

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'B', NEW DELHI**

**Before Sh. H. S. Sidhu, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 3298/Del/2019 : Asstt. Year : 2015-16**

Chowdry Associates, 4 <sup>th</sup> Floor, Punjabi Bhawan, 10, Rouse Avenue, New Delhi-110002	Vs	Asstt. Commissioner of Income Tax, Circle-6(1), New Delhi
<b>(APPELLANTT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAACC0387R</b>		

**Assessee by : Sh. M. P. Rastogi, Adv.  
Revenue by : Sh. Saras Kumar, Sr. DR**

<b>Date of Hearing: 17.02.2020</b>	<b>Date of Pronouncement: 11.03.2020</b>
------------------------------------	------------------------------------------

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-2, New Delhi dated 22.03.2019.

2. Following grounds have been raised by the assessee:

*"1. That the learned Commissioner of Income Tax (Appeals) has erred in confirming the disallowance of business loss Rs.5,56,24,659/- being the amount of unrecoverable balances of brokers M/s Anand Rathi Commodities Services Pvt. Ltd. and M/s Philip Commodities India Pvt. Ltd.*

*2. That the learned Commissioner of Income Tax (Appeals) has erred in holding that the appellant had indulged in transactions of speculative nature by short selling and dealing in derivatives ignoring the very fact that the National Spot Exchange limited (NSE) was a spot exchange for trading in commodities and*

*did not permit any derivative or speculative transactions.*

*3. That the learned Commissioner of Income Tax (Appeals) has erred in ignoring the fact that each purchase transaction was matched by a cross contract of simultaneous sale transaction. Both purchase and sale were delivery based business transactions as NSEL issued delivery allocation report for each purchase transaction by virtue of which the commodity purchased on behalf of the purchaser (appellant) was kept in various warehouses on behalf of the participant assessee and further the obligation of delivery at the time of sale at a pre-determined subsequent date was being met out of the purchase delivery of exact specification lying in the warehouses on behalf of the various participants including appellant. Such transactions of purchase of commodity and simultaneous sale for performance of delivery at a later date were supported by contract notes in the name of the appellant issued by brokers affiliated to NSEL.*

*4. That the learned Commissioner of Income Tax (Appeals) has erred in ignoring that the above fact which is conclusively evident from the contract notes wherein exchange delivery allocation charges, Vat charges, Service tax, and clearing and forwarding agent charges have been levied by the NSEL.*

*5. That the learned Commissioner of Income Tax (Appeals) has erred in confirming the disallowance of business loss Rs.5,56,24,659/- by treating the same to be a speculative loss made by the assessing officer which is based on suspicion, conjectures, surmises without any substantive basis or cogent material.*

*6. In the facts and circumstances of the case learned Commissioner of Income Tax (Appeals) has erred in ignoring the fact that what has been written off by the appellant is the money advanced to the brokers of NSEL which is in the nature of trade debt, income/loss from which could be held as speculative but how can a write off of debt be treated as speculative loss.*

*7. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in not appreciating that the appellant having fulfilled all relevant conditions for claim of Bad Debts u/s. 36(1)(vii) r.w.s. 36(2), its case was squarely covered by the ratio of the decision of the Hon'ble SC in the case of TRF Ltd. and tire clear guidelines as laid down by the CBDT Circular No. 12/2016 dtd. 30-05-2016."*

3. Brief facts of the case are that the assessee company is a Non-Banking Financial Company engaged in investment activities in shares and purchase & sale of units of various Mutual Funds. The assessee has been dealing in trading on the NSEL platform and treated the receipts as income from business which has been assessed by the revenue under the head of business income regularly and also in the assessment u/s 143(3) for the year 2013-14, 2014-15. During the current year too the assessee has shown the income under the head "income from profits and gains of Business". It was submitted that owing to the closer of NSEL, the business could not be carried in the assessment year 2016-17.

4. In this regard, the background of the NSEL is required to be looked into.

NSEL was incorporated in 2005 to offer an electronic platform for delivery-based spot contracts in various agricultural and non-agricultural commodities through the licensed members. In October 2008, as many as six state governments issued licenses under the model Agricultural Produce Market Committees (APMC) Act to NSEL. NSEL's delivery-based system worked through members warehouses to stock such commodities as transacted between multiple parties to trade, with underlying asset always been commodities. The basic idea of launching the bourse was to provide a place where farmers, traders,

corporates, processors, planters, manufacturers, and importers can sell and buy their commodities at the best possible and **competitive rates**.

5. During the AY 2015-16, the assessee was trading in commodity derivatives in the association which is National Spot Exchange Limited (NSEL). NSEL ran into regulatory hurdles and as such its operations are stopped by the regulators. The assessee forayed in commodity market since FY 2011-12 and availed services of authorized NSEL agents namely M/s. Anand Rathi Commodities Ltd and M/s. Philips Commodities India Pvt Ltd for that purpose. As the business of trading in NSEL platform was regular one and not in nature of speculative transaction u/s 43(5), the Appellant always treated the trading business of NSEL as regular business and offered for taxation u/s 28. There has been no dispute on these facts since FY 2011-12 and tax department has always accepted the same.

6. In the instant AY 2015-16, the AO noticed that the Appellant has claimed loss of Rs.5,56,24,659/- in relation to trade over NSEL counter owing to non-recovery of the amounts from the brokers as the operations of NSEL were closed. Per the AO, NSEL was formed to be engaged in SPOT Trading but NSEL was carrying out futures contract which was specifically prohibited. Thus, the AO challenged the basic premise about the operations of NSEL. The AO held that the NSEL is SPOT exchange and only SPOT contracts can be executed through NSEL, therefore, the contract has to be necessarily settled by delivery within a period not exceeding 11 days from the date of the trade. Any contract that does not get settled by delivery within 11 days ceases to be a SPOT contract and not covered by Forwards Contracts Regulation Act. The AO has not disputed

that the assessee has invested in NSEL through two brokers M/s Anand Rathi Commodities Pvt. Ltd. and M/s Phillip Commodities Pvt. Ltd. The assessee company traded on the exchange during F.Y. 2011-12, 2012-13 and 2013-14. The AO also held that the assessee has traded through paired contracts. Paired contract means that an investor would enter into two contracts. A buyer would buy the commodity from the market paying cash for it, and store the commodity in warehouses accredited to NSEL. The buyer then use the warehouse receipts as proof of ownership of the commodity and sell the commodity to financial investors as standard short term contracts (T+2). Immediately after buying the contract, the investor would put the commodity up for sale on a T+26/T+35 basis. Looking at the transactions of the assessee, the AO held that the assessee has entered into two contracts on the same day of the same commodity and the same quantity for buying as well as selling. Hence, the AO held that the assessee is entered speculation business.

7. The Id. CIT (A) confirmed the addition holding that the NSEL is meant for spot dealings resulting in actual and physical delivery of commodities in a specified time. But the appellant has indulged in transactions of speculative nature by short selling and dealing in derivatives. These dealings do not result in physical delivery of commodities but they involve transaction of value of commodities only. The appellant has purchased and sold from and to the same party on the same date. The Id. CIT (A) also held that on many occasions, the commodities are sold the next minute after purchase. It was held that the appellant has sold even before the commodity is purchased. Short selling and dealing in derivatives are prohibited on NSEL, hence, the

assessee has to be treated as dealing in business of speculation.

8. Having said that the Id. CIT (A) disallowed the claim of business loss declared by the appellant in respect of amount of unrecoverable balances from brokers M/s. Anand Rathi Commodities Services Pvt. Ltd. and M/s. Philip commodities India Pvt. Ltd.

9. Before us, the Id. AR repeated the submissions taken up before the authorities below.

10. The Id. DR submitted his arguments in writing which are as under:

*"During the course of hearing of the case today, i.e. 18.12.2019, the Id. Counsel for the assessee referred to the case of M/s Flair Exports Pvt. Ltd, New Delhi, claiming that the facts of that case are similar to those of this case.*

1. *In this connection, it is submitted that the MD & CEO, National Spot Exchange Ltd, has written a letter dated 23.01.2019 to the Pr. Chief Commissioner of Income Tax, Delhi, raising the issue of bogus claim of bad debts written off by some assessees. He has specifically mentioned the case of M/s Megh Sakariya International Pvt. Ltd. in which the Hon'ble ITAT, Chennai has allowed the assessee's claim. He has requested the Department to look into the matter to ensure that bogus bad debt claims being made by Members of NSEL are not allowed.*

2. *It is further submitted that, on similar facts, the Hon'ble ITAT, Ahmadabad, vide its order dated 16.10.2018 in ITA No. 2818/AHD/2017, has set aside the case of Omni Lens Pvt. Ltd. to A.O for examining it from the angle of speculative loss and set off only against speculative income.*

3. Copies of the above-mentioned letter dated 23/01/2019 from NSEL and order of the Hon'ble ITAT Ahmadabad in ITA No. 2818/AHD/2017 in the case of M/s Omni lens Pvt. Ltd for A.Y 2014-15 are enclosed.

4. In view of the above, the assessee's appeal may kindly be dismissed. Alternatively, the matter may be set aside to A.O for re-examining it."

11. He further attached the copy of the MD & CEO of NSEL wherein the revenue was advised against claim of bad debts.

*"Sub: Claim of Bad Debts by Members of NSEL and different treatments given to such claims by different Tribunals, leading to a loss of revenue, possibly amounting to few thousands of crores in rupees to the Exchequer*

*Dear Sir,*

*National Spot Exchange Ltd, (NSEL) had brought to your kind attention in the year 2016, bogus claims towards bad debts made by various Members who traded on the Exchange platform of NSEL and the need for admitting only the legitimate claims of such Members towards bad debts, vide letter nos.:*

*i. Ref. No.: NSEI/16-47/002 dated Aug 17, 2016 {attached as Annex - A)*

*ii. Ref. Mo.: NSEL/CEO/16-17/0282 dated Sep 16, 2016 (attached as Annex - B)*

*iii. Ref. Non NSEL/CEO/16-17/044S dated Dec 15, 2016 (attached as Annex - C)*

*Recently, we have come across one case wherein different Courts are taking different views on such claims. For instance, the order of the Chennai ITAT in the case of M/s Megh Sakariya International Pvt. Ltd. vs. DCIT, Circle 4(1), has allowed the claim of the appellant, disregarding the ground on which the AO made the addition of*

*income and which was upheld by the Hon'ble CIT Appeal-(copy of the order attached as Annex - D).*

*In the above case, Section 36(2) of the Income Tax Act, 1961 surprisingly has not been considered. We are not aware about other order but from the above, it appears that the addition of income has been made in routine manner without discussing the facts and thus the assessee has got relief from the Tribunal.*

*In a similar case, the Ahmadabad Bench of ITAT in ITA No. 2818/AHD/2017 in the case of Omni Lens Pvt. Ltd. Vs DCIT, Circle-3(1)(2) has given a new dimension to the issue by stating that it should be examined from view of speculative loss and set-off only against speculative income and set aside the file back to the AO for re-examination (Copy of the order attached as Annex - E).*

*We have brought this to the notice of the CBDT vide our letter Ref. No.: NSEL/MD&CE0/18-19/0278 dated December 05, 2018 (attached as Annex - F). However, as it may take some time for the instructions to come down, by when it may be too late for taking any corrective actions, we are bringing this to your kind attention for necessary action at your end.*

*Thus, it is requested that:*

*i. Where, the additions have been made in routine manner, it may kindly be defended by bringing out the factual position before the Appellate Authority.*

*ii. Where, the additions have not been made, the same should be done now using the appropriate provisions of the law, and also take into consideration the observations made by the Hon'ble Ahmadabad Tribunal.*

*iii. Necessary instructions may kindly be passed to the field formations, to take a unified stand at the Tribunals, so that there is*

*no loss of revenue, due to different position taken by different Assessing Officers.*

*We once again request you to kindly look into the matter, to ensure that bogus bad debt claims being made by Members of NSEL are not allowed, so that there is no loss of revenue to the exchequer."*

12. From the above events and the arguments of the Ld. DR, the following points are flagged:

1. The assessee has been claiming the transactions of trading on NSEL platform as business income which has been accepted by the revenue in all the earlier years.
2. The AO has taken a conscious decision to treat the transactions as speculative in nature during the current year only.
3. The AO held that since the contracts are paired there cannot be any loss to the assessee as sale and purchase have been taken simultaneously with the same person.
4. The AO held that the SPOT contracts have to be necessarily settled by delivery within a period of 11 days.
5. The AO held that the assessee is dealing in "commodity derivatives" and not commodities. (AO-para 5.14)
6. The AO held that the transactions of the assessee are speculative transactions as defined u/s 43(5).
7. The CEO/NSEL advised not to give benefit of bad debts claimed.
8. The CEO/NSEL advised that it is premature to allow the bad debts owing to unsetting of amount of Rs.5600 crores.
9. The CEO/NSEL advised that an amount of Rs.7000 crores has been secured against the claim of Rs.5600 crores.

10. Hence, CEO/NSEL advised that since the amounts would be settled no provision for bad debts be allowed.
11. It is an undisputed fact that the assessee has given money to brokers namely, M/s Anand Rathi Commodities Pvt. Ltd. and Philips Commodities Pvt. Ltd. for conducting of their business.
12. It is also undisputed fact that the monies given above have not been received by the assessee.
13. The loss arrived out of the non-receipt of the amount from the brokers is claimed to be a business loss by the assessee which has been rejected by the AO.
14. The assessee has also not disputed that the transactions are under paired transactions.

13. The Id. AR argued, reiterating the modus operandi the stockists of the commodities first deposited the commodity with the Exchange accredited warehouse and received a warehouse receipt which was deposited with NSEL for the purpose of transactions under the control and supervision of NSEL. The transactions in NSEL are made through members of NSEL, who are authorized brokers. The assessee has made the transactions under paired contracts. Under the paired contract, generally the purchases were made at T+2 cycle and sales were made at T+25 or T+35 cycle. Under these transactions, the assessee company made full payment for purchase immediately and delivery of the commodity lying in the warehouse was assigned to it. The transactions were subjected to VAT, delivery charges, service tax. As far as sale is concerned, the assessee company immediately put a contract for sale on T+25 and T+35 and delivery was assigned from buyer to the seller. The amount is

received as and when the transaction is completed. In the assessment years 2013-14 and 2014-15, whatever the transactions were made on NSEL, whatever the profits or losses obtained, the same were duly disclosed in the profit & loss account and assessed as business income.

14. Heard the arguments of both the parties and perused the material available on record.

15. From the entirety of the events, we find that in the assessment year 2014-15, the assessee had made purchases in the middle or last week of June 2013 through M/s Anand Rathi Commodities Pvt. Ltd. and M/s Philips Commodities Pvt. Ltd. The NSEL failed to fulfill its commitments and ultimately the Government had prohibited NSEL to make any transactions after 1<sup>st</sup> July 2013. The details of outstanding unsettled transactions of the assessee through both the brokers has also been furnished to the revenue authorities by the NSEL.

16. The AO disallowed the losses as claimed by the assessee on the ground that transactions has carried out by the assessee are speculative transactions settled without the delivery in terms of Section 43(5) of the Act. The AO in the assessment order reproduced the relevant provisions of Section 43(5) upto sub-Section (d) of 45(3). The AO stopped at short of sub-Section (d) without going further to sub-Section (e).

