

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

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
I.T.A. No. 2325/DEL/2015 (A.Y. 2009-10)**

DCIT Circle 17(1), New Delhi (APPELLANT)	Vs.	M/s. Mosaic India Pvt. Ltd. Y-65, Ground Floor, Hauz Khas, New Delhi- 110016 PAN : AACCC4033C (RESPONDENT)
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Appellant by	Sh. Manoneet Dalal, Ms. Manisha Jain, Sh. Vishu Goel, CA's
Respondent by	Sh. Amit Katoch, Sr.DR

Date of Hearing	07.08.2019
Date of Pronouncement	15.10.2019

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed against the order dated 30.01.2015 passed by CIT(A)-VI, New Delhi for assessment year 2009-10.

2. The grounds of appeal are as under :

1. *Whether on the facts & circumstances of the case & in law, the Ld. CIT(A) is justified in deleting the addition of Rs. 13,11,26,585/- on account of loss incurred on sale of bonds having span of 16 to 23 years received in lieu of cash subsidy and regarded as a capital loss by the A.O.*
2. *That the order of the Ld. CIT(A) is erroneous and is not tenable on facts and in law.*
3. *That the appellant craves leave to add, alter, amend or forego any ground(s) of appeal either before or at the time of hearing of appeal."*

3. The assessee is a company incorporated in India under the provisions of the Companies Act, 1956. The assessee is engaged in the business of import and export of fertilizers, domestic trading and distribution of fertilizers and Incidental activities such as stevedoring and warehousing services. The assessee company electronically filed its revised return of income for the subject year on 15.10.2010, declaring loss of Rs. 282,673,846 and claiming a refund of Rs. 177,258,732. Furthermore, a paper copy of the said return was filed with the office of the DCIT, Circle 5(1), New Delhi. The return was selected for scrutiny under Section 143(3), and vide order dated 11.03.2013 passed under Section 143(3) read with Section 144C of the Act, the Assessing Officer assessed the income of the assessee company at Rs. 30,050,180 while making the following additions:

S.No.	Additions made by AO	Amount (Rs.)
1	Disallowance of notional loss/expenditure incurred on account of foreign exchange fluctuation	181,597,443
2	Disallowance of loss incurred on sale of Special Government of India Fertilizer bonds ("bonds") received in lieu of subsidy from Government of India ("GOI")	131,126,585
	Total additions	312,724,028

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) allowed the appeal of the assessee.

5. The Ld. DR submitted that the CIT(A) erred in deleting the addition of Rs. 13,11,26,585/- on account of loss incurred on sale of bonds having span of 16 to 23 years received in lieu of cash subsidy and regarded as a capital loss by the Assessing Officer.

6. The Ld. AR relied upon the decision of the co-ordinate bench in case of

DCM Shriram Consolidated Ltd. vs. ACIT (ITA Nos 274 & 1301/Del/2013 order dated 14.10.2015). The Ld. AR also relied upon the order of the CIT(A).

7. We have heard both the parties and perused all the relevant material available on record. The assessee company has to accept the special bonds in lieu of cash/cheque payment made by the Government of India previously against the amount of Fertilizer Subsidy receivable by the companies. These bonds have been issued by GOI on face value with maturity of 16 to 23 years. These bonds are in nature of trading assets of the company and the assessee company was not in the position to hold these bonds as investment since it is issued by the Govt. of India in lieu of subsidy recoverable in cash/cheque and due to lack of funds, the assessee company was not able to hold these bonds. The decision of the Tribunal in case of DCM Shriram (supra) is squarely applicable in the present case. The facts of the present case is also identical and therefore, the CIT(A) was right in holding that the same is a revenue loss and not that of capital loss. The CIT (A) held as under:

“4.2.10 It is well settled position that mere nomenclature or reflection or treatment adopted by the assessee for a particular item such as disclosing the Special Bonds issued by the GOI under the head “Investment” does not determine the taxability of such item. Hon’ble Supreme Court in the case of Kedarnath Jute Mfg. Co. Ltd. [82 ITR 363] held that, “whether the assessee is entitled to a particular deduction or not will depend on provision of law relating thereto, and not on view taken by the assessee nor can be existence or absence of entries in the books of accounts be decisive or conclusive in the matter” In the case of National Cement Mines Industries Ltd. vs. CIT [42 ITR 69], Apex court held that, “the character of the receipt either as capital or as income should not be based on the name given to the amount received by the assessee in his records, because in law the real nature and character of the transaction must be determined in light of the terms of the contract and right and obligation of the parties flowing therefrom unguided by the nomenclature of the transaction”. In view of the above factual and legal position the loss on

the sale of bonds is a revenue loss and, therefore, the AO is not justified in disallowing the same as capital loss. The appeal is allowed in this ground.”

The addition therefore, was correctly deleted by the CIT(A). The reasoning given by the CIT(A) was correct and there is no need to interfere with the findings of the same. The appeal of the Revenue is dismissed.

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

Order pronounced in the Open Court on 15th October, 2019.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 15/10/2019

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Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI