

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, CHANDIGARH**

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND Ms. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No. 782/CHD/2016
Assessment Year : 2005-06

M/s BCL Securities &
Jewelers Ltd.
4, Battery Lane,
Rajpur Road, Civil Lines,
Delhi.

Vs

The DCIT,
Central Circle-I,
Ludhiana.

PAN: AAACB5493R

(Appellant)

(Respondent)

Appellant by : Shri Sudhir Sehgal
Respondent by : Shri Manjit Singh

Date of Hearing : 08.12.2016
Date of Pronouncement : 09.12.2016

ORDER

PER BHAVNESH SAINI, JM

This appeal by assessee has been directed against the order of ld. CIT(Appeals)-5, Ludhiana dated 18.03.2016 for assessment year 2005-06.

2. We have heard ld. Representatives of both the parties and perused the material on record.

3. The ld. counsel for the assessee did not press ground No. 3, same is dismissed as not pressed.

Ground Nos. 1 and 4 are general in nature and need no adjudication.

4. On ground No. 2, assessee challenged the orders of authorities below in confirming the disallowance of loss of Rs. 2 lacs. The Assessing Officer made addition of Rs. 2 lacs on account of disallowance of expenditure claimed by assessee for forfeiture of advance of Rs. 2 lacs against the purchase of shop. The Assessing Officer has mentioned that assessee in the trading account had shown purchase of Rs. 2 lacs. After calling the details, it was noticed that there was no fresh purchases and the amount represents forfeiture of part of the amount out of advance money paid earlier. The assessee had booked a shop with M/s Amity Amusement Ltd. The assessee paid Rs. 35 lacs for purchase of shop but it was never shown as stock-in-trade. Out of this amount, assessee received back Rs. 33 lacs during the year and balance amount was forfeited. The assessee claimed Rs. 2 lacs as expenses by showing it as purchase. The Assessing Officer rejected the claim of the assessee treating it as capital loss not allowable as expenditure in the year under consideration.

5. The assessee challenged addition before Id. CIT(Appeals) and it was submitted that assessee is in

the business of Real Estate and jewellery business. The assessee company has made advance of Rs. 35 lacs for purchase of shop to M/s Amity Amusement Ltd., Dehradun but the deal was not matured, therefore, in assessment year under appeal the company has returned amount of Rs. 33 lacs and forfeited a sum of Rs. 2 lacs on account of cancellation of shop. The assessee company has claimed it as loss being occurred during the regular course of business of Real Estate but the Assessing Officer has disallowed the same considering it to be capital loss. The observations of the Assessing Officer are incorrect that it is a capital loss as the amount has been advanced in regular course of business of Real Estate not as investment. Therefore, the same could not be treated as capital investment and should have been treated as business loss and is allowable expenditure. The ld. CIT(Appeals), however, on the same reasoning as adopted by the Assessing Officer, considered it to be capital loss and dismissed this ground of appeal of the assessee.

6. After considering rival submissions, we are of the view addition is wholly unjustified. It is admitted fact that assessee company is in the business of Real Estate. It is also not in dispute that assessee made advance for purchase of shop in a sum of Rs. 35 lacs to M/s Amity Amusement Ltd. PB-12 is the confirmation of account to show that on 01.04.2004 Rs. 35 lacs was 'Opening

Balance' of advance given to the aforesaid company as advance. Since advance is given for purchase of shop, therefore, it was rightly not taken into stock-in-trade because the property was yet to be purchased by the assessee. Since assessee is in Real Estate business, therefore, purchase of shop is a regular business activity of the assessee and could not be treated as investment. Since Rs. 2 lacs have been forfeited on account of cancellation of the deal, therefore, Rs. 2 lacs should have been considered as business loss of the assessee. The assessee in the accounts also, specifically noted that it is dealing in the real estate and has shown in the trading account, Rs. 2 lacs on account of purchase which should be mentioned as advance for purchase, which have been forfeited. Therefore, authorities below were not justified in rejecting the claim of the assessee of business loss considering that booking of the shop was not reflected in the stock-in-trade. Therefore, business loss suffered by assessee cannot be considered as capital loss.

7. Considering the above discussion, we are of the view since assessee suffered business loss of Rs. 2 lacs in assessment year under appeal on cancellation of the deal of the shop, therefore, it should be allowed as business expenditure incurred for the purpose of business. The orders of the authorities below are accordingly set aside and addition of Rs. 2 lacs is

deleted. This ground of appeal of the assessee is allowed.

8. In the result, appeal of the assessee is partly allowed.

Order pronounced in the Open Court.

Sd/-

Sd/-

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

(BHAVNESH SAINI)
JUDICIAL MEMBER

Dated: 09th December, 2016.

'Poonam'

Copy to:

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

Assistant Registrar,
ITAT/CHD