

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH  
MUMBAI**

**BEFORE: SHRI VIKAS AWASTHY, JUDICIAL MEMBER  
&  
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.495/Mum/2021  
(Assessment Year :2014-15)**

Asst. Commissioner of Income Tax 6(1)(1) R.No.504, 5 <sup>th</sup> floor, Aayakar Bhavan, M.K. Road, Mumbai-400020	Vs.	M/s. Clothing Culture Ltd. C/14A, BKT, House, Trade World Kamala Mills, Lower Parel(West), Mumbai-400013
<b>PAN/GIR No.AAEECC9016B</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Mr. Haridas Bhat, Adv.
Revenue by	Mr. Jayant Jhaveri, CIT DR
<b>Date of Hearing</b>	<b>10/10/2022</b>
<b>Date of Pronouncement</b>	<b>31/10/2022</b>

**आदेश / ORDER**

**PER M. BALAGANESH (A.M):**

This appeal in ITA No. 495/Mum/2021 for A.Y.2014-15 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-CIT(A) 12, Mumbai in appeal No. CIT(A)12, Mumbai/11344/2016-17 dated 14/08/2020 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 30/12/2016 by the Id. Dy. Commissioner of Income Tax 6(2)(1), Mumbai (hereinafter referred to as Id. AO).

2. At the outset, we find that the appeal of the Revenue is delayed by 123 days. We find that the appellate order was passed by the Id. CIT(A)

during the Covid period and the appeal has been filed before this Tribunal by the Revenue during the Covid period. Hence, in view of the relaxation granted by the Hon'ble Supreme Court, the delay of 123 days is hereby condoned and appeal of the Revenue is admitted for adjudication.

2.1. The Revenue has raised the following grounds of appeal:-

1. *"On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the profits and gains of Rs. 34,01,87,229/- derived by the assessee from purchase and sale of shares of M/s Anukaran Commercial Enterprises Ltd. cannot be treated as unexplained cash credit under section 68 of the Act, without appreciating the fact brought on record by the Assessing Officer that M/s Anukaran Commercial Enterprises Ltd. is an entity engaged in providing accommodation entries of LTCG/STCG to beneficiaries, including the assessee."*

2. *"On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that provisions of Section 68 are not applicable to the assessee's case without appreciating the fact that during the survey operations u/s 133A as well as during the assessment proceedings, the assessee has not been able to satisfactorily explain the genuineness of its transaction in shares of M/s Anukaran Commercial Enterprises."*

3. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating the fact that there has been a deliberate attempt on the part of the assessee to evade the payment of tax by categorising a receipt chargeable to tax at higher rate of 30% by treating the same as Short Term Capital Gain chargeable to tax at 15%, and only following the survey action u/s 133A, and during the course of the subsequent assessment proceeding the assessee to chose to offer the receipt for taxation @ 30%"*

4. *"On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that commodity transactions entered into by the assessee company on National Spot Exchange Ltd(NSEL) were not speculative transactions within the meaning of section 43(5) of the Act without appreciating the fact that alleged transactions were not supported by documentary evidence of actual delivery of goods."*

5. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A), has erred in holding that the loss of Rs. 24,39,25,896/- claimed by the assessee company in respect of commodity transaction on National Spot Exchange Ltd.(NSEL) was allowable as a normal business loss without appreciating the fact that there was rampant misuse and exploitation of NSEL Exchange Platform by unscrupulous brokers and traders and the transactions carried out through the Exchange were with malafide intentions."*

6. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the assessee's claim of expenses of Rs. 21,68,322/- towards warehousing rent, brokerage and commission, stamp charges on purchases and trading of commodities on National Spot Exchange Ltd(NSEL), without appreciating the fact that the alleged commodity transactions claimed to have been carried out by the assessee were not supported by documentary evidence of actual delivery of goods."

7. "The Appellant prays that the order of the CIT(Appeals) on the above ground be set aside and that of the AO be restored."

8. "The Appellant craves leave to amend or alter any ground or to submit additional new ground, which may be necessary."

3. We have heard rival submissions and perused the materials available on record. The assessee is a limited company engaged in the business of manufacturing and trading of textile products. The assessee filed its return of income for the A.Y.2014-15 on 28/11/2014 declaring total income of Rs.14,75,45,668/- comprising of business loss of Rs.19,30,14,338/- and short term capital gains of Rs.34,05,60,006/-. Subsequently in the course of assessment proceedings, the assessee filed a revised return on 22/03/2016 revising its total income at Rs.14,71,72,890/- and the entire income is offered to tax as business income. The Id. AO during the course of assessment proceedings observed that assessee had sold shares of M/s. Anukaran Commercial Enterprises Ltd (in short as 'ACEL') and had originally shown short term capital gain of Rs.34,05,60,006/- in the original return of income by offering the same to tax at special rates u/s.111A of the Act. However, in the revised return, the said gain was shown as business income by the assessee. The chronology of events leading to the said share transactions are as under:-

DATE	Narration of events
09.10.2012	The assessee purchased 5,00,000 Shares of M/s Anukaran Commercial Enterprises Ltd through block deal from M/s Marcos Securities India Pvt Ltd for a consideration of Rs. 5,37,50,000/-, thereby the effective price per share being Rs. 107.50.
27.11.2012	Bonus shares are issued by M/s Anukaran Commercial Enterprises Ltd in the

	ratio of 8:10. Thereby, 4,00,000 more shares are received by the assessee taking its share investment to 9,00,000 shares.
27.12.2012	Shares are split into ratio of 1:10 by M/s Anukaran Commercial Enterprises Ltd, so that the one equity share of Rs. 10/- was split in to 10 equity shares of Rs.1/- each. Thus, share investment of the assessee company increased to 90,00,000. Thus effective price per share now stood at Rs. 5.97.
16.01.2013 & 23.07.2013	90,00,000 shares of M/s Anukaran Commercial Enterprises Ltd are sold by the assessee company to various parties during this period for a consideration of Rs. 60,53,06,610/-. The assessee offers Short Term Capital Gain of Rs. 20.39 crore for AY 2013-14 and Rs. 34.05 crore for AY 2014-15, i.e., during the year under consideration.
28.09.2013	Return for AY 2013-14 is filed showing Short term Capital Gain of 20.39 crore.
15.09.2014	Case for AY 2013-14 is selected for scrutiny and notice u/s 143(2) is served.
28.11.2014	Return for AY 2014-15 is filed showing Short term Capital Gain of 34.05 crore.
09.06.2015	Survey u/s 133A is conducted by the Investigation Wing, Mumbai in the case of M/s Anukaran Commercial Enterprises Ltd
12.06.2015	Survey u/s 133A is conducted by the Investigation Wing, Mumbai consequent of above Survey. The assessee is confronted with the incriminating evidence found during survey which showed that STCG was a bogus accommodation entry and M/s Anukaran Commercial Enterprises Ltd was an accommodation entry provider.
10.12.2015	Consequent to the survey action the assessee files letter for AY 2013-14 withdrawing its claim of Short Term Capital Gain and offers the entire STCG income as business income at Normal rate of taxation.
22.03.2016	The assessee files revised return for AY 2014-15 withdrawing its claim of Short Term Capital Gain and offers the entire STCG income as business income at Normal rate of taxation.

3.1. The Id. AO show-caused the assessee as to why the gains received from sale of shares of M/s. ACEL has not been carried out by it in the regular course of business and be not treated as income from other sources. The assessee furnished the following documents in that regard:-

- (a) Contract notes for purchase of sale of shares
- (b) Demat account statement
- (c) Bank statement of assessee company
- (d) The assessee also submitted that the shares were purchased by it in open market in Bombay Stock Exchange through registered broker M/s. Anand Rathi Shares and Securities Ltd.,

3.2. The assessee categorically denied that there was nothing incriminating found during the course conducted on 12/03/2015 and that survey team verified the cash balance, books of accounts, bills, vouchers, diaries, writing pads, accounts maintained on computers, e-mail of all the computer etc., and found nothing incriminating thereon. The assessee further pointed out that the survey team was only of the opinion that the short term capital gains earned by the assessee company in the shares of ACEL was bogus and no document per se was found to support their view in that regard. Since the holding period of those shares from the time of purchase and its consequential sale was lesser and volume of share transactions were high, the survey team was of the opinion that the gain arising on sale of such shares should be treated as business income and not short term capital gains. This aspect was agreed by the assessee in order to buy mental peace and to avoid any further litigation and consequent penalty proceedings in the matter, the assessee came forward to offer the said gains arising on sale of shares as business income in the revised return as against short term capital gains offered in the original return.

3.3. The Id. AO in the assessment order observed that statement given by Shri Arvind Poddar before the Investigation Wing, who was main person of the assessee group of companies showed that he was not having any justified answers regarding the transactions in shares of ACEL. The Id. AO also noted that the shares of ACEL have been used for providing accommodation entry of bogus LTCG / STCG to various beneficiaries. The Id. AO also stated that this fact has been confirmed in statements of Shri Rajkumar and Shri Suresh Jajodia (entry providers) Shri Kushal Pravin Shah, Director of ACEL and by the statements of various other persons such as Shri Rajesh Kumar Kedia, and Shri Parag

Dharamshi Seth (exit provider), Shri Rajkumar Kedia, Shri Manish Arora, Shri Satyendra Kumar Jain, Shri Pravin Agarwal, Shri Saumen Chaudhary, Shri Subrata Halder, Shri Anil Kedia and Shri Mayur Jain. The Id. AO also analysed the price movement of ACEL in BSE to show that there was price rigging in the said shares during the period 29/11/2010 to 26/12/2012.

3.4. The assessee in response to show-cause notice issued by the Id. AO also stated that the survey team had shown some statement of third parties relating to LTCG transactions through private placement of shares of AECL. Those statements did not mention the name of the assessee company, its employees, its Directors nor about providing accommodation entry to the assessee company. As regards the query that Shri Arvind Poddar did not have any justification regarding the transaction in ACEL, the assessee stated that investment in shares of a listed company is not usually done by visiting the office of the company attending the Annual General meeting, knowing Directors or profile of the company. Investment is done based on market trends, news available in market through brokers, friends, relatives, daily price movement and above all vision of the enterprenuer. In this case, investment was done by the assessee in anticipation of profit based on market trends. The assessee further stated that Shri Arvind Poddar did not offer any comments on being confronted with the statements of various persons regarding shares of ACEL being used for providing accommodation entry due to following reasons:-

- (a) The statements shown to Shri Arvind Poddar were relating to allotment of shares of ACEL through private placements and providing entry to LTCG. This was not the case with the assessee company.

- (b) The statement do not contain the name of the assessee company.
- (c) No accommodation entry has been taken in the books of the assessee company towards STCG or LTCG in the shares of AECL.
- (d) The price movement in the scrip was known to everyone who deals in shares.

3.5. The assessee further stated that there is no statement or documentary evidence which directly or indirectly confirms that the assessee company has taken accommodation entry by way of STCG. The assessee further stated that it had offered proper and correct explanation as to nature and source of income arising on sale of shares by way of producing contract notes, bank statements, Demat account statement together with other documents etc. Thus, this is not a case where a sum found is credited in the books of accounts and assessee had not offered any satisfactory explanation thereon. Accordingly, it was pleaded that provisions of Section 68 of the Act cannot be brought into operation at all. The Id. AO however, ignored these contentions and sought to treat the gain on sale of shares of ACEL amounting to Rs.34,01,87,229/- as unexplained cash credit u/s.68 of the Act by shifting the same from business income. Aggrieved, the assessee preferred an appeal before the Id. CIT(A).

3.6. The Id. CIT(A) granted relief to the assessee by accepting the gain on sale of shares as business income as against income added u/s.68 of the Act by the Id. AO by observing as under:-

*4.8 I have carefully considered the relevant and material facts on record in respect of this ground of appeal, as brought out in the assessment order and submissions made during appeal proceedings. This is an admitted position that the appellant company had purchased 5,00,000/- shares of Anukaran Commercial Enterprises Ltd on 09.10.2012 at the rate*

of Rs 107.50 per share, for a total consideration of Rs 5.37 Crore. Thereafter, there was a bonus issue of shares in the ratio of 8:10 on 27.11.2012. Subsequently, the existing shares were split in the ratio of 1:10 on 27.12.2012, i.e. each equity share of face value Rs 10/- was split into ten equity shares of face value Rs 1. As a result of this bonus issue and share splitting the appellant company was holding 90,00,000 shares as against 5,00,000 shares originally purchased by it. The appellant company sold its entire shareholding during the period from 16.01.2013 to 23.07.2013 ( i.e. F.Y. 2012-13 and F.Y. 2013-14). It is seen from the details of sale transactions that the appellant company has sold the entire shareholding in an extended time frame of more than six months. The shares have been sold at rates varying from Rs 41/- per share to Rs 70/- per share. In other word, this is not a case where shares have been sold at a pre-determined date or period, as the sale has taken place continuously over a span of six months. This is also not a case where all the shares were sold at the peak price to book the maximum gains, as the shares have been sold in the range of Rs 41/- to Rs 70/-. AO has stated that the shares of ACEL were manipulated for providing accommodation entry. However, having regard to the manner in which the entire shareholding has been sold by the appellant company on various dates, during a span of six months, at varying rates, it is difficult to comprehend how the appellant company could be said to be an active beneficiary of such price manipulation, if any.

4.9 Furthermore, the modus operandi of accommodation entry providers has been discussed in detail in the assessment order. AO has mentioned therein that the shares of a penny stock are issued to the beneficiary of LTCG at very low prices, generally through the preferential allotment, by way of private placement. These shares have a lock-in period of one year, as per the SEBI Regulations 2009. This is not the case of the appellant company, which has purchased the shares of ACEL on 09.10.2012 in the open market on the platform of BSE, and not through private placement. The appellant company has sold these shares before the period of one year, and has offered to tax the resulting gains there from, originally as STCG, which was later revised as business income

4.10 On perusal of statement of Shri Kushal Pravin Shah, Director of ACEL it is seen that he has admitted that ACEL had issued preferential shares on 02.03.2012. ACEL allotted total 50 Lakh preferential shares at the rate of Rs 30/- each, for a total consideration of Rs 15 Crore. These preferential shares were allotted to 47 individuals, whose details along with PAN and address were provided by him Shri Kushal Shah also admitted that these individuals, to whom the preferential shares were allotted, were arranged by Shri Rajkumar and Shri Suresh Jajodia. On perusal of statements of Shri Rajkumar and Shri Suresh Jajodia, it is seen that they have admitted to have arranged these 47 individual investors, to whom the preferential shares of ACEL were allotted on 02.03.2012. However, it is also an admitted position that these 47 preferential allottees were the only beneficiaries of the said scheme of accommodation entry by of LTCG, in shares of ACEL. The complete list of those 47 preferential allottees, who were admittedly the beneficiaries of LTCG entries, was



available. The appellant company was clearly not one of those 47 individual investors to whom the shares of ACEL were allotted on 02.03.2012 on preferential basis, through private placement. This again is not the case of the appellant company. The appellant company has in fact purchased its entire holding in shares of ACEL on 09.10.2012, in the open market, on the platform of BSE, and not by way of private placement. The appellant company was not one of those 47 investors, to whom the shares of ACEL were preferentially allotted, and who were admittedly the beneficiaries of LTCG entry. This is a case where the beneficiaries were identified in the statement of Shri Kushal Pravin Shah Director of ACEL, and corroborated in the statement of entry providers. The appellant company admittedly is not among the beneficiaries so identified.

4.11 On perusal of the statements of Shri Rajesh Kumar Kedia and Shri Parag Dharamshi Sheth, it is seen that they have acted as ext providers for purchasing the shares of ACEL, sold by beneficiaries of bogus LTCG entry. There is no mention of the name of appellant company as a beneficiary in any of these statements.

4.12 AO has listed certain other evidence against ACEL at Para 5 of the assessment order, wherein he has reproduced the extracts from the statements of Shri Raj Kumar Kedia, Shri Manish Arora, Shri Satendra Kumar Jain, Shri Pravin Agarwal, Shri Soumen Choudhury, Shri Subrata Haldar, Shri Anil Kedia and Shri Mayur Jain. On a careful perusal of such evidence, it is seen that the same only corroborates the fact that the shares of ACEL have been used for providing accommodation entry of LTCG. However, it is seen that the name of appellant company as a beneficiary of such accommodation entry is not mentioned in any of these statements.

4.13 Shri Arvind Poddar was confronted with the statement of Shri Kushal Pravin Shah, Director of ACEL that the shares of ACEL were allotted on preferential basis, and thereafter used to provide entry of bogus LTCG (Question no 39). Shri Arvind Poddar has clarified in his statement that the appellant company has acquired the shares of ACEL through stock exchange and the same were not allotted to the appellant on preferential basis. Further, on being confronted with statements of various other persons, Shri Arvind Poddar did not offer any comments, as these statements do not make any mention of the transaction in shares of ACEL related to the appellant company. Shri Arvind Poddar, while concluding his statement, agreed to pay tax on the transactions in the shares of ACEL at normal rates, and undertook to file revised return of income of the appellant company for A.Y. 2014-15 and revised computation of income for A.Y. 2013-14. Thus, on a careful perusal of statement of Shri Arvind Poddar, it is seen that he has reiterated the fact, that the appellant company was not one of the preferential allottees of shares of ACEL, and hence not one of the beneficiaries of the scheme of accommodation entry in shares of ACEL.

4.14 To sum up, the facts brought on record clearly indicate that the shares of ACEL were undoubtedly used for providing accommodation entry

*of LTCG. However, it is also clear, at the same time, that the beneficiary of accommodation entry, through transactions in shares of ACEL, were only those allottees to whom the shares of ACEL were allotted on preferential basis by way of private placement. There are 47 such investors to whom preferential allotment of shares was made on 02.03. 2012. The complete list of such preferential allottees, with PAN, was furnished by Shri Kushal Pravin Shah, the Director of ACEL. There is no evidence brought on record to indicate that the appellant company was one of such preferential allottees. The appellant company, by its own admission, has acquired the shares of ACEL on 09.10.2012, through open market and not on preferential basis. Thus, there is no evidence on record to establish that the appellant company had been one of the beneficiaries of accommodation entry of LTCG in shares of ACEL, even though the evidence on record does suggest that the shares of ACEL were indeed used for providing accommodation entry.*

*4.15 On the other hand, the appellant has submitted the copies of contract note and relevant Bank Statement for purchase and sale of shares, and copy of demat statement, to substantiate the genuineness of transactions in shares of ACEL. The transactions of purchase and sale in shares of ACEL have been undertaken in the open market, on the platform of BSE, through a reputed stock broker. As regards source of investment of funds, Shri Arvind Poddar, in his statement, has stated that the appellant company had received money from M/s Balgopal Holding and Traders Ltd which is a group concern, and these funds were utilized for making investment in shares of ACEL. In the assessment order, AO has not drawn any adverse inference regarding the explanation offered by the appellant as to the source of investment. The appellant has also disclosed the gains resulting on sale of shares as STCG in the return of income. The appellant later revised the return of income, during the course of assessment proceedings, wherein it offered the gains on sale of shares as business income and paid taxes thereon at normal applicable rates.*

*4.16 On these facts. I find that this is not a case where the assessee has failed to offer any satisfactory explanation about any sum found credited in the books of accounts of the assessee. The sum credited in the books of accounts, in the present case, is the proceeds on sale of shares of ACEL. The appellant has duly reflected the share transactions in the books of accounts, submitted the relevant documentary evidence in support such as the contract note, bank statement and demat statement, offered the resulting gains for taxation in the return of income as STCG, later revised as business income, and also offered a satisfactory explanation as to source of investment towards purchase of shares. There is no evidence on record to establish that the appellant company was one of the beneficiary of the accommodation entry of LTCG in the shares of ACEL, even though the evidence does suggest that shares of ACEL were used for providing accommodation entry. In view of the facts and circumstances of the case, I find that the ingredients of section 68 are not satisfied in the present case, and the gains resulting on sale of shares of ACEL in the hands of the appellant company, which it has duly offered for taxation as business*

*income, could not be treated as unexplained cash credit under those provisions.*

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*4.19. In view of the facts and circumstances of the case, the prevailing position of law, and respectfully following the ratio of decision of Supreme Court, and the jurisdictional bench of ITAT, in the aforesaid cases, I find that the profits and gains derived by the appellant from purchase and sale of listed shares of M/s. Anukaran Commercial Enterprisers Limited, declared under the head of business income by the appellant, could not be treated as unexplained cash credit under section 68 of the Act. I find that the action of AO in not accepting the explanation offered by the appellant as to nature and source of the receipts, with reference to the material available on record, was without any justification. The provisions of section 68 are not applicable in the present case, for reasons discussed in preceding paragraphs. Accordingly, the grounds of appeal no. 2 to 5 are allowed.”*

3.7. None of the factual findings given by the Id. CIT(A) hereinabove were controverted by the Revenue before us with cogent evidences. It is not in dispute that assessee had sold the shares in piecemeal spreading over two assessment years that too at a price ranging from Rs.41 to 70/- per share. We find that assessee was selling the shares only from 16/02/2013 onwards in piecemeal. Even according to the Id. AO, the price rigging of shares of ACEL had happened only during the period 29/11/2010 to 26/12/2012. The assessee had not sold the shares during this period. Hence, the entire basis of rigging of prices, manipulation of prices, role of the assessee thereon, completely falls flat and fails. In any case, one of the main grievance of the Id. AO is that there were 47 investors to whom preferential allotment of shares were made on 02/03/2012 by ACEL. Admittedly, the assessee’s name does not figure in those 47 investors. On this ground also, the case of the Id. AO fails.

Despite all these strong points, the assessee has come forward to buy mental peace and to avoid protracted litigation pursuant to the survey by offering gain arising on sale of shares of ACEL as business income instead of short term capital gains offered at special rates of tax. By this process, the assessee has actually paid excess tax to the Government. It is not in dispute that assessee had duly paid the differential taxes together with interest thereon along with revised return filed by the assessee on 22/03/2016. It is also pertinent to note that in the various statements recorded by the Id. AO from various persons, the name of the assessee was never mentioned by any of them. Hence, it could be safely concluded that the assessee herein has got absolutely no link with either promoters of the company, entry providers, exit providers, 47 individuals to whom preferential allotment of shares were made and other private individuals. Hence, we have no hesitation to uphold the order passed by the Id CIT(A) in this regard. Hence, we direct the Id. AO to accept the gain arising on sale of shares to be taxed only under the head 'income from business' and not as unexplained cash credit u/s.68 of the Act. Accordingly, the grounds 1-3 raised by the Revenue are dismissed.

4. The ground Nos. 4 & 5 raised by the Revenue are relating to direction of the Id. CIT(A) to grant deduction for loss of Rs.24,39,28,896/- claimed by the assessee in respect of commodity transactions of National Spot Exchange Ltd., (NSEL) treating it as not speculative in nature. The interconnected issue involved thereon is deletion of disallowance of assessee claim of expenses of Rs.21,68,322/- towards warehousing rent, brokerage and commission, stamp charges on purchase and trading of commodities of NSEL.

4.1. We have heard rival submissions and perused the materials available on record. The assessee company has carried out commodity transactions on the platform of National Stock Exchange Limited (NSEL) during the year under consideration. In July 2013, it was reported that NSEL was not having any money or commodity, to honor the pending contracts. The assessee company was having 4 open contracts, aggregating to Rs 27.55 Crore, at the time when it was found that NSEL had no money or commodity against the contracts. Accordingly, the assessee company has written off the value of open contracts, during the year, by taking the value of closing stock as Nil. However, AO has held that the loss arising out of the commodity transaction is to be treated as speculative loss, as the assessee could not provide any evidence of physical delivery of goods. AO also disallowed deduction of Rs. 21,68,322/- on account of warehousing rent, brokerage and commission on purchase and trading of commodity and stamp charges on commodity transactions, holding that the said expenses have been incurred in relation to the commodity transactions, which are treated as speculative in nature.

4.2. The Id. CIT(A) granted relief to the assessee by holding that the loss incurred on commodity transactions by the assessee is covered by express provisions contained in Section 43(5)(d) of the Act and hence, the said loss should be construed only as normal business loss. With regard to allowability of deduction of expenses towards warehousing rent of Rs.12,12,432/-; brokerage and commission amounting to Rs.8,12,749/-; and stamp charges amounting to Rs.1,43,141/- in relation to activity of commodity trading, the Id. CIT(A) observed that the transactions made in NSEL in commodity trading cannot be construed as

speculative transactions and hence, these expenditure would become allowable as normal business expenditure u/s.37 of the Act.

4.3. It is not in dispute that assessee incurred a net loss in commodity transaction amounting to Rs.24,39,25,896/- during the year under consideration. We find that the assessee company had carried out trading activities in commodity and all the transactions were routed through profit and loss account and income or loss arising there from to the assessee were duly offered under the head 'income from business'. Similarly, all the expenditures incurred thereon in the form of warehousing rents, transaction charges, stamp duty agreement, VAT, service tax etc, which were incurred in trading of commodities were claimed as regular business expenditure to earn the said business income. The Id. AO in the A.Y.2013-14 had accepted the claim of the assessee and assessed the same as business income. But in A.Y.2014-15 i.e. during the year under consideration, the Id. AO had changed the stand since there was a loss claimed by the assessee thereon. It is a fact that assessee had made payment for purchase of commodities during the regular course of commodity trading activity carried out by it. These payments are made through regular registered brokers to NSEL. Pursuant to the said payment, the assessee would be issued warehousing receipt evidencing the storage of commodities in the designated warehouse. Pursuant to the scam broke down in NSEL wherein it revealed that they were involved in issuing fake warehousing receipts to various investors like assessee without storing physical commodities in such warehouse, the investors like assessee could not subsequently sell those goods in view of the fact that there were no commodities that were actually stored in the warehouse. Accordingly, the assessee being an investor had to file the case alongwith other investors

before competent authority. All these facts are in public domain and NSEL was able to pay part of the amount back to various investors from time to time. The assessee after reducing the amount recovered thereon, had claimed balance amount of Rs. 24,39,25,896/- as normal business loss incurred by it in the regular course of carrying out its business transactions. As correctly stated by the Id. CIT(A), as per the provisions of Section 43(5)(d) of the Act, transactions carried out by the assessee cannot be treated as a speculative transaction. Hence, it should be considered as regular business transaction and in case it resulted in a loss, it should be construed as normal business loss. Hence, we do not find any infirmity in the order of the Id. CIT(A) granting relief to this extent. Accordingly, the ground Nos. 4 & 5 raised by the Revenue are dismissed.

4.4. With regard to allowability of other regular business expenses, warehouse rent, brokerage and commission and stamp charges totalling to Rs.21,68,322/- incurred by the assessee in trading of commodities, we have already held hereinabove that the commodity transactions were carried out in the regular course of its business and the same cannot be treated as a speculative business carried on by the assessee. Once, it is held that these are regular business transactions, the aforesaid business expenditure also would become squarely allowable as deduction u/s.37 of the Act. Hence, we do not find any infirmity in the order of the Id. CIT(A) granting relief to the assessee in this regard. Accordingly, the ground No.7 & 8 raised by the Revenue are dismissed.

5. The ground No.s 7 & 8 raised by the Revenue are general in nature and does not require any specific adjudication.

**6. In the result, appeal of the Revenue is dismissed.**

Order pronounced on 31/10/2022 by way of proper mentioning in the notice board.

**Sd/-**  
**(VIKAS AWASTHY)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(M.BALAGANESH)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 31/10/2022  
KARUNA, *sr.ps*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)  
ITAT, Mumbai