17. Reading further, sub-Section (e) which was introduced by the Finance Act, 2013 w.e.f. 1<sup>st</sup> April 2014 reveals that in respect of trading and commodity derivatives carried out in a recognized association shall not be a speculative transaction.

The relevant provisions of Section 43(5)(e) are as detailed below.

[(e) an eligible transaction in respect of trading in commodity derivatives carried out in a recognised association [, 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:**

18. Further, Explanation 2 for the purpose of Clause (e) defines what constitutes "commodity derivative". The meaning has been assigned as per Chapter VII of the Finance Act, 2013.

19. Chapter VII of the Finance Act, 2013 at definitions mentioned at para 106(5)- Commodity derivative means -

- (i) a contract for delivery of goods which is not a ready delivery contract; or
- (ii) a contract for differences which derives its value from prices or indices of prices-
  - (A) of such underlying goods; or
  - (B) of related services and rights, such as warehousing and freight; or
  - (C) with reference to weather and similar events and activities.

20. The "eligible transactions" means

(A) carried out electronically on screen-based systems through member or an intermediary, registered under the bye-laws, rules and regulations of the recognized association 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 recognized association; 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;

21. The "recognized association" means "recognized association" means a recognized association as referred to in clause (j) of section 281 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952) and which fulfils such conditions as may be prescribed<sup>82</sup> and is notified<sup>83</sup> by the Central Government for this purpose;]

22. We also find that all the transactions made by the assessee are evidencing the client ID and PA No. and also carried out through computerized exchanged through electronic screen (NSEL) as per the details collected by the revenue.

23. We have also gone through the provisions of the Act introduced vide Finance Bill 2005 in respect of measures to rationalize the tax treatment of derivative transactions. The same is as under:

*Under the existing provisions clause (5) of Section 43, a transaction for the purchase and sale of any commodity including stocks and shares is deemed to be a "speculative transaction". If it is settled otherwise than by actual delivery. However, certain categories of transactions are excluded from the purview of the said provision. Further the unabsorbed speculation losses are allowed to be carried forward for eight years for set-off against speculation profits in subsequent years. These restrictions were essentially designed as an*

*anti-evasion measure to prevent claims of artificially generated losses in the absence of an appropriate institutional infrastructure.*

*Recent systemic and technological changes introduced by stock markets have resulted in sufficient transparency to prevent generating fictitious losses through artificial transactions or shifting of incidence of loss from one person to another. The screen based computerized trading proves for an excellent audit trail. Therefore, the present distinction between speculative and non-speculative transactions, particularly relating to derivatives is no more required. The proposed amendment, therefore, seeks to provide that an eligible transaction carried out in respect of trading in derivatives in a recognized stock exchange shall not be deemed to be a speculative transaction. The proposed amendment also seeks to notify relevant rules etc. regarding conditions to be fulfilled by recognized exchanges in this regard. Further, it is also proposed to amend sub-section (4) of Section 73 so as to reduce the period of carry forward of speculation losses from eight assessment years to four assessment years.*

*These amendments will take effect from 1<sup>st</sup> April, 2006 and will, accordingly, apply in relation to assessment year 2006-07 and subsequent years.*

24. The revenue has clearly held that the assessee is in the trading of commodity derivatives. Revenue, having said that failed to give the benefit of provisions of Section 43(5)(e). Hence, the transactions done by the assessee shall not be deemed to be a speculative transaction in terms of the provisions of the Act.

25. We have also gone through the accounts of assessee for the earlier years. The amount kept with M/s Anand Rathi

Commodities Pvt. Ltd. was Rs.1.30 crores for the year ending 31.03.2014 and Rs.4.60 crores for the ending 31.03.2013 and Rs.2.95 crores for the year ending 31.03.3012. Similarly, the amount kept with M/s Philips Commodities India Pvt. Ltd. was Rs.4.33 crores for the year ending 31.03.2014 and Rs.14.95 crores for the ending 31.03.2013. During the year, the assessee could not recover the amounts from these two brokers owing to suspension of operations by the NSEL which was given as a part of the business transaction for purchase of commodities in the conduct of regular business operations. Hence, the amount advanced made to purchase the commodity during the course of the business is a business loss allowable u/s 28 of the Act.

26. We have also perused the notice of PCIT, Central, New Delhi issued under the provisions of Section 263 of the Act proposing to withdraw the bad debts claimed by the assessee and accepted by the Assessing Officer. We categorically refrain from adjudicating on the strength of the notice, however, we observe that the said notice also dealt with the issue of bad debts claimed u/s 36(1)(vii) by that assessee.

27. We have also perused the order of the Chennai Tribunal in the case of Megh Sakariya International Pvt. Ltd. in ITA No. 59/Chennai/2018 wherein the bad debts have been allowed by the Tribunal u/s 36(1)(vii) of the Income Tax Act, 1961. In that case too, the revenue has also brought to the notice regarding the information received from NSEL that trading on that platform was topped since 31.07.2014 and the NSEL was in the process of settling the outstanding dues of its traders and auctioning its assets for the said purpose. The revenue claimed

that the claim of bad debts was premature. However, the ITAT has allowed the claim of the assessee based on the judgment of the Hon'ble Apex Court in the case of TRF Ltd. Vs CIT 320 ITR 397 wherein it was held that after 1<sup>st</sup> April, 1989, it was not necessary for the assessee to establish that the debt has become irrecoverable and it was enough if the debt was written off as irrecoverable in the books. Further, the CBDT vide Circular No. 12/2016 clarified regarding the claim of the bad debts, the same is reproduced as under:

*Circular No. 12/2016*

*F.No.279/Misc./140/2015-ITJ  
Government of India  
Ministry of Finance Department of Revenue  
Central Board of Direct Taxes*

*New Delhi, Dated 30th May, 2016*

*Subject: – Admissibility of claim of deduction of Bad Debt under section 36(1) (vii) read with section 36(2) of the Income-Tax Act, 1961– reg.*

*Proposals have been received by the Central Board of Direct Taxes regarding filing of appeals/pursuing litigation on the issue of allowability of bad debt that are written off as irrecoverable in the accounts of the assessee. The dispute relates to cases involving failure on the part of assessee to establish that the debt is irrecoverable.*

*2. Direct Tax Laws (Amendment) Act, 1987 amended the provisions of sections 36(1)(vii) and 36(2) of the Income Tax Act 1961, (hereafter referred to as the Act) to rationalize the provisions regarding allowability of bad debt with effect from the April, 1989.*

*3. The legislative intention behind the amendment was to eliminate litigation on the issue of the allowability of the bad debt by doing away with the requirement for the assessee to establish that the debt, has in fact, become irrecoverable. However, despite the amendment, disputes on the issue of allowability continue, mostly for the reason that the debt has not been established to be irrecoverable. The Hon'ble Supreme Court in the case of TRF Ltd. in CA Nos. 5292 to 5294 of 2003 vide judgment dated 9.2.2010, has stated that the position of law is well settled. "After 1.4.1989, for allowing deduction for the amount of any bad debt or part thereof*

*under section 36(1)(vii) of the Act, it is not necessary for assessee to establish that the debt, in fact has become irrecoverable; it is enough if bad debt is written off as irrecoverable in the books of accounts of assessee."*

*4. In view of the above, claim for any debt or part thereof in any previous year shall be admissible under section 36(1)(vii) of the Act, if it is written off as irrecoverable in the books of accounts of the assessee for that previous year and it fulfills the conditions stipulated in sub section (2) of sub-section 36(2) of the Act.*

*5. Accordingly, no appeals may henceforth be filed on this ground and appeals already filed, if any, on this issue before various Courts/Tribunals may be withdrawn/not pressed upon.*

*6. This may be brought to the notice of all concerned.*

*(Sadhana Panwar)  
DCIT (OSD) (ITJ),  
CBDT, New Delhi.*

28. Thus, we find that the CBDT has unequivocally allowed the claim of bad debts once the same is written off in the books of accounts as irrecoverable. Thus, the argument of the Id. DR that the bad debts should not be allowed which is based on the letter issued by the NSEL that NSEL is in the process of settling the amounts in view of the sufficiency of the assets and not to allow bad debts as the claim is pre-mature.

29. We also hold that, if in any previous year, the debt has been written off as bad and the relevant deduction has also been claimed but later on the same debt is recovered in full or part, then the amount so recovered will be included as income of the financial year in which such amount has recovered. Owing to taxability of the amounts recovered, the revenue would at liberty to tax the amount as and when received in accordance with the provisions of the Act. The department must obtain the information pertaining to payment by the NSEL to

brokers/traders on real time basis and bring these amounts to tax net. Hence, the advisory of the NSEL not to allow the bad debts claim would be legally untenable owing to the provisions of the Act, Circular of the CBDT and ruling of the Hon'ble Apex Court in the case of TRF Ltd. Vs CIT (323 ITR 397).

30. Further, we have also perused the order in the case of M/s Omni Lens Pvt. Ltd. in ITA No. 2818/Ahd./2010 wherein the matter was referred back to the file of the AO to examine the issue of speculation/non-speculation business after taking note of crucial aspect of actual delivery of the commodity, if any, as claimed and to ascertain as to how the entire debt has turned bad when the assessee was purportedly in possession of the goods purchased. The issue before us is clear on this aspect.

31. The matter before us deals with the non-recovery of the advances given to the brokers. The AO, for the instant year held that the assessee is dealing in speculative transactions and invoked provisions Section 43(5) of the Act. The AO has also held that the assessee has been carrying trade in commodity derivatives. Section 43(5)(e) considers an eligible transaction in respect of trading in commodity derivatives carried out in a recognized association shall not be deemed to be a speculative transaction. Hence, we hold that the transactions of the assessee shall not be deemed to be speculative transactions. Chapter VII of the Finance Act, 2013 w.e.f. 01.04.2014, details as to what is a commodity derivative in the Commodities Transaction Tax (CTT). As per the CTT commodity derivative means a contract for delivery of goods which is not a ready delivery contract or a contract for differences which derives its

value from the prices of such underlying goods. Thus, we find that the assessee is in the business of commodity derivatives but not in the speculation transaction as held by the AO. The revenue has also accepted the income from the transactions of the assessee as business income but not as income from speculation for all the earlier years. (Owing to collapse of the NSEL, no further trading could be conducted by the assessee in the latter years). It is also an undisputed fact that the trade advances given by the assessee stands irrecoverable.

32. In conclusion, keeping in view the facts of the case, a tax history of the assessee, treatment given by the revenue to the transactions undertaken by the assessee, finding of the AO that the assessee is into commodity derivatives, provisions of the Section 43(5) invoked by the AO, provisions of Section 43(5)(e) relied upon by the Id. AR, Explanation (2) of Section 43 as to what constitutes commodity derivatives, Para 5 of Chapter VII of Finance Act, 2013, CBDT Circular No. 3/2006 dated 27.02.2006, orders of the Co-ordinate Bench of ITAT in Megh Sakariya International (supra), Omni Lens Pvt. Ltd. (supra), judgment of the Hon'ble Apex Court in the case of TRF Ltd. (supra), we hereby hold that the business loss claimed by the assessee is allowable u/s 28 of the Act.

33. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 11/03/2020.

Sd/-

**(H. S. Sidhu)**  
**Judicial Member**

**Dated: 11/03/2020**

\*Subodh\*

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**