

THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI**BEFORE SHRI B R BASKARAN, AM AND SHRI RAJ KUMAR CHAUHAN, JM**आयकरअपीलसं/I.T.A. No.4847/Mum/2017
(निर्धारणवर्ष / Assessment Year: 2012-13)

ACIT-25(3) Room No. 601, C-10, 6 th Floor, Pratyakshakar Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai-400051.	बनाम/ Vs.	Nailesh S Mehta 102, Hiralaya, Plot No. 19, JVPD Scheme Vile Parle (W), Mumbai- 400056.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : ACZPM0898D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Sumat Chadha	
Revenue by:	Dr. Mahesh Akhade, CIT-DR	

सुनवाईकीतारीख / Date of Hearing: 01/07/2024
घोषणाकीतारीख /Date of Pronouncement: 04/07/2024**आदेश / ORDER****PER B R BASKARAN, AM:**

The appeal of the revenue is directed against the order dated 05-04-2017 passed by Ld CIT(A)-37, Mumbai and it relates to the assessment year 2012-13. Following issues are urged in this appeal:-

- Whether the Ld CIT(A) was right in holding that the compensation received on cancellation of Flats booked by the assessee is genuine business income and not cash credit representing accommodation entry, which is assessable as income of the assessee under the head Income from other sources.
- Whether the Ld CIT(A) was right in deleting the disallowance made by the AO u/s 14A of the Act read with Rule 8D of I T Rules.
- Whether the decision rendered by Ld CIT(A) in respect of profits generated in commodity derivatives and loss incurred in trading in futures and option is correct.

2. The assessee is engaged in the business of trading in derivatives, future and options, shares and commodities.

3. The first issue relates to the compensation amount of Rs.10.01 crores received by the assessee. It is stated that the assessee had entered into an agreement with M/s Ellora Build Spaces P Ltd on 01-04-2011 for purchase of flats for Rs.25 crores in the buildings proposed to be constructed under the name Nakshatra Phase I and Nakshatra Phase II. The assessee had given loan of Rs.2.40 crores to the above said builder and the said loan was converted into booking advance for purchase of flats. Later on, the booking of flats was cancelled by entering into a cancellation deed dated 14.02.2012 and the assessee was given a compensation of Rs.10,01,64,000/-. The assessee declared the same as his business income. The AO, however, noticed that the assessee has neither paid Service tax nor VAT on the booking of flats under construction in order to prove the genuineness of transaction. Accordingly, the AO took the view that the assessee and builder have adopted deceptive means for mutual benefit in order to reduce the tax liability. Accordingly, the AO held that the assessee has availed accommodation entry of Rs.10,01,64,000/- and the same is assessable as income of the assessee under the head "Income from other sources".

3.1 The Ld D.R submitted that the assessee did not furnish any document to prove the genuineness of transactions of booking of flats and cancellation of the same before the AO. Further, the assessee has also failed to prove that he is engaged in the real estate business. He submitted that the assessee had huge brought forward losses and hence the assessee has generated the impugned business income by way of accommodation entry by arranging make belief transactions. The Ld D.R further submitted that the Ld CIT(A) has granted relief to

the assessee by considering the documents which were not produced before the AO and thus violated the provisions of Rule 46A of Income tax Rules.

3.2 The Ld A.R, on the contrary, submitted that the assessee is a partner in certain partnership firms, which are engaged in the real estate business. He submitted that the assessee has booked flats with the intention of selling the same. He further submitted that the flats were booked at the then prevailing prices and the compensation was computed at the time of cancellation on the basis of price prevailing at that point of time. Accordingly, he submitted that the Ld CIT(A) has rightly held that the compensation amount received by the assessee is the business income of the assessee.

3.3 We heard the parties on this issue and perused the record. From the assessment order, it is not clear as to whether the assessee has furnished all the details to prove his claim of generation of business income. However, it is seen that the Ld CIT(A) has relied upon certain documents and evidences in order to accept the claim of the assessee. We also notice that the Ld CIT(A) has not called for any remand report from the AO. Hence, we notice that there is violation of Rule 46A of Income tax Rules. In any case, it is the contention of the assessee that the flats were booked at the then prevailing market price and the compensation was also computed on the basis of then prevailing market price. It is not clear as to whether the Ld CIT(A) has considered these facts. Under these set of facts, we are of the view that this issue needs to be restored to the file of the AO for examining it afresh by duly considering the evidences and information relating to the transactions. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO for examining it afresh by duly considering the information and

explanations that may be furnished by the assessee. After affording adequate opportunity of being heard, the AO may take appropriate decision in accordance with law.

4. The next issue relates to the disallowance made u/s 14A of the Act. The AO noticed that the assessee did not make any disallowance u/s 14A of the Act. Accordingly, he computed disallowance as per Rule 8D of I T Rules at Rs.37,58,008/- and added the same to the total income.

4.1 Before Ld CIT(A), the assessee contended that the AO did not record any dissatisfaction on the stand taken by the assessee on the matter of disallowance u/s 14A of the Act. Accordingly, it was contended that the AO could not have computed the disallowance u/s 14A read with Rule 8D without recording dissatisfaction. The Ld CIT(A) was convinced with the above said contentions of the assessee. Accordingly, the Ld CIT(A) held that the AO could not have computed the disallowance as per Rule 8D without recording dissatisfaction over the contention of the assessee. In this regard, the Ld CIT(A) took support of the decision rendered by the co-ordinate bench in the case of Kodak India (P) Ltd vs, Addl CIT (ITA No.7349/Mum/2012). The Ld CIT(A) also noticed that an identical disallowance made by the AO in AY 2009-10 and 2011-12 was deleted by the then CIT(A). Accordingly, the Ld CIT(A) deleted the disallowance made u/s 14A of the Act.

4.2 We heard the parties on this issue and perused the record. It is the condition prescribed in sec. 14A(2) of the Act that the AO can resort to the provisions of Rule 8D only if he is not satisfied with the claim of the assessee having regard to the accounts of the assessee. A perusal of the assessment order would show that the AO did not record any dissatisfaction over the claim of the assessee, i.e., the AO has proceeded to compute the disallowance u/s 14A as per Rule 8D

without making any discussion on the accounts /claim of the assessee. The said action of the AO is in violation of the condition prescribed in sec. 14A(2) of the Act and hence the AO could not have resorted to Rule 8D to compute the disallowance. Accordingly, we do not find any infirmity in the decision rendered by Ld CIT(A) on this issue and accordingly confirm the same.

5. The next issue contested by the revenue relates to addition made in respect of trading in derivatives and F & O transactions. Both the parties agreed that this issue may be restored to the file of the AO for examining it afresh, as there is misunderstanding over the facts relating to this issue. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO for examining it afresh by duly considering the information and explanations that may be furnished by the assessee.

6. In the result, the appeal of the revenue is treated as Partly Allowed.

Order pronounced in the open court on 04/07/2024

Sd/-

(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER

Sd/-

(B R BASKARAN)
ACCOUNTANT MEMBER

Mumbai, Dated : 04/07/2024

Vijay Pal Singh, (Sr. PS)

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The PCIT, Mumbai.
4. The CIT
5. The DR, 'D' Bench, ITAT, Mumbai

BY ORDER

//True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai