

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD**

**BEFORE DR. B.R.R. KUMAR, VICE-PRESIDENT
SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

I.T.A. No. 831/Ahd/2024
(Assessment Year: 2010-11)

N.K. Proteins Pvt. Ltd., 2 nd Floor, Popular House, Ashram Road, Ahmedabad PAN : AAACN 9377 N	Vs.	DCIT, Circle 3(1)(1), Ahmedabad
(Appellant)	..	(Respondent)

I.T.A. No. 896/Ahd/2024
(Assessment Year: 2010-11)

DCIT, Central Circle 1(2), Ahmedabad	Vs.	N.K. Proteins Pvt. Ltd., 7 nd Floor, Popular House, Ashram Road, Ahmedabad PAN : AAACN 9377 N
(Appellant)	..	(Respondent)

Assessee by :	Shri Vartik Chokshi, AR
Revenue by:	Shri V. Nandakumar, CIT-DR & Shri Kavan Limbasiya, Sr DR

Date of Hearing	17.03.2025 & 19.06.2025
Date of Pronouncement	23.06.2025

ORDER

PER DR. B.R.R. KUMAR, VICE-PRESIDENT :

These appeals have been filed by the assessee & Revenue against the order of the Ld. Commissioner of Income-tax (Appeals)-11, Ahmedabad (hereinafter referred to as "CIT(A)" for short) dated 28.02.2022, passed u/s 250 of the Income-tax Act, 1961, (hereinafter referred to as "the Act" for short) for the Assessment Year (AY) 2010-11.

ITA No. 831/Ahd/2024 - Assessee's appeal

2. The assessee has raised following grounds of appeal:-

"1. In law and in the facts and circumstances of the Appellant's case, the Id. CIT(Appeals) has erred in passing the impugned CIT(Appeals) order under section

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250 of the Income Tax Act, 1961 without appreciating the facts of the case and hence, the order passed is void and bad-in-law and deserves to be quashed.

2. In law and in the facts and circumstances of the Appellant's case, the Id. CIT(Appeals) has grossly erred by confirming the Id. Assessing Officer decision that the loss amounting to Rs. 72,67,098/- is fictitious and non-genuine without bringing any cogent and concrete evidence on records and in complete disregard of the order of Hon'ble ITAT for A.Y. 2011-12 wherein similar issue have been adjudicated in favor of the Appellant. Therefore, the addition confirmed without brining any specific finding on record is without application of mind therefore, the addition confirmed needs to be deleted."

3. The brief facts of the case are that the assessee is a private limited company and engaged in the business of manufacturing and sale of edible and non-edible oil products/by-products. The assessee for the year under consideration filed its return of income on 29.09.2010 declaring total income of Rs.15,31,24,189/-. Thereafter, the Assessment Order was framed under section 143(3) of the Act for the year under consideration at the total income of Rs.15,47,54,611/- after making the addition/disallowances of certain items vide order dated 26.03.2013.

4. Subsequently, the learned Pr. CIT considered the order passed by the Assessing Officer as erroneous insofar prejudicial to the interest of the revenue thereby, passing impugned order u/s 263 of the Act directing Assessing Officer to frame *de novo* assessment. During the course of subsequent assessment proceedings consequent to order u/s 263 of the Act, Assessing Officer has also obtained Special Audit Report u/s 142(2A) of the Act. Ultimately, an order u/s 143(3) r.w.s 263 & 142(2A) of the Act was passed on 11.11.2016 wherein Assessing Officer have carried out multiple addition and assessed total income at Rs. 44,01,27,884/-. Being aggrieved by the above order, the assessee had filed an appeal before the Id. CIT(A) for all such additions made by Assessing Officer. In the meanwhile, the assessee has preferred an appeal before ITAT against order u/s 263 passed by PCIT and such order was passed in ITA No. 699/Ahd/2015 on 10.08.2020 wherein the Tribunal has directed the Assessing Officer to restrict its findings on the mistakes identified by the learned Pr. CIT in its order.

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Pursuant to such order, an order giving effect to the order of ITAT, Ahmedabad u/s 254 of the Act dated 05.07.2023 was passed by Assessing Officer wherein relief has been granted to the appellant and the additions made by Assessing Officer were deleted. The assessee was now in receipt of the order of Ld. CIT(A) passed on 28.02.2024 wherein relief was granted for one of the above additions; however, the other addition was sustained by Ld. CIT(A) on account of disallowance of loss claimed at NSEL amounting to Rs.72,67,098/-.

5. Aggrieved by the order of the Ld. CIT(A) confirming the addition of Rs.72,67,098/-, the assessee is now in appeal before the Tribunal.

Disallowance of loss claimed at NSEL:

6. Apropos this issue, the Assessing Officer had observed that the assessee has incurred losses of Rs. 72,67,098/- in transactions of wash oil carried out on NSEL Platform as under:-

NSEL Parties	Qty (Kg)	Amount (Rs)
Purchases Parties (NSEL)		
Indian Bullion Market Association Ltd	1397 8292	594622862
Total purchase = A	1397 8392	594622862
Sales Parties (NSEL)		
Tirupati Proteins Pvt Ltd.	1397 8392	587355764
Total Sales = B	1397 8392	587355764
Difference (losses in transaction) = A-B		(-)72,67,098

6.1 As per the facts taken from the record of the Ld. CIT(A), the Assessing Officer has held that such transactions are paper transactions without actual delivery of goods and is not at market rates. It was found that assessee company has claimed to have purchased goods from Indian Bullion Market Association Limited and on very same

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date, such goods are sold to Tirupati Proteins Limited and just entering such paper transactions, assessee has incurred losses which has been claimed to have been set off against other business income. The Assessing Officer has discussed the background relating to misuse of platform in assessment order and disallowed such loss under Section 43(5) read with Section 73 of the Act.

6.2 During the course of appellate proceedings, assessee has stated that trading transactions at NSEL was carried out to avail short term financing for the business requirement and losses incurred represent interest cost. The assessee has explained that as it was in need for finance, and finance was available through NSEL by entering into purchase transactions backed by sales transactions having different settlement dates hence it uses such modus operandi hence losses shown in Profit & Loss account actually represent financial loss which cannot be held to be speculative loss.

6.3 Ld. CIT(A) held that it is undisputed fact that there was no transfer of goods, losses have been claimed by entering into paper transactions only. It is found that the borrowers and lenders entered into a pair of contrasts for every deal and conceptually NSEL was set up as an online trading platform for a number of commodities and each commodity as its delivery locations at NSEL designated warehouse or accredited godowns. Ld. CIT(A) held that, as per information, the said platform was misused. It is found that assessee has entered into T+3 contract in the electronic platform of NSEL against paired transaction of T+36 contract on same exchange and as purchase and sale price of both contracts are at different rates, assessee has obtained losses without giving delivery of goods which cannot be held to be genuine losses. The assessee has merely stated that as it was in need of finance, it has entered into such transactions and such losses represent financial interest cost and same cannot be accepted to be true for the reason that by entering into such transactions, both buyers and sellers of goods in contra trade have also been benefited and there is nothing on record which can prove that such both parties have offered such income in their return of income or paid taxes on such

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income when assessee is claiming losses in its books of accounts. The Ld. CIT(A) held that the assessee has entered into circular transactions which are clearly represent non-genuine trade and such losses cannot be allowed to be set off against business income.

6.4 Before us, the Ld. AR has relied upon decision of the ITAT in its own case in ITA No. 328/Ahd/2017 wherein similar loss was allowed as business loss/finance loss. For the sake of ready reference, the relevant part of the order in assessee's own case for AY 2011-12 is reproduced hereunder:-

"7. The Ld. DR submitted that as regards ground No.4, there was no transfer of goods and the assessee could not explain as to why the route of exchange, i.e. NSEL has been taken. The DR relied upon the assessment order and the order of the CIT(A). The Ld. D.R. submitted that the borrowers and lenders entered into a pair of contracts for every deal and conceptually NSEL was set up as an online trading platform for a number of commodities and each commodity as its delivery locations at NSEL designated warehouse or accredited godowns. But as per information the said platform was misused. Client of M/s. N. K. Proteins Pvt. Ltd. submitted that M/s. N. K. Industries Ltd. executed T+3 contract in the electronic platform of NSEL whereby N. K. Industries Ltd. sold 100 kg. of castor seeds to another prospective investor/client of another broker of NSEL for Rs. 100/-. The another prospective investor client of NSEL in turn executes T+36 trade contract on the electronic platform of NSEL whereby it sells the castor seeds to another client of M/s. N. K. Proteins Ltd. such as M/s. N. K. Corporation which is an associate concern for Rs. 110/-. Thereafter, the associate concern i.e. M/s. N. K. Corporation carry out intragroup sale back to M/s. N. K. Proteins Ltd. to square off the sale/purchase transactions and to maintain the stock position. All these three transactions were executed simultaneously and after the above set off of circular transactions, M/s. N. K. Proteins Ltd. has to receive the amount on the 3rd day from prospective investor and the subsidiary concern of M/s. N. K. Proteins Ltd. has to pay to the prospective investor after 36 days. In this way the T+36 contracts are rolled over from one settlement cycle to next cycle. The Ld. D.R. further submitted that the assessee itself has not reflected these transactions as financial transaction in its books of accounts. Therefore, the addition of Rs. 14,42,91,136/- is justifiable.

8. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note here that the Ld. AR submitted before us that the transactions were entered into with a view to avail finance for the business requirements of the assessee and the loss represented the cost to get the funds to run the business. The trading facility available on NSEL attracted the assessee to enter into such transaction. But the Assessing Officer has observed that if the assessee's contention that it is a finance transaction, then it attracts the interest element which is not reflected in assessee's account. Though the contention of the assessee is that it should not be taken as speculative loss, the test of speculative loss can only be determined when the transaction itself is speculative, but in

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the present case the transaction was that of payment made by banking channel through account payee cheque for purchase and sale with the seller and buyers who are assessed to tax as per the contentions of the assessee. When the parties that of purchaser and seller are present and not artificial then the said transaction cannot be treated as speculative transaction and the loss incurred thereon cannot be speculative loss. The contention of the Ld. D.R. that the N. K. Proteins and its client has executed T+3 and T+36 trade contracts itself establishes that there was a transaction to that effect from the platform of NSEL for which the NSEL has maintained a settlement account with HDFC Bank in the name of N. K. Protein Ltd.. For the purpose of carrying out transaction with NSEL they use to keep 3.5% of the value of the transaction as margin money of this account which is released only after the transaction is over. But since the transaction was not materialized in end the settlement amount was received in consonance with these business transactions from NSEL and thus it cannot be treated as speculative loss and is a part of business loss. As rightly contended on behalf of the assessee-company, the exercise of re-characterization of transactions in the light of statement given by Shri Nilesh Patel should be restricted to only determination of correct taxable income. The relevant purchase and sales transactions were entered into by the assessee-company in order to avail the funds and, therefore, the loss incurred in the said transactions actually represented cost of such funds which was a business loss. The adverse inference drawn by the learned CIT(A) against the assessee on the basis of withdrawal of such loss partly was also not correct as the reasons for such withdrawal proposed by the assessee were duly explained and the fact that the assessee-company by entering into these transactions had availed finance for the purpose of business was duly established. As regards the applicability of TDS provision, the learned Counsel for the assessee has pointed out from the relevant details of transactions that the sale proceeds were received by the assessee-company from different entities while payment towards the purchase was made towards different entities. The cost of finance thus was not paid to the party from whom the finance was actually availed and the applicability of TDS, therefore, was not warranted. Moreover, the cost incurred by the assessee for availing finance was not strictly in the nature of interest and the party selling the goods having offered the same for taxation, there is no obligation of deduction of tax at source by the assessee. Having regard to all these facts of the case, we are of the view that the disallowance made by the Assessing Officer and confirmed by the learned CIT(A) on account of alleged speculation loss is not sustainable and deleting the same, we allow Ground No.4 of the assessee's appeal."

6.5 Since the issue stands squarely covered by the order of the Tribunal in assessee's own case in ITA No. 328/Ahd/2017 for AY 2011-12, in the absence of any change in the factual matrix and the legal proposition, the appeal of the assessee on this ground is hereby allowed.

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ITA No. 896/Ahd/2024 - Revenue's appeal

7. The sole ground raised by the Revenue in its appeal reads as under:-

"In the facts and on the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the addition of Rs.23,02,44,592/-, made on account of paper/fictitious purchase of castor seeds, without discussing the case on merits."

8. The Assessing Officer, based on the Special Auditor's Report that the assessee had purchased Castor Seeds through NSEL platform and held that the assessee-company has not furnished details of payments for such goods purchased and merely replied that the payments is made through Settlement account of NSEL. The Assessing Officer held that the goods are received by company without any payment and the same is settled against other parties account, thus, the Castor Seeds received are in the nature of payment received from NSEL, alike to the payment received in NKPL-NSEL client A/c. Thus, the Castor Seeds of Rs.23.02 crore are received to the assessee company as NSEL payments in Barter System, which is undoubtedly income/receipt of the company.

9. Before the Assessing Officer, the assessee submitted that assessee has received castor seeds of Rs. 23.02 crore from NSEL Platform on actual delivery basis under Farmers Contract whereby the Farmers sell the goods to the assessee company. Against such purchases, the payments have been made from the funds generated through paper transactions on NSEL platform. Further, the said payments have been made through Settlement Account and thus it is clear that such transaction does not amount to Barter. It was explained before the Assessing Officer that the assessee has purchased the same through NSEL on delivery basis and these transactions are not paper transactions under traders' contract. To substantiate the same, the assessee had furnished the details of Purchases along with the Purchase invoices and other relevant details to the special auditor at the time of special audit and the sample copies of obligation report so as to justify the payment to NSEL towards the regular (delivery based) purchases under

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Farmers contract were submitted before the Assessing Officer. The Assessing Officer having examined the details held that explanation of the assessee is not acceptable as the alleged payments have been made through settlement account of NSEL and the same is settled against other parties' account. The Assessing Officer relied on the Special auditor Report which has also given the finding that castor seeds of Rs. 23.02 crore are received to the assessee company as NSEL payments in barter system, which is income/receipt of the company. The Assessing Officer held that the goods have been received physically through paper trade on NSEL in kind like funds received as cheque. The Assessing Officer held that the assessee has not been able to show actual payments made for the goods purchased through NSEL from company's own bank accounts. The Assessing Officer held that the payment from NSEL settlement account cannot be said to have been made for company's own purchases as such, in the absence of the payment details, the Castor Seeds received are in the nature of payment received from NSEL, alike to the payment received in NKPL-NSEL client A/c., and being in the nature of barter and hence income/receipt of the company.

10. Aggrieved by the order of the Assessing Officer, the Assessee filed appeal before the Ld. CIT(A) who deleted the impugned addition made by the Assessing Officer.

11. Aggrieved by the order of the Ld. CIT(A) deleting the addition made by the Assessing Officer, the Revenue is in appeal before us.

12. Heard both the parties and perused the material available on record.

The Assessing Officer held that the entire disallowances of purchases of castor seeds from NSEL has been treated as income on the ground that assessee has received such castor seeds against amount receivable from NSEL and it represents barter system. The assessee contended that Castor Seeds have been

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purchased under Farmers contract on actual delivery basis which is duly accounted in books of accounts and in support of such claim, it has submitted purchase details, stock details reflecting its purchases, sale of castor seeds as well as working of raw material consumption. The castor seeds purchased during the year includes castor seeds received from NSEL as well as other parties and aggregate purchase value tallies with purchase shown in books of account. It is undisputed fact that assessee has made purchase of castor seeds worth Rs 23.02 crore (8323.475 MT) under farmers contract during the year. While passing the assessment order, Assessing Officer has not alleged that such purchases are paper transactions or no delivery of goods were made as was the case for alleged bogus losses of Rs.72,67,098/-. The assessee has submitted purchase details along with stock register for goods received at Chandisar and Kadi location which in fact prove that assessee has received such goods at such premises. The castor seeds purchased during the year are either used for crushing for production of oil and oil cake or subsequent sales and such details are apparent from stock register as well as relevant schedules of Audited Annual accounts already on record of Assessing Officer as well as Special Auditor. The castor seeds purchases in its books of account with other purchases made from various parties in books of account and aggregate purchase value shown in purchase register tallies with amount shown in Profit & Loss account. The sales register along with stock register which clearly proves that part of above referred purchases were sold. When Assessing Officer has not doubted purchase quantity, sale quantity, books results, manufacturing process, there is no reason for treating entire purchase value as income of assessee. The assessee has in fact made payment against such purchases and the proofs have been submitted viz. copies of obligation report of NSEL for such purchase value and payments have in fact been made through

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HDFC Settlement Account. The assessee had submitted relevant bank details along with bank vouchers in support of its claim. Hence, we decline to interfere with the order of the Ld. CIT(A).

The appeal of the Revenue on this ground is dismissed.

13. In the result, the appeal of the assessee is allowed and the appeal of the Revenue is dismissed.

The order is pronounced in the open Court on 23.06.2025

Sd/-

(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Sd/-

(DR. B.R.R. KUMAR)
VICE-PRESIDENT

Ahmedabad; Dated 23/06/2025

***btk*

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

True Copy

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad

