

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

**BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.783/Mum/2019
(A.Y. 2014-15)**

Amol Capital Markets Private Limited A-106, Motalibai Wadia Bldg, 22-D SA Brelvi Street, Road, Fort, Mumbai – 400001	Vs.	ITO 4(1)(1) Room No. 636, Aayakar Bhavan, M.K. Road, Mumbai - 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AADCS8022N		
Appellant	..	Respondent

Appellant by :	Rahul Hakani
Respondent by :	Manoj Kumar Sinha

Date of Hearing	03.08.2023
Date of Pronouncement	18.08.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

The solitary ground of appeal of the assessee is directed against the order of Id. CIT(A) in confirming the action of assessing officer of denying set off of profit of F. & O. transactions and profit of non-delivery based share against brought forward business loss.

2. Fact in brief is that return of income declaring income at Rs.nil was filed on 25.09.2014. The assessment u/s 143(3) of the Act was completed on 15.12.2016. The assessing officer has treated the brought forward loss on the trading of F & O as speculative loss by invoking explanation to Sec. 73 of the Act and has not allowed the same to be set

off against the business income of the assessee for year under consideration.

3. Aggrieved the assessee filed the appeal before the Id. CIT(A). However, the Id. CIT(A) has dismissed the appeal of the assessee.

4. The assessee has filed the appeal before the ITAT. The ITAT vide ITA No. 783/Mum/2019 dated 17.10.2019 has dismissed the appeal of the assessee after referring the decision of Hon'ble Supreme Court in the case of Snowtex Investment Ltd. Vs. CIT (105 taxman.com 282) dated 30.04.2019. Subsequently, the assessee has filed miscellaneous application against the above referred decision of ITAT and the ITAT vide M.A. No. 269/Mum/2022 dated 26.06.2023 recalled the above referred order of the ITAT dated 30.04.2019 holding that decision Hon'ble Supreme Court in the case of Snowtex Investment Ltd. (supra) does not apply to the case of the assessee as the said case was pertained to assessment year 2008-09 whereas the case of the assessee is pertained to assessment year 2014-15. The ITAT bench in the miscellaneous application order has also held that assessee did not have any speculative business or loss because assessee was in the business of trading in future and option in shares on the recognised stock exchange which was out of the speculative business definition in view of the provision of Sec. 43 sub-section (5)(d).

5. Heard both the sides and perused the material on record. Without reiterating the facts as discussed above we have perused the provision of Sec. 43(5) of the Act as per which loss in F & O transaction is not speculative loss. In this regard, we have also perused the decision of Hon'ble Calcutta High Court in the case of Asian Financial Services Ltd. Vs. Commissioner of Income Tax, Calcutta (2016) 70 taxman.com 9 (Calcutta) wherein held that loss incurred on account of derivatives would be deemed business loss under proviso to Sec.43(5) and not

speculative loss and hence explanation to Sec. 73 could not be applied. As such loss would be set off against income from business. We have also perused decision of ITAT, Mumbai in the case of M/s Sucom India Ld. Vs. JCIT vide ITA No. 6203/Del/2015 dated 05.10.2018 wherein after following the decision of Hon'ble Calcutta High Court as referred above held that loss suffered by assessee of derivative transaction is not speculative loss and same is eligible to be adjusted against the business income and explanation 73 of the IT Act is not attracted. Following the aforesaid decision we restore this issue to the file of the assessing officer for allowing the claim of set off after examination/verification that assessee has incurred loss from F & O transactions. Therefore, the appeal of the assessee allowed for statistical purposes.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 18.08.2023

Sd/-
(Aby T Varkey)
Judicial Member

Sd/-
(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 18.08.2023

Rohit: PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

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

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.