

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH.K.N.CHARY, JUDICIAL MEMBER**

ITA No.2876/DEL/2016
Assessment Year: 2010-11

ITO Ward – 40 (5) New Delhi	Vs	D. R. Exports International 603, Gopal Heights Netaji Subhash Palace, Pitampura Delhi – 110034 PAN No. AAAFD3992N
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Amit Katoch, Sr. DR
Respondent by	Dr. Rakesh Gupta, Advocate Sh. Somil Agarwal, Advocate

Date of hearing:	18/03/2019
Date of Pronouncement:	20/03/2019

ORDER

PER N. K. BILLAIYA, AM:

With this appeal the revenue has challenged the correctness of the order of the CIT(A)-16, New Delhi dated 02.02.2016 pertaining to A. Y. 2010-11.

2. The substantive grievance of the revenue read as under :-
1. *Deleting the addition of Rs.1,05,48,477/- while only sustaining the addition of Rs.21,80,882/- out of the total addition of Rs.1,27,29,359/-, made by the AO on account of disallowance of loss on rate settlement (contracts), in contravention of provisions of Rule 46A of I T Rule, 1962.*
 2. *Deleting the addition of Rs. 12,93,875/- made by the AO on account of disallowance of speculative loss on derivative trading on MCX by not appreciating that it was not an approved stock exchange within the meaning of proviso (d) of section 43(5) of I T Act.*

Ground No.1

3. Representatives of both the sides were heard at length. Case records carefully perused.
4. The perusal of the order of the CIT(A) shows that while deciding the appeal the FAA has considered certain documents marked as page numbers 208 to 430. After considering these documents the CIT(A) decided in favour of the assessee.
5. In our considered view when these documents were filed for the first time before the CIT(A) the least he could have done was to call for a remand report from the Assessing Officer. In our understanding of the facts the CIT(A) has violated the basic principles of natural justice. Therefore, this issue is restored to the files of the Assessing Officer. The assessee is directed to furnish all the necessary evidences before the Assessing Officer and the Assessing Officer is directed to verify the same and decide this issue afresh after giving a reasonable opportunity of being heard to the assessee. Ground No.1 is allowed for statistical purpose.

Ground No.2

6. Facts on record shows that during the course of the assessment proceedings the assessee submitted copy of contract note of M/s. Karvy Comtrade Ltd. and M/s. Lakahn Lai Kantilal Brockers (P) Ltd. in respect of NCDEX/MCX exchange expense of Rs.1,29,873/-. After perusing the contract notes the Assessing Officer was of the firm belief that the case of the assessee falls into clause (a) or clause (d) of proviso to section 43 (5). After analyzing the provisions of section 43 (5) of the Act the Assessing Officer was of the opinion that such loss is a speculative loss and accordingly disallowed the same.

7. Before the CIT(A) the assessee agitated that the loss of Rs.1,29,875/- on the transactions carried out by the assessee on MCX. It was claimed that such loss was allowable as a business loss. Strong reliance was placed on the decision of the Hon'ble High court of Delhi in the case of NASA Finlease Private Limited reported 358 ITR 305.

8. After considering the facts and the judgment relied upon by the assessee the CIT(A) held as under :-

“The H’ble Delhi High Court in the case of Nasa Finlease has held that the provision for considering the trading in a recognised stock exchange was brought in with effect from 1 April 2006. The MCX exchange was recognised by the CBDT by the notification dated 22.05.2009. This notification does not give the date from which the exchange is recognised but only gives the recognition to the exchange. This delay in granting the recognition to the exchange is an administrative delay and is not due to the assessee. Hence all transactions carried out after 1.4.2006 are to be considered as business

transactions and assessed accordingly. Respectfully following the judgement of Hon'ble High Court of Delhi, the addition of Rs. 12,93,875/- is deleted.”

9. Since the FAA has followed the judgment of the Hon'ble Jurisdictional High Court of Delhi, the counsel relied upon the findings of the FAA.

10. A perusal of the assessment order shows that there is some confusion over the exchange where the loss has arisen. The Assessing Officer has proceeded by considering that the transaction was done, through multi commodity stock exchange of India Limited whereas the FAA has proceeded on the premise that the transaction has been done through multi commodity stock exchange. Since the recognition has been given to MCX and not Multi commodity stock exchange of India limited, therefore, in our opinion this has to be verified again. We, therefore, restore this issue to the files of the Assessing Officer. The assessee is directed to demonstrate that his transactions were done, through the exchange which was subsequently notified as a recognized exchange. The Assessing Officer is directed to examine the evidences and decide the issue afresh. The ground No.2 is also allowed for statistical purpose.

11. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open court on 20.03.2019

Sd/-
(K. NARSIMHA CHARY)
JUDICIAL MEMBER

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Date:- 20.03.2019

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	19.03.2019
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	20.03.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	