

आयकर अपीलिय अधीकरण, न्यायपीठ – “C(SMC)” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “C(SMC)” BENCH: KOLKATA
 (समक्ष) श्री ए. टी. वर्की, न्यायीक सदस्य)
 [Before Shri A. T. Varkey, JM]

ITA No.2253/Kol/2019
Assessment Year: 2012-13

Ganapati Arcade LLP (Before conversion into LLP Known as Ganapati Arcade Pvt. Ltd.) (PAN: AAOFG3773A)	Vs.	Income-tax Officer. Ward-8(4), Kolkata.
Appellant		Respondent
Date of Hearing		21.01.2020
Date of Pronouncement		06.02.2020
For the Appellant		Shri Siddharth Jhajharia, Advocate
For the Respondent		Shri Jayanta Khanra, JCIT, Sr. DR

ORDER

This is an appeal preferred by the assessee against the order of Ld. CIT(A)-3, Kolkata dated 23-08-2019 for the assessment year 2012-13.

2. Though the assessee has raised three grounds of appeal, it is noted that there is effectively only one issue i.e. against the action of the Ld. CIT(A) in confirming the action of the AO who disallowed the claim of loss of Rs.6,87,766/- claimed by the assessee which he incurred in foreign currency futures.

3. Brief facts of the case as noted by the AO are that he noted from the details of P&L Account that the assessee has claimed a deduction on account of loss from currency dealings amounting to Rs.6,87,766/-. According to AO, assessee has never dealt in foreign currency earlier. According to AO, only in this assessment year the assessee has dealt with the foreign currency and thereafter he has not dealt with foreign currency transaction as on date (date of assessment order 08.03.2015). According to AO, assessee's major income has been perpetually from the rental income from its immovable property and according to AO, the assessee claimed set off of the derivative loss on currency from its rental income and also the other sources of income. The AO did not accept the claim of assessee [deduction

on account of loss from currency dealings amounting to Rs.6,87,766/-] since the derivative loss according to him, is a speculative loss. Though the assessee filed written submission justifying its claim of loss the AO did not agree and held that the loss incurred by trading in currency derivative cannot be set off with any of the income other than the income derived from speculative income and, therefore, he disallowed the loss claimed of Rs.6,87,766/-. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who confirmed the same albeit on a different reason that the assessee has dealt this derivative transaction through broker named M/s. Marigold Vanijya P. Ltd. and the director of M/s. Marigold Shri Sachet Saraf has admitted that he and his company M/s. Marigold Vanijya P. Ltd. is involved in providing accommodation gain/loss to the clients. Based on this statement the Ld. CIT(A) held that the loss claimed by the assessee cannot be accepted since the assessee failed to establish the genuineness of the currency derivative loss and, therefore, the loss claimed was rightly disallowed by the AO and he confronted the action of AO on this reason. Aggrieved, the assessee is before this Tribunal.

4. Having heard the rival submissions, it is noted that according to AO, the transaction of currency derivatives does not fall u/s. 43(5)(d) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"). I note that the assessee had transacted in currency future (USD-INR) through the recognized member-broker in the recognized MCX stock Exchange Ltd. which transaction in "derivatives" within the term defined u/s. 2(ac) of the Securities Contract (Regulation) Act, 1956 and confirm to the criterion laid down for making the transaction eligible. And clause (d) of the proviso to section 43(5) of the Act carves out the exception to the "speculative transaction" as per section 43(5) provided the eligible transaction in respect of trading in derivatives, in this case "Future" transactions in currencies traded in the trading platform of the recognized stock exchange are business transaction and not speculative transactions. Therefore, the loss occurred from the trading in the aforesaid eligible transaction in respect of trading in derivatives through recognized stock exchange cannot be treated as speculative loss and therefore, loss arising there from can be adjusted against business income and the action of AO cannot be sustained. And it is noted that this issue is no longer res integra as held by the Tribunal in Nand Nandan Agrawal Vs. DCIT (2018) 90 taxmann.com 3 (Agra-Trib.), wherein the observation of the Tribunal is as under:

“..... It is held that the transactions in currency derivatives as entered into by the assessee, were not speculative transactions. There were no derivative contracts outstanding on 31.03.2014, which could be termed as a notional loss. Accordingly, the loss sustained by the assessee in trading of currency derivatives, amounting to Rs.17,09,121/- for AY 2013-14 and Rs.11,84,370/- for AY 2014-15 are allowed to be set off against the other business income of the assessee.....”

5. With regard to the claim of the Ld. CIT(A) that the transaction was not genuine, the Ld. AR drew my attention to the similar contention made by the AO in the case of ACIT Vs. M/s. Tirupati Awasth P. Ltd., ITA No. 1560/Kol/2016, AY 2011-12 dated 28.03.2018 wherein the contention was repelled by the Ld. CIT(A) which was confirmed by the Tribunal and held as under:

“10. Heard rival submissions and perused the material on record. We find that the AO issued notice u/s. 133(6) of the Act to MCX Stock Exchange, Mumbai. Admittedly the said stock exchange complied with the notice issued by the AO along with supplying various details in respect of said transaction. According to AO, it is incomplete details. However, the CIT-A noted in his order that the AO failed to verify the genuineness of transaction with that of broker of MCX Stock Exchange. It is also observed that the CIT-A found satisfied that the assessee filed all the required details and documents in support of the transactions entered into by it in respect of foreign exchange derivatives. We find that the AO made the addition only on the basis of statement recorded during the search & seizure operation in the premises of the said Shri Sachet Saraf, director of M/s. Marigold Vanijya P.Ltd. The said statement of Mr. Saraf was retracted at a later point of time. The CIT-A found satisfied that there was no corroborative evidence which supports the view of the AO that the said transaction was unexplained. Therefore, we find no additional evidence, which was filed before the CIT-A, but not before the AO. The CIT-A deleted the 6 ITA No. 1560/Kol/2016 said addition only on the basis of material/evidence available on record, which were very much before the AO in the re-assessment proceedings. The case laws as relied on by the assessee before the CIT-A were relevant and applicable to the present facts of the case. The CIT-A has discussed the each case law thoroughly. Thus, the CIT-A was justified in deleting the addition made by the AO on this issue. The grounds raised by the revenue in the appeal are dismissed.”

6. Respectfully following the order of the Tribunal (supra) the reason given by the Ld. CIT(A) to disallow the claim of the assessee also cannot be sustained and, therefore, the reason given by the AO as well as the Ld. CIT(A) fails and thus, the claim of the assessee is allowed.

7. In the result, the appeal of assessee is allowed.

Order is pronounced in the open court on 6th February, 2020.

Sd/-(Aby. T. Varkey)
Judicial Member

Dated :6th February, 2020

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Ganapati Arcade LLP (Before conversion into LLP Known as Ganapati Arcade Pvt. Ltd.), C/o, Salarpuria Jajodia & Co., 3rd floor, 7, Chittaranjan Avenue, Kolkata-700 072.
2. Respondent – ITO, Ward-8(4), Kolkata.
3. CIT(A)-3, Kolkata (sent through e-mail)
4. CIT- , Kolkata.
5. DR, ITAT, Kolkata. (sent through e-mail)

By order,

/True Copy,

Assistant Registrar