IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

T.C.A.No.138 of 2012

Shri K.Jawarilal .. Appellant

vs

The Assistant Commissioner of Income Tax,
Circle I, Vellore. .. Respondent

Prayer : Appeal filed under Section 260A of the Income Tax Act against the order of the Income Tax Appellate Tribunal, Chennai Bench 'A' dated 22.10.2010 in ITA No.974/Mds/2009.

For Appellant	:	Ms.Vandana Vyas for Mr.R.Sivaraman
For Respondent	:	Mr.J.Narayanaswamy Senior Standing Counsel

JUDGMENT
(Delivered by Dr. ANITA SUMANTH.,J)

This appeal relates to the Assessment Year 2005 – 06. The appellant is engaged in dealing in shares as well as other businesses. While computing income under the head 'business', the appellant had disallowed / added back losses suffers in intraday transactions as well as in futures and options on the understanding that such transactions were speculative in nature.

2. However, in the course of assessment, the appellant had taken a contrary view claiming allowances of such expenditures. This claim was denied on the ground that the original stand taken by the appellant, to the extent that the transactions were speculative in nature, was correct.

3. The Commissioner of Income-Tax (Appeals), partly allowed the appeal in regard to allowances of expenditures of future options and other derivative products, as against which, the Revenue filed an appeal before the Income-Tax Appellate Tribunal which was allowed by way of the impugned order dated 22.10.2010.

4. Inter alia, the Tribunal has also considered an amendment to Section 43(5) of the Act by virtue of which clause (d) was inserted vide Finance Act, 2005 retrospectively. Following a decision of the Special Bench of the Income-Tax Tribunal in the case of *Sri Capital Services v ACIT [318 ITR (AT) 1]*, the Tribunal in this case held that the application of clause (d) was prospective with effect from 01.04.2006 and would not apply for the previous years. As against this order, appellant is in appeal raising the following substantial questions of law:-

> *"1. Whether on the facts and in the circumstances the Appellate Tribunal was right in law in holding that loss of future & option transactions was speculative in nature under Section 43(5) of the Act for the assessment year 2005-06?*
> *2. Whether on the facts and in the circumstances of the case and having regard to the nature of the speculative transaction the amendment to sub-*

clause (d) to Section 43(5) inserted by the Finance Act, 2006 w.e.f. 1.4.2006 is clarificatory in nature and thus applicable even for the assessment year 2004-05 onwards?
3. Whether on the facts and circumstances of the case, the appellate Tribunal is right in law in holding that transactions in shares and securities are in the nature of speculative and not the transaction in future & option where the law itself provide for settlement otherwise than delivery?"

5. Ms.Vandna Vyas, who appears on behalf of the appellant would fairly bring to the notice of the Court that the substantial questions of law arising in this matter are covered by a decision of the Bombay High Court in *Commissioner of Income-Tax, Central-IV, Mumbai v Shri Bharat R.Ruia* [199 Taxman 87 (Bom)] in favour of the Revenue. The operative portion of the judgment reads thus:-

"In the result, we hold that the exchange traded derivative transactions carried on by the assessee during assessment year 2003-04 are speculative transactions covered under section 43(5) of the Act and the loss incurred in those transactions are liable to be treated as speculative loss and not business loss. We further hold that clause (d) inserted to the proviso to section 43(5) with effect from 1-4-2006 is prospective in nature and the ITAT was in error in holding that clause (d) to the proviso to section 43(5) applied retrospectively so as to apply to the transactions carried on by the assessee during assessment year 2003-04."

6. We are in agreement with the conclusions of the Bombay High Court as above. Hence the above substantial questions are answered in favour of the Revenue and against the assessee. This Tax Case (Appeal) is dismissed. No costs.

[A.S.M., J] [G.A.M., J]
21.11.2024

Index:Yes/No
Neutral Citation:Yes
ssm

DR. ANITA SUMANTH.,J.
and
G. ARUL MURUGAN.,J.

ssm

To
The Assistant Commissioner of Income Tax,
Circle I, Vellore

T.C.A.No.138 of 2012

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