the Act. Ld. AR referred and relied on the decision of the Tribunal, Mumbai Bench in ITA No.2138/Mum/2010 in the case of DCIT vs. M/s Envision Investment & Finance Pvt. Ltd. vide order dated 7.8.2015 judgment of Hon. Bombay High Court in the case of CIT vs. Manish D. Innani 59 taxmann.com 230 (Bombay) and the decision of the Tribunal, Mumbai Bench in the case of Shri Manish D. Innani vs. ACIT pronounced on 1/8/2012 wherein similar facts were adjudicated and the decision was given in favour of assessee.

6. On the other hand, Id. DR supported the orders of lower authorities.

7. We have heard the rival contentions and perused the record. Solitary issue raised before us by assessee is against the order of Id. CIT(A) confirming the action of Assessing Officer for not allowing rebate u/s 88E of the Act of Rs.3,33,568/-. From perusal of the computation of income available at page 3 to 5 of the Paper Book dated 29.8.2016 we observe that gross total income of Rs.85,17,532/- includes income from business and profession at

Rs.84,80,457/-. Income from business or profession at Rs.84,80,457/- constitutes various types of income earned by assessee from brokerage, depository operations, sale of shares and government securities. Further we observe from the computation of income that assessee has shown speculation income from profits on sale of shares subject to security transaction tax offered under section to sec.73 of the Act at Rs.39,54,393/-. This amount of Rs.39,54,393/- corresponds to the profit on sale of shares shown in the audited profit and loss account available at page 2 of the paper book. We further observe that for the purpose of computation of income assessee has subtracted loss from transaction of the commodities at Rs.9,602/- and also reduced notional figure Rs.74,66,955/- on account of diminishing value/write off of shares held as stock in trade and treating it as deemed speculation loss as a result of which under the head speculation income net loss of Rs.35,32,164/- has been disclosed. Further out of the tax payable for the year assessee has claimed rebate u/s 88E of the Act at Rs.3,33,568/-. Assessing Officer finalized the assessment denying rebate u/s 88E of the Act with the observation that there is a net speculation loss shown by the assessee whereas assessee is contending that it had a positive income speculation income from transaction subject to STT at Rs.39,54,393/- and overall also there is a positive income from business and profession at Rs.84,80,457/-. Ld. AR further contended that merely for reducing speculation income by diminishing value on the shares held as stock in trade leading to a net speculation loss cannot deprive the assessee from claiming rebate u/s 88E of the Act. We further observe that similar types of

facts wherein assessee had a positive income from transactions subject to STT in its profits and loss account but at the time of preparing computation of income the income was reduced to loss due to brought forward loss or due to speculation loss, assessee was allowed to claim rebate u/s 88E of the Act by Hon. Bombay High Court in the case of CIT vs. Manish D. Innani (supra) by observing as under :-

8. The Tribunal had before it a ground relating to rebate in respect of securities transactions tax under section 88E of the Act. The working of the rebate was a matter before the Assessing Officer. The assessee was asked to submit the working of rebate claimed in respect of securities transactions tax amounting to Rs. 1,01,87,300. The Assessing Officer found that though the assessee had applied the average rate on income but the average rate was adopted before setting off business loss of earlier years. The Assessing Officer held that the total income of the assessee is Rs. 5,94,71,620, which includes Rs. 3,34,49,474 (after setting of business loss of Rs. 1,62,36,858 brought forward from the year 2007-08), which is chargeable under the head "Profits and gains of business or profession" arising from taxable securities transactions. He, therefore, held that the assessee is entitled to get the rebate under section 88E on the income of Rs. 3,34,49,474 but not on Rs. 4,95,93,132.

9. To our mind, all that the Tribunal has done is to take into account the volume of the securities transactions and which were taxable. The total income of the assessee in the previous year included the income from taxable security transactions. The requirement under sub-section (1) of section 88E on this count was fully satisfied. The only issue was how this deduction and in terms of the provision has to be computed. The Assessing Officer has ignored completely the quantum of income from taxable securities transactions, the tax that is leviable thereon and which has to be deducted in terms of sub-section (2) of section 88E. So long as the stipulation

