

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G', NEW DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA.No.5770/Del/2015
Assessment Year 2006-2007

The DCIT, Central Circle-5, Room No.361, 3 rd Floor, ARA Centre, Jhandewalan Extn., New Delhi.	vs.	M/s. Nav Auro Investments Pvt. Ltd., (now Known as Auro Sugar Pvt. Ltd.,) 6-B, Jor Bagh Lane, New Delhi. PAN AAACN0192K
(Appellant)		(Respondent)

For Revenue :	Shri Md. Gaysuddin Ansari, Sr. D.R.
For Assessee :	Shri Ved Jain, Advocate

Date of Hearing :	23.10.2018
Date of Pronouncement :	05.11.2018

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Revenue has been directed against the Order of the Ld. CIT(A)-6, Delhi, Dated 03.03.2015, for the A.Y. 2006-2007, challenging the Order of the Ld. CIT(A) in

deleting the disallowance of Rs.1,79,61,170/- on account of loss in derivative transactions before 25.01.2006.

2. We have heard the Learned Representatives of both the parties.

3. It was submitted before the Ld. CIT(A) that A.O. vide Para-3 of the impugned assessment order, made a disallowance of Rs.1,79,61,170/- by bifurcating the overall Profit of dealing in shares of Rs.33,73,645/- into the two periods, one from 01.04.2005 to 24.01.2006 and another from 25.01.2006 to 31.03.2006. The A.O. did so because as per his interpretation, transactions in F & O (Futures & Options) were non -speculative only from 25.01.2006 in view of the Notification No. S.O. 89(E)[2/2006], Dated 25.01.2006 issued by the Central Government, wherein NSE and BSE were notified for the purposes of Section 43(5)(d) of the I.T. Act, 1961.

3.1. It was submitted before Ld. CIT(A) that the Finance Act made the provision of Section 43(5)(d) applicable from A.Y.

2006-07 i.e. from the first day of April and as such all F & O transactions carried out on recognized stock exchanges for the whole of AY 2006-07 were Non-Speculative in nature u/s 43(5)(d). It is only that the Government notified NSE & BSE as two stock exchanges on 25.01.2006, for the purposes of Section 43(5)(d). The assessee carried out all its transactions on BSE, which was a recognized stock exchange & hence all its F & O transactions were non-speculative in nature. The assessee relied upon the following decisions in support of its contention :-

1.	Bombay High Court in the case of CIT -IV, Mumbai vs. Shri Bharat R. Ruia (HUF) - 337 ITR 452 (Bom) dated 18.04.2011
2.	ACIT v Hiren Jaswantraai Shah (ITAT Ahmedabad)- (2011) 62 DTR 95 (Ahd) (Trib)-17.6.2011.
3.	ACIT vs. Parimal D. Nathwani (2011) 9 taxmann.com 284 (Mum-ITAT) pronounced on January 21,2011.
4.	GK Anand Bros. Buildwell (P.) Ltd. v. ITO 234 SOT 439 (Delhi) dated 01.10.2009.

3.2. The Ld. CIT(A) in view of the above facts and case laws, noted that it is crystal clear and well settled that the A.O. was not justified in bifurcating the F & O transactions

between prior to 25.01.2006 and after 25.01.2006 and should have considered the transactions of dealings in shares and F & O done during the whole assessment year in totality. And since all the transactions are Non-Speculative and Overall there is a Net Profit of Rs.33,73,645/- in dealing in shares, the disallowance of Rs. 1,79,61,170/- deserves to be deleted.

4. The Revenue is in appeal challenging the above deletion of addition. The Ld. D.R. relied upon the Order of the A.O.

5. On the other hand, Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that the issue involved in the present appeal is squarely covered by the Order of the ITAT, Delhi Bench in the case of GK Anand Bros. Buildwell (P.) Ltd. v. ITO (2009) 234 SOT 439 (Delhi) (supra), wherein it has been held that the benefit of clause (d) of proviso under section 43(5) of the Act will be available in respect of the transactions carried-out for the entire A.Y. 2006-2007. The Learned

Counsel for the Assessee also submitted that the issue is also covered by the Order of ITAT, Ahmedabad Bench in the case of ACIT vs. Hiren Jaswantraai Shah (2011) 62 DTR 95 (Ahd) (Trib) Dated 17.06.2011 and Judgment of Hon'ble Delhi High Court in the case of CIT vs. Nasa Finlease P. Ltd., (2013) 358 ITR 305 (Del.) in which in para-7 it was held as under :

“7. The factual position is not in dispute. Notification No.2/2006 dated 25th January, 2006, issued by the Central Board of Direct Taxes does not specify any particular date and simply notifies the National Stock Exchange India Ltd. and Bombay Stock Exchange, Mumbai under proviso (d) to clause (5) to Section 43 of the Act. The said proviso had become applicable with effect from 1st April, 2006. Issue of notification obviously had to take some time as it involved processing and examination of applications etc. This was a matter relating to procedure and the delay in issue of notification or

even framing of the Rules was due to administrative constraints. We agree with the tribunal that the delay occasioned, as procedure and formalities have to be complied with, should not disentitle and deprive an assessee, specially, when the transactions were carried through a notified stock exchange. The aforesaid delay is not attributable to the assessee. The notification, therefore, merits acceptance and should be given retrospective effect. Notification was procedural and necessary adjunct to the Section enforced with effect from 1st April, 2006. The rule and notification issued in the present case effectuate the statutory and the legislative mandate. There is no good ground or reason why the notification in question should not be given effect from 1st April, 2006. No reason or ground is alleged or argued to contend that National Stock Exchange India Ltd. could not and should not have been notified from 1st April, 2006.”

6. After considering the rival submissions, we are of the view that the issue is covered by the above Orders of the Tribunal as well as of the Hon'ble Delhi High Court referred to above. No infirmity have been pointed-out by the Ld. D.R. Therefore, the departmental appeal fails and is accordingly dismissed.

7. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Date 05.11.2018

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'G' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches : Delhi.

Date of dictation	26.10.2018
Date on which the typed draft order is placed before the dictation Member	30.10.2018
Date on which the approval draft comes to the Sr. PS	
Date on which the fair order is placed before the Dictation member for pronouncement	
Date on which the fair order comes back to the Sr. P.S.	05.11.2018
Date on which the final order is uploaded on the website of ITAT	06.11.2018
Date on which the file goes to the Bench Clerk	06.11.2018
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order.	