IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 888 OF 2016

The Pr. Commissioner of Income Tax-1 .. Appellant
v/s.
M/s. Triforce Infrastructure (India) Pvt. Ltd. .. Respondent

Mr. Suresh Kumar for the appellant
None for the respondent

CORAM : AKIL KURESHI &
M.S. SANKLECHA, J.J.
DATED : 11th DECEMBER, 2018.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 12th June, 2015 passed by the Income Tax Appellate Tribunal (the Tribunal). This appeal relates to Assessment Year 2007-08.

2. The Revenue urges the following re-framed question of law for our consideration :-

> *"Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in dismissing the Department's appeal by allowing assessee's loss from business of Futures and Options?"*

3. The respondent assessee had in its return of income declaring nil

income. During scrutiny assessment proceedings, the Assessing Officer noted from the Profit & Loss Account that the respondent was in receipt of speculation gain, dividend income and gain on Options aggregating to Rs. 6.11 lakhs. Against the above, the expenditure claimed was Rs.42.45 lakhs. Out of the above, expenditure claimed as loss on futures was Rs.42.40 lakhs. The Assessing Officer in assessment proceedings under Section 143(3) of the Act dis-allowed the loss on account of futures and options on the ground that the object clause of Memorandum of Association (MOU) did not authorize the company to do business in futures and options. The assessment order dated 24th December, 2009 determined income at Rs.6.11 lakhs.

4. Being aggrieved with the order dated 24th December, 2009, the respondent filed an appeal to the Commissioner of Income Tax (Appeals) [CIT(A)]. By an order dated 9th December, 2013, the CIT(A) while allowing the appeal reproduced clauses 21 and clause 68 of the MOU. In fact, clause 68 was introduced into the MOU w.e.f. 30th December, 2005. It was further held that clause 21 could itself permit the respondent to deal with the shares, futures and options. Nevertheless, on 31st December, 2005 clause 68 of the MOU specifically enabled the respondent to do business in futures and options i.e. before

starting the business in futures and options. As the relevant assessment year is A.Y. 2007-08, the CIT(A) allowed the respondent's appeal holding that loss incurred in futures and options as well as trading in shares is a part of its business loss.

5. Being aggrieved with the order dated 9th December, 2013 of the CIT(A), the Revenue filed an appeal to the Tribunal. By the impugned order, the Tribunal dismissed the Revenue's appeal upholding the order of the CIT(A). In fact, it also records the fact that the Assessing Officer while disallowing the losses in futures and options, have accepted the income of Rs.25,520/- shown on account of Futures & Options. This itself would be evidence of the fact that the MOU entitles the respondent assessee to carry on business in futures and options. Thus, dismissed the Revenue's appeal.

6. On facts we find that the view taken by the CIT(A) as well as the Tribunal, cannot be faulted with. The losses on futures and options was incurred post 30th December, 2005 i.e. after clause 68 was introduced in the MOU by an amendment. This appeal is in respect of A.Y. 2007-08 when clause 68 of the MOU was in existence. This entitled the respondent to do business in Futures and Options.

7. In the above view, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

8. The appeal is dismissed. No order as to costs.

(M.S. SANKLECHA, J.) **(AKIL KURESHI, J.)**