

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B" MUMBAI**

**BEFORE SHRI MAHAVIR SINGH (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 1092/MUM/2016
Assessment Year: 2011-12**

ITO-17(2)(3) Room No.
123B/G, Aayakar Bhavan,
M.K. Road, Mumbai-20.

Vs. M/s Mangal Trading
Co., 116, Mulji Devshi
Building, Keshavji Naik
Road, New Chinch
Bunder, Mumbai-
400009

PAN No. AAAFM8246Q

Appellant

Respondent

Revenue by : Mr. Mohammed Rizwan, DR
Assessee by : Mr. Vipul Joshi, AR

Date of Hearing : 23/01/2019
Date of pronouncement : 25/03/2019

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the Revenue. The relevant assessment year is 2011-12. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-28 [in short 'CIT(A)'], Mumbai and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The ground of appeal reads as under:

On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that there is no difference between the data of exchange and figures recorded in the books of accounts of the assessee, without appreciation the fact that assessee has reconciled the purchase and sales data with transactions recorded in the books of account of broker, instead

of explanation called for regarding the difference in sales and purchase amount shown by the assessee in the books of account with MCX/NCDEX data.

3. Briefly stated, the facts are that the assessee filed its return of income for the Assessment Year (AY) 2011-12 on 25.09.2011 declaring total income of Rs.1,39,902/-. The assessee is engaged in the business of dealing in all kinds of oil, oil seeds and trading in shares and commodities including derivatives. During the course of assessment proceedings, the Assessing Officer (AO) found that the assessee had entered into transactions in commodities in MCX and NCDEX. The gross transactions as reported in AIR information stood at Rs.474,02,32,523/- which also included sales as well as purchases. The AO noted difference in amounts of transactions as per information from the commodities exchanges (MCX and NCDEX) in comparison to the details submitted by the assessee during the course of assessment proceedings. In response to a query raised by the AO to explain (i) why the book result should not be rejected as per provisions of section 145(1) and (3), (ii) why the speculation loss in commodities should not be restricted to Rs.43,64,408/- as against the amount shown in the return of income of Rs.1,39,47,350/-, in absence of the details, (iii) why the speculation income of commodities worked out to Rs.1,84,12,153/- should not be taxed as against the amount of Rs.1,77,22,329/- shown in the P&L account and (iv) why the losses incurred on off-market transactions amounting to Rs.1,40,47,385/- should not be disallowed, the assessee filed a reply stating that there is no difference either with reference to purchases or sales on NCDEX exchange, but there is some difference both in purchases and sales in the deletion MCX exchange. Further, it was submitted before the AO that this apparent difference

on the MCX is due to the carry forward of open positions in derivative contracts for the month of March 2001 to April 2011, which falls in a different accounting year. In support of the above, the assessee filed a reconciliation statement before the AO. However, the AO was not convinced with the above explanation of the assessee for the reason that (i) the amounts disclosed by the assessee in its books and the amounts recorded in commodities exchange records clearly show that there are certain transaction which are not recorded in the assessee's client code but are in the main broker's code, (ii) the assessee has incurred expenditure amounting to Rs.23,89,828/- and the entire expenses cannot be said to have been incurred only for share trading and (iii) the assessee has utilized the infrastructure and staff for all the three types of business activity carried out by it

Therefore, the AO bifurcated the expenses between speculative business and other business on the basis of income/loss computed from the said activities.

Accordingly, the AO worked out the speculation loss of the assessee at Rs.1,52,36,068/-, thereby assessing the total business income at Rs.1,53,83,324/-.

4. In appeal, the Ld. CIT(A) observed that (i) the AO has quantified speculation loss of Rs.1,03,24,265/- (MCX) and Rs.37,23,120/- (NCDEX) from off-market transactions, on the basis of information received u/s 133(6), (ii) the assessee trades in commodity futures and therefore, there are some open positions carried forward to each subsequent months; these open positions of commodity contracts as on 31.03.2011 are carried forward to the next year, (iii) the assessee is able to reconcile the data before the AO.

The Ld. CIT(A) has also recorded in his order dated 29.12.2015 that the assessee has also explained to him the reconciliation. Therefore, he held that there is no merit in the order of the AO in holding that speculation loss of Rs.1,03,24,265/- (MCX) and Rs.37,23,120/- (NCDEX) pertained to off-market trades.

Also the Ld. CIT(A) has pointed out the discrepancies in the order of the AO by observing that :

“The appellant returned speculation income of Rs.1,77,22,329/- against which there is a speculation loss of Rs.1,39,47,350/-. The AO apparently found discrepancies therein and quantifies the speculation income at Rs.1,84,12,153/- and the speculation loss at Rs.1,40,47,385/- (refer table in para 4.2(d)). The AO then goes on to propose that the speculation income should be taxed but the speculation loss should be ignored. The AO has clearly ignored the provisions of sec 70 of the Act. Ultimately in the computation of income, the AO has simply disallowed the above mentioned speculation loss. It is also not known as to the basis of the AO holding the speculation loss of Rs.1,03,24,265 (MCX) & Rs.37,23,120/- (NCDEX) as arising from “off market transactions” , more so when the data is emerging from the replies of the exchanges themselves !! Admittedly the transactions have been carried out on the exchanges, because of which the exchanges report the transaction in the appellant code. A perceived difference in figures cannot in any way lead to a conclusion that the trades themselves are off market. In the result, I hold that the AO is not correct in holding that the speculation loss of Rs.1,03,24,265 (MCX) and Rs.37,23,120/- (NCDEX) are due to off market trades.”

5. Before us, the Ld. DR submits that in the instant case the assessee has reconciled the purchase and sales data with transactions recorded in the books of account broker, instead of explanation called for regarding the difference in sales and purchase amount shown by

the assessee in the books of account with MCX/NCDEX data. Thus the Ld. DR argues that the order passed by the Ld. CIT(A) be set aside and one passed by the AO be restored.

6. On the other hand, the Ld. counsel of the assessee submits that the assessee had furnished all the details as called for by the AO in writing with necessary documentary evidence. It is stated that the projected profits and/or loss in such transactions never exceed 0.002% either way and when such profit and/or loss are set off against each other, such profit and/or loss are micro percentage of the total turnover. It is stated that during the course of assessment proceedings it was explained to the AO how the open position emerges and how the same gets differently reflected in the books the Exchange, in the books of broker and in the books of the assessee. It was further explained to the AO that the Exchange records the same at full gross value; the broker records the same at full value moderated with marked to market margin and the traders carry forward the position without any moderation either by way of marked to market margin or perceived profit/loss.

The Ld. counsel finally submits that while computing the speculation loss, the AO has added the speculation income earned by the assessee of Rs.37,23,120/- instead of deducting the same and thus arrived at speculation loss of Rs.1,52,36,068/- instead of Rs.77,89,829/-. It is stated that due to casting error in adding profit to loss instead of deducting it, the AO has worked out the so-called disallowable expenses at Rs.11,88,683/- instead of Rs.7,58,596/-. Thus the Ld. counsel submits that the AO has added such speculation loss of Rs.1,52,36,068/- (instead of actual such loss of Rs.73,59,741/- as per

his working) as the income and has added the same to return income, as per his working instead of directing carry forward of such speculation loss and accepting the return of income.

7. We have heard the rival submissions and perused the relevant materials on record. A perusal of the details of turnover, purchase, sale in case of NCDEX and MCX, which were filed before the AO and Ld. CIT(A) clearly indicates that there is no difference either with reference to purchases or sales on NCDEX Exchange but there is some difference both in purchases and sales in the dealings on MCX Exchange. It is found that this apparent difference on the MCX is due to the carry forward of open positions in derivative contracts for the month of March 2011 to April 2011 which falls in different accounting year. The assessee, having explained to the AO how the open position emerges and how the same gets differently reflected in the books of Exchange, in the books of broker and in the books of the assessee, the reconciliation statement being a correct one should have been accepted by the AO.

In view of the above factual position, we uphold the order of the Ld. CIT(A).

8. In the result, the appeal is dismissed.

Order pronounced in the open Court on 25/03/2019.

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

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

Mumbai;

Dated: 25/03/2019

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai