

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA
[Before Sri J. Sudhakar Reddy, Accountant Member]**

**I.T.A. No. 1786/Kol/2017
Assessment Year: 2013-14**

M/s. Orbit Commonsale Pvt. Ltd.....Appellant
22, R.N. Mukherjee Road
3rd Floor
Kolkata - 700 001
[PAN : AABCO 1345 G]

Income Tax Officer, ward-15(1), Kolkata.....Respondent
Aaykar Bhawan Poorva
110, Shantipally
Kolkata - 700 107

Appearances by:

Shri S.K. Tulsian, Advocate, appeared on behalf of the assessee.

Shri Sallong Yaden, Addl. CIT, appearing on behalf of the Revenue.

Date of concluding the hearing : March 27th, 2018

Date of pronouncing the order : April 13th, 2018

O R D E R

Per J. Sudhakar Reddy :-

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-5, Kolkata (hereinafter the 'Id. CIT (A)'), passed u/s 250 of the Income Tax Act, 1961 (the 'Act'), dt. 08/05/2017, for the Assessment Year 2013-14.

2. The assessee is a company and derives income from business, capital gains and other sources. The addition in question before me is the disallowance of loss of Rs.26,36,957/- , claimed by the assessee in dealing on commodities. The Assessing Officer held that the assessee, with the connivance of M/s. Marigold Vanijya Pvt. Ltd. (MVPL) a member of MCA stock exchange, has booked these losses which are bogus in nature.

3. After hearing rival contention, I find that the Assessing Officer has made the addition solely based on an uncorroborated statement made by the broker

company before the investigation authority of the Income-tax Department. The Assessing Officer also records that the said statement has been retracted. A copy of the statement has not been given to the assessee. An opportunity of cross-examining the person who has given the statement based on which the addition has been made has to be provided to the assessee. Otherwise, a retracted statement cannot be the basis of making an addition. The Id. CIT(A) at para 1.3. of his order, was of the view that no purpose would be served by affording an opportunity of cross-examination to the assessee, in view of the retraction made by the assessee. While this is true, the statement cannot be used as evidence under the facts of this case. We find that M/s. MVPL had on 17th February, 2016, addressed the letter to the Income-tax Officer confirming all the transactions with the assessee and alleging that a statement was recorded by the investigation wing in a general manner and that there was no reference at all to the assessee, M/s Orbit Commonsale Pvt. Ltd., and that they were under stress during the course of survey and that the entire transactions were made through account payee cheques and were recorded in the books of account and are genuine transactions. The revenue has no other evidence in support of the addition/disallowance. Third party confirmation has to be accepted if no contrary evidence is found.

4. On these facts, I have no other alternative but to delete the disallowance and allow this appeal of the assessee.
5. In the result, appeal of the assessee is allowed for statistical purposes.

Kolkata, the 13th day of April, 2018.

Sd/-

[J. Sudhakar Reddy]
Accountant Member

Dated : 13.04.2018
{SC SPS}

Copy of the order forwarded to:

**1. M/s. Orbit Commonsale Pvt. Ltd
22, R.N. Mukherjee Road
3rd Floor
Kolkata – 700 001**

**2. Income Tax Officer, ward-15(1), Kolkata
Aaykar Bhawan Poorva
110, Shantipally
Kolkata – 700 107**

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Senior Private Secretary
Head of Office/ D.D.O. ITAT, Kolkata Benches