

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH, AHMEDABAD**

**BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT &  
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No.328/Ahd/2016  
(Assessment Year : 2012-13)

DCIT,  
Circle – 1(2),  
Ahmedabad.

Vs. Shri Pravin Kumar Hiralal  
Vora, A-71, Tirthbhumi  
Apartment, Nr, Thakorbbhai  
Desai Hall, Law Garden, Ellis  
Bridge, Ahmedabad.

[PAN No. ABJPV 2934 B]  
(Appellant)

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(Respondent)

**Appellant by :** Shri S. K. Dev, Sr. D.R.  
**Respondent by :** Shri Sakar Sharma, A.R.

**Date of Hearing** 27.03.2019  
**Date of Pronouncement** 17.05.2019

ORDER

**PER Ms. MADHUMITA ROY - JM:**

The instant appeal filed by the revenue is directed against the order dated 16.12.2015 passed by the Commissioner of Income Tax (Appeals)-10, Ahmedabad under section 143(3) of the Income Tax Act, 1961 (hereinafter referred as to ‘the Act’) arising out of the order dated 29.12.2014 passed by the Deputy Commissioner of Income Tax, Circle – 1(2), Ahmedabad for the Assessment Year 2012-13.

2. The appellant, an individual derived income from the business of trading in land, shares, capital gains and income from other sources, filed its return of income on 28.09.2012 declaring total income at Rs.53,53,630/-

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through electronic media. Under scrutiny, a notice u/s 143(2) of the Act dated 04.09.2014 was served upon the assessee and the detailed information was called for whereupon the assessee has furnished the complete details in respect of the loss of Rs.1,40,69,748/- suffered from the appellant-company in the transaction, trading from the broker named HRIM Comtrade. However, the said HRIM Comtrade has denied such transaction to the Learned AO whereupon a show-cause notice was issued upon the appellant in order to justify the claim of loss of Rs.1,40,69,748/- by and under the written submission dated 15.12.2014 and 16.12.2014, the assessee elaborately explained in respect to the losses suffered in commodity trading. The details of payment made by the assessee in settlement of the transaction of purchase/sales of commodities to the broker were also furnished before the Learned AO. It was submitted that such payment was made through the account payee crossed cheque drawn in favour of the HRIM Comtrade. Those were deposited by the broker in his bank account and the appellant assessee's bank account was debited. The confirmation/certificate issued by the concerned bank of the assessee was also furnished before the Learned AO. However, the Learned AO ultimately finalized the account by and under an order dated 29.12.2014 u/s 143(3) by making addition of Rs.1,40,69,748/- for the year under consideration. In appeal, the same was deleted by the Learned CIT(A) hence the instant appeal before us.

3. At the time of hearing of the instant appeal, the Learned Counsel appearing for the assessee submitted before us that the appellant before the authorities below had been able to establish that there is correlation of transaction price with the real time MCX prices. The submission made by the assessee that he has carried out transaction of commodity trading in MCX

through broker with corroborating evidences in the form of daily contract notes issued to the appellant by the sub broker in the name of HRIM Comtrade shows that such transaction on the given date was really carried out was accepted rightly by the Learned CIT(A). Such contract note was the primary document on the basis of which the Learned CIT(A) confirmed the genuineness of the transaction and thus such transaction has not been treated as loss as bogus. Treating the same as speculation loss the Learned CIT(A) without any ambiguity directed the same to be carried forward to the subsequent assessment year to be set off against future speculation profit. He thus rely upon the order passed by the first appellate authority. On the other hand, the Learned DR relied upon the order passed by the Learned AO.

4. Heard the respective parties, perused the relevant materials available on record.

Before the Revenue the appellant submitted the following details:

- a) Daily Contract notes as required under regulation 5.5;
- b) Periodic Client's account statement;
- c) Correlation of transaction prices with REAL time MCX prices;
- d) Trading Member No. - 12220 (i.e. of HRIM Comtrade);
- e) FMC Code No. - MCX/TCM/PART/0338 (i.e. of HRIM Comtrade);
- f) Address - 33, Veerappan Street, Mahaveer Complex, Chennai - 600079; ]
- g) Copy of account payee cheque issued - Payments by account payee cheque only;
- h) Bank certificate for payments credited in A/c of HRIM Comtrade

It appears that the appellant made a request to the Learned AO to call for the statement along with KYC from bank of HRIM Comtrade which was however, not acted upon. It was the submission of the assessee that unless and until the facts of the said bank account was not aware either by the AO or by

the assessee, the possible opportunity of cross examination is a paper opportunity only. The assessee further made an alternative submission to treat the said loss as speculation loss to be carried forward for adjustment against the speculation profit in future. However, such plea of the assessee was not found acceptable by the Learned AO.

Further that the appellant requested the Learned AO to consider the loss sustained due to commodity trading as speculative loss. In fact, since the assessee has been a victim of the fraud committed by the broker, in such situation, the transaction of trading in commodities cannot be considered as altogether bogus or non-genuine.

Moreover, the transactions of buying and selling without taking delivery ought to have been considered as 'speculative transaction' and the loss arising therefrom is not eligible to be set off against the income from normal business but is eligible for set off against the speculative profits only.

