

IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCHES "DB": INDORE  
BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER  
AND  
SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT MEMBER  
ITA No.675/Ind/2019  
ITA Nos.278 & 184/Ind/2020  
Assessment Years: 2011-12 to 2013-14

The ACIT (Central)-1, Indore 452001	vs.	Essence Commodities Pvt. Ltd., 630, Usha Nagar Extension, Opp. Dashahra Maidan, Indore 452009 <b>PAN AAACE3879L</b>
(Appellant)		(Respondent)

Cross Objection No.17/Ind/2020  
Cross Objection Nos.04 & 09/Ind/2021  
Arising out of  
ITA No.675/Ind/2019  
ITA Nos.278 & 184/Ind/2020  
Assessment Years: 2011-12 to 2013-14

Essence Commodities Pvt. Ltd., 630, Usha Nagar Extension, Opp. Dashahra Maidan, Indore 452009 <b>PAN AAACE3879L</b>	vs.	The ACIT (Central)-1, Indore 452001
(Cross Objector)		(Respondent)

For Revenue :	Shri P.K Mishra, CIT (DR)
	Shri Prakash Jain

For Assessee :	Shri Shreya Jain
Date of Hearing :	15.11.2022
Date of Pronouncement :	10.12.2023

### **ORDER**

#### **PER CHANDRA MOHAN GARG, J.M.**

The above captioned appeals have been filed by the Revenue against the Orders of the Ld. CIT(A)-3, Bhopal, dated 26.03.2019 A.Y. 2011-12, dated 12.02.2020 for AY 2013-14 and 17.03.2020 for A.Y. 2012-13. The learned representatives of both sides submitted that the issues in the revenue appeals are almost identical and similar therefore for adjudication of grievance of revenue the appeal of revenue for A.Y. 2011-12 may kindly be taken as lead case for adjudication of grievance of revenue.

3. The grounds of appeal raised by the revenue read as under:

**For A.Y. 2011-12**

1. *“On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in deleting the disallowance of contrived losses on NMCE (Rs.8,40,05,637/-) by overlooking the glaring evidences/ findings of synchronized trades executed by the assessee with a cluster of brokers/counterparties on MCE exchange which had resulted in excessive losses which were then set-off against profits from other exchanges and without appreciating that the selective quoting of certain loss transactions on other exchanges does not absolve the assessee from providing substantive explanation on excessive losses on NMCE.*
2. *On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in not appreciating the fact that the execution of trades on a recognized exchange (MCE) as per rules, on screen based platform through banking channels and entries in books had no relevance in deciding the genuineness of losses which were inherently managed/ contrived losses.*
3. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in holding that the AO should have brought corroborative evidences against the affidavit filed by the assessee (citing genuine business transactions) whereas it was the assessee who was supposed to produce evidences in support of the simple affidavit and that the corroborative evidences on synchronized trades resulting in excessive losses were all over the assessment order.*
4. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in by placing reliance on allowance of algorhythmic trading by SEBI while ignoring the facts that even such transactions resulted in continued losses which otherwise should have been profitable and ignoring ample direct/circumstantial evidences of synchronized trades indulged by the assessee.*

5. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred by placing reliance on audit carried out by Auditor appointed by Forward Market Commission ignoring the fact that the same was regarding authenticity of books of accounts and clients transactions. Moreover the same was based on information provided by the assessee and MCE and that the Auditor has remarked that no responsibility of errors in the report arising out of incorrect information provided by the assessee or NMCE is undertaken which evidently meant that the so called Audit Report was not error free.*
6. *On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in deleting the addition of unaccounted profit of Rs.5,20,237.5 despite the fact that during assessment proceedings the assessee had failed to demonstrate the accounting of this profit even after adequate opportunities.*

**Ground No. 1 to 5 of Revenue for A.Y. 2011-12**

3. The Ld. CIT(DR) drawing our attention towards relevant part of assessment order page 29 para 12.12 submitted that Assessing Officer during reassessment proceedings made detailed enquiry and established beyond doubt that the losses obtained by assessee on NMCE platform were contrived losses and these losses were incurred by executing the synchronized trade dealings in illiquid commodities. The Ld. CIT(DR) also submitted that

the losses were incurred with a specific intention to reduce the taxable income by setting off the same against the profit earned from business activities other than trading on NMCE and thus these losses need to be disallowed. The Ld. CIT(DR) further submitted that the AO also observed that such trading was predominantly done during the last quarters of the year and there was striking feature that this phenomenon was only seen while trading in on NMCE and while trading on other exchanges like NCDEX/MCX etc. were consistent during the year which show the assessee quantifies the profits made on other exchanges and then accordingly decided to set-off the same to the maximum extent by booking artificial losses on NMCE. The Ld. CIT(DR) also submitted that information regarding all the transaction of trade executed by the assessee was called from NMCE u/s. 133(6) which has been provided vide letter dated 01.11.2018. The Ld. CIT(DR) vehemently pointed out that on analysis of said data provided by NMCE it was clearly gathered that during the F.Y. 2010-11, pertaining to

A.Y. 2011-12 the assessee had made 4823 transactions on NMCE and has made loss of Rs. 8,40,05,637/- which was artificially booked to reduce the tax liability of assessee. Therefore the Assessing Officer was right making disallowance in this regard and the Ld. CIT(A) has granted relief to the assessee without any justified reason and basis. Therefore impugned first appellate order may kindly be set aside by restoring that of the AO.

4. Replying to the above contention of revenue the learned assessee representative drew our attention towards para 4.2 to 4.2.12 of first appellate order and submitted that the transactions carried out by the assessee were through recognized stock exchange which is confirmed by stock exchange NMCE commodity exchange that all the payments were received and paid through banking channel and routed through NMCE commodity stock exchange. The Ld. AR also pointed out that in the statement the director of company replying question no. 8 explained the all factual

matrix of the transactions and submitted that these were genuine business transactions and undertaken in the routine course of business. The Ld. AR also pointed out that allegation of the A.O recorded in the assessment order have no lacks to stand as the allegation that the assessee has incurred loss only at NMCE platform is not correct but the appellant company in the same commodity had also incurred losses on the transactions undertaken on other commodity exchanges.

5. The Ld. AR submitted that on MCX in aluminum commodity assessee incurred loss of Rs. 15,26,750/-and on NMCE on the same item of aluminum incurred loss of Rs. 7,00,000/-. It was also explained that in case of 'chana' on NCDEX assessee company incurred loss of Rs. 1,20,96,100/- on NMCE loss of Rs. 9,80,200/- only and likewise in copper assessee incurred loss of Rs. 9,60,250/- while on NMCE it earned profit of Rs. 9,32,850/-

6. The Ld. AR submitted that A.O. has made addition by wrongly presuming that the transactions entered by the appellant company is synchronized trade by ignoring the rules and regulations of the Forward Market Commission (FMC) which was set up by the Central Government to make close interaction with commodity exchanges. The learned counsel submitted that it is impossible to know the name of the counterparty broker from whom commodities were purchased or sold. Entire transaction is settled by banking channel through commodity exchange. Therefore the Ld. CIT(A) was right in deleting the addition.

7. The learned AR submitted that there were 5 registered commodity exchanges in India and National Multi Commodity of India Ltd. (NMCE) was one of them at that point of time. The A.O. failed to appreciate that on the commodity exchange algorithmic trading are allowed to all members of National Commodities and derivative exchanges. He further explained that the algorithmic

trading is nothing only high frequency trading wherein SEBI has permitted 15 transactions in one second. In support of this fact the assessee submitted copy of the circular issued by National Commodity Derivative Exchanges Ltd dated 18.03.2018 clause 7 where it has been allowed that the number of order per second from a particular CTCL ID/ATS ser-id shall not exceed 15 orders per second. The Ld. AR also submitted that said circular was subsequently revised by SEBI circular vide dated 27.09.2016 wherein number of transactions per second were increased from 15 to 20 as per clause 9 of said circular. The Ld. AR also submitted that the AO was not correct and justified in alleging that all the trade have been executed within 60 seconds when order is placed and all the date are squared up on the very same date, from the circular of NCDEX and SEBI it is clear that till 26 the September 2016, fifteen transactions were allowed and thereafter twenty transactions per second is allowed by the regulator itself.

8. The Ld. AR placing reliance on the order of Hon'ble Kolkata High Court in the case of ***Pr. CIT vs. M/s. BIB Cables and Conductors, ITA No. 78 of 2017 GA No. 747 of 2017*** order dated 19<sup>th</sup> June, 2018 held that to hold a transaction as bogus there has to be some concrete evidence where the transaction cannot be proved with the supportive evidence. The Ld. AR also submitted that in the present case the transactions of commodity exchange have not only been explained but also substantive from the confirmation of parties to the transactions when both the parties are confirming the transactions which have been duly supportive by the books of accounts and bank transactions and no material has been shown by the AO which could negate the finding that of market transactions are not prohibited that the transactions undertaken by the assessee has to be allowed irrespective of the fact that the same are accruing loss of profit to the assessee.

9. The Ld. AR vehemently pointed out that the NMCE exchange Ahmadabad has also done forensic audit and auditor appointing by NMCE exchange Ahmadabad submitted report stating that the list of counterparty member with the Summary of Contract wise trade executed with counterparty brokers by the said member during the Audit Period clearly reveals that the member has pleaded ignorance about any of the counterparty brokers/clients/second part with whom trade of member has been matched at NMCE platform. The Ld. AR strongly supporting the first appellate order submitted that in the present case all payments have been received and paid through banking channel and transactions have been carried out through recognized stock exchange and confirm by the stock exchange NMCE commodity exchange then the AO was not justified in disallowing the loss incurred to the assessee and Ld. CIT(A) rightly allowed the same. Therefore grounds no. 1 to 5 of Revenue may kindly be dismissed.

10. On careful consideration of rival submissions first of all we note that the Ld. CIT(A) has granted relief to the assessee with following observations and findings:-

*4.2 Ground No. 2.1 & 2.2:- Through these grounds of appeal, the appellant had challenged the addition of Rs. 8,40,05,637/- on account of disallowance of losses. The said grounds relates to the addition of Rs.8,40,05,637/- being loss incurred by the assessee on NMCE platform by appellant company. Statement of the Director of appellant company was recorded. The director while replying to question No.8 stated as under:-*

*Q.8. In reply of the Q no.7 you have provided the month-wise details of the profit/loss incurred by the M/s. Essence Commodities Private Limited have also been provided by the department to company. Ongoing through the same it has been found that on nearly all the transactions in every commodity losses have been booked by the company and it can also be observed that the company have started business of NMCE platform from February 2010 and since then the company has incurred only losses in almost every month. From above observations it clearly emerges that only losses have been made on NMCE consistently. Please explain the reasons Why the Ms. Essence Commodities Pvt. Ltd (ECPL) has consistently made losses on NMCE platform.*

*Ans. Sit, these are genuine business transactions and done in the routine course of the business."*

*4.2.2. During the course of assessment proceedings to support above answer the Director of the assessee company filed an affidavit which was discarded by the A.O without bringing any evidence or corroborated*

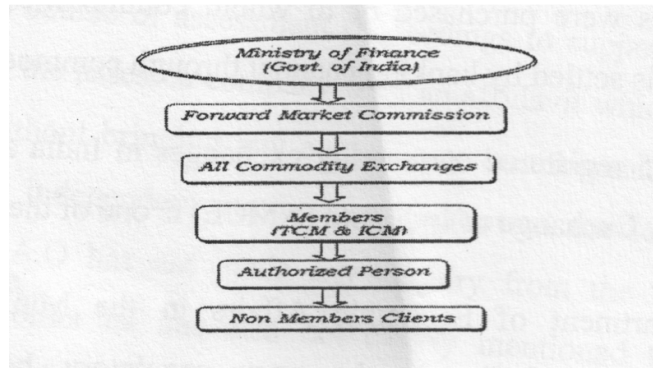
*evidence, without making any independent inquiry and disallowed the loss on hypothetical basis. The A.O has not made any enquiry from the third party. In the assessment order he has also not clearly mentioned that if the loss is arranged loss, how the assessee has paid cash to the third party or in what manner accounts were settled.*

*4.2.3 The allegation of the A.O that the assessee has incurred loss only at NMCE platform is not correct. The appellant company in the same commodity incurred the losses on other commodity exchange also. For instance on MCX in aluminum assessee incurred loss of Rs. 15,26,750/- and on NMCE incurred loss of Rs.7,00,000/-. In the case of chana on NCDEX assessee company incurred loss of Rs. 1,20,96,100/- and on NMCE loss of Rs.9,80,200/- while on ACE profit of Rs.6,350/-. In copper on MCX assessee incurred loss of Rs.960250/- while on NMCE it earned profit of Rs.9,32,850/-. A detailed statement showing commodity wise and exchange wise profit/loss has been filed. Thus from this fact it is clear that earning of profit or incurring loss is a regular phenomena of appellant's company business.*

*4.2.4 The A.O made the addition by presuming that the transaction entered by the appellant company is a synchronized trade by ignoring the rules and regulation of the Forward Markets Commission (FMC) which is set up by the Central Government to make close interaction with the commodity exchanges. As per the Forward Market Commission all the commodity transactions were executed on line in digital form on screen, hence it is impossible to know the name of the counterparty broker from whom commodities were purchased or to whom commodities were sold. Entire transaction is settled by banking channel through commodity exchange.*

4.2.5 There was 5 registered commodity exchanges in India and National Multi-Commodity Exchange of India Ltd (NMCE) is one of them.

*"The Department of Economic Affairs in the Ministry of Finance - Government of India, is the apex regulatory body governing all commodity exchanges. Various powers to provide regulatory supervision, besides the powers to grant or withdraw recognition of any exchange rests with this Department of the Government of India. The Forward Markets Commission (FMC) was set up in 1953 to provide regulatory advice to the Government and have closer regulatory interaction with the commodity exchanges. Most of the regulatory powers of the Central Government have been delegated to the FMC. For example, FMC has powers to approve the Memorandum and Articles of Associations as well as Byelaws of the Exchange. It has also powers to conduct inspection of accounts of the exchanges/their members, inquire into the affairs of the exchange. In an emergency, it can even suspend trading. All contracts for futures trade have be approved by the FMC before they can be launched on the exchange. As a self-regulatory organization, NMCE also plays an important role by ensuring that the provisions in the Articles of Association, and Byelaws etc. are followed in letter and spirit. The regulation by the Exchange is rule-based and incorporated in the software itself. Regulation involving human intervention and of discretionary nature is implemented through various committees of professional and experts. Special care is taken while constituting these committees to ensure that there is no conflict of interest. Legal Hierarchy is as under:-*



4.2.6 The A.O. made the addition without making any enquiry from the third party. All the transactions were carried out on an online Screen based platform where the buyer and the seller can never know to each other, identity under any circumstances and trades are automatically executed on the basis of matched buying and selling rates as per Exchange and FMC Rules and Regulations. Hence, genuineness of the transactions are beyond doubt. The commodities in which the appellant company trades on the NMCE platform were highly liquid and volatile in nature and as normally company is doing jobbing kind of trades on NMCE so most of trades executed immediately.

4.2.7 The contention of the A. that assessee incurred losses only on NMCE is not correct. The appellant traded in various commodities and incurred losses/profit on the same commodities on other commodity exchange also. The details of Profit and Loss earned on various exchanges in various commodities have been discussed above. These transactions were entered through recognized Exchange. Hence, the Exchange was the only Authority who can explain the correct nature and genuineness of these transactions.

The A.O. has not brought out any evidence on record which substantiate the allegation.

4.2.8 During the financial year 2010-11 relevant to assessment year 2011-12, the Forward Market Commission (FMC) also appointed independent auditor for separate audit / Inspection of books of accounts and other records conducted during the aforesaid period. Copy of Inspection Report duly signed by the Auditor was filed during the course of assessment proceeding. The future market is mainly meant for speculative transactions hence highly volatile and liquid in nature. In future markets most of the trades squared up during same day and nominal percentage of these trades carried forward to next day and also very little percentage of these resulted into deliveries. This fact can be verified from leading commodity exchanges.

From the above it is very much clear that almost all the commodities in which ECL trades were most liquid commodities on NMCE and also there were outstanding positions carried to next day so nobody can plan the trades for profit/loss. The profit/Loss can happen only depending on the volatility of the market. There is no link to prove that the appellant has received Cash and given cheque to any party. In absence of corroborative evidence disallowances has made by the A.O. is merely on presumption basis.

Reliance is placed on the following case laws:-

(i) *Bharti Syntex Limited vs CIT 137 TTJ 82 ( Jaipur Bench)*

(i) *CIT vs Value Capital Services (P) Ltd 307 ITR 334 ( Delhi)*

1. The commodities in which the appellant traded were highly liquid commodities and mainly belong to top traded commodities in NMCE.

2. NMCE is a nationalised electronic exchange and having membership and clientele all over India.

3. *The trading on NMCE happens in electronic platform and all the orders are visible to each and every person in front of electronic screen of NMCE, thus anybody from all India can strike the trade at any point of time, so clustering between members and synchronised trades are not possible.*

4. *The clustering and synchronization of such fast trades as specified by you between such brokers who are so distant from each other is never possible.*

4.2.9 *The A.O has made the addition on imaginary basis by presuming that the transaction entered by the appellant company is a synchronized trade with the clustering of few brokers losses is booked in every month of last quarter in every commodity at NMCE platform without appreciating and by ignoring the rules and regulation of the Forward Markets Commission (FMC) which is set up by the Central Government to make close interaction with the commodity exchanges. As per the Forward Market Commission all the commodity transactions were executed on line in digital form on screen, hence it is impossible to know the name of the counterparty broker from whom commodities were purchased or to whom commodities were sold. Entire transaction is settled by banking channel through commodity, exchange.*

4.2.10 *There was 5 registered commodity exchanges in India and National Multi-Commodity Exchange of India Ltd (NMCE) is one of them at that time. The A.O. failed to appreciate the fact that on the commodity exchange*

*Algorithmic Trading are allowable to all the members of all National Commodities and Derivatives Exchanges. The Algorithmic Trading is nothing only high frequency trading wherein SEBI has permitted 15 transaction in 1 second. In support of out this contention a copy of the circular issued by National Commodity and Derivatives*

*Exchange Ltd Circular No.:NCDEX/TRADING-027/2013/084 dated March, 18,2013 is enclosed herewith. The clause 7 of the circular reads as under:-*

*7. "The number of order per second from a particular CICL ID/ AIS ser-id shall not exceed 15 orders per second.*

*The above circular is reviewed by the SEBI vide circular no. SEBI/HO/CDMRD/DMP/CIR/P/2016/97 dated September 27, 2016 according to the said circular the number of transaction per second is reviewed from 15 to 20. The clause 9 of the said circular is reproducing herein under:-*

*9. "The Exchanges shall place a limit on numbers of orders per second from a particular CTCL ID/ATS user-ID not exceeding twenty orders per second. The limit of twenty orders per second from a particular CICL ID/ATS user-ID shall be measured over a rolling period of five seconds (i.e. hundred orders for 1<sup>st</sup> -6<sup>th</sup> second, hundred orders for 2<sup>nd</sup> to 7<sup>th</sup> second and so on).*

*4.2.11The A.O. is not justified by making allegation that i.e. all the trade have been executed within the 60 second when order is placed and all the data are squared up same day from the circular of NCDEX and SEBI it is clear that till 26 September 2016, fifteen transaction per second was allowed and thereafter twenty transactions per second is allowed by the regulator itself.*

*On the issue in question the Hon'ble Kolkata High Court in the case of Pr. CIT V/s M/s BIB Cables and Conductors ITAT No. 78 of 2017 GA No. 747 of 2017 order dated 19 June,2018 held as under:-*

*Para M onwards :-*

*M) The non submission of information and avoiding verification by writing that it had already filed written submissions with enclosures at the time of first hearing and thereafter and that no further papers or clarification need be filed by it. Further, asking to decide the appeal on the basis of submissions already filed by submitting a letter in dak"*

*In the appeal filed by the assessee, the Tribunal, however, held that there is no bar in undertaking off market transactions in commodities under the law. On the aspect of proving such transactions, the Tribunal opined that the Assessing Officer was duty bound to accept the profit shown in the Profit & Loss Account of the Assessee relying on the following authorities:-*

*(i) Apollo Iyres Ltd. V. CIT 255 ITR 273 (SC);*

*(ii) Malayala Manorama Co. Ltd. V. CIT 300 ITR 251 (SC);*

*(iii) DCIT- Circle- 10(1) V. Dune Leasing & Finance Ltd. 126 ITD 255 (Del.) On factual analysis of the assessee's case, the Tribunal observed and held:-*

*"4. We have heard both the side and perused the materials available on record. The Id. AR submitted two papers books. First book is running in pages no. 1 to 88 and 2nd paper book is running in pages 1 to 34. Before us the Id. AR submitted that the order of the AO is silent about the date from which the broker was expelled.*

*There is no law that the off market transactions should be informed to stock exchange. All the transactions are duly recorded in the accounts of both the parties and supported with the account payee cheques. The Id. AR has also submitted the*

*IT return, ledger copy, letter to AO and PAN of the broker in support of his claim which is placed at pages 72 to 75 of the paper book. The Id. AR produced the purchase & sale contracts notes which are placed on pages 28 to 69 of the paper book. The purchase and sales registers were also submitted in the form of the paper book which is placed at pages 76 to 87. The Board resolution passed by the company for the transactions in commodity was placed at page 88 of the paper book. On the other hand the Id. DR relied in the order of the lower authorities.*

*4.1 From the aforesaid discussion we find that the assessee has incurred losses from the off market commodity transactions and the AO held such loss as bogus and inadmissible in the eyes of the law. The same loss was also confirmed by the Id. CIT(A). However we find that all the transactions through the broker were duly recorded in the books of the assessee. The broker has also declared in its books of accounts and offered for taxation. In our view to hold a transaction as bogus, there has to be some concrete evidence where the transactions cannot be proved with the supportive evidence. Here in the case the transactions of the commodity exchanged have not only been explained but also substantiated from the confirmation of the party. Both the parties are confirming the transactions which have been duly supported with the books of accounts and bank transactions. The Id. AR has also submitted the board resolution for the trading of commodity transaction. The broker was expelled from the commodity exchange cannot be the criteria to hold the transaction as bogus. In view of above, we reverse the order of the lower authorities and allow the common grounds of assessee's appeal."*

*[quoted verbatim] This is essentially a finding of the Tribunal on fact. No material has been shown to us which would negate the Tribunal's finding that off market transactions are not prohibited. As regards veracity of the transactions, the Tribunal has come to its conclusion on analysis of relevant materials. That being the position, Tribunal having analysed the set of facts in coming to its finding, we do not think there is any scope of interference with the order of the Tribunal in exercise of our jurisdiction under Section 2604 of the Income Tax Act, 1961. No substantial question of law is involved in this appeal. The appeal and the stay petition, accordingly, shall stand dismissed.*

*4.2.12 From the above it is clear that even loss arises on off market transactions is not bogus if the transaction are recorded in the books of both the parties and offered for taxation and finally the transaction were settled through banking channel. The FMC appointed the Chartered Accountant for auditing of the appellants accounts. The performance audit report submitted by the auditor is as under:-*

S. No.	Para No.	Ch. No.	Chapter of manual	Violations
1	6.7 Margin Collection (Page #43)	VI	Clientele' Transactions	
2	4.2.5 Trade Log and Order Log (Page #27)	IV	Verification of Books of accounts and Other Records	
3	4.2.5 Margin Deposit Book (Page #27)	IV	Verification of Books of accounts and Other Records	
4	2.4.7 Order Book (Page #27)	IV	Verification of Books of accounts and Other Records	

5	4.1(t) maintenance of Books of Accounts (Page #24)	IV	Verification of Books of accounts and Other Records	
6	4.2.9 Register of Commodity (Page #28)	IV	Verification of Books of accounts and Other Records	

*From the above it clear that there is no violation on the part of the appellant.*

*The independent auditor appointed by the FMC has not detected any violation against the appellant. The NMCE exchange Ahmadabad has also done the forensic audit. The forensic has been done by the auditor appointed by NMCE exchange Ahmadabad. The report of the auditor is as under:-*

*" We had analyzed the Trade Date provided by NMCE of Essence Commodities (P) Limited and observed that, there are 38 (Thirty Eight), 46 (Forty Six) & 60 (Sixty) counter Party members Brokers in 2009-10, 2010-11 2011-12 years respectively. Further as explained by Member that in Computerized / Screen based Trading Platform the Trading Member does not know the Identity of Member or Client Code of counter Party /2nd Party, hence the Member has said I pleaded ignorance about any of the aforesaid Counter Party brokers / Clients / 2nd part with whom the Trade of Member has been matched at IMCE Platform. The list of Counter Party Member along with the Summary of Contract wise trade executed with Counter party Brokers by the said Member during the Audit Period is attached as Annexure 'B'*  
*"*

*The appellant has only 9.44 %, 7.66% and 7.04% share in Contracts Traded by the Member vis-a-vis Total Turnover is such contracts on Exchange Platform in the year 2009-10, 2010-11 & 2011-12 respectively.*

*In the case of appellant the transaction is carried through the recognized stock exchange which is confirmed by the stock exchange NMCE Commodity Exchange, that all the payments are received / paid through banking channel that through routed through NMCE Commodity Exchange. Therefore, the A.O was not justified in disallowing loss of Rs. 8,40,05,637/- without any basis. Therefore, the addition made by AO amounting to Rs. 8,40,05,637/- is Deleted. Therefore, the appeal on this ground is Allowed.*

11. On careful consideration of assessment order dated 07.12.2018 passed u/s. 143(3) r.w.s 147 of the Income Tax Act 1961, findings recorded by the Ld. CIT(A) in the impugned order, while allowing the losses to the assessee and rival contentions of both the sides. First of all we note that neither the AO nor the Ld. CIT(DR) before this bench have controverted the fact which we have clearly noted that all the transactions have been carried out through recognized stock exchange which were also confirmed by the stock exchange NMCE commodity exchange and it was also

confirmed all the payments have been received/paid through banking channels and have routed through NMCE commodity exchange. The report of forensic auditor appointed by NMCE exchange Ahmadabad, also reveals that in computerized/screen based trading platform the trading members does not know the identity of member or client code of counterparty/second party, hence the member has said/pleaded ignorance of any aforesaid counterparty brokers/clients/second party with whom the trade of members has been matched at NMCE platform.

12. Hon'ble Calcutta High Court in the case of PCIT vs. BIB Cables and Conductors (supra) elaborately analyzed the details of identical transactions and thereafter concluded in the favour of the assessee upholding the orders of Tribunal that all the transactions were undertaken through broker and were duly recorded in the books of accounts of assessee the broker has also declared the transaction in its books of

accounts and income earned there from was also offered for taxation. Their Lordship speaking for Hon'ble Calcutta High Court observed that to hold a transaction as bogus, there has to be concrete evidence where the transactions cannot be proved with supportive evidences. In the present case, it is not a case of AO that the transactions of the assessee have not been proved with supportive evidence but the action of the AO revolves around the sole allegation that the assessee incurred artificial losses to square up its profit earned from other commodity exchanges and to evade tax liability. Therefore, the AO observed that transactions are not genuine. As we have noted above that it is not a case of the AO that no transactions were undertaken and assessee booked bogus losses but the allegation of the AO is that the losses were incurred by the assessee were only contrived losses and these losses were managed with the help of brokers who always there in group of clusters so as to same can be set off against the profits earned from activities of trading other then NMCE platform.

13. On being asked by the Bench, the Ld. CIT(DR), except reading and supporting assessment order could not bring or substantiate any factual position or allegation against the assessee by way of cogent findings and supportive documentary evidence or positive adverse material against the assessee to prove that the alleged losses were not actually accrued to the assessee and the assessee claimed bogus losses. The Ld. CIT(A) noted a very important factual position which is self speaking that the assessee incurred losses on similar commodity in the other stock exchanges on high value and also earned profit in NMCE and incurred losses on MCX in the forward trading of copper.

14. So far as allegation of the A.O. that assessee has undertaken high volume transaction in 60 second we note that the SEBI has permitted 15 to 20 transactions per minute as per revised Circular No. 97 dated 27.09.2016 and merely because the assessee has incurred losses on a

particular platform does not *Ipsa facto* established that the losses are contrived or artificial and the sole intention is to set off the profits earned from other stock exchanges and to reduce and evade the tax liability on the profits earned from other stock exchanges.

15. In view of above, we are unable to see any ambiguity perversity or any other valid reason to interfere with findings arrived by the Ld. CIT(A). Our conclusion also gets support from Hon'ble Kolkata High Court in the case of PCIT vs. BIB Cables and Conductors (supra). Accordingly grounds nos. 1 to 5 of revenue for A.Y. 2011-12 are dismissed.

**Ground no. 6 of revenue for A.Y. 2011-12**

16. Apropos ground no. 6 the Ld. CIT(DR) submitted that during F.Y. 2010-11 with counter client Victory Tip Up Pvt. Ltd. the assessee has made by calls amounting to Rs. 1,82,21,825/- and sold calls amounting to Rs. 1,87,42,062/-

hence the profit made on said particular transactions comes to Rs. 5,20,237/- and assessee has failed to demonstrate that this profits has been accounted for as income and has offered for taxation. Therefore the AO was right in making addition in the hands of the assessee as it was amply clear that assessee has not accounted said profit accrued to it in the books of account.

17. Replying to the above, the Ld. AR submitted that the transaction pertaining to Victory Tip Up Pvt. Ltd. were recorded in the books of accounts and the transactions picked up by the AO for making disallowance were dully entered by the appellant company in its regular and day to day books of accounts. He further submitted that the said transactions were also reflected in the P & L account of F.Y. 2010-11 and taken into account while preparing the audit report hence the transactions highlighted in the assessment

order are duly recorded in the books of accounts. Therefore the Ld. CIT(A) was right in deleting the baseless addition.

18. On careful consideration of rival submission we are of the view that the AO proceeded to make addition on the allegation of non-inclusion of the profit accrued to the assessee from the transactions pertaining to M/s. Victory Tip Up Pvt. Ltd. by holding that the said transactions have not been recorded in the books of accounts of the assessee. Per contra, the Ld. CIT(A), on examination of books of accounts found that the said speculation business transactions with M/s. Victory Tip Up Pvt Ltd. were reflected in audit report and the transactions highlighted and alleged by the AO in the assessment order were dully recorded in the books of account. Therefore, we are unable to see any valid reason to interfere with the findings arrived by the Ld. CIT(A) and thus we uphold the same. Accordingly ground no. 6 of revenue is also dismissed.

**Ground no. 1 to 5 of Revenue for A.Y. 2012-13 & 2013-**

**14**

19. The grounds of assessee for A.Y. 2012-13 and 2013-14 are identical and similar and the Ld. CIT(DR) could not show us any distinct or dissimilar factual position of situation between A.Y. 2011-12 and AYs 2012-13 & 2013-14. Therefore, our conclusion recorded for ground nos. 1 to 5 of revenue for A.Y. 2011-12 would apply *mutatis mutandis* to ground nos. 1 to 5 of revenue for A.Y. 2012-13 & 2013-14. Accordingly, grounds of revenue no. 1 to 5 for A.Y. 2012-13 & 2013-14 are also dismissed.

20. In the result all the appeals of revenue for A.Ys. 2011-12 to 2013-14 are dismissed.

**Cross objections of assessee for A.Y. 2011-12 to 2013-**

**14**

21. The Ld. AR submitted that the cross objections of the assessee have been filed only to support the first appellate

order. No substantial arguments have been advanced in support of cross objections of the assessee. Since by the earlier part of this we have dismissed appeals of revenue for A.Ys. 2011-12, 2012-13 & 2013-14 therefore the cross objections of the assessee are not being adjudicated upon as have become academic and infructuous.

22. In the result, cross-objections filed by the assessee for the A.Ys. 2011-12, 2012-13 & 2013-14 are dismissed.

23. To sum-up, appeals of the Revenue and Cross Objections of the Assessee are dismissed.

Order pronounced in the open court on 10.02.2023.

Sd/-

[BHAGIRATH MAL BIYANI]  
ACCOUNTANT MEMBER  
Indore, Dated 10<sup>th</sup> February, 2022  
NV/-

Copy to

Sd/-

[CHANDRA MOHAN GARG]  
JUDICIAL MEMBER

1.	The appellant
2.	The respondent
3.	Ld. CIT(A) concerned
4.	CIT concerned
5.	DR ITAT Bench, Indore
6.	Guard File

//By Order//

Assistant Registrar, ITAT, Indore Benches,  
Indore.

Date of dictation on	02.02.2023
Date on which the typed draft order is placed before the dictation Member	.02.2023
Date on which the approval draft comes to the Sr. PS	.02.2023
Date on which the fair order is placed before the Dictation member for pronouncement	.02.2023
Date on which the fair order comes back to the Sr. P.S.	.02.2023
Date on which the final order is uploaded on the website of ITAT	.02.2023
Date on which the file goes to the Bench Clerk	.02.2023
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order.	