under sub-section (2) is adhered to and followed, namely, the amount of income-tax on the income arising from the taxable securities transactions referred to in sub-section (1), shall be equal to the amount calculated by applying the average rate of income on such income, the deduction deserves to be granted. Therefore, the clear language of the section has been taken into consideration. The total income in a previous year if includes any income arising from taxable security transactions, then the assessee is entitled to deduction from the amount of income-tax on such income arising from such transactions. That is because the income from taxable securities transactions has already been subjected to tax. The security transactions are taxable. Therefore, from the amount of income-tax on such income arising from such transactions, the deduction has to be computed and that is an amount equal to the securities transactions tax paid by the assessee in respect of the taxable securities transactions entered into in the course of his business during that previous year. The proviso contemplates that deduction can be allowed only if the assessee furnishes, along with the return of income, evidence of payment of securities transactions tax in the prescribed form. There is no dispute before us that the assessee has complied with the proviso and the second proviso as well, namely, that the amount of deduction under this sub-section shall not exceed the amount of income-tax on taxable securities transactions computed in the manner provided in sub-section (2). To our mind, the Tribunal committed no error when it corrected the computation or calculation of deduction. There was no warrant in the light of the clear language of this provision then to take into consideration the brought forward losses. It is the taxable securities transactions, the income derived from such taxable securities transactions and they being taxable, the tax paid thereon, which has to be deducted. That is how the section has been understood and applied to the given facts and circumstances. We do not think that any larger controversy arises for determination and consideration in this appeal. We are not in agreement with Mr. Malhotra that the decision of the Tribunal's co-ordinate Bench in *Oasis Securities Lid (supra)* has been distinguished but still the deduction has been granted. In paragraph 6.1, the Tribunal concluded that the assessee is entitled to the rebate of Rs. 1.01 crores under section 88E of the Income-

tax Act, 1961, as against the rebate of Rs. 75.07 lakhs allowed by the Assessing Officer. The Tribunal may have distinguished its order and the decision of the coordinate Bench rendered in the case of *Oasis Securities Ltd (supra)*, but, pertinently, it was held that the surplus from share dealing of market/future and option segment may not be there, but there is net income after setting off of losses. There was an over all profit for the assessment year under consideration and the rebate had to be allowed. Before the Assessing Officer or the Commissioner as well, the issue was not as much of admissibility of rebate in terms of section 88E but the manner of its computation. The deduction has to be computed in the manner specified in sub-section (2) of section 88E. We do not think that there is any basis for the argument and in the given facts and circumstances that the average rate was applied on income before setting off business loss of earlier year.

**10.** In these circumstances and when the income from the securities transactions is taxable and offered to tax, the deduction in so far as that sum is concerned or quantum has been granted. We do not think that the Tribunal's order can be interfered with. The Tribunal's view is imminently possible in the backdrop of the facts and circumstances peculiar to the assessee. In any event by sub-section (3) of section 88E it has been clarified that no deduction under section 88E shall be allowable in, or after, the assessment year beginning on the 1st day of April, 2009, i.e., because a deduction which is contemplated by this provision has been now made admissible elsewhere. In these circumstances, the appeal raises no substantial question of law. It is dismissed. More so when the Tribunal's order has been given effect to by the Assessing Officer. He has followed his view taken in the assessment year 2006-07, which is also following the Tribunal's order. No costs.

**8.** We further observe that in the case of *DCIT vs. M/s Envision Investment & Finance Pvt. Ltd. (supra)* wherein also assessee dealt in shares and securities incurred loss on trading in securities earned profit on sale of shares at Rs.24,25,505/- but also claimed loss in fall

in value of shares at Rs.92,46,676/-, leaving behind net loss of Rs.68,21,171/- Assessing Officer denied the claim u/s 88E, holding that assessee's income has been assessed under the head "Speculative income/loss" therefore, assessee is not entitled for rebate u/s 88E of the Act. The Co-ordinate Bench adjudicated this fact by observing that assessee cannot be declined to claim rebate u/s 88E merely because there is a speculation loss, because the claim is allowable from the business income be it speculative or not.

9. From going through the above judgment and decision of Hon. Bombay High Court and Co-ordinate Bench, Mumbai respectively, we find the same are squarely applicable on the facts of the assessee so much so that assessee is also having a positive income from sale of shares and the net speculation loss was merely because of notional adjustment on diminishing value of rate of shares held in stock in trade treated as speculation loss. Therefore, in our view assessee is eligible for rebate u/s 88E at Rs.3,33,568/-. We accordingly set aside the order of Id. CIT(A) and allow the ground of assessee. Appeal of assessee is allowed.

10. In the result, appeal of assessee is allowed.

Order pronounced in the open Court on 16 <sup>th</sup> November, 2016
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Sd/-  
(R.P. Tolani)  
Judicial Member

sd/-  
(Manish Borad)  
Accountant Member

Dated 16/11/2016

Mahata/-

Copy of the order forwarded to:

1.	The Appellant
2.	The Respondent
3.	The CIT concerned
4.	The CIT(A) concerned
5.	The DR, ITAT, Ahmedabad
6.	Guard File

BY ORDER

Asst. Registrar, ITAT, Ahmedabad

1. Date of dictation: 15/11/2016
2. Date on which the typed draft is placed before the Dictating Member: 16/11/2016 other Member:
3. Date on which approved draft comes to the Sr. P. S./P.S.:
4. Date on which the fair order is placed before the Dictating Member for pronouncement: \_\_\_\_\_
5. Date on which the fair order comes back to the Sr. P.S./P.S.:
6. Date on which the file goes to the Bench Clerk: 16/11/2016
7. Date on which the file goes to the Head Clerk:
8. The date on which the file goes to the Assistant Registrar for signature on the order:
9. Date of Despatch of the Order: