आयकर अपीलीय अधिकरण, मुंबई

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES 'B' MUMBAI

सर्वश्री आय.पी. बंसल, न्यायिक सदस्य **एवं** श्री बी.आर. भास्करन, लेखा सदस्य के समक्ष ।

BEFORE SHRI I.P. BANSAL, JUDICIAL MEMBER /AND

SHRI B.R.BASKARAN, ACCOUNTANT MEMBER

ITA NO.6163/MUM/2011 (A.Y.2003-04)

Income tax Officer-6(1)-4, Room No.503, Aayakar Bhavan, Mumbai 400 020. GIR No/PAN : AAACT 9112 B (Appellant)	Vs.	The Bombay Commodity Exchange Ltd., (Formerly known as M/s. The Bombay Oilseeds & Oil Exchange Ltd.), Jenabhai Building, Yusuf Meharali Rd. Mumbai-400 021. (Respondent)

C.O. No.137/MUM/2012
Arising out of ITA NO.6163/MUM/2011 (A.Y.2003-04)

The Bombay Commodity Exchange Ltd., (Formerly known as M/s. The Bombay Oilseeds & Oil Exchange Ltd.), Jenabhai Building, Yusuf Meharali Rd. Mumbai-400 021. (Cross Objector)	*Vs.*	*Income tax Officer-6(1)-4, Room No.503, Aayakar Bhavan, Mumbai 400 020. GIR No/PAN : AAACT 9112 B (Appellant)*

Department by	:	Shri Vivek Batra
Respondent by	:	Shri R.K. Kotiyan

Date of hearing	:	07/01/2015
Date of pronouncement	:	07/01/2015

ORDER

PER I.P.BANSAL, J.M:

Appeal is filed by the Revenue and the cross objection by the assessee. These are directed against the order passed by the ld. CIT(A) dated 30/05/2011 for the assessment year 2003-04. The grounds of appeal read as under :-

> *"1. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in directing to allow set off of unabsorbed depreciation and business loss against the income from other sources relying on the decision of the Hon'ble ITAT in assessee's own case for A.Y. 2001-02 without appreciating fact that assessee had income under the head of business and professional in the said year.*
> *2. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in directing to allow set off of unabsorbed depreciation and business loss against the income from other sources without appreciating facts that as per provisions of Section 32(2) the unabsorbed depreciation and business loss for A.Yrs, 1997-98 to 2001-02 has to be set off against the business income only.*
> *3. The appellant prays that the order of Ld. CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored."*

2. Grounds of cross objection read as under :-

> *"The Respondent submits the following grounds of cross objection against the OuL 30.05.2011 made by the Commissioner of Income-tax (Appeals) 14, Mumbai:*
> *1. The learned Appellate Commissioner erred in holding that the principles of mutuality did not apply to income and dividends earned by the appellant*
> *2. The learned Appellate Commissioner further erred in holding that interest and dividend income earned by the appellant cannot be set off against the expenditure incurred by the appellant in conduct of its mutual activities. He failed to appreciate that there was a clear nexus between the said receipts and the activities of the appellant and that the set off was permissible in law.*
> *3. Without prejudice to the above and in the alternative, the respondent be granted benefit of section 44A of the Income tax Act, 1961 and the income be computed accordingly."*

<u>Revenue's Appeal :ITA No.6163/Mum/11 :-</u>

3. As it can be seen from the Grounds of appeal filed by the Revenue it has two limbs, one is set off of unabsorbed depreciation and the other is set off of business loss. As it relates to set off of business loss against the income from other sources, we find that the ld. CIT(A) has not granted any relief to the assessee. During the course of hearing, it was brought to the notice of the ld. DR that though this issue was raised by the assessee before the ld. CIT(A), but ld. CIT(A) did not give any

relief of set off of business loss against income from other sources. Therefore, Ground No.1 & 2 raised by the Revenue to the extent of set off of business loss against income from other sources is misconceived and dismissed.

3.1 So far as it relates to set off of unabsorbed depreciation against income from other sources, ld. CIT(A) has followed the decision of ITAT in assessee's own case. For the sake of convenience the relevant portion of the order of ld. CIT(A) is reproduced below:-

> *"8. Ground No. 5*
> *8.1 In this ground the appellant has challenged the decision of the Assessing Officer that the appellant is not entitled to carry forward and set off of its unabsorbed business loss and depreciation. In this regard, the appellant has cited the decision of Hon'ble Tribunal in its own case for A.Y. 2001-02 wherein it was held that the assessee is entitled to the benefit of set off of unabsorbed depreciation pertaining to A.Yrs. 1997-98 to 2000-01. The relevant portion of the said decision of Hon'ble Tribunal is as under:* -
>
> > *"15. We considered the above question. There is nothing in law as stated in the Income-tax Act, where the claim of the assessee for setting off the unabsorbed depreciation for the assessment years 1997-98 to 2000-2001 should be declined. Not only that, the unabsorbed depreciation always partakes the character of current year's depreciation. Therefore, we find that the CIT(A) has erred in not allowing the benefit of carry forward and set off of unabsorbed depreciation pertaining to the earlier assessment years 1997-98 to 2000-01. It is to be seen that the C1T(A) himself as extended the above benefit to the assessee up to the assessment year 1996-97. Therefore there is no reason why it should not be done for the succeeding assessment years. Therefore, we direct the Assessing Officer to give the benefit of set off of unabsorbed depreciation pertaining to the assessment years 1997-98 to 2000-2001.".*
>
> *8.2 Since in the case of the assessee itself Hon'ble Tribunal have directed that benefit of set off of unabsorbed depreciation be granted to the appellant, respectfully following the decision of Hon'ble ITAT, the Assessing Officer is hereby directed to grant such set off of unabsorbed depreciation to the assessee in the current year.* "

4. On this issue we have heard both the parties. It was the contention of the Revenue that CIT(A) has committed an error in following the earlier order of the Tribunal and as against that, it was the contention of the ld. AR that CIT(A) did not commit any error as he is bound to follow the order of the Tribunal . Therefore, we

are of the opinion that CIT(A) did not commit any error in deciding the issue by following the earlier order of the Tribunal in assessee's own case. More particularly in a situation when no reason has been assigned to show that why ld. CIT(A) has committed an error in following the order of earlier years, therefore, ground of the Revenue to the extent of set off of unabsorbed depreciation against the income from other sources is dismissed.

Assessee's Cross Objection No.137/Mum/2012 :-

5. At the time of hearing the ld. AR did not press the entire cross objection. He has made endorsement in this regard on the cross objection, therefore, the CO is dismissed being not pressed.

6. In the result, appeal as well as the cross objection both are dismissed in the manner aforesaid.

Order pronounced in the open court on 07 /01/2015
आदेश की घोषणा खुले न्यायालय में दिनांकः 07/01/2015 को की गई ।

Sd/- Sd/-
(बी.आर. भास्करन /B.R.BASKARAN) (आय.पी. बंसल **/ I.P. BANSAL**)
लेखा सदस्य **/ ACCOUNTANT MEMBER** न्यायिक सदस्य **/ JUDICIAL MEMBER**

मुंबई Mumbai; दिनांक Dated 07 /01/2015

व.नि.स./*Jv*, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy// **उप/सहायक पंजीकार** (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai.**