

आयकर अपीलीय अधिकरण, अहमदाबाद खिायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
“SMC” BENCH, AHMEDABAD

BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1393/Ahd/2017
निधारण वर्ष/Asstt. Year: 2012-2013

D.C.I.T., Circle-4(1)(1), Ahmedabad	Vs.	M/s. S.N. Realty Infrastructure (P) Ltd House No. 1, Sigma Commerzone, Iscon Cross Road, Highway, Ahmedabad. PAN: AAJCS3859D
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(Applicant)		(Respondent)
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Revenue by :	Shri Lalit P. Jain, Sr.D.R
Assessee by :	Shri D.K. Parikh, A.R

सुनवाई क तिारीख/Date of Hearing : 26/12/2018

घोषणा क तिारीख /Date of Pronouncement: 01/01/2019

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Revenue against the order of the Commissioner of Income Tax (Appeals) ó 7, Ahmedabad [CIT(A) in short] vide appeal no.CIT(A)-7/222/14-15 dated 06/03/2017 arising in the matter of assessment order passed under s.143(3) r.w.s. of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dated 25/02/2015 relevant to the Assessment Year (AY) 2012-2013.

2. Revenue has raised the following ground of appeal:

1. *“Whether the Ld.CIT(A) is right in law and on facts in deleting the addition/disallowance made on account of F & O Loss of Rs.3,66,76,119/-”*

3. The only issue raised by the Revenue is that Ld.CIT (A) erred in treating the loss incurred by the assessee in its derivatives transactions as non-speculative.

4. Briefly stated facts are that the assessee in the present case is a Private Limited Company and engaged in the business of trading in derivatives, renting of motor cars and also deriving income under the head ~~house property~~. The assessee in its profit and loss account has claimed loss of Rs. 3,66,76,119/- on account of trading in derivatives. The assessee claim to have carried out its trading activities in derivatives through recognized Stock Exchange.

5. However, the AO found that the assessee failed to furnish the supporting evidence justifying that the impugned loss represents from the trading activities in derivatives and it fulfills the conditions as specified u/s.43(5)(d) of the Act. Accordingly, the AO treated the loss of Rs. 3,66,76,119/- as speculative in nature.

6. The assessee carried the matter to the Ld. CIT (A) and submitted that all the necessary supporting pieces of evidence were filed before the AO during the assessment proceeding. The assessee also claimed that such loss was accepted as non-speculative by the AO during the assessment proceeding.

6.1 The transactions were carried out electronically on screen based system through the broker namely J.M. Finance Services limited which is recognized with National Stock Exchange. As such the assessee had fulfilled all the conditions as specified u/s. 43(5)(d) of the Act.

6.2 The Ld.CIT (A) after considering the submission of the assessee called for a remand report on the documents filed by it. But the AO failed to provide any remand report as called by the Ld.CIT (A) despite the several reminders issued to him.

6.3 The Ld.CIT(A) observed that the transaction was carried out electronically on the screen based system and through the broker registered with National Stock Exchange.

6.4 The Ld.CIT(A) also found that the transactions showing the losses of the assessee were supported with Time Stamp Contracts, the copy of invoices issued by National Stock Exchange. Therefore the Ld. CIT (A) observed that all the conditions as specified u/s 43(5)(d) of the Act have complied with. Accordingly, Ld.CIT(A) held that the impugned loss could not be treated as a speculative loss. Thus, the order the AO was reversed by Ld.CIT (A).

7. Being aggrieved by the order of Ld. CIT(A), the Revenue is in appeal before us.

8. Before us, both Ld.DR and Ld.AR relied on the order of authorities below as favorable to them.

9. We have heard the rival contentions and perused the materials available on record. The issue in the instant case relates to the fact whether the loss incurred by the assessee in derivative transactions represents a speculative loss. The assessee during the year has incurred a loss of Rs. 3,66,76,119/-in derivative trading. The assessee claimed that such loss is not speculative in pursuance to the provisions of clause (d) of subsection 5 of section 43 of the Act. However, the AO treated such loss as speculative by observing that the assessee failed to substantiate his claim from documentary evidence during the assessment proceedings.

9.1 However, the Ld. CIT(A) reversed the order of the AO by observing that the assessee duly furnished all the supporting pieces of evidence during the assessment proceedings as well as before him. Accordingly the Ld. CIT(A) reversed the order of the AO.

9.2 At this juncture, we find pertinent to refer to the provisions of section 43(5)(d) of the Act, which reads as under:

“(5) ³²“speculative transaction”³³ means a transaction in which a contract³³ for the purchase or sale of any commodity³³, including stocks and shares, is periodically or ultimately settled³³ otherwise than by the actual delivery³³ or transfer of the commodity or scrips:

***Provided** that for the purposes of this clause—*

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³⁴[(d) an eligible transaction in respect of trading in derivatives referred to in clause ³⁵[(ac)] of section 2 ³⁶of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) carried out in a recognised stock exchange;] shall not be deemed to be a speculative transaction.”

9.3 As per the above provisions, the transaction in derivative will not be treated as speculative if it fulfills the following conditions:

1. The transactions carried out electronically on screen based system.
2. The transaction is carried out through the registered stockbroker.
3. The transaction is supported by a time stamped contract note issued by such broker containing client code and permanent account number.
4. The transaction is carried out through the recognized stock exchange.

9.4 The Ld. CIT(A) in his finding has recorded that, the assessee has provided all the requisite details to justify that the loss claimed in derivative transactions fulfills all the conditions as specified under section 43(5)(d) of the Act.

9.5 The Ld. DR before us has not brought anything contrary against the finding of the Ld. CIT(A).

9.6 We also note that the Ld. CIT(A) has called the remand report from the AO on the documents furnished by the assessee before him. But the AO failed to file any remand report to the Ld. CIT(A) despite several reminders issued to him.

9.7 We also note that the assessee vide letter dated 19th February 2015 has furnished the details before the AO as given under:

“in our case, the F&O transactions are carried out electronically on screen based system through a stock broker viz JM financial services private Ltd which are recognised stock brokers with national stock exchange of India Ltd (NSE) and the transactions are supported by our time stamped contract notes. The contract notes and bills/invoices issued by NSE in enclosed herewith”

9.8 The AO in his assessment order has referred to the submission filed by the assessee vide letter dated 19th February 2015. The relevant extract of the AO order is extracted below:

“Vide submission dated 19/2/2015 the assessee submitted explanation in this regard. The submission of the assessee is duly considered. However the same is not found acceptable. The assessee has claimed that the transaction in shares in F&O was undertaken through recognised stock exchange. However the assessee failed to furnish relevant document evidence such as contract notes etc”

9.9 From the preceding discussion, we find that there is the factual difference between the submission filed by the assessee and the observation of the AO. But in the given facts and circumstances, we are of the view that the AO erred in understanding the details filed by the assessee. It is because on the same set of documents, the Ld. CIT(A) called for the remand report from the AO, but he failed to do so despite several reminders issue to him.

9.10 Thus considering the facts in totality, we are of the view that the impugned loss does not represent the speculative transaction in pursuance to the provisions of clause (d) of subsection 5 of section 43 of the Act. Accordingly, we do not find any infirmity in the order of the Ld. CIT(A). Hence the ground of appeal of the Revenue is dismissed.

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

Order pronounced in the Court on 01/01/2019 at Ahmedabad.

**-Sd-
(MAHAVIR PRASAD)
JUDICIAL MEMBER**

Ahmedabad; Dated
manish

True Copy
01/01/2019

**-Sd-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

आदेश क० त० प्रतः / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. त्रिभागीय प्रजाधि, आयकर अपीलप्र अकरण / DR, ITAT,
6. गार्डफाइल / Guard file.

आदेशानुसार/BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलप्र अकरण, अहमदाबाद / ITAT, Ahmedabad