

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH; AMRITSAR.**

BEFORE SH. T. S. KAPOOR, ACCOUNTANT MEMBER
AND SH. N.K. CHOUDHRY, JUDICIAL MEMBER

ITA No. 595/(Asr)/2015

Assessment Years: 2011-12

PAN: AAFCA2935C

M/s. Ashwani Financial Services Private Limited, Amritsar. (Appellant)	Vs.	Joint Commissioner of Income Tax, Range IV, Amritsar. (Respondent)
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Appellant by: Sh. Randeep Mahajan (C.A.)
Respondent by: Sh. Rahul Dhawan (D.R.)

Date of hearing: 24.04.2017

Date of pronouncement: 05.05.2017

ORDER

PER T. S. KAPOOR (AM):

This is an appeal filed by assessee against the order of Ld. CIT (A), Amritsar, and dated 05.08.2015 for Asst. Year 2010-11.

2. The solitary ground taken by assessee in this appeal is disallowance sustained by Ld. CIT(A) of an amount of Rs. 1,54,600/- which the assessee had claimed to have paid to its clients to compensate for their loss which occurred due to negligence of employees of assessee.

3. The brief facts as noted in the assessment order are that assessee is engaged in Marketing of Financial Products of various companies as distributor. The case of the assessee was selected for scrutiny. During assessment proceedings, the Assessing Officer observed that assessee had claimed in its profit and loss account an amount of Rs. 1,54,600/-

as expenses on account of compensation for loss of clients. Therefore, the assessee was asked to justify this claim and in reply, the assessee submitted that the amounts were paid to Mr. Tarlochan Singh, Munish Kumar and Mr. Jagmohan Khanna through cheques. It was further submitted that these payments were made on account of loss to their clients due to negligence on the part of the employees of the company by not squaring of the position in equity derivatives as per client's instructions. The Assessing Officer held that no supporting evidence except copy of account showing payment of some amount by cheques was filed and he held that the statement of account filed does not prove that payment was made on account of loss to these persons and therefore, he made the addition. Aggrieved the assessee filed appeal before Ld. CIT(A) who also dismissed the appeal of assessee holding that assessee had failed to establish as to how so called business loss of 1,54,600/- was incurred by it.

4. Aggrieved the assessee is in appeal before us.

5. At the outset, the Ld. AR submitted that assessee was dealing in Marketing of Financial Instruments including securities, shares, mutual funds etc. and it was also working as sub brokers of reliance securities limited to deal in the share market.

6. The Ld. AR submitted that assessee had maintained the account of these three persons with reliance securities limited for whom, it was working as sub broker. He further, submitted that these clients of

assessee had taken position in 'NIFTY' of National Stock Exchange and during the month of September, 2010, there was volatile fluctuation in NIFTY which went up to 11%. The clients of the appellant had given a price for stop loss to the appellant, but the appellant could not square off the trades of the client within given rates and therefore, the clients had suffered loss and since the losses were suffered by its clients due to fault of its employees and therefore, their losses were compensated by assessee by issuing the cheques and in this respect, the Ld. AR invited our attention to the copy of bank account of assessee placed at annexure 1, 2 & 3 where the copy of bank accounts reflecting payments made to these persons was placed. The Ld. AR took us to paper book 4, 5, 6 where the receipts issued by these persons of having received compensation was placed. The Ld. AR submitted that the expense was wholly and exclusively incurred for the purpose of business and therefore, was allowable u/s 37 of the Act. The Ld. AR invited our attention to circular no. 35 issued by Board wherein the Board had clarified that any loss arising due to embezzlement by employee or due to negligence of employees should be allowed if the loss took place in the normal course of business.

7. The Ld. DR, on the other hand, submitted that assessee has not been able to prove as to how the loss was payable by it as the losses were suffered by the clients and, therefore, these losses were suffered by its client and assessee was not entitled to claim in its profit and loss and

therefore, the authorities below has rightly made and upheld the disallowance.

8. We have heard the rival parties and have gone through the material placed on record. We find that assessee is engaged in Marketing and Distribution of Financial Products and is also engaged in the share trading business and was working as sub broker of Reliance securities limited. The assessee had among other clients namely Shri Tarlochan Singh, Munish Kumar and Shri Jagmohan Khanna whose trading accounts were opened with the reliance securities through assessee who was working as sub broker of reliance securities. These assessee incurred losses between the period of 20th September to 30th September, 2010 which is apparent from the copy of account of these clients with the reliance securities placed in paper book at page 7, 8, & 9. The assessee had claimed that these losses had occurred to these clients due to negligence of its employees as the employees of assessee could not square off the positions taken by these clients in NIFTY index of National Stock Exchange. Against these losses suffered by these clients, the assessee had compensated them partly through cheques which fact is verifiable from paper book page 1, 2, 3 where a copy of bank account of assessee reflecting payments to these persons is placed. Further the receipts issued by these clients highlights that the said amounts had been received by them as compensation for loss incurred by them on account of negligence on the part of employees of the assessee. All these

evidences prove that assessee had really made the payments to these persons and the payments were made on account of losses suffered by them as is apparent from the copy of account of these clients placed at paper book page 7 to 9. The finding of the authorities below that the copy of statement do not prove that payment was made on account of this loss of these persons is not correct as every evidence is available to demonstrate that assessee had made payments for losses suffered by its clients on account of negligence of its employees. The amount paid to these persons is necessarily an expenditure which is allowable u/s 37 of the Act as section 37 of the Act clearly states that any expenditure not in the nature of capital expenditure or personal expense laid out or expenditure wholly and exclusively incurred for the purposes of business or profession shall be allowed in computing the income chargeable under the head profits and gains or business or profession. Moreover, circular no. 35 issued by Board clearly states the losses arising due to negligence of employees has to be allowed as expense if the loss took place in the normal course of the business and the amount involved was necessarily kept for the purpose of business. In the present case, the losses were necessarily incurred in the normal course of business of assessee and therefore, the expenditure was allowable.

9. In view of the above, we delete the additions sustained by Ld. CIT(A).

10. In nutshell, the appeal filed by assessee is allowed.

Order pronounced in the open Court on 05.05.2017.

Sd/-
(N.K. CHOUDHRY)
JUDICIAL MEMBER

Sd/-
(T.S. KAPOOR)
ACCOUNTANT MEMBER

Dated: 05/ 05/2017

GP/Sr.PS/

Copy of the order forwarded to:

1. The Assessee:
2. The
3. The CIT(A)
4. The CIT
5. The SR DR, ITAT, Amritsar.

True copy

By order