

आयकर अपील अाधिकरण, राजकोट ँयायपीठ, राजकोट ।
IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT

**BEFORE SHRI RAJPAL YADAV,
HON'BLE JUDICIAL MEMBER
AND
SHRI WASEEM AHMED
HON'BLE ACCOUNTANT MEMBER**

ITA No.199/RJT/2017

अाधायण वषा Asstt. Year: 2013-14

DCIT, Cir.1(2) Rajkot.	Vs.	M/s.Topland Fincorp 2, Umakant Pandit Udhyognagar Mavdi Plot Rajkot.
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(Applicant)		(Responent)
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Revenue by :	Shri Anil Kumar Das, DR
Assessee by :	Shri Vimal Desai, AR

सुनवाई का ताराख/**Date of Hearing** : 18/09/2019
घोषणा का ताराख /**Date of Pronouncement**: 19/09/2019

आदेश/ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER:

Revenue is in appeal before the Tribunal against order of the ld.CIT(A)-I, Rajkot dated 24.4.2017 passed for the Asstt.Year 2013-14.

2. In the first ground of appeal, the grievance of Revenue is that the ld.CIT(A) has erred in deleting the disallowance of Rs.3,26,821/- which was disallowed by the AO with the help of section 14A of the Income Tax Act, 1961.

3. Brief facts of the case are that the assessee has filed its return of income electronically on 16.9.2013 declaring total income at Rs.(-)6,01,95,642/-. The

ld.AO observed that the assessee has shown dividend income amounting to Rs.69,940/-. He worked out the disallowance required to be made under section 14A with formula given under Rule 8D of the Income Tax Rules at Rs.3,26,821/-. On the appeal, the ld.CIT(A) has deleted the disallowance on the ground that the alleged dividend income was not claimed as exempt by the assessee. The ld.CIT(A) has relied upon the decision of Honøble jurisdictional High Court in the case of Corrttech Energy P.Ltd., 45 taxmann.com 116. Honøble High Court has held that if there is no exempt income claimed by the assessee, then no disallowance under section 14A required to be made.

4. On due consideration of the above facts, we are of the view that the ld.CIT(A) has rightly placed its reliance upon the decision of Honøble jurisdictional High Court for the proposition that once no tax free income was claimed by the assessee, then no disallowance under section 14A is required to be made. Hence this ground of appeal is rejected.

5. Ground no.2: In this ground of appeal, grievance of the Revenue is that the ld.CIT(A) has erred in setting aside the finding of the AO whereby the ld.CIT(A) has allowed the claim of the assessee of Rs.4,41,66,710/- as business loss.

6. The ld.AO without recording any finding or any fact and without giving any notice to the assessee held that loss debited on derivative is a speculative loss. Four line finding recorded by the AO in this behalf reads as under:

5. On verification of profit & loss account, it seen that the assessee has debited loss on derivatives at Rs.4,41,66,710/- which is speculative loss. The same is not business loss and therefore required to be carried forward as speculative loss and will be adjusted against speculative income only.””

7. Dissatisfied with the treatment given by the AO the assessee carried the matter in appeal before the Id.CIT(A). It was contended by the assessee that from the derivative transaction it has suffered above loss. The details relating to such loss has been submitted during the assessment proceedings including the bills, contract note etc. It was also contended that the AO failed to appreciate that transaction in derivatives of shares entered by the assessee was eligible transaction carried on recognized stock exchange and fall within the purview of section 43(5)(d) of the Act. Therefore, they cannot be treated as speculative transaction, and the action of the AO is completely unjustified. The Id.CIT(A) has examined this aspect and thereafter held that this treatment given by the assessee in the books cannot be treated as speculative loss. The finding recorded by the Id.CIT(A) to this effect read as under:

“11. I have duly considered the above submissions of the appellant and assessment order of the AO. There is no dispute between the appellant and the AO regarding the fact of incurring loss in share derivatives and the figure of such loss. The only dispute is regarding the treatment of such loss as speculative business loss vs. non-speculative business loss. From the assessment order, it is seen that the AO. treated the share derivatives loss as speculative business loss but no reasons are given for the same. It appears that the AO proceeded on the perception that derivatives, being non-delivery based transactions, are always speculative in nature. It appears that the AO carried out this variation without issuing any show-cause notice to the appellant. It is also seen that the appellant moved a rectification application soon after the assessment order seeking correction on the ground that as per provisions of Section 43(5)(d), the derivative transactions in shares on a recognized stock exchange are excluded from the purview of speculative transactions. The AR of the appellant submitted before me that the said rectification is still pending before the AO. The AR of the appellant also drew my attention to copy of few contract notes filed In the paper book and submitted that the same were conforming to the conditions laid in section 43(5)(d) of the Act and therefore, the derivatives loss should not have been treated as speculative loss by the A.O. On careful consideration, I am in agreement with the appellant.

The A.O. has not given any explicit reason for treating the loss in share derivatives as speculative loss. It seems that he has failed to consider the provisions of Section 43(5)(d) of the Act. The appellant has convincingly explained that the conditions stipulated in Section 43(5)(d) were met with. As per Section 43(5)(d), the derivative transactions in shares carried out in a recognized stock exchange are not to be treated as speculative transactions. I therefore direct the A.O. to treat the loss in share derivatives claimed by the appellant as non-speculative business loss and allow to be carried forward as such. This ground of appeal is allowed.

8. With the assistance of the ld.representatives, we have gone through the record carefully. Section 43(5)(d) provides the meaning of speculative transaction. It is important to take note of this clause. ÷

“43. In sections 28 to 41 and in this section, unless the context otherwise requires—

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(5) "speculative transaction" means a transaction in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips:

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(d) an eligible transaction in respect of trading in derivatives referred to in clause (ac) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) carried out in a recognised stock exchange; or

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9. A perusal of the above would indicate that derivative transaction in shares in a recognized stock exchange is excluded from the purview of speculative transaction. The AO has not appreciated this aspect and has not considered any details. He simply believed that this is a speculative loss. On

the other hand, the Id.CIT(A) has appreciated this aspect, and thereafter held that this loss cannot be treated as speculative loss. In view of the above discussion, we do not find any merit in this ground of appeal raised by the Revenue. Accordingly, it is rejected.

10. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the Court on 19th September, 2019 at Rajkot.

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER