

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "SMC-Bench" JAIPUR

श्री गगन गोयल, लेखा सदस्य एवं श्री नरेन्द्र कुमार, न्यायिक सदस्य के समक्ष
BEFORE: SHRIGAGAN GOYAL, AM& SHRI NARINDER KUMAR, JM

आयकर अपील सं./ITA No. 130/JPR/2025
निर्धारण वर्ष/Assessment Year : 2016-17

Nirmal Kumar Dugar 4451, K.G.B Ka Rasta Johari Bazar 302003	बनाम Vs.	The ITO, Ward-2(1), Jaipur
स्थायीलेखा सं./जीआईआरसं./PAN/GIR No. ABRPD3523B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Sh. Sauravh Harsh, Adv., Ld. AR
राजस्व की ओरसे / Revenue by: Shri Gaurav Awasthi, JCIT, Ld. DR

सुनवाई की तारीख / Date of Hearing : 09/10/2025
उदघोषणा की तारीख / Date of Pronouncement: 13/10/2025

आदेश / ORDER

PER: NARINDER KUMAR, JUDICIALMEMBER .

Appellant-assessee has challenged here impugned order dated 4.12.2024 passed by Learned CIT(A), whereby his appeal filed against assessment order dated 20.11.2018 passed by the Assessing Officer, in relation to the Assessment Year 2016-17 has been dismissed, and as a result, the assessment order assessing the income of the assessee at Rs. 13,63,700/-, has been sustained.

2. Vide impugned assessment order, an addition of Rs. 12,59,537/- was made by way of *income from house property*.

Yet another addition of Rs. 1,04,155/- was made by way of *income from other sources*.

3. Assessing Officer made the above said two additions after arriving at the conclusion that the assessee was engaged in shares and securities transactions, speculative in nature, of the value of Rs. 18,39,385/- in view of provisions of section 43(5) of the Income Tax Act, 1961, and further that the assessee had failed to establish business loss of Rs. 18,39,385/- from the transactions relating to shares and securities.

The assessee challenged the assessment order, but Learned CIT(A) dismissed the appeal and confirmed said order.

4. Hence, this appeal by the assessee before this Appellate Tribunal.

5. Arguments heard. File perused.

6. Admittedly, in the return of income relating to the Assessment Year 2016-17, the assessee declared his total income as "Nil". Case of the assessee was selected for limited scrutiny through CASS. In this regard, notice under section 143(2) of the Act was served upon the assessee.

During said proceedings, the Assessing Officer found that in the computation of income, the assessee had reflected business loss of Rs. 18,39,385/-from the transactions relating to shares and securities.

In order to verify the claim of the assessee regarding business loss, and to find out if said loss was speculative or non-speculative in nature, information was requisitioned from M/s Hem Securities Limited.

Information received from the said company revealed that earlier the appellant was engaged in purchase and sale of shares, which the assessee had shown under the head "Capital gain".

It also transpired that the assessee was also engaged in the shares and transactions as derivatives. The above named company also provided to the Assessing Officer client delivery and speculation details(derivatives) separately. From said details, it transpired that the assessee had booked the loss through transaction entered in derivatives at Rs. 18,39,385/-, which were actually speculative in nature. Details in this regard are available in the assessment order, page 2 to 42. That is how, the Assessing Officer had to issue notice under section 142(1) of the Act to the assessee confronting with the details furnished by him as available in P & L Account, wherein loss of Rs. 18,39,385/-was reflected as *business loss* and found to have been *set off from*

the income earned from house property and other sources. Accordingly, the assessee was called upon to show cause as to why said amount be not treated as speculative loss in view of the provisions of section 43(5) of the Act and charged to income tax upto the income of Rs. 13,62,692/-found to have been set off by him under the head *house property to the tune of Rs. 12,59,537/-and under the head income from other sources to the tune of Rs. 1,04,155/-.*

Accordingly, the assessee was called upon to furnish turnover details account of the transactions entered in shares/derivatives in terms of section 44AB of the Act. He was also called upon to furnish explanation as why derivatives were not reflected in the closing stock or other assets i.e. in the balance sheet.

As per reply to the said notice, the assessee came up with the plea that as per amendment in section 43(5) of the Act, w.e.f.1.4.2006, the subject transactions were no more speculative transactions and rather same were normal business transactions, and as such, said loss being normal business loss, could be set off against income from other source. Accordingly, the assessee claimed that said loss be not treated as speculative transaction loss, and he was entitled to set off the same income from house property and other sources income of Rs. 13,62,692/-.

While submitting turnover details of transactions, the assessee also claimed that the turnover being less than Rs. 1 Crores, provisions of section 44AB were not attracted. He further claimed to have added the value of derivatives to the sum total of shares and debentures appearing in the Balance sheet.

Having considered the abovesaid reply and details furnished by the assessee, the Assessing Officer was of the view that the assessee was engaged in the shares and securities transactions, which were speculative in nature as per provisions of section 43(5) of the Act, but the assessee had failed to establish by leading supporting evidence that it was a case of business loss. Said finding led to framing of the assessment order making the two subject additions.

Contentions

7. Learned AR for the appellant has referred to the amendment which came into force w.e.f. 1.4.2006 and submitted that in view of said amendment the subject transactions are no more speculative in nature and rather normal business transactions. Accordingly, the contention is that said loss can be set off against income from other heads like income from house property and income from other sources, and as such, the assessee has rightly claimed the

set off. In the written submissions, learned AR for the appellant has made reference to the decision in the case of Snowtex Investment Limited v. PCIT, Central 2, Kolkatta, CA No.4483 of 2019. Copy of the turnover for the year under consideration has also been relied on.

CIT(A) Decides

While dealing with the contentions raised on behalf of the appellant, Learned CIT(A) also referred to the provisions of section 43(5), including the amendment made to clause (5) by the Finance Act, 2018, w.e.f. 1.4.2019. However, significant to note that present case pertains to the Assessment Year 2016-17.

In para 5.8 of the impugned order, Learned CIT(A) expressed that even if the assessee has non-speculative income, he was supposed to get his books of account audited and only then claim the loss from future/option trading as business loss, but not otherwise i.e. in absence of audit of books of account. By so observing, Learned CIT(A) appears to have not approved the view expressed by the Assessing Officer that the the shares and securities transactions, in which the assessee was engaged, were speculative in nature or that the assessee had failed to establish the business loss by leading supporting evidence.

In para 5.7 of the impugned order, Learned CIT(A) went on to observe that in view of provisions of section 43(5) and 73 of the Act, income from future/Option and derivatives can be set-off against “ **other heads of income**”, and accordingly, once again, did not approve the reasoning given by the Assessing Officer in the show cause notice that the loss claimed by the assessee could not be set off from the” **income of other heads**”.

Learned CIT(A) was of the view that this case being a case of loss from derivative trading and that too being less than 8% of the turnover, provisions of section 44AB read with section 44AD relating to Tax Audit , were attracted, but the assessee had not filed any audit report for the relevant year.

So, Learned CIT(A) has held the assessee not eligible to claim business loss due to the reason that he had not got his books audited. In the opinion of Learned CIT(A), the assessee was supposed to get his books of accounts audited and only then claim loss from future/option trading as business loss.

As to what was the limit of the trading turnover during the relevant period?

8. It is significant to note that in section 44AD, to be covered by the definition of ‘eligible business’, w.e.f. 1.4.2017 words “2 crore rupees” were substituted in place of “one crore rupees”. But, earlier i.e. prior to 1.4.2017,

total turnover or gross receipts in the previous year should not have exceeded the amount of Rs. 60,00,000/-, as per Finance Act, 2012 which came into force w.e.f. 1.4.2013.

Here, it is not case of the department that trading turnover of the assessee during the relevant Financial Year 2015-16 exceeded Rs. 60,00,000/-. Even as per section 44AB of the Act, during the relevant period i.e. FY 2015-16, requirement of audit of accounts of persons carrying on business was there in case total turnover or gross receipts of the person carrying on business exceeded Rs. 60 lakhs. In para 5.6 of the impugned order, Learned CIT(A) specifically mentioned that the trading turnover of the assessee was less than Rs. 1 Crore. Actually, he should have taken into consideration the abovesaid limit of Rs. 60 lakhs.

9. In view of the above discussion and having regard to the limit of the turnover during the relevant period, and the total turnover or gross receipts of the assessee during the relevant period, we find that the requirement of auditing of account books was not applicable in the case of the appellant.

Having regard to the findings recorded by Learned CIT(A), when the only objection to the eligibility of the business of the appellant was non auditing of account books, but, as discussed above, said requirement was not

applicable in the case of the appellant, the claim of the assessee deserves to be allowed.

Result

10. As a result, the assessment order passed by the Assessing Officer and confirmed by Learned CIT(A), though for different reasons, deserves to be set aside. Similarly, the impugned order passed by Learned CIT(A) also deserves to be set aside.

11. Consequently, this appeal is allowed.

File be consigned to the record room after the needful is done by the office.

Order pronounced in the open court on 13/10/2025.

Sd/-
(गगन गोयल)
(GAGAN GOYAL)
लेखा सदस्य / Accountant Member

Sd/-
(नरेन्द्र कुमार)
(NARINDER KUMAR)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 13/10/2025

*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Nirmal Kumar Dugar, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward 2(1), Jaipur
3. आयकरआयुक्त / The ITO

4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर /DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 130/JPR/2025)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar