

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'C': NEW DELHI  
BEFORE,  
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.5424/Del/2018  
(ASSESSMENT YEAR-2010-11)**

Hema Engineering Industries Ltd. Office: Sachidanand Farm House, Kishangarh Village, (Near DDA Sports Complex), Lane Green Avenue, Vasant Kunj New Delhi-110 070 PAN-AAACH 0118F <b>(Appellant)</b>	Vs.	DCIT Circle-11(1) New Delhi <b>(Respondent)</b>
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Appellant by	None
Respondent by	Sh. Sandip Kumar Mishra, Sr. DR

Date of Hearing	11/10/2023
Date of Pronouncement	16/10/2023

**ORDER**

**PER YOGESH KUMAR U.S., JM:**

This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-35, New Delhi ["Ld. CIT(A)", for short], dated 22/06/2018 for Assessment Year 2010-11.

2. Grounds taken in this appeal are as under:

*"1. The Hon'ble CIT(A) has erred in law and on facts in concurring with the decision of the A.O. in regard to addition of Rs.48,09,315/- on account of alleged fictitious loss in derivative trading account u/s*

148. The order passed by the Hon'ble CIT(A) is without analyzing the facts of the case and is against the cannons of Justice.

**Grounds of Appeal No.1**

Addition on account of fictitious loss in derivative trading of Rs.48,09,315/-

Addition u/s 148 towards alleged loss of Rs.48,09,315/- in respect of derivative in Equity & MCX whereas the assessee has reflected a net profit of Rs.73,46,240/- from derivatives. The assessee has also not revised any income u/s 148 while filing ITR against notice u/s 147.

The order confirmed by the Hon'ble CIT(A) is arbitrary, not founded on facts and is prayed to be deleted in full.

2. The assessee company craves mercy to add/amend any grounds of appeal at the time of hearing.”

3. When the matter is called none appeared for the assessee. The power of attorney of the assessee was placed on record, but neither the assessee nor the representative of the assessee appeared before the Tribunal, therefore, we are compelled to decide the present Appeal after hearing the Ld. Departmental Representative and on perusing the material on record.

4. Brief facts of the case are that, the Assessee filed return of income declaring income at Rs. 53,430/- under normal provisions and at Rs. 5,46,28,808/- u/s 115JB of the Act. The case was selected for scrutiny an assessment u/s 143(3) of the Act completed on 28/03/2013 at total income of Rs. 29,67,75,254/-. Certain piece of information was received from Investigating Wing that the Assessee had received fictitious loss of Rs. 49,09,315/- from Mansukh Securities and Finance Ltd. and therefore,

reduced the profit by the same amount. Based on the said information, the assessment was reopened and after recording the reasons for escapement, the reassessment proceedings have been initiated. The order u/s 147 read with Section 143(3) of the Act came to be passed on 29/03/2016 by making addition of Rs. 48,09,315/- finding that the assessee had taken fictitious loss in order to reduce its profit. Aggrieved by the assessment order dated 29/03/2016, the assessee preferred an appeal before the CIT(A), the Ld. CIT(A) vide order dated 22/06/2018, dismissed the Appeal filed by the assessee.

5. We have heard the Ld. Departmental Representative and perused the material available on record. The Department of Revenue had received an information that the Assessee had received fictitious loss of Rs. 48,09,315/- from Mansukh Securities and Finance Ltd., which reduced the profit of the assessee the case of the assessee was reopened. The assessee was asked to show cause as to why the said amount of Rs. 48,09,315/- not be added back to the income. The assessee replied as under:-

*“During the course of last hearing, you honour has stated as to why earning of Rs. 48,09,315 received from Mansukh be not treated as income.*

*In this connection, we invite reference to our letter dated 19th May, 2015, copy of the same is enclosed wherein it was submitted that we have earned a net income of Rs. 73,46,240/- from Manuskh against a loss of R.s 48,09,315/- as stated by your honor. The same has been reflected as income which has been netted off against loss of foreign exchange fluctuation of Rs. 62,30,098/- resulting into a*

*net income of Rs. 11,16,182/-, which is duly reflected in the Balance Sheet as per schedule -14 of the Balance sheet.*

*The ledger Account in respect of foreign exchange fluctuation where income from Mansukh is Incorporated has been submitted to your honour in our previous letter as stated above i.e. 19.5.2015 explains every aspect of adjustment.*

*Sir, the amount of Rs. 48,09,315/- is a loss as per your notice u/s 148 whereas the assessee has declared net earnings from Mansukh at Rs. 73,46,240 therefore, proceedings u/s 148 to be dropped and oblige."*

6. The above said reply filed by the Assessee found to be not satisfactory by the A.O. and made the additions. The ld. CIT(A) while dismissing the appeal filed by the assessee held as under:-

*"4.2.3. The appellant company is engaged in the business of manufacturing of auto parts for two wheelers and to some extent of four wheelers and other engineering items its various manufacturing units. The AO has stated in the assessment order that information was received from the Investigation Wing of the Income Tax Department that the appellant has received fictitious loss of Rs. 48,09,315 from Mansukh Securities and Finance Ltd and therefore, reduced the profit by the same amount. On the basis of this information, the assessment was reopened after recording the reasons for escapement and after taking statutory approval, notice u/s 148 of the I.T. Act was issued on 30.03.2015 requiring the appellant to file return of income for the year under consideration. Reasons for reopening of assessment were also provided to the appellant. The notice u/s 143(2) of the I.T. Act dated 09.09.2015*

*was issued and served upon the appellant and the objections were duly disposed of by passing a speaking order vide letter dated 07.09.2015.*

*The appellant has stated that during the year, the company has shown a profit of Rs.73,46,240/- from derivative in equity and MCX from a Registered Broker with Stock Exchange. And has further submitted appellant during the previous year 2009-10 declared a profit of Rs. 73,46,240/- and the same is part of Foreign currency fluctuation ledger account showing an Income of Rs.11,16,142/-.*

*The copy of the account of the appellant company with the broker Mansukh Securities and Finance Ltd., showing the dealings of various securities (equity), future and option, is reproduced in the next page:*

*X*

*X*

*As can be seen above the appellant company has been booking losses by using client code modification in the instant year and the amount of Rs.48,09,315/- as held by the AO to be fictitious loss is found to be correct. The reply of the appellant has been duly considered, however, not found to be satisfactory. It is absolutely dear from the script wise details of the derivative trading that the appellant has taken the fictitious loss in order to reduce its profit. Therefore, the amount of Rs. 48,09,315 has been correctly added back to the income of the appellant by the AO. I find no reason to interfere with the AO's order on this issue. Appeal on this ground is dismissed.*

*With regard to the ground that the AO has wrongly stated that the appellant filed a return in response to notice u/s. 148 at a loss of Rs.48,09,315/- whereas no return was filed u/s. 148. This ground does not affect the decision taken on the addition made in the assessment order. Hence, this point is of no relevance and thereby dismissed.”*

7. It is observed that the assessee company has been booking losses by using Client Code Modification in the year under consideration and the amount of Rs. 48,09,315/- as held by the A.O. to be fictitious loss. It is found by the authorities that the script wise details of the derivative trading that the assessee had taken the fictitious loss in order to reduce the profit. The assessee has not produced any material to contradict or disprove the said findings of the A.O. Therefore, in our considered opinion, the Ld. CIT(A) has committed no error in confirming the addition made by the A.O., accordingly, we find no merits in the Grounds of Appeal of the assessee which are dismissed.

8. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in open Court on 16<sup>th</sup> October, 2023.

Sd/-  
**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**  
Dated: 16/10/2023  
Pk/R.N, Sr.ps

Sd/-  
**(YOGESH KUMAR U.S.)**  
**JUDICIAL MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI