

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA-GUWAHATI'e-COURT', KOLKATA
[Virtual Court Hearing]**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 15/GAU/2019
Assessment Year: 2012-2013**

***Bagdevi Suppliers Pvt. Limited,..... Appellant
52, Weston Street, 1st Floor,
Kolkata-700012
[PAN:AADCB6576A]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-1, Shillong,
Aayakar Bhawan,
M.G. Road, Shillong-793001, Meghalaya***

Appearances by:

N o n e, appeared on behalf of the assessee

Shri N.T. Sherpa, JCIT, appeared on behalf of the Revenue

Date of concluding the hearing : January 31, 2023

Date of pronouncing the order : March 30, 2023

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal against the order of ld. Commissioner of Income Tax (Appeals), Shillong dated 10.10.2018 passed for A.Y. 2012-13.

2. In response to the notice of hearing, no one has come present on behalf of the assessee. On earlier occasions also, no one appeared, namely 02.06.2020. 10.03.2021, etc. Hence with the assistance of ld. D.R., we have gone through the record carefully and proceed to decide the appeal *ex-parte qua* the assessee.

3. The assessee has taken seven grounds of appeal. In Ground No. 1, the assessee has contended that ld. CIT(Appeals) has erred in deciding the appeal *ex-parte* without allowing the assessee a proper opportunity of being heard. In the next ground of appeal, the assessee has reserved the right to produce additional evidence in terms of Rule 46A of the Income Tax Rules, 1962.

4. As far as these two grounds of appeal are concerned, we are of the view that the first ground is not sustainable because Shri Praveen Kumar, CA, Authorized Representative appeared before the ld. CIT(Appeals). The submission of the ld. Counsel has been noticed by the ld. CIT(Appeals). It is not an *ex-parte* order, hence the ground is rejected.

5. As far as the second ground of appeal is concerned, additional evidence under rule 46A of the Income Tax Rules, 1962 can be produced before the ld. 1st Appellate Authority and not before the Tribunal. Such power rests with the Tribunal

under Rule 29 of Income Tax Appellate Tribunal Rules. Hence it is a vague ground of appeal, it is not maintainable.

6. Similarly in Grounds No. 5, 6 & 7, the assessee has pleaded general line of arguments, namely impugned order is not sustainable, the order of the ld. Assessing Officer be modified and the assessee be given relief prayed for, the assessee carves leave to add, alter or amend any ground before or at the time of hearing. Hence no specific finding is required on these grounds.

7. Grounds No. 3 & 4 are the main ground of appeal, which read as under:-

“(3) For that the order passed by the ld. CIT(A) is bad in law since the ld. CIT(A) has not decided the issues ground wise in respect of the grounds raised by the appellant in the Memo of Appeal.

(4) For that the ld. CIT(A) is bad in law since the order passed is not any speaking order nor the ld. CIT(A) has looked into the assessment records and relevant materials to conclude that the order of the ld. AO cannot be interfered with.

8. With the assistance of ld. D.R., we have gone through the record carefully. In the first-fold of grievance, the assessee has pleaded that ld. CIT(Appeals) has erred in confirming the

disallowance of claim of loss amounting to Rs.34,07,935/-. This loss has been alleged as suffered in derivative trading loss.

9. Brief facts of the case are that the assessee has filed its original return of income on 26.09.2012 showing total income of Rs.17,476/-. Its case was selected for scrutiny assessment and notices under section 143(2) and 142(1) were issued and served. An assessment order under section 143(3) was passed on 19.03.2015. The assessee thereafter filed an application before the ld. Pr. CIT, Shillong because the principal place of business was shifted to Shillong. Such application was moved on 15.01.2016 under section 264 of the Income Tax Act. Section 264 empowers the ld. Principal Chief CIT or ld. Principal CIT to exercise revisionary powers on the application of an assessee or on their own motion. In the original assessment order, an addition of Rs.1,86,00,000/- was made under section 68 on account of unexplained share application money. This issue was agitated before the ld. Principal Chief Commissioner, who remitted this issue to the file of ld. Assessing Officer and after going through this submission of the assessee, ld. Assessing Officer did not make any addition of this amount in the assessment order dated 09.05.2016 passed under section 143(3) read with section 264 of the Income Tax Act.

10. As far as the issue agitated before us regarding claim of loss on derivative trading is concerned, the finding of the Id. Assessing Officer deserves to be noted:-

“3.00. Bogus Claim of Loss on derivative Trading:-

3.01. During the course of assessment proceedings and on examining the P/L account it is seen that a loss of Rs.34,07,935.00 has been claimed on Derivative trading. On going through the relevant documents it is seen that the assessee company did the derivative trading through M/s Geometry Vanijya Pvt. Ltd. and relevant details of the said transactions were submitted with contract notes during the course of the assessment proceedings with the then Assessing Officer. The matter was examined during the course of assessment proceedings and the assessee company was asked to explain and the explanation submitted by the assessee was found not satisfactory and accordingly considering the explanation of the assessee and also the details submitted by MCX Stock Exchange Ltd. The claim made by the assessee was disallowed by the then Assessing Officer. During the course of assessment proceedings the matter was again taken up with the A/R of the assessee company and the A/R of the assessee company relied on the submission made thereon, further from the petition made u/s 264 of the Act before the Pr. CIT, Shillong, the assessee company did not ask for any relief to the addition made by the then Assessing Officer, ^{5r} view of the above and since the addition made is net under dispute, since not included in the revision petition and also keeping In line the addition made by the then Assessing officer as such the excess loss of Rs.34,07,935.00 claimed by the assessee on the currency derivatives is treated as bogus and is disallowed and added back to the total income of the assessee. Actual profit earned o' Rs.i4. 43C.00 is also being added to the total Income of the assessee.

Penal proceedings under section 271(1)(c) of the Income-tax Act, 1961 has been initiated separately”.

11. A perusal of the above finding would reveal that this trading loss was originally made vide assessment order dated 19.03.2015. The assessee itself did not challenge this order either

before the ld. Pr. Chief Commissioner under section 264 or in an appeal before the ld. CIT(Appeals). It attained finality. It cannot be agitated in the present proceeding. This aspect has been mentioned in the finding of the ld. Assessing Officer and for the purpose of computation of income required for determination of tax liability. This aspect has been noticed by the ld. Assessing Officer. The ld. Assessing Officer also recorded a finding that this issue has not been relegated to him for adjudication by the ld. Principal CIT. Hence, it cannot be taken before the ld. CIT(Appeals) in the garb of assessment order dated 09.05.2016 passed under section 143(3) read with section 264. Though it is not the duty of the Tribunal to advise a litigant but for the purpose of completeness of the finding, the assessee ought to have challenged the assessment order dated 19.03.2015 on this issue before the ld. CIT(Appeals). Hence, this fold of grievance is rejected.

12. In the next fold of grievance, the assessee has submitted that the ld. Assessing Officer has erred in making an addition of Rs.91,750/- under Rule 8D read with section 14A as much as Income Tax Rules, 1962 and Income Tax Act, 1961.

13. We find that there is no tax-free income claimed by the assessee. The ld. Assessing Officer has worked out the disallowance on his assumption that in future, some tax-free income will result to the assessee on the investment. As per the

decision of the Hon'ble Delhi High Court passed in ITA No. 204 of 2022, if there is no tax-free income to the assessee, then no disallowance is to be made under section 14A of the Income Tax Act. Hon'ble Delhi High Court has considered the Memorandum of Finance Bill, 2022 and thereafter given its finding. Considering the latest decision of the Hon'ble Delhi High Court dated 22.07.2022, we are of the view that this addition is not sustainable and deleted.

14. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 30.03.2023.

Sd/- (Manish Borad) Accountant Member Kolkata, the 30th day of March, 2023	Sd/- (Rajpal Yadav) Vice-President
--	---

Copies to : (1) **Bagdevi Suppliers Pvt. Limited,**
52, Weston Street, 1st Floor,
Kolkata-700012

(2) **Income Tax Officer,**
Ward-1, Shillong,
Aayakar Bhawan,
M.G. Road, Shillong-793001, Meghalaya

(3) *Commissioner of Income Tax (Appeals),*
Shillong,

(4) *Commissioner of Income Tax-* ,

(5) *The Departmental Representative*

(6) *Guard File*

TRUE COPY

By order

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

Laha/Sr. P.S.