

Trading in commodity derivatives prior to insertion of clause (e) of proviso to section 43(5) to be regarded as speculative transaction

March 9, 2018

In brief

In a recent ruling,¹ the Mumbai bench of the Income-tax Appellate Tribunal (Tribunal) allowed the set-off of losses from commodity derivatives business against the profits of same business where transactions were carried out prior to insertion of clause (e)² of proviso to section 43(5) of the Income-tax Act, 1961 (the Act).

In detail

Facts

- The taxpayer was in the business of derivate trading in commodity on various stock exchanges and filed its return of income after setting-off derivative loss against the profits of the same business.
- The tax officer (TO) applied clause (d) of proviso to section 43(5) of the Act and bifurcated the earnings for the recognised stock exchange (RSE) and unrecognised stock exchange (USE) and assessed the loss from USE as speculative loss, not eligible for set-off against the profit of the RSE.

- Aggrieved taxpayer preferred an appeal before the Commissioner of Income-tax (Appeal), which upheld the TO's order. The taxpayer further appealed before the Tribunal.

Issues before the Tribunal

- Whether the business activity of derivate trading in commodity prior to insertion of clause (e) of proviso to section 43(5) of the Act would fall within the ambit of speculative transaction?
- When the taxpayer's sole business was to trade in commodity derivatives, whether the loss from such business activity could be set-off against the profits of the same business?

Tribunal's ruling

- The Tribunal examined the definition of "derivative" given under section 2(ac) of the Securities Contract (Regulation) Act, 1956 and held that the trading in commodity derivatives were not covered under clause (d)³ of proviso to section 43(5) of the Act.
- The Tribunal observed that trading in commodity derivatives was to be treated as speculative business prior to insertion of clause (e) to proviso to section 43(5) of the Act, which did not apply for the assessment year under consideration.
- The Tribunal placed reliance on its earlier

¹ ITA No. 5179/ Mum/ 2016

² Clause (e) of proviso to section 43(5) of the Act was inserted by Finance Act 2013 to provide trading in commodity derivatives carried out through a recognised association should not be regarded as speculative transaction.

³ Clause (d) of proviso to section 43(5) of the Act provides that an eligible transaction of trading in derivatives referred under clause (ac) of section 2 of the Securities Contract (Regulation) Act, 1956 carried out through a RSE should not be regarded as speculative transaction.

decision⁴ having similar facts.

- The Tribunal observed that the taxpayer had not claimed any special deduction under section 43(5) of the Act for treating the profit as business profit.
- The Tribunal held that the activity carried out by the taxpayer throughout the year, solely in commodity derivatives on various stock exchanges, should have been treated as one business

activity, and loss incurred or profit earned should have been speculative loss/ profit and eligible for set-off against each other.

The takeaways

- This ruling reinforces the principle that loss from a business should be allowed to set-off against profit of same business, irrespective of the nature of the transaction (i.e., speculative/ non-speculative).

- This ruling reaffirms that the business activity of trading in commodity derivatives undertaken before 01 April 2014 has to be considered as speculative business and do not fall under the purview of clause (d) of proviso to section 43(5) of the Act.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

⁴ Varsha Corp. Ltd. v. DCIT ITA No. 6534/Mum/2010

Our Offices

Ahmedabad

1701, 17th Floor, Shapath V,
Opp. Karnavati Club,
S G Highway,
Ahmedabad – 380051
Gujarat
+91-79 3091 7000

Hyderabad

Plot no. 77/A, 8-2-624/A/1, 4th
Floor, Road No. 10, Banjara Hills,
Hyderabad – 500034,
Telangana
+91-40 44246000

Gurgaon

Building No. 10, Tower - C
17th & 18th Floor,
DLF Cyber City,
Gurgaon – 122002
Haryana
+91-124 330 6000

Bengaluru

6th Floor
Millenia Tower 'D'
1 & 2, Murphy Road, Ulsoor,
Bengaluru – 560 008
Karnataka
+91-80 4079 7000

Kolkata

56 & 57, Block DN.
Ground Floor, A- Wing
Sector - V, Salt Lake
Kolkata – 700 091,
West Bengal
+91-033 2357 9101/
4400 1111

Pune

7th Floor, Tower A - Wing 1,
Business Bay, Airport Road,
Yerwada, Pune – 411 006
Maharashtra
+91-20 4100 4444

Chennai

8th Floor
Prestige Palladium Bayan
129-140 Greaves Road
Chennai – 600 006
Tamil Nadu
+91 44 4228 5000

Mumbai

PwC House
Plot No. 18A,
Guru Nanak Road (Station Road),
Bandra (West), Mumbai – 400 050
Maharashtra
+91-22 6689 1000

For more information

Contact us at
pwctrs.knowledgemanagement@in.pwc.com

About PwC

At PwC, our purpose is to build trust in society and solve important problems. We're a network of firms in 157 countries with more than 223,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at www.pwc.com.

In India, PwC has offices in these cities: Ahmedabad, Bengaluru, Chennai, Delhi NCR (Gurgaon), Hyderabad, Kolkata, Mumbai and Pune. For more information about PwC India's service offerings, visit www.pwc.com/in

PwC refers to the PwC International network and/or one or more of its member firms, each of which is a separate, independent and distinct legal entity. Please see www.pwc.com/structure for further details.

©2018 PwC. All rights reserved

Follow us on:



For private circulation only

This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication, and, to the extent permitted by law, PwCPL, its members, employees and agents accept no liability, and disclaim all responsibility, for the consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it. Without prior permission of PwCPL, this publication may not be quoted in whole or in part or otherwise referred to in any documents.

© 2018 PricewaterhouseCoopers Private Limited. All rights reserved. In this document, "PwC" refers to PricewaterhouseCoopers Private Limited (a limited liability company in India having Corporate Identity Number or CIN : U74140WB1983PTC036093), which is a member firm of PricewaterhouseCoopers International Limited (PwCIL), each member firm of which is a separate legal entity.