It appears that upon considering the entire evidences placed before the authorities below, the Learned CIT(A) while allowing the claim of the assessee on the basis of its alternative submission as discussed hereinabove observed as follows:

*“5.1 I find merit in the appellant submission that he had carried out transaction of commodity trading in MCX through broker. The Documentary evidence in form of daily contract notes issued to the appellant by the sub broker in the name of HRIM Comtrade clearly shows that on the given date transaction mentioned therein carried out. The daily contract note is the primary document in respect of commodity trading through MCX. The details of the contract note with respect to the name of the broker, MCX membership ID, FMC code and the address as mentioned in the daily contract notes clearly matches with all the relevant particulars of HRIM Comtrade, therefore the appellant had no reason to doubt that the sub broker to whom he*

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*was carried out the transaction commodity trading is not a genuine person. The Periodic clients account statement issued by the sub broker to the appellant assessee also show the name of HRIM Comtrade and the PAN reflecting on the periodic account statement matches with vie PAN of the HRIM Comtrade as per the website of the Income Tax. The Appellant :ias therefore no reason to doubt about the genuineness of the transaction being carried out through HRIM Comtrade. The Appellant had been able to establish that there is correlation of transaction price with the real time MCX prices.*

*5.2 The appellant had also proved that payment in respect of the transaction of trading of commodity to the sub broker HRIM had been made through Account Payee cheques as under:*

<i>Sr. No.</i>	<i>Date</i>	<i>Cheque No.</i>	<i>Amount</i>	<i>Beneficiary</i>
<i>1</i>	<i>21-12-11</i>	<i>111148</i>	<i>17,22,153</i>	<i>HRIM Comtrade</i>
<i>2</i>	<i>12-01-12</i>	<i>111150</i>	<i>23,15,241</i>	<i>HRIM Comtrade</i>
<i>3</i>	<i>01-02-12</i>	<i>111151</i>	<i>29,53,539</i>	<i>HRIM Comtrade</i>
<i>4</i>	<i>13-02-12</i>	<i>111152</i>	<i>17,07,998</i>	<i>HRIM Comtrade</i>
<i>5</i>	<i>22-02-12</i>	<i>111154</i>	<i>18,50,595</i>	<i>HRIM Comtrade</i>
<i>6</i>	<i>01-03-12</i>	<i>111156</i>	<i>17,32,165</i>	<i>HRIM Comtrade</i>
<i>7</i>	<i>17-03-12</i>	<i>111159</i>	<i>18,52,726</i>	<i>HRIM Comtrade</i>
			<i>1,41,34,417</i>	

*The appellant had also furnished before the A.O. as well as before me in the course of appellate proceeding certificate issued by the HDFC bank limited dated 11/12/2014 to the effect that the affirmation cheque issued in favour of HRIM Comtrade had been duly cleared and the appellant bank account had been debited accordingly. The bank certificate dated 11/12/2014 clearly proves that the payment has been made by the appellant by the assessee to HRIM Comtrade through account payee cheque and the cheques had been duly cleared and honored and the appellant bank account had been debited for the corresponding amount of the cheques issued.*

*5.2 The Appellant further argued that the appellant had in fact carried out ansaction at commodity trading in MCX through sub broker and had suffered loss of Rs.1,40,69,748 and necessary documentary evidence in support thereof in produced before the A.O.*

*5.3 Taking into consideration the totality the facts and circumstance of the case and the written submission filed by appellant, I am inclined to hold that the appellant had carried out transaction of commodity trading in MCX*

*through the sub Broker and had suffered of loss of Rs. 1,40,69,748. On the face of evidence produced by the appellant before the A.O. and also before me in course of the appellant proceeding in support of the transaction of commodity trading in MCX carried by appellant through the sub broker, it is not justified to treat the transactions and resultant loss as bogus. In fact the appellant had carried out transaction of trading in commodity in MCX through sub broker and the appellant had suffered loss of Rs. 1,40,69,748 in such transaction, however since transaction of buying and selling without taking delivery is to be considered as speculative transaction, the loss arising therefore is to be treated as speculation loss which is not eligible to be set off against the business or profession. Therefore, the A.O. is justified in disallowing the amount of Rs. 1,40,69,748 as speculation loss cannot be set off against the business or profession. This ground of appeal is dismissed and the additions made by the AO are confirmed.*

*6. However, the A.O. is hereby directed to take the loss of Rs. 1,40,69,748 as speculation loss to be carried forward to the subsequent assessment year to be set off against future speculation profit. Ground number- 3 is **allowed.***

When the transaction of commodity trading in MCX carried by the appellant through the sub broker was established by the appellant before the Learned CIT(A) with corroborating evidences the Learned CIT(A) rightly has treated such transaction as genuine and not bogus. Further that since such transaction of buying and selling without taking delivery is required to be treated as speculative transaction, the loss arising out of such transaction though could not be eligible to be set off against the business or profession we find no frailty in directing such speculative loss to be carried forward to the subsequent assessment year to be set off against future speculation profit as held by the Learned CIT(A).

5. In the light of the above discussion, this Court does not find any infirmity in the impugned order passed by the Learned CIT(A) as to warrant interference. The question is accordingly answered in the affirmative, i.e. in

favour of the assessee and against the revenue. Consequently, the appeals fails and accordingly dismissed.

6. In the result, revenue's appeal is dismissed.

<b>This Order pronounced in Open Court on</b>	<b>17/05/2019</b>
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Sd/-  
( PRAMOD KUMAR )  
**VICE PRESIDENT**  
Ahmedabad; Dated 17/05/2019  
*Priti Yadav, Sr.PS*

Sd/-  
( Ms. MADHUMITA ROY )  
**JUDICIAL MEMBER**

**आदेश की प्रतिलिपि अग्रेषित/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)-10, Ahmedabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad