

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'B' BENCH, KOLKATA
[Virtual Court Hearing]**

**Before Shri J. Sudhakar Reddy, Accountant Member &
Shri A.T. Varkey, Judicial Member**

**I.T.A. No. 2019/KOL/2019
Assessment Year: 2016-2017**

***Khatuwala Computech Pvt. Limited,..... Appellant
46, Middle Road, P.O. Barrackpore,
North 24-Parganas-700120
[PAN:AABCK3455H]***

-Vs.-

***Income Tax Officer,..... Respondent
Ward-14(2), Kolkata,
Aayakar Bhawan Poorva,
110, Shanti Pally,
Kolkata-700107***

Appearances by:

Shri Rohit Shukla, FCA, appeared on behalf of the assessee

Smt. Ranu Biswas, Additional CIT, appeared on behalf of the Revenue

Date of concluding the hearing : March 30, 2021

Date of pronouncing the order : April 12, 2021

O R D E R

Per Shri J. Sudhakar Reddy, Accountant Member:-

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-5, Kolkata dated 05.06.2019 for the assessment year 2016-17 on the following effective Ground:-

"That the Id. CIT(Appeals)-5, Kolkata erred in confirming the addition of Rs.1,52,000/- as speculative income since the value shown in the contract note for sale was different than the value shown in Form 10DB in respect of transactions of shares of Ceat Limited".

2. After hearing the rival contentions, we find that the sole issue involved in the ground of appeal for adjudication is the value of sale of equity shares of Ceat Limited. The Assessing Officer considered the sale consideration of equity shares as per the computation for calculating Securities Transaction Tax. The assessee's contention that the actual sale consideration has to be taken and not the value considered for computing STT, was rejected by both the Assessing Officer as well as Id. CIT(Appeals). We have gone through the detailed submissions made by the assessee. The same is extracted from page 2 to 9 of the paper book for ready reference:-

"3.01 Exhibit 2 was filed vide the assessee's reply on 15.11.2018 (Page 34 to Page 39 of PB) in response to the learned AO's notice dated 23.10.2018 (Page 32 to Page 33 of PB) with reference to the learned AO's query: "(5) Reconcile sale of Equity Share of Rs.1,74,16,897 In your books with Rs.1,76,10,177 as per our information". It was explained that the reconciliation is as per Exhibit 2 and that the value difference is because of the Brokerage & Charges of 0.1% (approx. Rs.17,557) and also on account of Hedging Profit / (Loss) of Ceat Limited (Rs.1,28,564) and Wockhardt Limited (Rs.11,409).

Exhibit 3 was filed vide the assessee's reply on 15.11.2018 in response to the learned AO's notice dated 23.10.2018 with reference to the query: "(6) No mention of sale of Equity Shares to the tune of Rs.11,98,90,649 in your books and statements submitted". It was explained that the aforesaid sale value is the sale value of shares under speculation and that for the purpose of accounting, only the difference being profit or loss arising out of speculative transactions is recorded.

It was also submitted during the course of scrutiny assessment that as per NSE Circular No. NSE/CMO/0146/2004 dated 10.11.2004, for the purposes of STT calculation, the sale value is first calculated by using the VWAP (Volume weighted average price) method as explained in the said circular. This derived sale value is then the basis for form 10DB on which STT is further calculated. This Circular is at Page 40 to 42 of PB. Therefore, it is not always a case where "Sale Value" as appearing in a contract note matches with "Value" for calculating STT (in Form 10DB).

3.02 During the financial year 2015-16, the assessee transacted in shares of Ceat Limited on 5 different dates as per Table A given below:

TABLE A

(A) Date of transactio	(B) Contract Note No	(C) Qty. Bough	(D) Qty. Sold	(E) Sale value after brokerage	(F) Speculation gain/loss	(G) Form 10DB value	(H) Form 10DB value (other than
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ITA No. 2019/KOL/2019
Assessment Year: 2016-2017
Khatuwala Computech Pvt. Limited

n		t				(Deliver)	delivery)
1.4.15	NR/13511		2500	2065330.40(page10)		2067400(pag e 11)	
6.4.15	NR/32842		1500	1258995.70 (page 12)		1260255(pag e 13)	
17.4.15	NR/196987	36254	36254		144570.77(pa ge 16)		33594406.56(pa ge 17)
20.4.15	NR/215851	7500	11500	3461478.86(page 18)		3629320(pag e 20)	6804975(page 20)
29.4.15	NR/340743	1750	1750		5197.20 (page 21)		1326045(page 23)
				6785804.96	139373.57	6956975	41725426.56

***** Page Numbers referred in Table A are the Page Numbers printed on the Contract Notes / PB**

Ceat Limited - Data as per Contract Notes	
Total Value of Sale (after brokerage)	6785804.96
Value as shown by Form 10DB for the purpose of calculation of Securities Transaction Tax (STT)	6956975.00

4. The five contract notes mentioned in Table A above respectively bearing number N/R/13511 dated 01.04.2015; N/R/32842 dated 06.04.2015, N/R/j196987 dated 17.04.2015, N/R/215851 dated 20.04.2015 and N/R/340743 dated 29.04.2015 are appearing at Pages 10 to 23 of PB. These contract notes state the detailed transactions and also the Securities Transaction Tax (SIT) & Volume for calculation for Form 10DB purposes.

Values given in "Reconciliation Statement of Value of Sale of Shares vis-a-vis Value of Sale of Shares appearing in Form 10DB in Exhibit - 2.

The assessee incurred speculation loss and hedging loss out of transactions in relation to shares of Ceat Limited as detailed in Exhibit 3 and as per details in Table A above. These figures of Contract Notes (Column H) are matching with the values given in "Reconciliation Statement of Speculative Gain j (Loss) vis-a-vis Value appearing in Form No. 10DB in Exhibit - 3.

5. A reconciliation of the transactions of Contract Note No: N/R/215851 of 20.04.2015- (Page 18 to Page 20 of PB)

Ceat Limited	7500	Purchase	Rs.6887064.35
Ceat Limited	7500	Sale	Rs.67,58,500.51
		Hedging gain/loss	Rs.128564.34
Ceat Limited	4000	Sale	Rs.3590043.20
		Sale recorded in books	Rs.3461478.86

From the aforesaid contract note N/R/215851 of 20.04.2015 and chart it is evident that the assessee appropriated the loss on 7,500 shares of Ceat Limited of (Rs.1,28,564) as Hedging Loss on which the Form 10DB value is ascertained at Rs.68,04,975. Nowhere has the assessee either not disclosed the sale value or the profit / (loss) on the share transaction.

6. The learned AO observed at Page 2 of his order dated 19/24-12-2018 "As per Reconciliation statement of sale of equity shares

sale value of Ceat Limited shown to be Rs. 69, 56, 975. But as per reconciliation statement of speculative transaction sale value of such shares is shown to be Rs.68,04,975. The company was directed to show cause why under valuation of sales of equity shares of Rs.1,52,000(Rs.69,56,975minus Rs.68,04,975) will not be added back with returned income. In reply the AR replied, 'The sale values have been given in Exhibit 3 only to reconcile the sale value of Rs.11,98,90,650 as per Form 10DB for speculative transactions which resulted in speculative loss of Rs.2,63,830 and hedging loss of Rs.1,39,973 [Ceat Limited Rs.1,28,564 & Wockhardt Limited Rs.11,409]" But 10DB reveals following details.

<i>Name of share</i>	<i>Value as 10DB in exhibit 2 of reconciliation statement of sale of equity shares submitted on 15.11.18</i>	<i>Value as 10DB in exhibit 3 of reconciliation statement of speculative transaction submitted on 15.11.18</i>	<i>Difference</i>
<i>Ceat Limited</i>	<i>6956975</i>	<i>6804975</i>	<i>152000</i>
<i>Wockhardt Limited</i>	<i>1763200</i>	<i>1763200</i>	<i>0</i>

So value of sales cannot be different whether it is considered for speculation or considered for sale of shares just like Wockhardt Limited. Hence AR's contention is not acceptable. On this basis Rs.1,52,000 is added with returned income as undisclosed value of shares during speculation transaction."

The assessee refers to the contract note no N/R/ 158010 dated 15.04.2015 for Wockhardt Limited (Page 24 to 29 of PB) which was submitted during the course of assessment proceedings on 15.11.2018. The relevant data is reproduced below:

<i>Wockhardt Ltd.</i>	<i>1000</i>	<i>Purchase</i>	<i>Rs.1768927.50</i>
<i>Wockhardt Ltd.</i>	<i>1000</i>	<i>Sale</i>	<i>Rs.1757519.00</i>
		<i>Hedging gain/loss</i>	<i>Rs.11408.50</i>
<i>Wockhardt Ltd.</i>	<i>1000</i>	<i>Sale</i>	<i>Rs.1761385.90</i>
		<i>Sale recorded in books(as per contract note)</i>	<i>Rs.1749977.40</i>

The assessee further submits that the data as per Page 27 of PB on the aforesaid contract note:

<i>Column Heading</i>	<i>Value</i>	<i>STT</i>
<i>Transaction settled by delivery-sale</i>	<i>1763200.00</i>	<i>1763.20</i>
<i>Transaction settled by other than delivery</i>	<i>1763200.00</i>	<i>440.80</i>

In the case of Wockhardt Limited, the Form 10DE value for both types of transactions is each valued at Rs.17,63,200 for STT purposes and hence in Exhibit 2 - the delivery Form 10DB at column 5 is the same as value at Exhibit 3 - speculative sale value.

The learned AO allowed this hedging loss and since the Form 10DB values were the same in delivery and non delivery cases, he did not apply his mind and held this as the basis for extrapolating it to Ceat Limited without realizing that the comparison of the sale values is totally wrong - one is the sale value (Form 10DB) for non delivery shares and the other is the sale value of delivery shares.

7. Further the learned CIT(A) while confirming the above addition observed at Page 9 of his order dated 05-06-2019:-

"I have considered the submission of the appellant and perused the relevant assessment records. The A. O. had added back Rs.1,52,000 which represented the under valuation of shares as per reconciliation statement submitted by the appellant. The A/ R of the appellant in his submission had held that the difference arose due to the methodology of charging SIT by the broker in compliance with NSE Circular No. NSE/CMO/0146/2004 dated 10.11.2004. The A.O. held that the difference in value of sales reflected in contract note and value reflected in Form 10DB was bound to arise because of the methodology of computing sales for the purpose of charging SIT. There is not much merit in the claim of the appellant. He could not reconcile in difference in turnover as reflected in the books and in Form 10DB. Form 10DB is evidence of payment of SIT on transactions entered through recognized stock exchange. Therefore, there cannot be any difference in turnover between SIT and books. The A/ R of the appellant had emphasized the point that the method for computing turnover for arriving SIT is different. However, there is not much credence in the submission of the appellant. The Circular No. NSE/CMO/0146/2004 dated 11.11.2004 only relates to computation of SIT and does not relate to computation of turnover. The addition of Rs.1,52,000 is sustained. This ground of appeal fails and is therefore, not allowed.

The learned A.O. erred in comparing figures. Please see highlighted portion of Table A appearing above. He compared sum of value of Contract Note Page 11, 13 & 20 of PH amounting to Rs.69,56,975 with the value of Rs.68,04,975 appearing at Contract Note Page 20 of PH. In other words he did not compare with apple with apple but compared apples with oranges. Thus, he arrived at an entirely erroneous conclusion. The value of Rs.68,04,975 is the Form 10DB value of 7,500 shares that were transacted on 20.04.2015 and settled "other than delivery" and whereas Rs.69,56,975 is the Form 10DB 'delivery' value of 8,000 (2,500 + 1,500 + ,000) shares of Ceat Limited transacted on 01.04.2015, 06.04.2015 & 20.04.2015.

9. The learned CIT (A) also could not give justice to the facts of the case and upheld the action of the AO.

10. The assessee contends that on comparison with five contract notes of Ceat Limited appearing at Page 10 to 23 of PH and contract note of Wockhardt Limited appearing at Page 24 to 29 of PH.

10.01 In the case of Wockhardt Limited, the learned AO made erroneous comparison of the sale value as per Form 10DB for non

delivery shares with the sale value of delivery shares and concluded that it did not result in any difference. But such cases do happen when Form 10DB values for these different types of transactions were identical, and in this case the value was same for both the types of transactions.

10.02 It duly disclosed the sale value of 8,000 shares of Ceat Limited at Rs.67,85,804.96 as is evident from Exhibit - 2 appearing at Page 30 of PB as well as Table A above. The value of Rs.69,56,975 is the value shown in Form 10DB in respect of these 8,000 shares.

10.03 The value on 20.04.2015 of Rs.68,04,975 is the Form 10DB sale value of shares of Ceat Limited on speculation on which the assessee incurred a hedging loss of (Rs.128,564), which was duly disclosed vide Exhibit - 3 appearing at Page 31 of PB and Table A above.

11. As such the conclusion arrived by the learned AO that the assessee suppressed the value of sales by comparing two figures of Rs.68,04,975 and Rs.69,56,975 is erroneous. Further there is no difference in the turnover of Ceat Limited between the books and the contract notes. It is only for the purpose of calculation of Securities Transaction Tax (Form 10DB) based on VWAP (Volume Weighted Average Price), two different values of Sales are appearing in the Contract Note.

12. Based on facts of the above case, the assessee prays for deletion of Rs.152,000”.

3. The Id. Departmental Representative could not controvert the above submissions of the assessee. In view of the above discussion and considering the totality of the facts and circumstances of the case, we delete the addition made by the Assessing Officer as confirmed by the Id. CIT(Appeals) and allow the appeal of the assessee.

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

Order pronounced in the open Court on April 12, 2021.

**Sd/-
(A.T. Varkey)
Judicial Member**

**Sd/-
(J. Sudhakar Reddy)
Accountant Member**

Kolkata, the 12th day of April, 2021

Copies to : (1) **Khatuwala Computech Pvt. Limited,
46, Middle Road, P.O. Barrackpore,**

North 24-Parganas-700120

- (2) **Income Tax Officer,
Ward-14(2), Kolkata,
Aayakar Bhawan Poorva,
110, Shanti Pally, Kolkata-700107**
- (3) *Commissioner of Income Tax (Appeals)-5, Kolkata;*
(4) *Commissioner of Income Tax- ,*
(5) *The Departmental Representative*
(6) *Guard File*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.