

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI**

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.2472/Mum/2021
(A.Y. 2010-11)**

Income Tax Officer, Ward-2(2)(3) Room No. 542, 5 th Floor, Aayakar Bhavan, M.K. Road, Churchgate, Mumbai - 400 020	Vs.	M/s Plaza Securities Ltd. 8-B, Rajbahadur Motilal Mansion, 11/43 Tamarind Street For, Mumbai - 400023
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACP8335L		
Respondent	..	Appellant

Appellant by :	N.R. Agarwal
Respondent by :	Ms. Vranda U. Matkar

Date of Hearing	25.05.2022
Date of Pronouncement	15.06.2022

आदेश / O R D E R

Per Amarjit Singh (AM):

The present appeal filed by the revenue is directed against the order passed by the Id. CIT(A), NFAC, Delhi, which in turn arises from the order passed by the A.O. u/s 143 r.w.s 147 of the Income Tax Act, 1961, for A.Y. 2010-11. The revenue has raised the following grounds before us:

“1. Whether on the facts and the circumstances of the case and in law, the Id.CIT(A) erred in not considering the loss in F&O segment as speculation loss, relying on the decision of ITAT, Ahmedabad, in the case of ITO Vs Upkar Retails Pvt. Ltd. (ITA No. 2237/Ahd/2014) notwithstanding that on similar issue Revenue has not accepted decision of the Calcutta high Court in Asian Financial Services Ltd. Vs. CIT (2017) 293 CTR 240 (Cal) and on which SLP is pending.”

2. The fact in brief is that the assessee has filed return of income declaring a total loss of Rs.34,57,764/- on 31.03.2016. The return was processed u/s 143(1) of the Act. Thereafter assessment u/s 143(3) r.w.s 147 of the Act was completed on 31.03.2016. During the course of assessment the A.O has treated loss from F & O of Rs.1,72,18,187/- as speculation loss and same was not allowed to be set off against the non speculation income.

3. Aggrieved, the assessee filed the appeal before the Id. CIT(A). The Id. CIT(A) has allowed the appeal of the assessee and held that the loss in F & O segment cannot be considered as speculation loss after taking into consideration the amendment made in the Income Tax Act, w.e.f 01.04.2016. The Id. CIT(A) has also referred the decision of ITAT, Ahmedabad in the case of ITO Vs. Upkar Retail, vide order dated 18.06.2018 in ITA No. 2237/Ahd/2014. The relevant part of the decision of CIT(A) is reproduced as under:

“23. The appellant had claimed loss of Rs.1,72,18,187.11 (About 1.72 Crores) in F & O trading and it was set off against trading income of Rs.216,17,066 41 (About 2.16 Crores). The AO has noted that the nature of trading income of Rs.2.16 was not explained. The AO disallowed loss of Rs.1.72 on the ground the loss from F & O transactions has to be treated as speculation loss in view of the decision in the case of CIT vs DLF Commerical Developers Ltd. (2013) 35 Taxmann.com 280 (Delhi).

24. The appellant has argued that the trading in F&O segment was not to be considered as speculative loss as per amendment in the Income Tax Act w.e.f. 01.04.2016. It is further submitted that Kolkata High Court has given judgment in favour of assessee after considering above stated judgment of Delhi High Court. It is also argued that ITAT Ahmedabad has considered judgment of both high court and decided in favour of assessee in the case of ITO vs Upkar Retail vide order

dated 18.06.2018 in ITA No.2237/Ahd/2014. Several other judgment have been relied on by the Appellant. It is argued the case of DLF Commercial Developers Ltd. (supra) related to share transactions and not F&O transactions.”

4. Heard both the sides and perused the material on record. During the course of assessment the A.O has noticed that assessee has claimed F & O loss of Rs.1,72,18,187/-. The A.O has disallowed the claim of set off by treating the F & O loss as speculation loss. The Id.CIT(A) has allowed the claim of the assessee after following the decision of Hon’ble Delhi High Court and ITAT, Ahmedabad as discussed supra in his finding. The Finance Act, 2005 has amended section 43(5)(d) to provide that an eligible transaction in respect of trading in derivatives of securities carried out on a recognized stock exchange shall not be deemed as speculative transactions. In this regard we have also perused the decision of Hon’ble Bombay High Court in the case of Souvenir Developer (I) Pvt. Ltd. Vs The Union of India. The relevant part of the decision on similar issue and identical fact is reproduced as under:

“42. In so far as judgment of Delhi High Court in case of the Commissioner of Income Tax Vs. DLF Commercial Developers Limited (supra) relied upon by the learned counsel for revenue is concerned, the Delhi High Court has taken a view contrary to the view taken by this Court in case of Commissioner of Income Tax Vs. Shri Bharat R. Ruia (HUF) (supra). The Judgment of the Hon’ble Supreme Court in case of Snowtex Investment Limited (supra) was not brought to the notice of Delhi High Court while dealing with the case of Commissioner of Income Tax Vs. DLF Commercial Developers Limited. The said judgment of Delhi High Court would not advance the case of the revenue.

43. In our view, the Income Tax Appellate Tribunal could not have confirmed any addition on transaction in derivatives on recognised stock exchange as defined in Section 43(5)(d) of the Income Tax Act, 1961 with reference to explanation given to Section 73 of the Income Tax Act, 1961 which is applicable to speculative transaction. By virtue of insertion of clause (d) to the proviso to Section 43 (5) of the Income Tax Act, 1961, the transactions in respect of the trading in derivatives as prescribed in clause (d) inserted in proviso to Section 43(5) would not be a speculative transaction.”

In view of the above facts and following the decision of the Hon’ble jurisdictional High Court as supra we don’t find any reason to interfere

in the decision of ld. CIT(A), therefore, the ground of appeal of the revenue is dismissed.

5. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 15.06.2022

Sd/-

(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated 16.06.2022

PS: Rohit

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

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

आदेशानुसार / BY ORDER,
सत्यापित प्रति // True Copy //

(Asst. Registrar)
ITAT, Mumbai