

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
[Before Shri A. T. Varkey, JM & Shri Waseem Ahmed, AM]

I.TA No. 2405/Kol/2013		
Assessment Year: 2005-06		
Income-tax Officer, Wd-2(1), Kolkata	Vs.	M/s. Micro Niryat Ltd. (PAN: AABCM7974R)
Appellant		Respondent

Date of Hearing	07.02.2017
Date of Pronouncement	29.03.2017
For the Appellant	Shri Debasish Banerjee, JCIT, Sr. DR
For the Respondent	N o n e

ORDER

Per Shri A.T.Varkey, JM

This is an appeal filed by the revenue against the order of Ld. CIT(A)-XX, Kolkata dated 17.06.2013 for AY 2005-06.

2. None appeared for the assessee, however, after perusal of the records, we are of the opinion that without hearing the assessee, we can adjudicate the issue raised by the revenue after hearing the Ld. DR.

3. At the outset itself, the Ld. DR drew our attention to the first ground raised by the revenue which is against the action of the Ld. CIT(A) in admitting fresh evidence in violation of Rule 46A of the I. T. Rules, 1962 (hereinafter referred to as the ‘Rules’).

4. The brief facts of the case as noted by the Ld. CIT(A) is that the assessee had shown income of Rs.1,38,622/- after setting off the speculation loss in share trading amounting to Rs.49,59,859/- against speculation profit earned in pharmaceuticals, textiles items dealt through commodities exchange. The AO treated the profit derived from pharmaceuticals, textiles items as business profit and the same was not allowed to

be set off against speculation loss on share dealing and made an addition of Rs.49,59,859/- by disallowing the speculation loss claimed by the assessee. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A), who was pleased to delete the addition by allowing the assessee's appeal. Aggrieved by the order of the Ld. CIT(A) the revenue is before us.

5. We have heard submissions of the Ld. DR and perused the material available on record. The Ld. DR drew our attention to page 2 of the impugned order wherein in para 4.1, the Ld. CIT(A) has reproduced the submission of the Ld. AR and drew our attention to the middle of the para where it is stated that *“only the difference amount i.e. amounting to Rs.46,86,196/- and Rs.3,10,669/- has been received by account payee cheque from the said broker. A copy of the said bank statement is being produced for your kind perusal which is on account of speculation profit derived from the transaction dealt by the said broker.”* The Ld. DR contended that the Ld. AR of the assessee has for the first time produced the copy of the bank statement to prove that the difference amount has been paid to the broker by account payee cheque to show that it was speculation transaction. According to Ld. DR, the Ld. CIT(A) has admitted the said fresh evidence and has made a finding which is reproduced hereunder:

“The bills received from the broker showed that only the difference amount was paid to the appellant. A copy of bank statement filed by the appellant was perused in this regard which confirms the submission of the appellant.”

We note that from the aforesaid finding recorded by the Ld. CIT(A) which has been reproduced above and the submissions of the Ld. DR have shown that the evidence in the form of the bank statement were filed before the Ld. CIT(A) which has been admitted by him without resorting to the procedure laid down in Rule 46A of the Rules and based on the said bank statement finding of fact has been recorded by the Ld. CIT(A) without calling for remand report from the AO as envisaged under Rule 46A of the Rules, is in violation of the said Rule. Therefore, we find force in the contention of the Ld. DR and in the interest of justice, we set aside the order of the Ld. CIT(A) and

remit the matter back to the file of the AO to decide the issue de novo after giving opportunity to the assessee.

6. In the result, the appeal of revenue is allowed for statistical purposes.

Order is pronounced in the open court on 29.03.2017.

Sd/-
(Waseem Ahmed)
Accountant Member

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated : 29th March, 2017

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Income-tax Officer, Wd-2(1), Kolkata.
2. Respondent – M/s. Micro Niryat Ltd., 156A, Lenin Sarani, Kolkata-700 013.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.