

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Shri B.R. Baskaran (AM)

I.T.A. No. 648/Mum/2022 (A.Y. 2017-18)

DJS Stock and Shares Ltd. Office No. 1/2, Casa Blanca Old Raviraj Complex Jesal Park, Bhyander-E Thane-401 105. PAN : AAACD7350B (Appellant)	Vs.	DCIT, Central Circle-5(2) Room No. 1908, 19 th Floor Air India Building Nariman Point Mumbai-400 021. (Respondent)
--	-----	--

Assessee by	Shri Ravikant Pathak
Department by	Ms. Naina Krishnakumar
Date of Hearing	21.07.2022
Date of Pronouncement	22.07.2022

ORDER

The assessee has filed this appeal challenging the order dated 22.2.2022 passed by learned CIT(A)-53, Mumbai and it relates to A.Y. 2017-18.

2. The solitary issue urged in this appeal relates to disallowance of Rs.3,69,661/-, being penalty levied upon the assessee by the Stock Exchange for maintaining short margins.

3. The assessee company is engaged in the business of the share broking and trading in shares and securities. During the year under consideration the assessee has paid a sum of Rs. 3,69,661/- as penalty to the Stock Exchange. The Assessing Officer disallowed the same holding that the penalty is not allowable as deduction. Learned CIT(A) confirmed the same.

4. The Learned AR submitted that the assessee is required to maintain margin money with the Stock Exchange. Whenever margin money falls short, the assessee has to make good the same immediately, failing which, the Stock Exchange would levy a penalty upon the assessee. The Learned AR submitted

that the said penalty is levied as per the terms and conditions entered with the Stock exchange with its members. It is only a practice of disciplining the members of stock exchange, i.e., it is only a deterrent under the usual business of carrying on the business by the members of stock exchange. The Ld A.R submitted that the said penalty cannot be equated with the penalty levied for infraction of any law and hence proviso to section 37(1) of the Act would not apply to the above said payment. Accordingly he submitted that learned CIT(A) was not justified in confirming the disallowance made by the Assessing Officer. The Learned AR submitted that an identical issue has been considered by the Coordinate Bench of the Tribunal in the case of ITO Vs. M/s. The Stock & Bond Trading Co. (ITA No. 6459/Mum/08 dated 2.2.2010) and the Tribunal has deleted the disallowance by holding that the penalty charges levied by the Stock Exchange cannot be treated to penalty falling within the ambit of proviso to section 37(1) of the Act. The Learned AR submitted that the above said decision of the Tribunal has since been upheld by Hon'ble High Court of Bombay in ITA No. 4117 of 2010 dated 14.10.2011.

5. I have heard learned DR on this issue and perused the record. I noticed that an identical issue has been examined by the Division Bench of the Tribunal and it has been decided in favour of the assessee with following observations :-

“5. Ground No. 8 to 12 raised by the Revenue in this appeal involve a common issue relating to disallowance of Rs. 2,73,693/- made by the A.O. on account of penalty imposed by the stock exchange which stands deleted by the ld. CIT(A).

6. We have heard the arguments of both the sides and also perused the relevant material on record. It is observed that a similar issue had come up for consideration before the co-ordinate Bench of this Tribunal in the case of ITO vs. V.R.M. Share Broking Pvt. Ltd., 27 SOT 469 wherein it was held that the penalty for failure of margins imposed by SEBI on share brokers by various notifications being risk management oriented, payment towards such penalty does not attract proviso to section 37(1) which is aimed at providing deterrence for infraction of laws of the country. To the similar effect in the decision of Chandigarh Bench of the ITAT in the case of Master Capital Services Ltd. Vs. DCIT, 108 TTJ 389 wherein it was held that fines and penalties paid by the assessee to NSE for trading beyond exposer limit, late

submissions of margin certificates and delay in making deliveries of shares due to deficiencies are payments made in regular course of business and not for infraction of law as envisaged in proviso to section 37(1). In our opinion, these decisions of the Tribunal are squarely applicable to the issue under consideration and respectfully following the same, we uphold the impugned order of the Id. CIT(A) deleting the disallowance made by the A.O. on account of penalty paid by the assessee to BSE on violation of the bye laws of the stock exchange. Ground No. 8 to 12 of Revenue's appeal are accordingly dismissed."

6. I also noticed that the above decision rendered by the Tribunal has since been upheld by Hon'ble High Court of Bombay. In the instant case also penalty charged levied by the SEBI are related to shortfall in the margin money and is not for infraction of any law. Accordingly the said payment cannot be considered as penalty for violation of any law falling within the ambit of proviso to section 37(1) of the Act. Accordingly, following the decision rendered by the Division Bench in the case of M/s. The Stock & Bond Trading Co. (supra), I hold that the said amount is allowable as deduction. Accordingly I set aside the order passed by learned CIT(A) on this issue and direct the Assessing Officer to delete the disallowance.

7. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 22.07.2022.

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 22/07/2022

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS