

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC” BENCH, AHMEDABAD**

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

VIRTUAL HEARING

**ITA No.554/Ahd/2019
Assessment Year: 2015-16**

Shri Anup Kiritbhai Patel, Vaniyawad Ni Khadki, Near Tower, Uttarsanda, Nadiad-387 370		ITO, Ward -41(1) & TPS Nadiad
(Appellant / Assessee)	Vs.	(Respondent/ Revenue)
PAN: AOHPP4976P		
Assessee by	Shri B.T. Thakkar, AR	
Revenue by	Shri R.P. Makwana, Sr. DR	
Date of Hearing	08.03.2022	
Date of Pronouncement	02.06.2022	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

1. This appeal filed by the assessee is directed against the order dated 29.01.2019 of learned Commissioner of Income-Tax (Appeals)-2, Vadodara [**Ld. CIT(A)**]in Appeal No. CIT(A)-2/10322/2017-18, which in turn arises out of the order of assessment dated 15.12.2017 passed by the learned ITO, Ward-41(1)(1), Nadia [**Ld. AO**] u/s 143(3) of the Income-tax Act, 1961 [**the Act**] for the Assessment-Year 2015-16.
2. The assessee has raised following ground:

“(1) The Commissioner of Income-tax has erred on facts and law, in confirming addition of Rs. 8,12,571/-. The same being unjust and unlawful may please be directed to be deleted.”

3. The assessee is earning income from day-trading of stock market, Future & Option (F&O) transactions and interest. The assessee filed Return of Income on 19.03.2016 declaring a total income of Rs. 5,20,033/- which included business income of Rs. 97,666/- u/s 44AD. The case was selected for scrutiny and the statutory notices u/s 143(2) and 142(1) were issued from time to time. Finally, the assessment was completed u/s 143(3) by order dated 15.12.2017 at a total income of Rs. 13,32,600/-, after making an addition of Rs. 8,12,571/- on account of additional income from F&O transactions. Aggrieved by the order of assessment, the assessee filed appeal to Ld. CIT(A). The Ld. CIT(A), however, dismissed appeal and did not grant any relief. Against the order of Ld. CIT(A), the assessee has filed this appeal and now before us.

4. The solitary grievance of the assessee is the addition of Rs. 8,12,571/- made by Ld. AO on account of additional income from F&O transactions. During assessment-proceeding, the Ld. AO called for the details of F&O transactions from the assessee, in response to which the assessee supplied the details. When the Ld. AO compared the details supplied by the assessee with the information received from stock exchange / commodity exchange, the Ld. AO observed certain differences. Based on those differences, the Ld. AO arrived at following conclusions in Para No. 3 to 7 of the assessment-order:

Para No.	Brief conclusion taken by Ld. AO
3	The assessee has stated that he had one outstanding open position of NIFTY F&O as on 31.03.2014 i.e. carry forward as sale of future, but this is not true.
4	The assessee had opening stock of 125 Nos. of Maruti F&O

5	The assessee had opening stock of 2000 Nos. of Hexaware and 125 Nos. of Dr. Reddy. Further the assessee had closing stock of 125 Nos. of Grasim, 500 Nos. of Cipla and 125 Nos. of Bajaj.
6	The assessee had closing stock of 1,000 Nos. of ICICI and 375 Nos. of INFY.
7	The assessee purchased 15 Nos. of Silver commodity on 30 th April, 2015 which does not relate to the previous year 2014-15 relevant to assessment-year under consideration.

Although the assessee submitted to the Ld. AO that the differences are on account of outstanding open contracts of F&O yet the Ld. AO treated the differences as closing / opening stocks of the assessee. The Ld. AO, therefore, made re-working of purchase, sales, cost and profit of the F&O transactions and thereby computed an additional income of Rs. 8,12,571/- made addition to that extent. The detailed working are given in the assessment-order, which are not being reproduced for the sake of brevity.

5. Being aggrieved by the aforesaid addition of Rs. 8,12,571/-, the assessee went in appeal before Ld. CIT(A). During appellate-proceeding before Ld. CIT(A), the assessee made following submissions, as mentioned by Ld. CIT(A) in his order:

“3.2 During the appellate proceeding before me, the appellant made written submission which is reproduced as under:

“With respect to the order passed by the Ld. AO for the A.Y. 2015-16 the AO has calculated the Closing Stock of the open positions of the Futures and Options of Rs.24,14,212.50 and concluded the profit of Rs.14,29,972.50. Our argument against this is as under:

- The assessee is having a business of future and options, derivatives and commodity. Whereby there cannot be closing stock. The yearend balance shall be only the margin i.e. mark to margin.**
- Under para5, the Ld. AO showed the opening stock of two shares i.e. Hexaware and Dr. Reddy which are the sell positions outstanding on the year end and not opening stocks.**

- **The profit of Rs.14,29,972.50 shown by the Ld. AO is the notional gain and not the actual gain as the positions for the said share were still open as on 31st March 2015 which is also accepted by the ld. AO.**
- **The accounting treatment given by the Ld. AO (Trading account mentioned like the normal business activity) in the order is also inconsistent with the guidance note issued by the ICAI(Guidance Note on Accounting for Equity Index and Equity Stock Futures and Options).**
- **Our actual loss form F&O business is (Rs.—132254.00) which is also reflected in the financial wise summary issued by the Max Stock Broking Pvt. Ltd.**
- **Our plea to you is that the Ld. AO has erred in treating the assessee's business as a normal trading activity and has prepared the opening stock and closing stock like the normal trading business, instead of using mark to margin account balance.**
- **Further, in the case of ITAT-Mumbai, Edelweiss Capital Ltd. Mumbai on 12.08.2010, the same issue arose and the Ld. Bench took the cognizance of the ICAI Guidance note as well as refer the Supreme Court Judgement in the case of Chainrup Sampatram vs. CIT, West Bengal, whereby the Chief Justice observed that "Loss due to a fall in price below cost is allowed even if such loss has not been actually realized" Hence, it is the rule of prudence that "While anticipated losses can be taken note of while valuing the closing stock, anticipated profits cannot be recognized."**

6. The Ld. CIT(A), however, disagreed with the submission of assessee and confirmed the addition, by observing as under:

"3.3 I have considered the order of the Assessing Officer and the written submission of the appellant.

3.3.1 The sole ground of appeal relates to addition on account of F&O profits of Rs.14,29,972/-. On plain reading of appellant's submission only two disputes arise (i) Assessing Officer has assessed notional gain (ii) Assessing officer treated assessee's business as normal trading business. AR

also relied upon decision of the Mumbai, Tribunal, CIT vs. Edelweiss Capital Ltd. Mumbai where anticipated loss has been allowed but not anticipated gain to be estimated. But I hardly find this decision applicable here because assessing officer has determined profit based on the trading value. Trading data has been obtained from NSE, a third party whereas assessee challenges the profit based on own brokers trading data -Max Stock Broker Pvt. Ltd. Obviously, NSE data are more reliable than a private broking firm.

3.3.2 Another argument is that the Assessing Officer has considered trading business. Again I find this argument is factually incorrect. Detailed working at para 2 to 7 of assessment order clearly shows market to margin balance that has been considered to arrive profit/gain earned in appellant's business of grading. AR has failed to controvert the findings of the Assessing Officer with factual justification. Therefore, I don't need to interfere with the order passed by the Assessing Officer. Addition in this count is hereby upheld. This ground is dismissed."

7. Before us, the Ld. AR opened his argument by explaining the methodology and treatment of F&O transactions. The Ld. AR submitted that in F&O transactions, there occurs two events, viz. (i) Purchase, and (ii) Sale at two different timings. According to Ld. AR, the sequence of "purchase" and "sale" could be any, i.e. purchase followed by sale or sale followed by purchase. Therefore, if a person enters into a "purchase" transaction on a particular date, it is necessarily reversed by a "sale" transaction on a later date. Conversely if a person enters into a "sale" transaction" on a particular date, it is necessarily reversed by a "purchase transaction" on a later date. The event of "reversal" is called "squaring off". The Ld. AR further submitted that the difference of purchase price and sale-price is the amount of total profit or loss arising from the transaction. The Ld. AR further submitted that during the time-gap of purchase and sale, the transaction is also "marked-to-market" at the end of every day, on the basis of prevailing daily price. The profit or loss arising identified at the time of such daily marking is also ascertained. According to Ld. AR this process of daily marking happens till the transaction is finally squared-off. The Ld. AR further submitted that till squaring-off, the transaction remains "open / outstanding" but there is

nothing like opening stock or closing stock as understood by the Ld. AO. To illustrate this, the Ld. AR carried our attention to the Paper-Book wherein a Statement issued by M/s Max Stock Broking Pvt. Ltd., the member of stock-exchange through which the assessee did F&O transactions, is placed. This Statement contains Scrip-wise Summary of F&O Transactions done by the assessee. The Ld. AR referred to some of the transactions appearing in this Statement which we present below:

Page No. of Paper-Book	F&O Scrip	Transaction appearing in the Statement
5	NIFTY 23Apr14	Opening Position 50 Nos. @ 6739.65 for Rs. 3,36,982.50
1	Bajaj-Auto 30Apr15	Purchased on 16/03/2015 - 125 Nos. @ 2080.01 for Rs. 2,60,001.25
2	Cipla 30Apr15	Purchased on 27/03/2015 - 500 Nos. @ 699.02 for Rs. 3,49,510.00
2	Dr. Reddy 30Apr15	Sold on 31/03/2015 - 125 sold @ 3525.29 for Rs. 4,40,661.25
3	Grasim 30Apr15	Purchased on 20/03/2015 - 125 @ 3609.91 for Rs. 4,51,238.75

The Ld. AR submitted that these illustrative transactions would suffice to explain the facts. According to the Ld. AR, the first transaction demonstrates that there was an open outstanding transaction of 50 Nos. of “NIFTY 23Apr2014” as on 01.04.2014 as explained by the assessee to the Ld. AO during the assessment-proceeding, but the Ld. AO has not accepted the submission of assessee. The Ld. AR submitted that the other transactions indicate that the purchase / sale transactions were done on 16/03/2015, 27/03/2015, 31/03/2015 i.e. in the previous year 2014-15 relevant to the assessment-year 2015-16 under consideration but their expiry dates were 30 Apr, 2015, which indicates that the transactions stood as open outstanding contracts on 31.03.2015 i.e. the end of the previous year 2014-15 relevant to the assessment year 2015-16 under consideration. The Ld. AR submitted

that these and similar other transactions have been wrongly coined as “opening stock” or “closing stock” by Ld. AO. According to Ld. AR, there is nothing like opening stock or closing stock in F&O transactions, it is only open outstanding transactions. The Ld. AR submitted that during the year, the assessee has suffered a total loss of Rs. 1,32,254/- from F&O transactions, of which the major portion is the actual profit / loss of squared-up transactions and some amount of loss was from marking-to-market of open outstanding contracts. According to the Ld. AR, the actual profit / loss arising from squared up transactions is taxable / allowable in income-tax and there is no dispute over it. Further, the loss arising from marking-to-market of open outstanding transactions is also allowable as decided by the Hon’ble ITAT Mumbai in **DCIT Vs. Edelweiss Capital Ltd. ITA No. 5587/Mum/2018 dated 25/10/2019**. However, the Ld. AO has re-worked profit by treating the open outstanding transactions of purchase / sales as closing / opening stock and thereby enhanced taxable income. The Ld. AR submitted that unlike a normal trading business, there cannot be any closing stock / opening stock in F&O transactions and this aspect is not understood by the lower authorities. Ld. AR also submitted that even the Ld. CIT(A) has not considered the submissions of assessee properly and carefully, he has simply supported the approach of Ld. AO. Therefore, according to the Ld. AR, the approach of the lower authorities in justifying the addition of Rs. 8,12,571/- is not correct. With these submissions, the Ld. AR requested to delete the addition of Rs. 8,12,571/-.

8. Per contra, the Ld. DR relied upon the orders of lower authorities and claimed that the addition of Rs. 8,12,571/- has been made by Ld. AO after due consideration and hence the same was rightly confirmed by the Ld. CIT(A). Accordingly, the Ld. DR requested to uphold the addition.

9. We have considered rival submissions of both sides and also perused the material held on record. We observe that the Ld. AR has explained the methodology of F&O transactions in the first instance. Thereafter, the Ld. AR has, by means of the illustrations of various transactions appearing in the

Statement of M/s Max Stock Broking Pvt. Ltd., explained vehemently that the impugned purchase / sale transactions were the open outstanding contracts of F&O which were done in the previous year 2014-15 and expired in the previous year 2015-16. The Ld. AR is right in stating that these purchase / sale transactions, though outstanding on 31.03.2015, did not represent closing / opening stocks of assessee. We also find strength in the argument of the Ld. AR that the loss arising from daily marking of these open outstanding transactions is allowable as per the decision of Hon'ble Mumbai Bench of ITAT in **DCIT Vs. Edelweiss Capital Ltd. (supra)**. In view of the peculiar nature of F&O transactions submitted by the Ld. AR, we are of the view that the Ld. AO has wrongly treated the open outstanding contracts as closing / opening stocks of the assessee and made re-working of profit. Therefore, the addition of Rs. 8,12,571/- made by Ld. AO is not correct and deserves to be deleted. Accordingly, we accept the ground of assessee and delete the addition.

10. In the result, this appeal of assessee is allowed.

Order pronounced as per Rule 34 of I.T.A.T. Rules 1963 on
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Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

TRUE COPY

Ahmedabad

दिनांक /Dated : 02.06.2022

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

Shri Anup Kiritbhai Patel
ITA No.554/Ahd/2019
Assessment year 2015-16
By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad Benches, Ahmedabad