

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC B” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT

ITA No.2785/Bang/2018
Assessment year : 2015-16

Shri Sameer Mulabagal, S/o. Mr. Mr. M.K. Mulbagal, # 9062, Sobha Daffodil, 24 th Main, HSR Layout, Sector 2, Bengaluru – 562 102. PAN: AKBPM 5993R	Vs.	The Income Tax Officer, Ward 4(3)(4), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Anoop Kumar Agarwal, CA
Respondent by	:	Shri S. Venkatesh, JDIT

Date of hearing	:	22.01.2019
Date of Pronouncement	:	25.01.2019

ORDER

This is an appeal by the Assessee against the order dated 20,07,2018 of the CIT(Appeals)-4, Bangalore relating to assessment year 2015-16.

2. The Assessee is an individual. During the previous year relevant to AY 2014-15, his source of income was Long Term Capital Gain (LTCG) on sale of shares and interest income of Rs.67,31,553 and Rs.4,41,880/- respectively. Such LTCG and interest income was claimed as exempt income and accepted by the AO and there is no dispute on this. The Assessee had carried out transactions in futures and derivative and sale of

option in securities. In fact, the case of the Assessee was taken up for scrutiny assessment only because of huge volume of such transactions.

3. It is not in dispute that the Assessee suffered a loss of Rs.18,89,097 on such transactions in futures and options. The purchase value of such transaction was Rs.76,18,741 and sale value of such transactions was Rs.57,68,418. In the return of income, the Assessee had treated transactions in futures and options as giving rise to Short Term capital gain. Since such loss of Rs.18,89,097 could not be set off against any income against which it could be set off, the Assessee claimed that the said loss should be carried forward for set off against income in future in accordance with law.

4. The AO held that since the Assessee had voluminous transactions in futures and options, he had to be regarded as having carried on business in futures and options and the income from such business ought to have been offered to tax under the head "income from business". U/s.44AA and 44AB of the Income Tax Act, 1961 (Act), if a person carrying on business in which the turnover is more than Rs.1 Crores, then he has to keep and maintain books of accounts in the manner specified and has also to get his books of accounts audited. The AO held that as per guidance note paragraph 15.5 of Guidance note on Tax audit u/s.44AB of the Act issued by Institute of Chartered Accountants of India (ICAI), turnover indicates aggregate price of commodities received by an Assessee during the course of his trading or business activities and therefore the value of purchases and sales has to be regarded as turnover. Since the value of purchases and sales in the case of the Assessee was Rs.1,33,87,159/- (Purchase value 76,18,741 + 57,68,418 Sale Value), he held that the Assessee ought to have maintained books of accounts and got the same audited. Since the Assessee did not maintain any books of accounts, the AO held that the loss shown by the Assessee has to be disregarded and he

estimated income from business of Assessee at 8% of Rs.1,33,87,159/-. Thereby the total income of Assessee was determined at Rs. 10,70,970/- as against nil income declared by the Assessee. The action of the AO was confirmed by the CIT(A). Aggrieved by the order CIT(A), the Assessee is in appeal before the Tribunal.

5. I have heard the rival submissions. It is undisputed that the result of dealings in derivatives, futures and options by the Assessee resulted in a loss of Rs.18,89,097/-. Even assuming the AO was right in estimating income of the Assessee, he could not have ignored the reality of the result of the transaction and estimate income when there is a loss suffered by the Assessee. The law is well settled that even in a best judgment assessment, the AO has to make a reasonable estimate and his estimate cannot be on the basis of any guess work or contrary to the material before him. I am therefore of the view that the addition of Rs.10,70,970 as income of the Assessee in transactions in derivatives, futures and options cannot be sustained and the same is directed to be deleted.

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

Pronounced in the open court on this 25th day of January, 2019.

Sd/-

(N.V. VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 25th January, 2019.

/ Desai Smurthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.