

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'A', KOLKATA

[Before Dr. Manish Borad, Accountant Member &
Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 156/Kol/2023
Assessment Year : 2013-14

Kippy Engineering Private Limited PAN: AABCK 1659 H	Vs.	DCIT, Central Circle-3(4), Kolkata
Appellant		Respondent

Date of Hearing	18.05.2023
Date of Pronouncement	23.06.2023
For the Assessee	Shri Ritesh Goel, Advocate
For the Revenue	Shri Subhrajyoti Bhattacharjee, CIT, DR

ORDER

Per Sonjoy Sarma, JM:

This appeal of the assessee for the assessment year 2013-14 is directed against the order dated 29.12.2022 passed by the Id. Commissioner of Income-tax Appeals, NFAC, Delhi [hereinafter referred to as 'the Id. CIT(A)']. The assessee has raised the following grounds of appeal:

- 1. That the order of the Commissioner of Income-tax (Appeals) (hereinafter referred to as CIT(A) is opposed to law and facts of the case.*
- 2. That on the facts and circumstances of the case, Ld. CIT(A) has erred in law in confirming an addition of loss of Rs. 61,33,487/- and is liable to be deleted.*
- 3. That on the facts and circumstances of the case, ld. CIT(A) has erred in law in holding that loss on trading in currency as speculative loss instead of normal business loss and thereby not allowing the adjustment of the loss of Rs. 61,33,487/- with the normal income is arbitrary, illegal and not in accordance with law.*
- 4. That on the facts and circumstances of the case, ld. CIT(A) has erred in not interpreting of CBDT instruction regarding allowability of losses on account of forex derivatives.*

5. *That on the facts and circumstances of the case, ld. CIT(A) has not provided the reasonable opportunity of being heard which is contrary to the principles of natural justice.*

6. *That the appellant humbly craves leave to add, amend, alter, withdraw, delete or substitute all or any of the ground(s) of appeal at the time of hearing.”*

2. Brief facts of the case are that the assessee has filed its return of income on 29.09.2013 for the assessment year in question. Subsequently, in the case of assessee, return was selected for scrutiny under CASS and notices u/s 143(2) and 142(1) were issued upon the assessee. In response to such notices, ld. AR of the assessee appeared before the AO. During the assessment proceeding, the ld. AO noticed that the assessee had debited a sum of Rs. 61,33,487/- on account of loss from derivative trading and found to be adjusted with the business income of the assessee for the relevant assessment year under consideration. The ld. AO on verification of the same, he notices that the loss was on account of currency trading and it was on account of speculative business transaction. Therefore, he viewed that speculative business loss can be set off against the speculative profit and no other head of income. Due to this reason, a sum of Rs. 61,33,487/- on account of loss from derivative trading disallowed in the hands of assessee by the ld. AO.

3. Dissatisfied with the above order, the assessee preferred an appeal before the ld. CIT(A) where the appeal filed by the assessee was dismissed by sustaining the order passed by the ld. AO.

4. Aggrieved by the above order, assessee is in appeal before the Tribunal.

5. At the time of hearing, ld. counsel for the assessee submitted that the ld. CIT(A) has erred in law by holding that the loss in trading in currency as speculative loss and thereby ld. AO not allowing the claim of assessee to adjust with the normal income of assessee is a arbitrary order and it becomes illegal to the provisions of law. In such a situation, the impugned order passed by ld. CIT(A) needs to be set aside. The ld. counsel for the assessee submitted that the assessee had entered into derivative transactions in foreign currency through SEBI registered broker who is a member of United Stock Exchange of India Limited (USEL) and these derivative transactions are carried out through USEL which is a recognized stock exchange and these transactions are backed by time stamped contract notes carrying unique client identity number along with PAN and it is outside the ambit of the definition of speculative transaction defined u/s 43(5) of the Act. He further contended that the Proviso (d) to section 43(5) of the Act was inserted by Finance Act, 2005 with effect from 01.04.2006 and submitted that the said proviso to section 43(5) curved out an exception to the definition of speculative transaction and due to this the loss suffered in the transaction in derivative before insertion to provision to section 43(5) were considered as speculative and were not entitled to be set off against the profit under any other head of income except from speculative business. The ld. counsel submitted that while passing the impugned order, the ld. CIT(A) stated in his order that the assessee has failed to produce the supporting documents that is contract note, ledger etc from which assessee could not prove that this transaction fall under the ambit of eligible transaction. The ld. AR placed before us the sample copy of contract note along with

ledger copy of account in support of his argument and which are placed at Annexure A in his written note. The ld. counsel for the assessee to support his claim placed reliance on the judgement rendered by the Hon'ble Supreme Court in the case of Snow Ten Investment Ltd. vs PCIT, Central-21, Kolkata reported in 2019 SCC Online SC 749 and in paragraph nos. 3 to 5, 14, 18, 25, 26, 33 & 34 in support of his submission that the losses having arisen from trading in futures and options were not profits from speculative business. Therefore, he submitted that the loss arising from non-speculative in nature may be allowed to be adjusted with the normal business of the assessee.

6. On the other hand, ld. DR supported the order rendered by the authorities below.

7. We have heard the rival contention and perused the material available on record. We find that the impugned order passed by the ld. CIT(A) by which sustaining the order passed by the AO did not allow the claim of the assessee to adjust loss of Rs. 61,33,487/- with assessee's normal income is not in accordance with law. Since, the insertion of clause (d) to the provision of section 43(5) of the Act, the transaction in respect of trading in derivative as prescribed in clause (d) inserted in provision of section 43(5) would not be a speculative transaction in view of the judgement rendered by Hon'ble Supreme Court in the case of Snow Ten Investment Ltd. vs PCIT (supra). Therefore, the view taken by the authorities below is hereby not in accordance with law. Accordingly we set aside the order passed by the ld. CIT(A) and direct the AO to allow the claim of assessee to set off loss suffered by the assessee in the said

transaction in derivative against the normal business of the assessee. In view of the above, ground no. 2 & 3 are allowed and the remaining grounds are general and consequential in nature, therefore need not required to be adjudicated.

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

Order pronounced in the open court on 23.06.2023.

Sd/-

Sd/-

(Manish Borad)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 23.06.2023

Biswajit

Copy of the order forwarded to:

1. Appellant- Kippy Engineering Private Limited, 22/1, Alipore Road, Ground Floor, Kolkata-700027.
2. Respondent – DCIT, Central Circle-3(4), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata