

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI**

**BEFORE MS. KAVITHA RAJAGOPAL, JM  
AND  
SHRI OMKARESHWAR CHIDARA, AM**

ITA No. 6817/Mum/2024  
(Assessment Year: 2014-15)

<b>Bright Paints Pvt. Ltd.</b> 11, Happy Home, 244, Waterfield Road, Bandra – 400050.	Vs.	<b>Dy. Commissioner of Income Tax – 12(1)(2)</b> Pratishtha Bhavan, Church Gate, Maharshi Karve Road, Mumbai – 400020.
<b>PAN/GIR No. AAACB1696E</b>		
<b>(Appellant)</b>	:	<b>(Respondent)</b>

<b>Assessee by</b>	:	Shri. Nitesh Joshi
<b>Respondent by</b>	:	Shri. Leyaqt Ali, SR. DR.

<b>Date of Hearing</b>	:	20.06.2025
<b>Date of Pronouncement</b>	:	27.06.2025

**ORDER**

**Per Kavitha Rajagopal, J M:**

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) Delhi ('ld. CIT(A)' for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2014-15.

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

*“1. That the NFAC ought to have accepted the total income of Nil and business loss relatable to the current year to be carried forward of Rs. 77,65,016 as offered by the Appellant in its return of income. He erred in upholding the total income as determined by the AO at Rs.45,03,790 and characterization of loss of Rs.1,21,66,229 to be carried forward as speculation loss.*



2. *That the NFAC ought to have accepted the disallowance as made by the Appellant under section 14A of the Act of Rs. 96,764. It ought to have held that in the absence of recording of an objective non-satisfaction with respect to the correctness of the Appellant's claim, the AO could not have computed such disallowance by invoking the provisions of rule 8D of the Income-tax Rules (the Rules).*
  3. *That the NFAC ought to have held that the disallowance to be made under section 14A of the Act cannot exceed the exempt income earned during the year of Rs.36,855.*
  4. *That the NFAC ought to have held that the disallowance under section 14A of the Act is to be restricted in respect of such investments which have actually yielded exempt income during the year.*
  5. *That the NFAC ought to have held that Explanation below section 73 of the Act had no application to its case as the Appellant's business does not consist in the purchase and sale of shares and consequently there was no loss on that account.*
  6. *The NFAC failed to appreciate that the Appellant is engaged in the business of trading in derivatives which is distinct from shares.*
  7. *That the NFAC ought to have held that the Appellant's case falls within the exception to the said Explanation as its gross total income consisted mainly of income from house property and income by way of capital gains. In any event of the matter, if derivatives are to be regarded as shares, then, it would also fall within the exception of a company whose principal business is of trading in shares*
  8. *That the NFAC ought to have held that no interest could be charged in the present case under sections 234B of the Act.”*
3. Brief facts of the case are that the assessee is a builder and developer and also engaged in the derivative trading in stock futures. The assessee company had filed its return income dated 29.11.2014, declaring total loss at Rs. (-) 77,65,015/- out of income from operations at Rs. (-) 1,17,53,866/- and other income at Rs. 60,10,047, where the net loss from business was computed at Rs. (-) 75,60,207/-. The return of income was processed u/s. 143(1) of the Act and the assessee's case was selected for scrutiny under CASS and notices u/s. 143(2) and 142(1) of the Act were duly issued and served upon the assessee.



The learned Assessing Officer ('ld. A.O.' for short) observed that the assessee has made various investments and had earned exempt income for which the assessee had not made disallowance pertaining to the expenditure incurred for earning of the exempt income. Further, the assessee had incurred derivative loss amounting to Rs. 1,22,68,805/- which has been set off against the 'Income from house property' which according to the ld. AO was to be disallowed in terms of Explanation to Section 73 of the Act as being speculative loss. The ld. AO then passed the assessment order u/s. 143(3)(ii) of the Act, dated 23.11.2016, thereby determining total income at Rs. 45,03,789/-, after making addition/disallowance of Rs. 1,02,576/- u/s. 14A r.w.r. 8D of the Income Tax Rules, 1962 and Rs. 1,21,66,229/- towards the derivative loss to be treated as speculative loss.

4. Aggrieved the assessee was in appeal before the first appellate authority, who vide order dated 28.10.2024 upheld the addition made by the ld. AO.
5. The assessee is in appeal before us, challenging the impugned additions.
6. Ground no. 1 and 5 to 7 raised by the assessee pertains to the disallowance of Rs. 1,21,66,229/- towards derivative loss set off by the assessee against the 'Income from house property'. The ld. AO observed that the assessee earned majorly on account of derivatives for which the ld. AO relied on the decision of the Hon'ble Delhi High Court in the case of *DLF Commercial Limited (2013) 35 taxmann.com 280*, thereby invoking the provision of Explanation to Section 73 of the Act and treated the same as speculative loss, thereby denying the claim of set off of derivative loss against the



- ‘Income from house property’. The ld. CIT(A) upheld this disallowance made by the ld. AO.
7. The learned Authorised Representative ('ld. AR' for short) for the assessee contended that trading in derivatives was carried out by the assessee through recognized stock exchange and the same cannot be considered as speculative loss as per clause (d) of the proviso to Section 43(5) read with clause (i) of Explanation 1 of the said provision which has to be treated as speculative loss only for Section 43(5) and not for Section 73 as done by the ld. AO. The ld. AR further contended that the Explanation to Section 73 is applicable only to the business of the purchase and sale of shares and not for trading in derivatives. The ld. AR relied on the several decisions viz. Hon'ble Calcutta High Court in the case of *Asian Finance Services Ltd. v. CIT (2016) 70 taxmann.com 9*, which had distinguished the decision of the Hon'ble Delhi High Court in the case of *DLF Commercial Developers Ltd. (supra)* and also relied on the decision of the Hon'ble Kerala High Court in the case of *PCIT vs. Dewa Projects (P.) Ltd. (2025) 170 taxmann.com 44* and Hon'ble Bombay High Court decision in the case of *Souvenir Developers (I) Pvt. Ltd. v. UOI (2022) 444 ITR 167* and prayed that the impugned disallowance be deleted.
8. The learned Departmental Representative ('ld. DR' for short) for the revenue on the other hand controverted the said fact and stated that the Hon'ble Delhi High Court in the case of *DLF Commercial Developers (supra)* has categorically held the loss arising out of trading in derivatives to be speculative loss as per the Explanation to Section 73 of the Act and stated that the lower authorities have rightly denied the assessee's claim.



The Id. DR relied on the decision in the case of ***DLF Commercial Developers (supra)*** and the orders of the lower authorities.

9. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has incurred derivative loss of Rs. 1,22,68,805/- which has been set off against the 'Income from house property'. The Id. AO rejected the assessee's claim of set off of derivative loss against the 'Income from house property' by treating the same as speculative loss not eligible for claiming set off as per the proposition laid down in the case of ***DLF Commercial Developers (supra)***. The Id. AO relied on the provision of Explanation to Section 73, where the business of purchase and sale of shares is deemed to be a speculative business. The assessee on the other hand controverted the said fact and stated that the speculative transaction has been defined u/s. 43(5) of the Act, where on contract for purchase or sale of any commodity including stocks and shares which is periodically or ultimately settled otherwise than by the actual delivery or transfer of commodity or scrips, then the said transaction would tantamount to a speculative transaction. The provision (d) and (e) to Section 43(5) excludes an eligible transaction in support of trading in derivative carried out in a recognized stock exchange and eligible transaction of trading and commodity derivative carried out in a recognized stock exchange which is chargeable to commodities transaction tax under Chapter VII of Finance Act, 2013 shall not be deemed to be a speculative transaction. On the contrary, the Explanation to Section 73 states in case of loss in speculation business other than the company whose gross total income consists mainly of income which is chargeable under the head interest on



securities, income from house property, capital gain or income from other sources or whose principal business is trading in shares or banking or granting of loans engaged in the purchase or sale of other companies then such company shall be deemed to be carrying on a speculation business to the extent to which the business consists of purchase and sale of such shares. The relevant extract of the said provision is cited herein under for ease of reference:

“43. In [sections 28](#) to [41](#) and in this section, unless the context otherwise requires—

- (1) .....
- (2) .....
- (3) .....
- (4) .....
- (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 arbitrage 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, 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 (17 of 2013) shall not apply.

**Explanation 1.**—For the purposes of clause (d), 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 notified 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 recognised stock exchange 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 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;”

10. On bare perusal of the above said provision, it is observed that the Section 43(5) of the Act defines what a speculative transaction is along with the proviso which excludes



transaction in trading of commodity derivatives as being a speculative transaction. On the contrary, the Explanation to Section 73 of the Act states that when the assessee company is majorly involved in the business of the purchase and sale of shares then it is deemed to have been carrying on a speculation business only to the extent of the purchase and sale of such shares.

11. In the present case in hand, the contentions of the revenue are that the assessee was majorly involved in the business of the derivatives which according to the revenue is akin to purchase and sale of shares as specified u/s. 73 of the Act. For this, the lower authorities have relied on the decision of the Hon'ble Delhi High Court in the case of ***DLF Commercial Developers (supra)***.
12. Pertinently, it is observed that the subsequent decision of the Hon'ble High Court of Calcutta in the case of ***Asian Finance Services Ltd. (supra)*** and the Hon'ble High Court of Kerala in the case of ***Dewa Projects (P.) Ltd. (supra)*** has decided this issue in favour of the assessee by holding that a transaction in derivatives are not speculative transactions and the loss incurred in such transaction would be a business loss for the purpose of Section 72 of the Act. The relevant extract of the decision of ***PCIT vs. Dewa Projects (P.) Ltd. (2025) 170 taxmann.com 44*** is quoted herein under for reference:

9. *The interplay between the provisions of Section 43 and Section 73 of the I.T. Act, to the extent they are relevant for deciding the issue before us, has been discussed by the Supreme Court in Snowtex (supra) as follows:*

*"14. The provisions of section 43(5) were amended by the Finance Act, 2005. Prior to the amendment, section 43(5) defined a 'speculative transaction' to mean a transaction in which a contract for the purchase or the sale of any commodity including stocks and shares is settled otherwise than by the actual delivery or transfer of the commodity or scrips. The impact of the amendment by the Finance Act, 2005 was that an eligible transaction on a recognised stock exchange in respect of trading in derivatives was deemed not to be a speculative transaction. With effect from April 1, 2006, trading in derivatives was by a deeming fiction*



not regarded as a speculative transaction when it was carried out on a recognized stock exchange.

15. The circular of the Central Board of Direct Taxes dated February 27, 2006 indicated that this amendment was occasioned by the changes which were introduced by SEBI both at the legal and technological level for bringing in greater transparency in the market for derivatives. Explaining the reason for the amendment, the Circular states:

*"3.10 Excluding 'trading in derivatives' on recognised stock exchanges from the ambit of 'speculative transactions'*

*The existing provisions of clause (5) of section 43 define 'speculative transaction' to mean a transaction in which a contract for the purchase or sale of any commodity including stocks and shares is settled otherwise than by the actual delivery or transfer of the commodity or scrips. The proviso to section 43(5) lists out certain transactions which are not deemed to be speculative transactions.*

*Systemic and technological changes introduced by SEBI have resulted in sufficient transparency in the stock markets and have to a large extent curbed the scope for generating fictitious losses through artificial transactions or shifting of incidence of loss from one person to another. The screen based computerized trading provides for audit trail. In the wake of these developments, the present distinction between speculative and non-speculative transactions, in respect of trading in derivatives of securities is losing relevance.*

*The Finance Act, 2005 has, accordingly, amended section 43(5) to provide that an eligible transaction in respect of trading in derivatives of securities carried out on a recognised stock exchange shall not be deemed as speculative transaction. The notification prescribing the rules and the conditions to be fulfilled by a stock exchange to be recognized by the Central Government for the purposes of section 43(5) [i.e., Rules 6DDA and 6DDB of the Income-tax Rules, 1962] has been published in the Official Gazette on 1st July, 2005 vide S. O. No. 932(E).*

*Applicability : From the assessment year 2006-07 onwards."*

16. Section 73 deals with losses from speculation business. Under subsection (1) of section 73, a loss computed in relation to speculation business carried on by an assessee can only be set off against the profits and gains of another speculation business. The Explanation to section 73 contains a deeming fiction where certain businesses shall, for the purposes of the section, be deemed to be speculation businesses. The Explanation also carves out an exception in respect of certain specified businesses which shall lie outside the fold of the deeming fiction. Prior to the amendment of the Explanation by the Finance (No.2) Act 2014 with effect from April 1, 2015, the business of trading in shares carried on by a company was not excluded from its purview. However, by the amendment which was brought into force from April 1, 2015, the Explanation to section 73 reads as follows:

*"Explanation - Where any part of the business of a company (other than a company whose gross total income consists mainly of income which is chargeable under the heads "Interest on securities", "Income from house property", "Capital gains" and "Income from other sources", or a company the principal business of which is the business of trading in shares or banking or the granting of loans and advances) consists in the purchase and sale of shares of other companies, such company shall, for the purposes of this section, be deemed to be carrying on a speculation business to the extent to which the business consists of the purchase and sale of such shares."*



*17. While on the one hand, Parliament amended section 43(5) with effect from April 1, 2006 as a result of which trading in derivatives on recognised stock exchanges fell outside the purview of the business of speculation, a corresponding amendment to the Explanation to section 73 in respect of trading in shares was brought in only with effect from April 1, 2015."*

*It will thus be seen that once the provisions of Section 43(5), as amended, came to treat a trade in derivatives as not a speculative transaction when it was carried out on a recognised stock exchange, then the effect of that amendment was to treat the transaction in derivatives as merely a business transaction. A loss in the derivative business would consequently be a business loss for the purposes of Section 72, and a set off of such business loss would have to be permitted against profits and gains of business as computed in terms of the I.T. Act. In other words, this was not a case where Section 73 was attracted at all since Section 73 deals specifically with losses in speculation business. As rightly found by the Tribunal in the instant case, since the transaction in derivatives was not a speculative transaction, the disallowance of the set off by the Assessing Officer was clearly illegal. We find, therefore, that the impugned order of the Tribunal, inasmuch as it relates to the questions raised in the present appeal, does not require any interference. Question nos.(1) to (3) are thus answered against the Revenue and in favour of the assessee."*

13. It is also observed that in the decision of the *Asian Financial Service Ltd. (supra)* much prior to the decision of the Hon'ble High Court of Kerala, this view has been reiterated where the Hon'ble High Court has interpreted the word 'shares' to be not akin to the word 'derivatives' and that the Hon'ble Delhi High Court in the case of *DLF Commercial Developers (supra)*, pertains only to shares and not derivatives, as the intention of the legislature was to treat them differently. Further, clause (a) to (e) of Section 43(5) of the Act are not deemed to be speculative transaction. From the above observations, we are inclined to treat the transaction in derivatives as business transaction and the loss arising out of it would consequently be a business loss for the purpose of Section 72 of the Act and hence, we hereby direct the ld. AO to treat the same as business loss and not speculative loss.

14. Ground no. 1, 5, 6 and 7 are hereby allowed as per the above terms.

15. Ground 2, 3 and 4 pertains to disallowance made u/s. 14A of the Act amounting to Rs. 1,02,576/-. It is observed that the assessee has made investments and had earned



dividend income of Rs. 36,855/- claiming to be exempt u/s. 10(34) of the Act and had made a *suo moto* disallowance of Rs. 96,764/-. The ld. AO recorded his dissatisfaction pertaining to the accounts of the assessee and had made disallowance on the expenditure u/s. 14A r.w.r. 8D amounting to Rs. 1,02,576/- and the same was upheld by the ld. CIT(A).

16. After hearing the rival submissions, it is observed that the issue in hand is no longer *res integra*, where it is a settled proposition of law that the disallowance u/s. 14A is to be restricted only to the extent of the exempt income earned by the assessee during the year under consideration.

17. In the present case in hand, the total exempt income earned by the assessee amounting to Rs. 36,855/- and the assessee has made a disallowance of Rs. 96,764/-. The ld. AO has also erred in disallowing 0.5% of the average value of the investment without considering that only the investment which has yielded exempt income are to be taken into consideration for making disallowance under Rule 8D of the IT Rules, 1962. By following the judicial precedents, we hereby direct the ld. AO to restrict to the extent of the *suo moto* disallowance made by the assessee which is much higher than the exempt income earned by the assessee. Though, the ld. AR for the assessee has relied on the decision of the coordinate bench in the case of ***Sajjan India Ltd. vs. Additional Commissioner of Income Tax, Range 7(2), Mumbai [2018] 89 taxmann.com 21(Mumbai-Trib.)*** and the Hon'ble Gujrat High Court in the case of ***Principal Commissioner of Income-tax vs. UTI Bank Ltd. [2018] 99 taxmann.com 392 (Gujarat)/[2017] 398 ITR 514 (Gujarat)[13-06-2016]***, for restricting the disallowance



only to the extent of the exempt income, where the assessee's *suo moto* disallowance was much higher than that, we are not in agreement with the same for the reason that the decisions relied upon by the ld. AR was distinguishable on the facts of the present case.

18. In the result, the ground no. 3 and 4 raised by the assessee are partly allowed.

19. Ground no. 8 is consequential in nature and requires no separate adjudication.

20. In the result, the appeal filed by the assessee is partly allowed.

*Order pronounced in the open court on 27.06.2025*

**Sd/-**  
**(OMKARESHWAR CHIDARA)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(KAVITHA RAJAGOPAL)**  
**JUDICIAL MEMBER**

Mumbai; Dated: 27.06.2025  
Karishma J. Pawar (Stenographer)

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent
3. CIT- concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt.Registrar)  
ITAT, Mumbai