

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

**I.T.A. No. 354/Kol/2024**  
**Assessment Year: 2015-16**

Krishna Kumar Jalan 37, Block-B, New Alipore Kolkata - 700053 [PAN : ACQPJ4938A]	Vs	Assistant Commissioner of Income Tax, Circle - 28, Kolkata
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Sanjeev S. Verma, C.A.
Revenue by :	Shri Arup Chatterjee, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 07/05/2024  
घोषणा की तारीख /Date of Pronouncement: /05/2024

**आदेश/ORDER**

**PER DR. MANISH BORAD, ACCOUNTANT MEMBER :**

The present appeal is directed at the instance of the assessee against the order of the Learned Commissioner of Income Tax, Appeal, Addl/JCIT(A)-1, Coimbatore (hereinafter the "Id. CIT(A)") dt. 27/12/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2015-16, which is arising out of the order u/s 143(3) of the Act dated 20/11/2017 framed by the ACIT, Circle-28, Kolkata.

2. Grievance of the assessee in the instant appeal is two-fold. First, that the Id. CIT(A) erred in treating the business loss from future and derivatives trading at Rs.16,19,235/- as speculation loss. Secondly, that the Id. CIT(A) erred in upholding the action of the Id. Assessing Officer making addition for LIC pension income of Rs.24,000/- which already stood offered to tax and this tantamounts to double addition.

3. At the outset, the Id. Counsel for the assessee submitted that the assessee while filing the return belatedly, inadvertently made two mistakes. Firstly, treating the business loss from future & options and derivatives trading on recognised stock exchange as a speculation loss and secondly, forgot to reduce the LIC pension income of Rs.24,000/- from the net profit in the profit and loss account but offered it to tax under the head "income from other sources". He further submitted that the assessee has made all possible efforts by way of filing rectification application, revised computation during the course of scrutiny proceedings and also filed the details before the Id. CIT(A) but did not get any relief only on the ground that assessee ought to have revised the return in order to rectify the mistakes committed while filing the return.

3.1. On the other hand, the Id. D/R vehemently argued supporting the orders of both the lower authorities and stated that the assessee should have filed the return of income within the statutory time limit and if he has failed to do so, there is no option under the Act to revise the uploaded return.

4. I have heard rival contentions and perused the material placed before us. Admittedly, the assessee had committed errors while filing the return. However, when the case of the assessee was selected for limited scrutiny as per CASS, the assessee filed the revised computation for income bringing forth the errors inadvertently committed by him. Article 265 of the Constitution of India states that "No tax shall be levied or collected except by authority of law". The assessee should be made liable to pay the tax on the correct amount of income earned during the year.

If there has been any inadvertent mistake, which assessee had committed while filing the return and when the matter was there before the assessing authority and the appellate authority, the contention of the assessee ought to have been examined on merit so as to assess the correct income. In the instant case, the assessee had incurred loss of Rs.16,91,235/- from trading in F&O and derivatives carried out on recognised stock exchange. This fact has neither been controverted by the lower authorities and the same is also supported by the various details filed by the assessee including the details of security transaction tax paid. Section 43(5) of the Act has a direct bearing on this issue of claim of loss from transactions of F&O carried out on the recognised stock exchange and the same is reproduced below:-

*“(5) "speculative transaction" means a transaction in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips:*

*Provided that for the purposes of this clause –*

*(a) a contract in respect of raw materials or merchandise entered into by a person in the course of his manufacturing or merchanting business to guard against loss through future price fluctuations in respect of his contracts for actual delivery of goods manufactured by him or merchandise sold by him; or*

*(b) a contract in respect of stocks and shares entered into by a dealer or investor therein to guard against loss in his holdings of stocks and shares through price fluctuations; or*

*(c) a contract entered into by a member of a forward market or a stock exchange in the course of any transaction in the nature of jobbing or arbitrage to guard against loss which may arise in the ordinary course of his business as such member; or*

*(d) an eligible transaction in respect of trading in derivatives referred to in clause (ac) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) carried out in a recognised stock exchange; or*

*(e) an eligible transaction in respect of trading in commodity derivatives carried out in a recognised stock exchange, which is chargeable to commodities transaction tax under Chapter VII of the Finance Act, 2013 (17 of 2013), shall not be deemed to be a speculative transaction.”*

5. Now from perusal of the above Section, I notice that exceptions mentioned in Section 43(5) of the Act are not to be considered as speculative transaction. The alleged loss of Rs.16,91,235/- incurred by the assessee falls under the category of proviso (d) to Section 43(5) of the Act i.e., *eligible transaction in respect of trading in derivatives carried out in a recognised stock exchange*. I find that the alleged loss does not fall under the category of speculation loss and is part of business loss and the same is eligible to be set off against the business profits. The Id. CIT(A) has discarded the assessee's contention solely on the ground that the assessee should have filed the revised return. However, since the assessee did not file the return within the statutory time limit u/s 139(1) of the Act, then he is precluded from filing the revised return u/s 139(5) of the Act. Now, if the case of the assessee had not been selected for scrutiny then, certainly there would have been no mechanism to rectify such mistake and there would have been no chance for the assessee to get relief but since the case of the assessee has been selected for scrutiny and the Id. Assessing Officer had to assess the income and when the assessee had placed before him all necessary details to prove that the alleged loss is business loss and not a speculation loss, the Id. Assessing Officer should have considered the same in order to assess the correct income. Therefore, under the given facts and circumstances of the case I am inclined to hold that since the alleged loss is business loss and not speculation loss as it has been earned from trading of derivative on the recognised stock exchange and falls within the exception of Section 43(5) of the Act, the same deserves to be set off

against other income. Accordingly, Ground No. 1 raised by the assessee is allowed.

6. As far as Ground No. 2 is concerned, it is regarding the addition for LIC pension claim of Rs.24,000/-. Perusal of the computation of income indicates that the assessee forgot to reduce the LIC pension income of Rs.24,000/- from net profit as per the profit and loss account but offered it to tax under head "income from other sources". This also being a mistake which was brought to the notice of the Id. Assessing Officer during the course of scrutiny proceedings, ought to have been rectified since same income has been taxed twice. Since both the lower authorities failed to do so, I am inclined to set aside the finding of the Id. CIT(A) and direct the Id. Assessing Officer to reduce the income of the assessee by Rs.24,000/-. Accordingly, Ground No. 2 raised by the assessee is allowed.

7. Ground No. 3 is general in nature.

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

**Order pronounced in the Court on 3<sup>rd</sup> June, 2024 at Kolkata.**

*Sd/-*

**(DR. MANISH BORAD)  
ACCOUNTANT MEMBER**

Kolkata, Dated 03/05/2024

*\*S. S. S.*

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

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Kolkata