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

**BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER AND**
**SHRI SANJAY GARG, JUDICIAL MEMBER**

**ITA No.1764/M/2013**
**Assessment Year: 2009-10**

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| Dy. C.I.T., Circle - 3(1),<br>Room No.607, 6th Floor,<br>Aayakar Bhavan,<br>Mumbai - 400020 | Vs. | M/s. ECAP Equities Ltd.,<br>14th Floor, Express Towers,<br>Nariman Point,<br>Mumbai – 400 021<br>**PAN:AABCE 8997N** |
| (Appellant) | | (Respondent) |

Assessee by : Shri Ravikant S. Pathak, A.R.
Revenue by : Shri Neil Philip, D.R.

Date of Hearing : 15.06.2015
Date of Pronouncement : 15.06.2015

## ORDER

**Per Sanjay Garg, Judicial Member:**

The present appeal has been filed by the Revenue against the order of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] dated 14.12.2012 relevant to assessment year 2009-10.

2. The sole ground taken by the Revenue in this appeal is read as under:

> "1. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was justified in deleting the addition of Rs.8,55,86,854/- made on account of mark to market loss claimed on account of trading in derivative transactions, without appreciating the fact that the loss claimed on the basis of value of derivative as on 31st March is merely a notional loss and the actual loss or the profit in respect of such derivative transaction would get crystallized only at the time of settlement of such transaction."

3. At the outset, the Ld. A.R. has submitted that the issue is squarely covered in favour of the assessee by the judgment of the co-ordinate bench of the Tribunal in the case of M/s. Indsec Securities & Finance Ltd. in ITA

No.4236/M/2012 vide order dated 06.09.13. While dealing with the identical issue, the following observations were made by the bench:

> *"8. Ground No.2 of the appeal relates to the confirmation of disallowance of mark-to-market loss of Rs.83,655/- treating it as contingent in nature.*
>
> *9. The issue is squarely covered in favour of the assessee by the judgment of the co-ordinate bench of this Tribunal dated 03.05.13 passed in ITA No.1502/M/12 (assessment year 2008-09) in the case of "Kotak Mahindra Investment Ltd." wherein the co-ordinate bench of this Tribunal while relying upon the law laid down by the Hon'ble Supreme Court in the case of CIT vs. Woodward Governor India (P.) Ltd. (2009) 179 Taxman 326, has observed that the stock future is one of the types of forward contract, which is traded on exchanges. This can be traded in BSE as well as in NSE. In such type of contracts the stock is not actually purchased rather the profit or loss is calculated on the book value in comparison to the actual market rate of the stocks on the date which has been agreed by the parties for the performance of the contract. Certain stocks are booked to be purchased at predetermined particular rate on future date and when such future date of performance of contract becomes due, then the predetermined price is compared with the actual market rate of the booked stock and the difference, if any, is paid by the parties without actually purchasing or selling the stocks in question. The daily market rate of the said stock in question is taken and the difference between the market rate and the predetermined rate is daily calculated and the difference margin, if any, is received/paid to the broker and finally on the stipulated date the contracts are squared off resulting into actual loss or profit. The contracts in such type of cases can be squared off before the arrival of actual performance date of contract, as the profit and loss are calculated on daily basis and the margins are settled accordingly. Such type of contracts are not purely contingent in nature rather loss or profit is somewhat ascertainable in view of constant watch on daily market value and even the quantum of profit or loss though not actually ascertainable, can be anticipated in view of the trends of the market. The difference between the predetermined price and market price is settled daily on mark-to-market basis. In such type of contracts, it is not the stock value which is subject matter of the contract rather the contract itself is the stock in trade which is purchased by paying/depositing the initial margins on percentage basis to the broker taking into consideration maximum anticipated rise or fall in the price of the stock in future. The difference of margin is calculated and settled on daily basis in view of the market rates and trends.*
>
> *The Hon'ble Supreme Court in the case of CIT v. Woodward Governor India (P.) Ltd (2009) 179 Taxman 326, while dealing with the question as to whether the additional liability arising on account of fluctuation in the rate of exchange can be allowed to be adjusted pending actual payment of the varied, has observed that "expenditure" as used in section 37 in Income Tax Act may in the circumstances of a particular case cover an amount which is a "loss" even though said amount has not been given from the pocket of the assessee. It has been further observed that the ordinary principle of commercial accounting requires that in the Profit & Loss account the value of stock in trade at the beginning and at the end of the year should be entered at cost or market price, whichever is lower. While anticipated loss is taken into account, anticipated profit in the shape of appreciated value of the closing*

*stock is not brought into account, as no prudent trader would care to show increase profits before actual realization. Profits for income-tax purposes are to be computed in accordance with ordinary principles of commercial accounting, unless, such principles stand superseded or modified by legislative enactments. Unrealized profits in the shape of appreciated value of goods remaining unsold at the end of the accounting year and carried over to the following year's account in a continuing business are not brought to the charge as a matter of practice, though, as stated above, loss due to fall in the price below cost is allowed even though such loss has not been realized actually. Accounts regularly maintained in the course of business are to be taken as correct unless there are strong and sufficient reasons to indicate that they are unreliable. The co-ordinate bench of this Tribunal further relying upon the judgment of another co-ordinate bench of the Tribunal dated 10.11.10 passed in ITA No.5324/Mum/2007 for A.Y. 2004-05 in the case of Edelweiss Capital Ltd. further held that it is not only the actual stock but derivatives can also be held as stock in trade and the principle "cost or market price whichever is lower" has been rightly followed by the assessee in valuing the derivatives and further when the derivates are held as stock in trade then whatever rules apply to the stock in trade will have to apply to their valuation also. While anticipated loss is taken into account while valuation of closing stock, anticipated profit in the shape of appreciated value of the closing stock is not brought into account, as not prudent trader would care to show increased profits before actual realization.*

*10. Respectfully following the law laid down by the authorities as mentioned above, this issue is decided in favour of the assessee and the addition made by the AO on this ground is hereby ordered to be deleted."*

4. The Ld. D.R. could not bring before us any contrary fact or case law which may justify departure from the above observations made by the Tribunal. Hence, following the decision of the co-ordinate bench of the Tribunal, it is held that mark to market losses on account of trading in derivative transactions are allowable deductions. Hence this issue is accordingly decided in favour of the assessee and against the Revenue.

5. In the result, the appeal of the Revenue is therefore dismissed.

**Order pronounced in the open court on 15.06.2015.**

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| **Sd/-** | **Sd/-** |
| **(R.C. Sharma)** | **(Sanjay Garg)** |
| **ACCOUNTANT MEMBER** | **JUDICIAL MEMBER** |

Mumbai, Dated: 15.06.2015.

* Kishore

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR “C” Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.