

**IN THE INCOME TAX APPELLATE TRIBUNAL,
AHMEDABAD B BENCH, AHMEDABAD**

[Coram: Justice P P Bhatt, President and Pramod Kumar, Vice President]

ITA No.: 262/Ahd/2015
Assessment year: 2010-11

Prakashkumar Natvarlal PatelAppellant
*Prop. of M/s. Jiya Enterprise,
F-204, Uma Sharanam, Opp. Nirman Homes,
New S.G. Road, Gota, Ahmedabad-382481
[PAN : AOLLP 6510 K]*

Vs

Income Tax OfficerRespondent
Ward 3(3), Ahmedabad

Appearances by

Ashwin Shah, Bhadresh G. *for the appellant*
Mudit Nagpal *for the respondent*

Date of concluding the hearing : June 03, 2019
Date of pronouncement : June 03, 2019

O R D E R

Per Bench :

1. By way of this appeal, the assessee appellant has challenged correctness of the order dated 15th December 2014 passed by the CIT(A) in the matter of assessment under section 143(3) of the Income Tax Act, 1961, for the assessment year 2010-11.

2. Grievances raised by the assessee appellant are as follows:

“1. The learned CIT(A) has erred in confirming F&O commodity loss of Rs. 40,07,962 as speculation loss in as much as the F&O loss is a business loss as per Section 43(5)(e) as inserted by Finance Act, 2013 with effect from 01-04-2014 and that the said insertion is with retrospective effect in view Supreme Court in the case of Allied Motors P. Ltd V/s. CIT 224 ITR 677 and CIT V/s. Alom Extrusions Ltd. 319 ITR 306.

2. The learned CIT(A) has erred in confirming the interest of Rs. 3,00,000 out of Rs. 4,77,240 on the ground that the interest free loans are given in as much as the entire amount of interest paid is for the purpose of business and therefore it is allowable as deduction.”

3. To adjudicate on this appeal, only a few material facts need to be taken note of. The assessee before us is engaged in the business of gold and bullion trading. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has claimed a deduction of Rs 40,07,962 in respect of commodity transactions on MCX as loss. The Assessing Officer noted that this is not a recognized stock exchange and that it is in the nature of speculative transactions. The assessee's claim regarding the transactions being in the nature of hedging transactions was also rejected. The loss of Rs 40,07,962 was thus treated to be speculative loss in nature which was not set off against other business profits. The Assessing Officer also noted that the assessee has given interest free loans unconnected with business, and at the same time borrowed funds from a bank and one other person on commercial terms. It was in this backdrop that the interest payment of Rs 4,77,240 was also disallowed by the Assessing Officer. Aggrieved, assessee carried the matter in appeal before the CIT(A). It was contended that the amendment in Section 43(5), by inserting clause (e), must be held to be retrospective in effect, even though it was introduced w.e.f. 1st April 2014. The CIT(A) rejected this plea. On the interest disallowance, the CIT(A) allowed relief to the extent of Rs 1,77,420 but confirmed the balance amount of Rs 3,00,000. The disallowance so confirmed was justified on the ground that "while the assessee has allowed his own funds as interest free advances, he is paying interest on the loans that he has received". The assessee is not satisfied and is in further appeal before us.

4. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

5. So far assessee's grievance against the disallowance of interest to the extent of Rs 3,00,000 is concerned, once the CIT(A) holds, as she has held in this case, that the assessee had sufficient interest free funds available, there cannot be any justification of the disallowance of interest on borrowed funds. As is the settled legal position, when the assessee has sufficient interest free funds, the presumption has to be that the interest free funds have been utilized for the purpose of advancing interest free loans. Hon'ble Bombay High Court's judgment in the case of CIT Vs Reliance Utilities & Power Pvt Ltd [(2009) 313 ITR 340 (Bom)], which has been followed, with approval, by Hon'ble jurisdictional High Court in the case of CIT Vs UTI Bank Ltd [(2013) 32 taxmann.282 (Guj)] holds so. In this view of the matter, the disallowance of Rs 3,00,000 must stand deleted.

7. Ground no. 2 is thus allowed

8. On the question of the loss of Rs 40,07,962 being treated as speculation loss and ineligible to set off against normal income, the assessee has an altogether new plea. He contends that loss on account of derivate trading cannot be treated as speculation loss at all. He finds support from certain judicial precedents in support of this proposition. In all fairness, however, he admits that this plea was never before the authorities below, even as he contends that he has all the rights to present a new legal plea at the stage of the Tribunal. When we, however, suggested that this plea should be first examined by the CIT(A), he very graciously, even though somewhat reluctantly, agreed to the suggestion. Learned Departmental Representative also did not oppose the suggestion. The plea taken by the learned counsel certainly deserves judicious consideration but taking up this plea directly at this stage, and allowing the lower appellate forum to be bypassed altogether, would not be appropriate.

9. In view of these discussions, as also bearing in mind entirety of the case, we deem it fit and proper to remit the issue to the file of the CIT(A) for adjudication de novo in the light of our above observations, in accordance with the law and by way of a speaking order. As the matter is being remitted to the file of the CIT(A) for fresh consideration, all issues are left open.

10. Ground no. 1 is thus allowed for statistical purposes.

11. In the result, the appeal is partly allowed in the terms indicated above. Pronounced in the open court today on the 3rd day of June, 2019.

Sd/-

Justice P P Bhatt
(President)

Sd/-

Pramod Kumar
(Vice-President)

Ahmedabad, dated the 3rd day of June, 2019

Copies to:

(1)	<i>The appellant</i>	(2)	<i>The respondent</i>
(3)	<i>CIT</i>	(4)	<i>CIT(A)</i>
(5)	<i>DR</i>	(6)	<i>Guard File</i>

By order

True Copy

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*