

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI

BEFORE JUSTICE (RETD.) SHRI C.V. BHADANG, HON'BLE PRESIDENT
AND
SHRI B.R. BASKARAN, HON'BLE ACCOUNTANT MEMBER

ITA Nos. 1572/MUM/2024 : A.Y. : 2018-19
CO No. 171/MUM/2024 : A.Y. : 2018-19
(Arising out of ITA No. 1572/M/24)

Dy. Commissioner of Income Tax, Vs. Daystar Enterprises Pvt. Ltd.,
Circle-5(1)(1), 507, Mahalaxmi Chamber,
Aayakar Bhavan, 22, Bhulabhai Desai Road,
M.K. Road, Mumbai. Mahalaxmi, Mumbai.
(Appellant) PAN : AAACI2687N
(Respondent/Cross Objector)

For Assessee :	Shri Rajiv Khandelwal and Shri Akash Kumar
For Revenue :	Ms. Mahita Nair, Sr.DR

Date of Hearing :	05-09-2024
Date of Pronouncement :	21-10-2024

ORDER

PER B.R. BASKARAN, A.M :

The appeal filed by the Revenue and the cross objection filed by the assessee are directed against the order dated 02-02-2024 passed by Ld CIT(A), NFAC, Delhi and they relate to the Assessment Year (AY.) 2018-19.

2. The assessee is engaged in the business of trading in fabrics, Real estate renting services, undertaking F & O activities in stock market etc.

3. We shall first take up the appeal filed by the Revenue. The first issue relates to the head of income, under which the rental income earned by the assessee is required to be assessed. The assessee owned properties and had given them on rent. It earned rental income of Rs.3,88,14,052/- from those two properties. The assessee declared the same as income under the head "Income from House Property". The AO, however, took the view that the assessee has collected rent under the name "Licence Fees" and hence the same should constitute its business income. Further, one of the objects of the assessee was mentioned as renting of properties. Accordingly, the AO held that the rental income declared by the assessee is assessable as business income and accordingly assessed the same under the head Income from business. The Ld CIT(A), however, reversed the above said decision of the AO and hence the Revenue is in appeal before the Tribunal on the above said issue.

4. We heard the parties on this issue and perused the record. We notice that the assessee has treated the properties as its Investment only. Further, the assessee has been declaring the rental income under the head "Income from House Property" only in the earlier years and the same has been accepted by the AO in the preceding years. In support of the same, the assessee has furnished in the paper book copies of assessment orders passed in AY 2015-16 and 2016-17. During the year under consideration, the AO has changed the head of income into 'Income from Business' on the reasoning that the rent has been received under the name "Licence fee" and further, the objectives of the assessee included renting of properties. However, he has ignored the fact that the relevant properties have been shown as Investments by the assessee, meaning thereby, the assessee did

not treat the relevant properties as its business assets. Further, the nomenclature given to the rental receipts may not be relevant to determine the head of income. Hence both the reasoning given by the AO would fail. We notice that the Ld CIT(A) has also taken support of Principle of Consistency, which, in our view, cannot be faulted with in this case. Accordingly, we are of the view that the Ld CIT(A) was justified in holding that the rental income received by the assessee is assessable under the head "Income from House Property".

5. The next issue urged by the Revenue relates to the treatment of loss incurred by the assessee in F & O Transactions as normal business loss and not as speculation loss as held by the AO. The assessee had incurred loss of Rs.14,99,282/- in F & O transactions as speculation loss and accordingly held that the same could be set off against speculation gain only. The AO also recorded a fact that the broker note issued by M/s Motilal Oswal has mentioned the F & O transaction transactions as 'speculation transactions' only. Accordingly, the AO disallowed the claim of set off claimed by the assessee against its business income. The Ld CIT(A) noticed that, under sec.43(5) of the Act, the F & O transactions are treated as normal business transactions. Further, he also recorded a finding after verification of broker notes that they do not mention the F & O transactions as speculative transactions. Accordingly, he reversed the order passed by the AO on this issue and allowed set off of F & O loss against other business income. The Revenue is aggrieved.

6. We heard rival contentions on this issue. The provisions of sec.43(5) of the Act defines the expression "speculative transactions" as under:-

43 (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 arbitrate 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][Sub. for "recognised association" by the Act No. 12 of 2020, w.e.f. 1-4-2020], 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:

[Provided further that for the purposes of clause (e) of the first proviso, in respect of trading in agricultural commodity derivatives, the requirement of chargeability of commodity transaction tax under Chapter VII of the Finance Act, 2013 shall not apply.][Inserted by Finance Act, 2018 (Act No. 13 of 2018), dated 29.3.2018.]

[Explanation. - For the purposes of this clause, the expressions-(i)"eligible transaction" means any transaction,—

(A)carried out electronically on screen-based systems through a stock broker or sub-broker or such other intermediary registered under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) in accordance with the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) or the Securities and Exchange Board of India Act, 1992 (15 of 1992) or the Depositories Act, 1996 (22 of 1996) and the rules, regulations or bye-laws made or directions issued under those Acts or by banks or mutual funds on a recognised stock exchange; and

(B) which is supported by a time stamped contract note issued by such stock broker or sub-broker or such other intermediary to every client indicating in the contract note the unique client identity number allotted under any Act referred to in sub-clause (A) and permanent account number allotted under this Act;

(ii) "recognised stock exchange" means a recognised stock exchange as referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and which fulfils such conditions as may be prescribed and notified⁷⁹ by the Central Government for this purpose;

Explanation 2.—For the purposes of clause (e), the expressions—

(i) "commodity derivative" shall have the meaning as assigned to it in Chapter VII of the Finance Act, 2013;

(ii) "eligible transaction" means any transaction,—

(A) carried out electronically on screen-based systems through member or an intermediary, registered under the bye-laws, rules and regulations of the 80[recognised stock exchange][Sub. for "recognised association" by the Act No. 12 of 2020, w.e.f. 1-4-2020.] for trading in commodity derivative in accordance with the provisions of the Forward Contracts (Regulation) Act, 1952 (74 of 1952) and the rules, regulations or bye-laws made or directions issued under that Act on a 80[recognised stock exchange]; and

(B) which is supported by a time stamped contract note issued by such member or intermediary to every client indicating in the contract note, the unique client identity number allotted under the Act, rules, regulations or bye-laws referred to in sub-clause (A), unique trade number and permanent account number allotted under this Act;[(iii) "recognised stock exchange" means a recognised stock exchange as referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and which fulfils such conditions as may be prescribed and notified by the Central Government for this purpose;]

We notice that the Ld CIT(A) has rendered his decision following the above said provisions, which by way of deeming fiction has excluded the eligible transactions in respect of trading in derivatives from the definition of "speculative transaction". Before us, the Revenue could not show any other contrary provision to demonstrate that the reliance placed by Ld CIT(A) on the provisions of sec.43(5) of the Act was wrong. The finding of fact given by the Ld CIT(A) with regard to the noting made in the broker note was also not proved to be incorrect by the Revenue. Under these set

of facts, we do not find any infirmity in the order passed by Ld CIT(A) on this issue.

7. We shall now take up the Cross objection filed by the assessee. The only issue urged by the assessee is related to the disallowance made by the AO u/s 14A of the Act.

8. The Ld A.R submitted that the assessee did not earn any exempt income during the year under consideration from out of the investments held by it. However, the assessee disallowed a sum of Rs.14,200/- voluntarily in the return of income. The AO, however, computed the disallowance u/s 14A of the Act as per Rule 8D of IT Rules and accordingly disallowed a further sum of Rs.10,20,312/-. The Ld CIT(A) also confirmed the same.

9. The Ld A.R submitted that it is now well settled proposition of law that no disallowance u/s 14A is called for when the assessee did not earn any exempt income. In this regard, the Ld A.R placed his reliance on the decision rendered by Hon'ble Bombay High Court in the case of PCIT vs. Kohinoor Project (P) Ltd (425 ITR 700)(Bom).

10. We heard rival contentions on this issue and perused the record. The fact would remain that the assessee did not earn any exempt income during the year under consideration. The Hon'ble jurisdictional Bombay High Court has held in the case of Kohinoor Project (P) Ltd (supra) that the disallowance u/s 14A is not required to be made if no exempt income is received or receivable during the relevant previous year. Since the decision rendered by Ld CIT(A) on this issue is contrary to the decision rendered by Hon'ble jurisdictional Bombay High Court, the same cannot be sustained.

11. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the addition made by him u/s 14A of the Act.

12. In the result, the appeal filed by the Revenue is dismissed and the Cross objection filed by the assessee is allowed.

Order pronounced in the open court on 21-10-2024

Sd/-
(JUSTICE (Retd.) C.V. BHADANG)
PRESIDENT

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

Mumbai,
Date : 21-10-2024

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "D" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai