

IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH (SMC), KOLKATA

[Before Shri J. Sudhakar Reddy, AM]

I.T.A. No. 2402/Kol/2017  
Assessment Year : 2013-14

*M/s. Chemex Goods Pvt. Ltd.....Appellant*  
*C/o. Subash Agarwal & Associates*  
*Siddha Gibson, 1, Gibson Lane,*  
*2<sup>nd</sup> Floor, Suite-213,*  
*Kolkata – 700 069.*  
*[Pan : AABCC 2614 G]*

*Income Tax Officer.....Respondent*  
*Ward 10(2), Kolkata,*  
*Aayakar Bhawan,*  
*P-7, Chowringhee Square,*  
*Kolkata – 700 069.*

**Appearances by:**

*Shri Subash Agarwal, Advocate appearing on behalf of the Assessee.*  
*Shri Amitava Bhattacharya, Addl CIT appearing on behalf of the Revenue.*

Date of concluding the hearing : April 16, 2018

Date of pronouncing the order : May 18, 2018

**ORDER**

This is an appeal filed by the assessee directed against the order of CIT (Appeals) – 4, Kolkata dated 06.09.2017 for the assessment year 2013-14 under section 250 of the Income Tax Act, 1961 ('the Act').

2. The assessee is a company and is engaged in the business of granting loans and as well as share trading. It has claimed loss in Foreign Exchange trading of Rs. 17,84,248/-. The Assessing Officer disallowed this loss based on a statement from Shri Sachet Saraf, Director of M/s. Marigold Vanijya Pvt. Ltd. recorded on 23.03.2013 by the Investigation Wing which had carried on a Search & Seizure Operation under section 132 of the Act. It is stated that Shri Sachet

Saraf admitted that he was engaged in providing entries of bogus loss or profit as per the requirement of his clients. It is also stated that information was gathered under section 133(6) from MCX and it was confirmed that M/s. Marigold Vanijya Pvt. Ltd. was engaged in providing bogus entries and that Regulatory Authorities have levied penalties on them. The Assessing Officer also observed that M/s. Marigold Vanijya Pvt. Ltd. charged brokerage @ 0.4% and whereas the brokerage cost ranged between 0.01% to 0.0015% and that was paid is abnormally high. He held that the assessee has not offered any explanation as to why he had chosen an unknown broker without reputation on payment of high percentage of brokerage. He concluded that the assessee had, income from other sources, and did not want to pay tax at the rate of 30% thereon and accordingly obtain entries of bogus loss to defraud the revenue. He disallowed the claim of the assessee. Aggrieved the assessee carried the matter on appeal without success. Further aggrieved the assessee is an appeal before us.

3. After hearing rival contentions, we find that the similar issue has come up before the 'B' Bench of this Tribunal in the case of ACIT vs M/s. Tirupati Awas Pvt. Ltd., ITA No. 1560/Kol/2016 for the A.Y. 2011-12 order dated 28.03.2013. The Tribunal based on the very same facts i.e. statement of Shri Sachet Saraf, Director of M/s. Marigold Vanijya Pvt. Ltd. in the very same search had at para 10 observed as follows:

*"Heard rival submissions and perused the material on record. We find that the A.O. issued notice u/s 133(6) of the Act to MCX Stock Exchange, Mumbai. Admittedly, the said stock exchange complied with the notice issued by the A.O. along with supplying various details in respect of said*

*transaction. According to A.O., it is incomplete details. However, the CIT(A) noted in his order that the A.O. failed to verify the genuineness of transaction with that of broker of MCX Stock Exchange. It is also observed that the CIT(A) found satisfied that the assessee filed all the required details and documents in support of the transactions entered into by it in respect of foreign exchange derivatives. We find that the A.O. made the addition only on the basis of statement recorded during the search & seizure operation in the premises of the said Sachet Saraf, Director of M/s. Marigold Vanijya Pvt. Ltd. The said statement of Mr. Saraf was retracted at a later point of time. The CIT(A) found satisfied that there was no corroborative evidence which supports the view of the A.O. that the said transaction was unexplained. Therefore, we find no additional evidence, which was filed before the CIT(A), but not before the A.O. The CIT(A) deleted the said addition only on the basis of material/evidence available on record, which were very much before the A.O. in the re-assessment proceedings. The case laws as relied on by the assessee before the CIT(A) were relevant and applicable to the present facts of the case. The CIT(A) has discussed the each case law thoroughly. Thus, the CIT(A) was justified in deleting the addition made by the A.O. on this issue. The grounds raised by the revenue in the appeal are dismissed.”*

4. The learned DR relied on the order of the ITAT in the case of DCIT vs M/s. DRP Trading & Investments Pvt. Ltd., ITA No. 83/Kol/2016 for the A.Y. 2012-13 order dated 08.11.2017.

5. This order is not applicable to the facts of the case, as in the cash in hand, the assessee had paid a margin money of Rs. 5,00,000/- in the transactions and whereas in the case of M/s. DRP Trading & Investments Pvt. Ltd., there was no margin money paid. The assessee has filed copy of the ledger of the assessee, in the books of M/s. Marigold Vanijya Pvt. Ltd., the copy of all the contract notes, copy of the affidavit given by Shri Sachet Saraf stating that the transactions with the assessee are bona fide trading transactions and that all the transactions were made by account payee cheques only, in support of his contention. In my view, the assessee discharged the burden of

proof that lay on it. As the facts of these cases are similar to the facts of the case of M/s. Tirupati Awas Pvt. Ltd., I respectfully follow the same and delete the disallowance and allow this ground of the assessee.

6. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 18<sup>th</sup> May, 2018.

Sd/-  
(J. Sudhakar Reddy)  
ACCOUNTANT MEMBER

**Dated: 18/05/2018**  
Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Chemex Goods Pvt. Ltd., C/o. Subash Agarwal & Associates  
Siddha Gibson, 1, Gibson Lane, 2<sup>nd</sup> Floor, Suite-213, Kolkata –  
700 069.
2. ITO, Ward 10(2), Aayakar Bhawan, P-7, Chowringhee Square,  
Kolkata – 69.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.  
ITAT, Kolkata