

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No. 5385/Mum/2024  
Assessment Year : 2022-23

Abhay Gopalchandra Haritwal, Flat No. 72, Bldg. No. 9, Vijay Nagari Annex, Ghodbunder Road, Wagbil, Thane, Maharashtra PAN : AAPPH6706H (Appellant)	vs.	Income Tax Officer, Ward-1(1), Thane Ashar IT Park, Wagle Industrial Estate, Thane (W), Thane (Respondent)
For Assessee :		Ms. Priyanka Agrawal
For Revenue :		Shri Virabhadra Mahajan, Sr.DR
Date of Hearing :		26-12-2024
Date of Pronouncement :		26-12-2024

**ORDER**

The assessee has filed this appeal challenging the order dated 20-08-2024 passed by the Ld.Addl./JCIT(A)-9, Delhi and it relates to AY.2022-23.

2. The only grievance of the assessee is that the CPC/Ld CIT(A) did not allow the set-off of current year's business loss of Rs.83,574/- against his income under other heads of income.

3. The learned counsel appearing for the assessee submitted that the assessee had entered into F&O transactions in shares and incurred a loss of Rs. 83,574/-. It is considered as business loss in terms of the proviso to sec.43(5) of the Act. However, while filing the return of income, the said loss was wrongly shown as 'speculative loss' and

hence, the CPC did not allow the set-off of the loss against income declared under heads of income. The Ld.AR submitted that the provisions of section 43(5) of the Income Tax Act, 1961 ('the Act'), defines speculation transaction and it excludes eligible transaction of trading in derivatives from the purview of speculative transaction. Hence, the mistake committed by the assessee in filling up the income tax return should have been corrected by the CPC. The Ld.CIT(A) also confirmed the action of the CPC, observing that the mistake has been committed by the assessee himself. The Ld.AR submitted that there is no estoppel against law and total income has to be computed by the tax authorities in accordance with law only. Accordingly, the Ld.AR submitted that the loss incurred by the assessee in F&O transactions may be directed to be treated as 'business loss' and not as 'speculative loss'.

4. I heard the Ld.DR and perused the record. As rightly submitted by the Ld.AR, there is no estoppel against law and hence, the mistake, if any, committed by the assessee in filling up the return of income should not be used against the assessee. According to the assessee, the F&O transactions do not fall under the category of speculative transactions, within the meaning of section 43(5) of the Act. In that case, the said loss cannot be treated as 'speculative loss' merely because the assessee has declared it as 'speculative loss' while filling up the return of income. It is well settled principle that it is the duty of the AO to guide the assessee and also determine the total income in accordance with law.

5. Accordingly, I am of the view that the mistake committed by the assessee should have been corrected by the AO. Accordingly, I set aside the order passed by the Ld.CIT(A) on this issue and restore to the same to the file of the AO with a direction to examine the loss incurred in F&O transactions in terms of section 43(5) of the Act and if it falls within the exception provided under the proviso to section 43(5) of the

Act, then treat it as business loss and compute the total income in accordance with law. The assessee should be provided with adequate opportunity of being heard.

6. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 26-12-2024

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

Mumbai,

Date: 26-12-2024

*TNMM*

Copy to :

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

By Order

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