

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'G' BENCH
MUMBAI**

**BEFORE: SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
&
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**ITA No.187/Mum/2024
(Assessment Year :2015-16)**

M/s. Gokul Fuelchem Private Limited 6/6, Bhagwati Apartment, S.V. Road Malad West Maharashtra-400 064	Vs.	National Faceless Assessment Centre Delhi
PAN/GIR No.AADCG2015K		
(Appellant)	..	(Respondent)

Assessee by	Shri Vimal Punamiya & Shri Rahul Punmiya
Revenue by	Shri Dinesh A Chourasia
Date of Hearing	30/05/2024
Date of Pronouncement	29/07/2024

आदेश / O R D E R

PER B.R. BASKARAN (A.M):

The assessee has filed this appeal challenging the order dated 20-12-2023 passed by Ld CIT(A), NFAC, Delhi and it relates to the assessment year 2015-16. The solitary issue urged in this appeal relates to the disallowance of claim of F & O loss of Rs.1.35 crores.

2. The facts relating to the above said issue are discussed in brief. The assessee is a carrying on business in Indus, coal

etc. The AO received information that certain stock brokers were manipulating F & O transactions in the stock market in order to generate bogus losses and gains. The modus operandi was that certain group of traders will sell stock options at an unreasonably lower price without any corresponding off setting position in the underlying scrip. Later, during the course of the day, those stock options will be bought back at market rates, which are usually substantially higher. These transactions will result unusual loss to a group of persons and huge gains to some other persons. This system of operation was called reversal trade. In this regard, both SEBI and income tax department carried out enquiries. The Income tax department conducted search and surveys under the name "Project Falcon". Certain investors were also subject to survey operations. Most of them accepted their role in the manipulative practices. One of the brokers subjected to survey operation was Shri Lalit Kumar Tulshyan. The information collected from the above said broker revealed that the assessee herein has carried out F & O transactions through the above said broker and incurred losses in the reversal trade to the tune of Rs.44,79,600/- during the year relevant to AY 2015-16. Such losses were considered to be bogus by the income tax department. Accordingly, the AO reopened the assessment of AY 2015-16.

3. In the reopened assessment, the AO noticed that the assessee has claimed loss of RS.1,34,95,517/- on F & O trading and claimed the same against its business profits. The AO considered the above said loss as bogus in nature and

accordingly disallowed the same in the assessment order passed u/s 144 of the Act to the best of his judgement.

4. Before the Ld CIT(A), the assessee submitted that the F & O transactions were carried out in the normal course of its activities. It was submitted that the broker might have carried out client code modification due to wrong punching etc., but the assessee was not aware of/concerned with those kinds of activities of broker. Accordingly, it was submitted that, on that count, the transactions of the assessee should not be considered to be bogus in nature. The Ld CIT(A) was not convinced with the submissions of the assessee. He took the view that it is the responsibility of the assessee to prove that the transactions are genuine. However, the assessee has failed to do so. Further, the loss has arisen due to change and modification of client code done by the broker, which fact proves that the loss was generated and shifted to the assessee. Accordingly, he confirmed the disallowance made by the AO.

5. We heard the parties and perused the record. We notice from the assessment order that the assessing officer has fully relied upon the report of the investigation wing with regard to the alleged manipulative practices in the F & O transactions, mainly for the reason that the broker through whom the assessee had carried out the F & O transactions was examined by the SEBI. However, the fact would remain that the assessee has carried out the above said transactions through stock exchange platform. The relevant contract notes/invoices support the transactions carried out by the assessee. There is no dispute that the assessee has disclosed

the sale and purchase transactions in the books of accounts. The payments for the same have been carried out through banking channels. The assessing officer has not found fault with any of those documents. Further, it is not the case that the assessee itself was subjected to enquiry either by SEBI or by Income tax Department. It is not clear as to whether the broker of the assessee has specifically identified the transactions carried on by the assessee as bogus, in which case, the same should have been put before the assessee for explanation. Under these set of facts, we are of the view that the AO was not justified in disbelieving the transactions of the assessee merely for the reason that the broker of the assessee was subjected to search for manipulation in F & O transactions. There is no material before the AO that the transactions carried on by the assessee itself was bogus. Thus, the reasoning given by the AO for making the impugned disallowance is a generalized one and the general report could not have been relied upon by the AO.

6. The case of the Ld CIT(A) was that the loss of the assessee was generated through alleged client code modification. The Hon'ble Bombay High Court has held in the case of *Coronation Agro Industries Ltd vs. DCIT (2017)(82 taxmann.com 75)(Bom)* that the client code modification done by the assessee's broker cannot be a ground to believe that there had been any escapement of income. However, the Ld CIT(A) has also confirmed the disallowance primarily on the basis of report of the investigation wing. Since the transactions are supported by proper documents and since they cannot be disbelieved based on the generalized report of

the investigation wing, we are of the view that the disallowance confirmed by the Ld CIT(A) was not justified. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the disallowance of F & O loss of Rs.1,34,95,517/- made by the AO.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 29/07/2024 by way of proper mentioning in the notice board.

Sd/-
(ANIKESH BANERJEE)
JUDICIAL MEMBER

Mumbai; Dated 29/07/2024
KARUNA, sr.ps

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai