

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI
BEFORE,
SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.945/Del/2019
(ASSESSMENT YEAR 2014-15)**

Kulvinder Nath Marwah N-26, Ground Floor Kalkaji New Delhi-110 019 PAN-AAGPM 5356B (Appellant)	Vs.	ACIT Circle-29(1) New Delhi (Respondent)
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Assessee by	Sh. Pradeep Jindal, CA
Department by	Ms. Maimun Alam, Sr. DR
Date of Hearing	30/10/2023
Date of Pronouncement	10/01/2024

ORDER

PER M. BALAGANESH AM:

This appeal of the Assessee arises out of the order of the Learned Commissioner of Income Tax (Appeals), New Delhi, [hereinafter referred to as 'Ld. CIT(A)'] in Appeal No.262/2016-17 dated 20/11/2018 against the order passed by Assistant Commissioner of Income Tax, Circle-29(1), New Delhi (hereinafter referred to as the 'Ld. AO') u/s 143(3) of the Income Tax Act (hereinafter referred to as 'the Act') on 30/12/2016 for the Assessment Year 2014-15.

2. The only effective issue to be decided in this appeal is as to whether the ld. CIT(A) was justified in confirming the disallowance made on account of derivative loss in the facts and circumstances of the case.

3. We have heard the rival submissions and perused the materials available on record. The assessee is an individual and deriving income from business, house property and from other sources. The return of income for the Asst. Year 2014-15 was filed by the assessee on 30.9.2014 declaring total income of Rs.57,54,800/-. The ld. AO observed that assessee had claimed loss on derivatives of Rs.14,43,040/- which was adjusted against the profits of the wine shop in the return of income. The ld. AO asked the assessee to justify the allowability of the said derivative loss. On perusal of the replies filed by the assessee, the ld. AO concluded that the assessee had not carried out the derivative transactions through a stock broker or sub-broker or intermediary registered under section 12 of the SEBI Act and accordingly treated the said derivative transaction as a speculative transaction in terms of section 43(5) of the Act and disallowed the same. Consequently, the ld. AO denied the set off of the derivative loss against the profits of the wine shop.

4. Further the ld. AO observed that investment in derivative transactions have been made on behalf of the assessee by PK Gupta & Son (HUF), Shri Krishna Shutterings Pvt Ltd and Subhash Chand

Gupta and these three parties nowhere appear on the asset side of the balance sheet of the assessee. In reply to the same, the assessee stated that the above mentioned three parties account were squared off during the year. Further it was pointed out that three parties appear as unsecured loans in the balance sheet of the assessee as they had made investments on behalf of the assessee in derivatives. The ld. AO however confirmed the fact of assessee furnishing the ledger accounts of the aforesaid three parties during the course of assessment proceedings. The ld. AO proceeded to treated the peak balance i.e maximum investment on one date with each party to be an unexplained investment made in derivatives u/s 69 of the Act and added a sum of Rs 1,27,20,985/- in the assessment.

5. The assessee submitted that the ld. AO had not understood the modus operandi of the activities carried out by the assessee in derivative transactions. The assessee submitted that she had undertaken derivative transaction through sub-brokers namely PK Gupta & Sons (HUF), Shri Krishna Shutterings Pvt Ltd and Shri Subhash Chand Gupta. It was submitted that –

a) Shri Subhash Chand Gupta (through Ficus Securities Private Limited) – As per copy of account of the assessee in the books of the above party, the derivative transaction resulting in loss of Rs 2,50,000/- against sale of Rs 4,87,400/-. The total sale effected has been treated as unexplained investment by the ld. AO.

b) Shri Krishna Shutterings Pvt Ltd through Ashlar Securities Private Limited – it is stated that in this concern the total value of

purchases of Rs 32,31,645/- which has resulted in net derivative loss (Rs 2,50,000/- and Rs 2,23,040/-) has been treated as unexplained investment.

c) P K Gupta & Sons (HUF) through Ashlar Securities Private Limited – it is stated that in this concern the net result of derivative transactions was loss of Rs 7,10,000/- and the ld. AO has treated the amount of total sales achieved of Rs 90,01,940/- as unexplained investment.

6. The assessee submitted that all the aforesaid transactions were carried out through recognized stock exchange duly suffering Securities Transaction Tax (STT). It was explained that in derivative transactions, the transactions of purchase and sales were notional in character as no money in actual gets transferred under the head 'purchase and sale' and the resulted difference which is either paid or received at the end of the transaction matters.

7. The ld. CIT(A) considering the evidences filed by the assessee concluded that the derivative transactions could not be carried out by the assessee without payment of margin monies. Accordingly the element of margin monies was estimated by the ld. CIT(A) at 10% of total transactions of Rs 1,27,20,985/- and addition of Rs 12,72,098/- was sustained.

8. It is not in dispute that transactions were entered by the assessee with three sub brokers namely Subhash Chand Gupta who acted through Ficus Securities Pvt Ltd ; Shri Krishna

Shutterings Pvt Ltd who acted through Ashlar Securities Private Limited and P K Gupta & Sons (HUF) who acted through Ashlar Securities Private Limited. The maximum amount of investment on one date of derivative transaction was Rs 1,27,20,985/- considering in aggregate of all the three parties. It is not in dispute that the assessee had incurred total loss in derivative transactions amounting to Rs 14,43,040/- which was separately disallowed by the ld. AO in the assessment. This point was not agitated by the assessee before the ld. CIT(A). The ld.AR before us explained the entire gamut of transactions carried out by the assessee through sub-brokers in the following tabular form:-

<i>Name</i>	<i>Purchase</i>	<i>Sale</i>	<i>Maximum Investment</i>	<i>Loss Incurred</i>
<i>Subhash Chand Gupta</i>	<i>732100</i>	<i>487400</i>	<i>487400</i>	<i>250000</i>
<i>Shri Krishna Shutterings Pvt. Ltd.</i>	<i>3568895</i>	<i>3313245</i>	<i>3231645</i>	<i>260000</i>
<i>Shri Krishna Shutterings Pvt. Ltd.</i>	<i>889667</i>	<i>673521</i>	<i>0</i>	<i>223040</i>
<i>P K Gupta & Sons HUF</i>	<i>9700939</i>	<i>9001940</i>	<i>9001940</i>	<i>710000</i>
<i>Total</i>			<i>12720985</i>	<i>1443040</i>

9. The plea of the assessee is that she had not deposited any margin money with the sub-brokers. It was submitted that deposit of margin money was not even the pre-requisite to enter into such transactions. The losses incurred by the assessee amounting to Rs 14,43,040/- has been physically funded by the assessee by making payment through regular banking channels of the assessee. We find that the ld. AR also placed on record the ledger account copies of the three sub-brokers along with contract notes of their respective

brokers. These papers are enclosed in pages 4 to 43 of the Paper Book. The total loss incurred by the assessee out of doing transactions with aforesaid three parties was Rs 14,43,040/- which has been paid by the assessee on the following dates from her bank account maintained with State Bank of India New Delhi DDA Flats, Kalkaji Branch from Account Number 00000065022555400 :-

10.3.14 – Rs. 7,10,000/- vide Cheque No. 354593
10.3.14 – Rs.2,60,000/- vide Cheque No. 354592
10.3.14 – Rs. 2,50,000/- vide Cheque No. 354591
13.3.14 – Rs. 2,23,040/- vide Cheque No. 354842
TOTAL Rs. 14,43,040/-

10. The sources for making the aforesaid payments are drawn from the books of accounts regularly maintained by the assessee and in any case, the same is not disputed by the revenue before us.

11. Considering the various evidences submitted by the assessee as stated supra, we are inclined to accept to the contentions of the assessee and the loss of Rs 14,43,040/- alone had to be disallowed which had already been done by the ld. AO in the assessment and accepted by the assessee by not filing any appeal. Hence there is no need to make any separate addition on account of alleged payment of margin monies on an estimated basis and accordingly, the addition made in the sum of Rs 12,72,098/- is hereby deleted.

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

Order pronounced in the open court on 10th January, 2024.

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated:10/01/2024

Pk/sps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI