

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'B' BENCH,
NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT, AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

ITA No. 3330/DEL/2019 [A.Y. 2015-16]

The A.C.I.T
Circle - 24(1)
New Delhi

Vs.

Sri Balaji Forgings Private Ltd
WZ-106/80 Near Cambridge School
Rajouri Garden, NewDelhi

PAN - AAACS 1255 L

(Applicant)

(Respondent)

Assessee By : Shri Lalit Mohan, CA
Shri Parth Singhal, Adv

Department By : Shri Vivek Kumar Upadhyay, Sr. DR

Date of Hearing : 28.05.2024
Date of Pronouncement : 14.06.2024

ORDER

PER NAVEEN CHANDRA, ACCOUNTANT MEMBER:-

This appeal by the Revenue is preferred against the order of the
ld. CIT(A)- 8, New Delhi dated 06.10.2019 pertaining to A.Y. 2015-16.

2. Brief facts of the case are that the assessee is engaged in the business of manufacturing industry. The assessee has filed return of income on 29.10.2015 for A.Y 2015-16, declaring an income of Rs. 39,98,870/-. The case was selected for scrutiny under CASS and notice u/s 143(2) was issued on 13/04/2016 and the same was duly served upon the assessee.

3. On perusal of the P&L accounts the Assessing Officer noted that the assessee has shown other income in the form of commodity trading profit of Rs.9,40,17,274/ which has been set off against the business loss. The assessing officer found that the assessee had claimed trading in commodities from the following parties:

Sr. No.	Particulars	Amount (in INR)
1.	Narayani Commodities	8,00,17,273
2	Imperial Commodities	15,00,000
0.	Subh Commodities Pvt. Ltd.	1,03,00,090
4.	Vinayak Commodities	21,99,910
	Total	9,40,17,273

4. The assessing officer doubted the veracity of the transaction in commodity profit and made enquiries which led the AO to believe that the transactions are not genuine and he invoked the provisions of section 68 of the IT Act. Thus, assessment u/s 143(3) of the Act was

completed by the Assessing Officer on 29.12.2017 determining assessed loss at Rs. 9,00,18,404/- under normal provision of income. The Assessing Officer further made an addition of Rs. 9,40,17,274/- on account of unexplained cash credit u/s 68 r.w.s 115BBE of the Income-tax Act, 1961 [the Act, for short]of the Act.

5. Aggrieved with the addition of Rs. 9,40,17,274/- u/s 68 made by Assessing Officer the assessee went in appeal electronically before the Id. CIT(A). The CIT(A) deleted the addition holding that since the assessee has fully disclosed the profits earned from commodity trading, the action of the AO is not tenable and that the amended provisions of the section 115BBE for prohibition of set off of losses are not applicable to the AY under consideration.

6. Aggrieved the Revenue appealed before the ITAT which vide order dated 21.07.2022 upheld the order of CIT(A). This order of the ITAT was recalled vide M.A. 155/Del/2023 dated 19/03/2024 for the purpose of adjudicating ground no. 1 of the Revenue's appeal which was left unadjudicated.

7. The Id DR argued that the AO has demonstrated that the transactions in commodity entered into by the assessee are bogus and the addition u/s 68 need to be sustained.

8. Per contra, the Id counsel of the assessee stated that addition u/s 68 needs to be set off against business loss as the prohibition for set off of loss u/s 115BBE(2) is applicable from the AY 2017-18. The impugned assessment being for the AY 2015-16, the AO should have allowed the set off of business loss from the income added u/s 68 of the IT Act.

9. We have heard the rival submissions and have perused the relevant material on record. We have also gone through the elaborate discussion by both the lower authorities and the earlier decision of ITAT (supra) which has dealt with each and every detail thoroughly.

10. We find that ground no.1 and ground no. 2 taken by the Revenue are interlinked. The CIT(A) has deleted the addition of Rs. 9,40,17,274/- holding that as the assessee has fully disclosed the profits earned from the commodity trading. The CIT(A) has also held that prohibition of set off of losses against income referred to u/s 68 r.w.s 115BBE would be effective from 01.04.2017. We also find that this

decision of ITAT dated 21.07.2022 (supra) has upheld the CIT(A) order in entirety. We are therefore of the view that the issue of addition of income added u/s 68 taken up in ground no. 1, has inherently been decided by the ITAT in its earlier decision dated 21.07.2022 in assessee's favour. In any case, in the event the addition of Rs 9,40,17,274/- is sustained, the assessee will get the benefit of set off of the business loss determined by the Assessing Officer. In either scenario, there is no effect on the taxable income of the assessee for the instant year. Considering the facts of the case, ground no 1 taken by the Revenue has become academic. Accordingly, the appeal is dismissed.

10. In the result, the appeal of the Revenue in ITA No. 3330/DEL/2019 stands dismissed.

The order is pronounced in the open court on 14.06.2024.

Sd/-

**[SAKTIJIT DEY]
VICE PRESIDENT**

Sd/-

**[NAVEEN CHANDRA]
ACCOUNTANT MEMBER**

Dated: 14th JUNE, 2024.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	