

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

**श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.Nos.185/Viz/2018
(निर्धारण वर्ष/ Assessment Year: 2013-14)**

Optimus Commodity Futures
Private Ltd.
D.No.11-8-29
Jagannadam Street
Kothapet
Vijayawada
[PAN : AAAC06427B]

Vs. Dy.Commissioner of
Income Tax
Circle-1(1)
Vijayawada

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से/ Respondent by

: Shri C.Subrahmanyam, AR
: Shri D.K.Sonowal, CIT DR

सुनवाई की तारीख / Date of Hearing

: 17.01.2019

घोषणा की तारीख/Date of Pronouncement

: 25.01.2019

आदेश /ORDER

PER D.S. SUNDER SINGH, Accountant Member:

This appeal is filed by the assessee against the order of the Principal Commissioner of Income Tax (Pr.CIT), Vijayawada dated 27.03.2018 for the Assessment Year (A.Y.)2013-14.

2. The assessment in this case was completed u/s 143(3) by an order dated 26.02.2016 on total Loss of Rs.9,43,161/. Subsequently, the Pr.CIT, Vijayawada has taken up the case for revision u/s 263 and found that the assessee had set off the speculative loss against the business income, thus, viewed that the assessment order passed by the Assessing Officer (AO) u/s 143(3) dated 26.02.2016 is erroneous and prejudicial to the interest of the revenue. Accordingly issued show cause notice directing the assessee to explain as to why the assessment framed u/s 143(3) should not be revised u/s 263 of the Act. In response to the notice, the assessee filed explanation stating that the assessee did not claim any set off of speculation loss against the business income and the AO also did not allow the set off of speculation loss against the business income. The assessee further submitted that the AO determined the income correctly as per law and there is no error in the order passed by the AO, Hence, no case for revision u/s 263 is called for. However, the Pr.CIT found that the speculation loss had been claimed by the assessee and allowed to be set off against the income from other sources and accordingly held that the assessment order passed by the AO is erroneous and prejudicial to the interest of the revenue. Hence, set aside the order passed by the AO and directed the AO to recompute the income after giving reasonable opportunity to the assessee.

3. Aggrieved by the order of the Ld.Pr.CIT, the assessee is in appeal before this Tribunal. During the appeal hearing, the Ld.AR submitted that, for the A.Y.2013-14, the assessee filed the return of income admitting total income of Rs.9,77,411/- and disclosed the revenue from operations at Rs.3,68,67,794/-, income from other sources amounting to Rs.32,99,542/-, and speculation loss of Rs.4000/-. The AR further submitted that in the computation of income in page No.6 of the paper book the assessee reduced the speculation loss from the business income and balance was taken as business loss. The assessee referring to page No.2 of the paper book submitted that the total business loss including speculation business loss was Rs.9,77,410/- which was admitted in the Return of income as per ITR acknowledgement dated 27.09.2013. Referring to page No.4 of the paper book, the Ld.AR submitted that in Schedule CYLA of the Income Tax Return, the assessee claimed for carry forward of business loss at Rs.9,73,410/- and speculation loss was separately claimed in Schedule CFL under loss from speculative business. The assessee further submitted that as per page No.5 of the paper book, the assessee claimed carry forward of business loss separately and speculation loss separately. The business loss was Rs.9,73,410/- and speculation loss was Rs.4000/- which was claimed for

carry forward separately. Referring to page No.9 of the paper book, the assessee submitted that as per the profit and loss account, the speculation loss was Rs.4000/-. In the notes forming part of Profit & loss account also, in page No.10 of the paper book, the assessee submitted that the revenue from sale of services, loss on trading in commodities and the other income was admitted separately by the assessee. Therefore, argued that there is no error in the order passed by the AO and accordingly requested to quash the order passed u/s 263 and allow the appeal of the assessee.

4. On the other hand, the Ld.DR supported the orders of the Ld.Pr.CIT.

5. We have heard both the parties and perused the material placed on record. In this case as per the information placed before us, the assessee derived loss of Rs.4,000/- from speculative business and loss from business other than speculative business was Rs.9,73,410/- which was claimed for carry forward as per Schedule CYLA and Schedule CFL of Income Tax Return annexed at page No.5 of the paper book. Similarly, from the profit and loss account also it is observed that loss incurred from speculation loss was Rs.4000/-. The AO passed order u/s 143(3) and allowed carry forward of business loss and speculation separately. Against total loss assessed Rs.9,43,161/-, depreciation loss other than speculation loss was allowed to

be carry forward to the extent of Rs.9,39,162/- which is excluding the speculation loss of Rs.4000/-. Similarly, the AO allowed carry forward of accumulated speculation loss to the extent of Rs.37,13,336/- consisting of speculation loss for the A.Y. 2011-12 for an amount of Rs.37,09,336 and the current year speculation loss of Rs.4000/-. The computation of total loss arrived by the AO in page No.3 of the assessment order which reads as under :

Loss returned	:	Rs.9,77,410
Add : Disallowance Depreciation u/s 32	:	Rs. 34,249
		Rs.9,43,161/-
Loss assessed		Rs.9,43,161/-
Tax thereon	:	Nil
Note : Unabsorbed loss, depreciation loss for the A.Y. 2013-14		
Depreciation Loss	:	Rs.9,39,162
Business Loss (Speculation Loss)	:	Rs.37,13,336/-

5.1. From the above computation, it is observed that though the loss assessed including the speculation loss was Rs.9,43,161/-, the AO allowed the business loss of Rs.9,39,162/- for carry forward excluding the speculation loss of Rs.4000/- ($9,43,161 - 4000 = 9,39,162$). Similarly the AO allowed the carry forward of speculation business loss separately for an amount of Rs.37,13,336/- which is including current year speculation loss of Rs.4000/-. Therefore, it is observed that the AO did not allow the

speculation loss against business income or income from other sources and has not committed any error in the assessment order and determined the business loss and speculation loss correctly, hence, the assessment order passed by the AO was neither erroneous nor prejudicial to the interest of the revenue. Therefore, we set aside the order of the Ld.Pr.CIT passed u/s 263 and restore the assessment order framed by the AO u/s 143(3) of the Act. The appeal of the assessee is allowed.

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

Order pronounced in the open court on 25th January 2019.

Sd/-

Sd/-

(वी.दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 25.01.2019

L.Rama, SPS

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

लेखा सदस्य/ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती / The Assessee – Optimus Commodity Futures Private Ltd, D.No.11-8-29, Jagannadam Street, Kothapet, Vijayawada
2. राजस्व / The Revenue– Dy.Commissioner of Income Tax, Circle-1(1), Vijayawada
3. The Pr.Commissioner of Income Tax, Vijayawada
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम / DR, ITAT, Visakhapatnam
5. गार्ड फ़ाईल / Guard file

// True Copy //

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, VISAKHAPATNAM