

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "A", MUMBAI**

**BEFORE SHRI RAJESH KUMAR (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 1503/MUM/2019  
Assessment Year: 2013-14**

Amol Capital Market Pvt. Ltd., A-106, Motalibai Wadia Bldg, 22-D SA Brelvi Street, Road, Fort, Mumbai - 400001 PAN: AADCS8022N	<b>Vs.</b>	The DCIT-4(1)(1), Room No. 636, Aaykar Bhavan, M.K. Road, Mumbai - 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Shri Venugopal Nair (AR)

Revenue by : Shri Michael Jerald (DR)

Date of Hearing: 03/03/2020  
Date of Pronouncement: 20/05/2020

**ORDER**

**PER RAM LAL NEGI, JM**

This appeal has been filed by the assessee against the order dated 28.01.2019 passed by the Ld. Commissioner of Income Tax (Appeals) (for short 'the. CIT (A) 9, Mumbai, for the assessment year 2013-14, whereby the Ld. CIT(A) has partly allowed the appeal filed by the assessee against the assessment order passed u/s 143 (3) of the Income Tax Act, 1961 (for short the 'Act').

2. Brief facts of the case are that the assessee company a corporate member of BSE engaged in the business of share and stock broker, investment and financial consultants, filed its return of income for the assessment year under consideration, declaring loss of Rs. 62,91,080/-. The AO passed assessment order u/s 143 (3) of the Act determining the total income of the assessee at Rs. 24,72,485/- after making disallowance of Rs. 6,94,209/- u/s 14A read with rule 8D and Rs. 80,69,356/- u/s 73 of the Act. The assessee challenged the

assessment order before the Ld. CIT (A). The Ld. CIT (A) partly allowed the appeal of the assessee, however, confirmed the addition of Rs. 80,69,356/-. Still aggrieved, the assessee is in appeal before the Tribunal.

3. The assessee has challenged the impugned order passed by the Ld. CIT (A) on the following effective grounds of appeals:

- “1. *The Ld. CIT (A) erred in facts and circumstances in confirming action of AO treating loss in F&O transactions as deemed speculative under exp to sec. 73, without appreciating sec 43(5)(d) having already deemed such loss as non speculative, further deeming as speculative is not appropriate and by ignoring that gross total income of appellant consists mainly of income chargeable under income from Business other than F&O, capital gains & interest on FDS.*
2. *The Ld. CIT (A) erred in facts and circumstances of the case and in law in holding AO to have rightly made disallowance of 50% of business expenses of the appellant as pertaining to speculative business.*
3. *Reasons given by ld. CIT (A) confirming additions are wrong, insufficient and contrary to facts and law.”*

4. Before us, the Ld. counsel for the assessee submitted that since the income of the assessee is from the business of Future an Option derivatives (F & O), the same should have been treated as business income as per the provisions of section 43 (5) (d) of the Act. Therefore, the Ld. CIT (A) has wrongly held that the loss from F & O in assessee's case has to be set off as provided u/s 73 (1), the Ld. counsel further submitted that the business being non speculative, the loss from F & O should also be considered as business loss. In order to substantiate the said contention the Ld. counsel relied on the judgment of the Hon'ble Supreme Court in the case of *Snowtex Investment Limited vs. PCIT (Supreme Court) Civil Appeal No 4483 of 2019 (arising out of SLP(C) No. 20017 of 2017*, judgment of the Hon'ble Calcutta High Court in the case of *Asian Financial Services Ltd.* 293 CTR 240 (Cal), decision of the Delhi Bench of the ITAT in the case of *M/s Sucon India Ltd. vs. JCIT ITA No.6203/Del/2015*, decision of Mumbai Bench of the ITAT in the case of *ITO vs. M/s Arandi Investments Pvt. Ltd. ITA No.2330/Mum/2016* and the decision of

the Ahmadabad Bench of the Tribunal in the case of *Magic share Traders Ltd. vs. DCIT ITA No.770/Ahd/2016*. The Ld. counsel further pointed out that the “A” Bench of the ITAT, Mumbai has dealt with the identical issues in assessee’s own case ITA No 1974/Mum/2016 for the AY 2012-13 and the Tribunal vide order dated 21.08.2017 restored the issue pertaining to short term capital loss and loss on F & O to the file of the Ld. CIT (A) with the liberty to the assessee to substantiate its claim that F&O transaction under consideration pertain to eligible transactions contemplated by Explanation-1 to Section 43 (5). Further, the Ld. CIT(A) has restored the issue relating to disallowances of expenses relatable to transactions pertaining to sale of shares to the file of the Ld. CIT(A) for deciding the issue afresh.

5. On the other hand, the Ld. departmental representative (DR) admitted that the ITAT has dealt with the issues raised by the assessee in the present case in assessee’s appeal pertaining the assessment year 2012-13. However, the Ld. DR supported the order passed by the Ld. CIT(A) on the ground that the Ld. CIT(A) has passed the said order in the light of the facts of the present case. The Ld. DR pointed out that the Hon’ble Supreme Court has admitted the appeal against the judgment of the Hon’ble Calcutta High Court delivered in the case of *Asian Financial Services Ltd.* (supra). The Ld. DR further relied on the judgment of the Hon’ble Supreme court in the case of *Snowtex Investment Ltd. vs. PCIT*, wherein the Hon’ble Apex court has held that the amendment to section 73 by finance Act (No.2) Act, 2014 is prospectively effective from 01.04.2015 and cannot be given retrospective effect. The Ld. DR further relied upon the decision of the Mumbai Tribunal in the case of *Varsha Corporation Ltd vs. DCIT (2014) taxmann.com 352(Mum. Trib)*.

6. We have heard both the parties at length and perused the material on record including the cases relied upon by the parties and the decision of the coordinate Bench rendered in assessee’s own appeal for the assessment year 2012-13 (supra). As pointed out by the Ld. counsel, the coordinate Bench has restored the identical grounds to the file of the Ld. CIT(A) for fresh adjudication

in the light of the directions given in the order. The findings of the coordinate are as under:

*“14 We now advert to the issue pertaining to the assessing of the „trading loss” of ( -) Rs. 33,60,540/- claimed by the assessee, as a „Speculation loss” by the A.O. We find that the „trading loss” of (-) Rs. 33,60,540/- comprised of Profit on trading of shares of Rs. 26,441/- and loss on F&O for the year of Rs. 33,86,990/-. We are of the considered view that the Hon’ble High Court of Bombay in the case of CIT Vs. Bharat R. Ruia (HUF) reported as 199 Taxmann 87 (Bom) had observed that Futures & Options (F&O) are sub categories of derivatives. We further find that the CBDT vide its Circular No. 3 of 2006, while deliberating on the scope of the post amended Sec. 43(5)(d) had referred to the Explanatory Notes on the provisions of the Finance Act, 2005, and therein observed that trading in derivatives had been excluded from the ambit of speculative transactions with prospective effect from A.Y. 2006-07 onwards. Thus in the backdrop of the aforesaid facts, it can safely be concluded that as F&O transactions are a part of trading in derivatives, therefore, pursuant to the amendment made available to Sec. 43(5)(d) w.e.f. A.Y. 2006-07, the same can safely be held to have been excluded from the ambit of speculative transactions. We further find that the aforesaid issue had also been deliberated upon by the coordinate bench of the Tribunal in the case of DCIT Vs. Sski Investors Services (P) Ltd. (2008) 113 TTJ (Mum) 511, wherein it was held that as derivative trading does not involve any purchase and sale of shares, therefore, the loss on account of derivatives cannot be treated as a „Speculation loss”. We further find that a similar view had been taken by the coordinate bench of ITAT, Mumbai in the case of Pradeep Kumar Harlalka Vs. ACIT, reported as 47 SOT 204 (Mum ).*

*15. We find ourselves to be in agreement with the contentions raised before us by the ld A.R. that F&O transactions cannot be categorized as speculative transactions in light of post amended Sec. 45(5)(d). However, we find substantial force in the view arrived at by the CIT(A) that as Clause (d) of Sec. 43(5) r.w. Explanation 1(i) contemplates an „eligible transaction” in respect of trading in derivatives referred in Clause (ac) of Sec. 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) carried*

out in a recognized stock exchange, therefore, in the absence of any material/evidence having been placed on record by the assessee, from where it could be gathered that the F&O transactions were done on a recognized stock exchange and were screen based transactions having stamped date, time and details of the said transactions, the claim of the assessee could not be summarily accepted. We thus are of the considered view that the matter in all fairness needs to be restored to the file of the CIT(A), with a liberty to the assessee to substantiate its claim that the F&O transactions under consideration pertained to „eligible transactions“ contemplated by Explanation 1 of Sec. 43(5). The matter is thus restored to the file of the CIT(A) for fresh adjudication in the backdrop of our aforesaid observations. That in case the assessee is able to establish that the F&O tradings under consideration falls within the scope and gamut of „eligible transactions“ (supra), then the loss suffered from the said F&O transactions would be assessed as a „trading loss“, as claimed by the assessee. Needless to say, the CIT(A) shall afford sufficient opportunity of being heard to the assessee to substantiate its claim during the course of the set aside proceedings. We are further of the considered view that if the assessee is able to substantiate that the F&O transactions falls within the sweep of Sec. 43(5)(d), then shall be entitled to claim the „set off“ of the profit on trading of shares of Rs. 26,441/- as claimed by it in its „return of income“

We now take up the contention of the assessee that the AO had erred in disallowing 50% of the expenses debited to the 'Profit & Loss A/c' by attributing the same to the speculative business of the assessee. We are of the considered view that the aforesaid disallowance is in itself dependent on the fact as to whether the respective transaction of sale of shares by the assessee, viz. sale of shares held as investment and those held as 'stock in trade' are in the nature of speculative transactions or not. That as we have concluded that the loss suffered by the assessee on sale of shares held by it as an investment is to be held to be a speculation loss, therefore, the disallowances of expenses pertaining to such transactions would be justified. However, as the adjudication on the issue as to whether the loss suffered by the assessee on the sale of shares held by it as 'stock in trade' would fall within the realm of the 'Speculative loss' or not, had

*been set aside by us to the file of Ld. CIT(A) for fresh adjudication for verifying the fulfillment by the assessee of the requisite conditions contemplated u/s 43(5)(d) r. w. Explanation 1, therefore, the issue as regards the disallowance of expenses relatable to such transactions would be dependent on the adjudication by the CIT(A) of the issue. We, thus restore the issue as regards the disallowance of expenses relatable to transactions pertaining to sale of shares held by the assessee in 'stock in trade' to the file of the CIT(A). The assessee shall be at liberty to raise fresh submissions in context of the expenses relatable to the transactions pertaining to the sale of shares held by the assessee as stock in trade, in case if the assessee is found to have failed to satisfy the requisite conditions contemplated u/s 43(5)(d) pertaining to the sale transactions of the share held by it as 'stock in trade'. The ground of appeal No.2 is thus partly allowed in terms of our aforesaid observations.*

7. We notice that the coordinate Bench of the Tribunal has dealt with the identical issues in assessee's own appeal for the assessment year 2012-13 discussed above and the Bench has restored both the issues to the file of the Ld. CIT(A) for fresh adjudication in terms of the said order. Hence, respectfully following the decision of the coordinate Bench we restore both the issues to the file of the Ld. CIT(A) for adjudicating the same afresh in accordance with the directions given by the coordinate Bench in assessee's appeal for the assessment year 2012-13 discussed above.

In the result, appeal filed by the assessee for assessment year 2013-2014 is partly allowed for statistical purposes.

Order pronounced on 20<sup>th</sup>. May, 2020 under rule 34(4) of the ITAT Rules, 1963.

Sd/-  
(RAJESH KUMAR)  
ACCOUNTANT MEMBER

Sd/-  
(RAM LAL NEGI)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 20/05/2020

**आदेश प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**