IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
and
SHRIS.RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA No.2877/DEL/2024
(Assessment Year: 2016-17)

B & B Sharecom Pvt. Ltd., 133, 1st Floor, Parijat Complex, Hisar – 125 001.	vs.	DCIT, Circle, Hisar.

(PAN :AAGCB1363A)

(APPELLANT) (RESPONDENT)

ASSESSEE BY : Shri K. Sampath, Advocate
Shri V Rajakumar, Advocate
REVENUE BY : Shri Abhishek Deavel, Sr. DR

Date of Hearing : 22.08.2025
Date of Order : 24.09.2025

O R D E R

PER S.RIFAUR RAHMAN, ACCOUNTANT MEMBER :

1. The assessee has filed appeal against the order of ld. Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi[hereinafter referred to as 'ld. CIT (A)]dated 08.05.2024for Assessment Year 2016-17 raising following grounds of appeal :-

> "On the facts and in the circumstances of the case and in law the Ld. CIT(A) at NFAC, Delhi erred in confirming the actions of the Assessing Officer making following additions/disallowances :-

A. Rs.8,00,00,000/- on account of fresh share capital issued in doubting the credit worthiness of the shareholders by ignoring the confirmations and documents submitted;

B. Rs.16,00,000/- on account of alleged commission paid on assumptions and presumptions;

C. Rs.3,53,89,637/- being the amount of loss suffered on intraday transactions on stock exchange treating the same as speculative in terms of section 43(5) of the Act;

D. not allowing set-off of loss suffered on intraday transactions against profit earned by the assessee on commodity derivatives which are not chargeable to CIT in a sum of Rs.4,42,20,153/-;

E. initiating proceedings u/s 271 (1)(c).

The above action being arbitrary, fallacious, unwarranted and illegal must be quashed with directions for appropriate relief."

2. With regard to Ground Nos. (A) and (B), relevant facts of the case are, assessee filed its return of income declaring income of Rs.NIL and carry forward the loss of Rs.9,55,53,675/-. The case was selected for scrutiny through CASS for examination of the following issues :-

(i) Substantial increase in share capital in a year,
(ii) Large squared-up loans,
(iii) Large value sale of shares or unit reported in STT return,
(iv) Large value sale of option in securities,
(v) Large value of future derivatives,
(vi) Mismatch in sales turnover reported in Audit Report.

3. Accordingly, notices under section 143(2) and 142(1) of the Income-tax Act, 1961 (for short 'the Act') were issued and served on the assessee. In

response, ld. AR of the assessee attended the proceedings and submitted the relevant information through electronic mode.

4. The assessee company is engaged in trading of various products like guar, refine, dal, guar seeds, dhania, udad etc.. The company is also engaged in trading in share market with different segments i.e. commodity trading, F&O trading, currency trading, intraday transaction. During assessment proceedings, the AO observed that assessee has issued 80,00,000 shares at the face value of Rs.10 from 24.02.2016 to 19.03.2016. He observed that assessee has issued share capital to M/s. JA Infracon Pvt. Ltd. (JAIPL), M/s. Adila Traders Pvt. Ltd. (ADPL) and M/s. Sonal Styles Pvt. Ltd. (SSPL). The details of issue of shares are reproduced at page 3 of the assessment order. The assessee has furnished copies of Income-tax return along with audit report of all the investors. In order to verify the genuineness of the transactions, notices u/s 133 (6) were issued to these companies, however the same were returned with the comment 'left'. Subsequently, a show-cause notice dated 30.11.2018 was issued to the assessee and thereafter letters along with affidavit of the directors of the company were received from all three companies. Subsequently, the assessee was asked to produce the directors of the abovesaid companies. In the abovesaid letter, the AO raised the following issue that the assessee has received share premium from the said three companies, namely, JSIPL, ATPL and SSPL and these companies

have maintained very low bank balances and has an amount stands credited to the bank account and the same is transferred to the assessee company on the same day or within two days. Therefore, the abovesaid companies are maintaining very low bank balance. Since the assessee has not produced the directors of the abovesaid companies and the assessee has informed to the AO that assessee is not directly or indirectly related to the investor companies and assessee cannot insist their directors to attend the office of the AO in such short notice of two days. Not satisfied with the submissions of the assessee, AO issued Commission to the respective Circles of the investor companies and received the report that these companies do not exist at the addresses. With the above report, the AO proceeded to invoke the provisions of section 68 of the Act with the following observations :-

> "1. Identity of all three shareholding companies could not be established as neither the letter sent by post could be served nor could the verification carried out by the Inspector of the department trace the companies.
>
> 2. As all the three shareholder companies are filing Return of Income at negligible income this confirms that creditworthiness of all three shareholder companies remained not proved.
>
> 3. As bank statement of all the three shareholder companies reveals immediate deposit in the form of RTGS from third party and immediate transfer to the assessee or any other party. There is negligible balance in the account of three companies in any date. Thus, genuineness of the transaction remained unproved.
>
> 4. The assessee failed to produce the directors of three shareholder companies. Thus the identity of these share holder companies remain unproved.
>
> 5. No dividend has been issued by the assessee company to three shareholders and there is no business logic why these three companies situated at far of distance would invest in unknown company like assessee on which they are not even getting any returns."

5. He further observed that the above issue of share capital is nothing but colourable device and assessee has obtained accommodation entry and in his opinion, assessee must have paid commission @ 2%. Accordingly, he proceeded to make the addition of Rs.8,16,00,000/- u/s 68 of the Act.

6. Aggrieved assessee preferred an appeal before the NFAC, Delhi and filed detailed submissions which are reproduced at pages 6 to 22 of the impugned order.

7. After considering the abovesaid submissions, ld. CIT (A) sustained the additions made by the AO.

8. Aggrieved with the above order of ld. CIT (A), assessee is in appeal before us.

9. At the time of hearing, ld. AR for the assessee submitted that both the Authorities misdirected themselves in attempting to verify the facts leading to the subscription by the three Companies towards the share capital of this Assessee through devious and unorthodox procedure. The AO was wrong in observing that the identity of the three shareholding Companies were not established. He could not have held so despite the fact that the income tax returns for the subject year of the three subscribing Companies along with their accounts were duly filed before him. This is acknowledged on page 4 of the assessment order. That being a direct and irrefutable proof of their

existence and also the acknowledgement of the pertinent facts has been arbitrarily ignored by the AO/NFAC.

9.1 Further he submitted that the fact that the shareholder Companies had negligible income could not be a ground to conclude that their creditworthiness remained unproved. Creditworthiness is determined not on the basis of income as returned for assessment by an entity but on the basis of the capacity of the entity to meet the obligations towards the creditors and other business associates. In the subject case, the three subscribing Companies had paid for their subscriptions through banking channels and there were no hassles at all with regard to the receipt of payments at any time. In the circumstances, the Authorities could not fault the subscribing Companies for their creditworthiness from any angle whatsoever.

9.2 He submitted that the payments by the subscribing Companies to this Assessee towards the subscription for the share capital could not have been faulted for the mere reason that, they had emanated from the other deposits immediately made by them in that Bank, before doing the RTGS to the Assessee. The AO failed to realise that it is imprudent and against commercial practice for a finance company to keep funds idle or unutilised. Business prudence, enterprise and efficiency direct that the monies at the disposal of the business should be made to run as far and distant as possible to fetch incomes. The AO's objection based on this ground is totally

misconceived. Further on that very ground for the AO to assert that the genuineness of the transaction remained unproved is simply compounding that serious error. The genuineness of any transaction can be verified from the drift and the potency of that transaction. In the subject case, all the transactions, even as per the admission of the AO, are through RTGS and being so, the genuineness of the transactions could not be legitimately called to question.

9.3 Further he submitted that the AO gave little or no time for the production of the directors before him. The AO failed to realise and appreciate that the directors of the Companies were stationed in Ahmedabad, Mumbai and Thane. Certainly they were away from Hisar at a distance of more than 500 kms. In terms of the CPC Order XV I Rule 2(1), the AO was obliged to deposit the diet money if he was really intent on having the directors to personally appear before him. The summons, therefore, were not in conformity with the applicable provisions of the CPC and, therefore, the summons were invalid and of no effect. Absence of directors cannot, therefore, be a pertinent point for distrusting the investment made in the Assessee Company. At any rate the primary evidence with regard to the three subscribing Companies in the form of their returns of income were filed before the AO and there was nothing pointed out in them to create any doubt or misgiving about their genuineness or authenticity. This could have been

easily verified by the AO with the PAN numbers of the investing Companies in his possession.

9.3 As to the subscribing Companies not receiving any dividend from this Assessee Company the answer is simple and self-evident. That is because the Company itself had incurred heavy losses repeatedly and as such, there was no positive income for disposal by way of dividend.

9.4 He submitted that the other point raised by the AO is the conclusion that the Companies are engaged in a totally different business with no direct or indirect relationship with this Assessee and with the directors not being known to them, the investments as made by them was unreasonable and improbable. This argument of the AO cracks on its face. Investment decisions by any person are not based on the personal relationship with directors or the similarity of business. Investment decisions are based mainly on the business prospects of the investing Company and the reputation of the directors of that Company and also the nature of business in which the investments have been made. The charge of the AO that "the Assessee has brought back its own unaccounted money in the garb of share capital" is totally fallacious and malicious. Which was the Assessee's unaccounted money and from which business it was earned and when that unaccounted money was transferred to the three subscribing Companies remains unstated by the AO.

9.5 Besides the above, there is not a shred of evidence to support the several fallacious allegations of the AO. The decision relied upon by the AO of the apex Court in Mcdowells vs. CTO (1985)154 ITR 148, is totally distinguishable on facts. Mcdowells decision was not with regard to subscriptions of share capital and so to invoke that decision in a non-income tax matter to allege an accommodation entry and that too without an iota of proof is grossly fallacious and totally uncalled for.

9.6 There is no quarrel with the proposition enunciated by the Calcutta High Court in CIT vs. Precision Finance Pvt Ltd. (1994) 208 ITR 465(Cal) cited by the NFAC. Assessee in this case has complied with the requirements enunciated in that decision. The NFAC has wrongly distinguished the cases cited by the Assessee.

9.7 The observations of the NFAC in para 5.9 vis-a-vis the Delhi High Court in CIT vs. Nipun Builders and Developers Pvt Ltd. (2013) 30 Taxman 292, is totally inapplicable, because the directors in that case were not 500 kms away from the site of verification.

9.8 The final conclusions as arrived at by the Authorities are ex facie erroneous and untenable. With the returns of the three subscribing Companies on record and with their having paid for the shares through banking channels and with their directors, confirming on affidavit, the factum of the investments and

with no proof at all to the contrary adduced by the AO, the identity, creditworthiness and genuineness of the transactions, was beyond challenge.

9.9 While on this it needs to be noted that the Department has been going hammer and tongs against the Assessees in cases involving induction of share capital. There are a plethora of decisions on this point. As at present however the Supreme Court has buried that controversy through its following decisions which are all self-explanatory and therefore need not be discussed in detail in the submissions:-

- PCIT vs. Kuntala Mohapatra (2024) 160 taxmann.com 608 (SC) (CLPB 1-5);
- PCIT vs. Kishore Kumar Mohapatra (2024) 162 taxmann.com 5(SC) (CLPB 10-14);
- PCIT vs. Parasben Kasturchand Kochar (2021) 282 taxman 301(SC) (CLPB 15-17); &
- PCIT vs. Tejua Rohit Kumar Kapadia (2018) 94 taxman.com 325(SC) (CLPB 18-21).

9.10 Thus on the ground that there was more than enough direct evidence to establish the veracity, authenticity and genuineness of the investments made by the three subscribing Companies of Ahmedabad, Bombay and Thane amounting to Rs. 8 Crores and with no contra evidences of a plausible nature being adduced by the Authorities below apart from barring consideration of the material on record, the addition, as made, is arbitrary, erroneous and illegal and merits to be quashed.

9.11 Ground "B" is connected to Ground "A", in so far as the AO alleges payment of commission at 2% for the procurement of share capital of Rs. 8 Crores. The only observation made by the AO, in this regard is:-

> "Therefore, an addition of Rs. 8,00,00,000/- is hereby made in the income of the assessee. Moreover, in order to obtain an accommodation entry, assessee needs to pay commission at the rate of 2% as per prevailing market rates. Therefore, an addition of Rs. 16,00,000/- is also made to the income of the assessee as unexplained expenses."

9.12 The NFAC has confirmed the addition made by the AO with observations contained on page 34 of the Appellate order, with the following remarks:-

> "1 In view of the above facts and judicial pronouncements, I am of the view that AO has rightly made addition of Rs. 8,16,00,000/- (Rs. 8 Crores as bogus share capital and Rs. 16 lakhs as commission on such bogus capital @ 2%) to the income of the appellant. Accordingly, addition made by AO of Rs. 8,16,00,000/- is confirmed. Ground No. 2 of the appeal is dismissed."

It will be noticed that both the Authorities have indulged in guesswork, shorn of any material or evidence. While the AO does not even divulge the basic facts relating to such alleged payments, the NFAC confirms the same by relying of Case Laws without even touching upon the facts. With such perfunctory approach, the addition made is fictitious and baseless which merits to be quashed in limine.

10. On the other hand, ld. DR of the Revenue brought to our notice details of documents submitted by the assessee before the lower authorities and also in the form of paper book and he brought to our notice financial statements and return of income of the investor companies placed on record. From the above

documents, he submitted that all these investor companies do not have enough profit to support the investment made in the assessee company. Therefore, he relied on the findings of the lower authorities that these companies do not have financial capacity to make the investment in the assessee company and he relied page 30 of the order of the first appellate authority and he justified the findings of the lower authorities on the decision of Hon'ble Supreme Court in the case of NRA Iron and Steel Pvt. Ltd. (2019) 412 ITR 161. He further submitted that several notices were issued by the AO were not served on the investor companies and finally he supported the findings of the lower authorities.

11. In the rejoinder, ld. AR submitted that the assessee has already proved the genuineness of the transaction and all the funds were transferred through banking channel. There is no evidence with revenue of any cash deposit involved anywhere in these transactions, as far as capacity is concerned, it is also brought on record that investor companies are having huge surpluses to make the investment and earning capacity is not a criteria for making an investment. Further he submitted that the decision of Hon'ble Supreme Court in the case of NRA Iron and Steel Pvt. Ltd. (supra) is distinguishable from the facts on record. Further he brought to our notice all the investor companies are still in existence and brought to our notice the company muster date of these companies.

12. Considered the rival submissions and material placed on record. We observe that during the year, assessee had issued Rs.80,00,000 shares at the face value of Rs.10. It was observed that the shares were issued to JAIPL, ADPL and SSPL. During assessment proceedings, assessee had furnished copies of income-tax returns along with audit report of all investors. In order to verify the genuineness of transaction, a notice u/s 133(6) was issued to the assessee. In response, assessee has submitted confirmations and affidavit from the Directors of all the three companies. The assessee was asked to produce Directors of the companies. However, assessee was not able to produce those Directors within the time allowed by the AO i.e. within two days. Since assessee could not produce the Directors, AO proceeded to treat the same as accommodation entries. Further he observed that the income declared by these companies were very negligible, therefore, the creditworthiness of all the three shareholders were not proved. With regard to above observation of the AO, we observe that assessee has submitted all the relevant documents and confirmation in support of the issue of share capital to three shareholders. The time given to the assessee to produce the Directors, the assessee does not have power to direct those directors to present before the AO. The assessee has produced all relevant information including income-tax return of shareholders, if required the AO could have initiated proceedings to make sure that those directors were present before him. The time given to the

assessee to produce them was also too short. It is also fact on record that these companies are in existence and they are filing return regularly.

13. Coming to the issue of declaring negligible income in their return of income, we observe that the Courts have held that any capacity of the investors cannot be the basis of determining the creditworthiness. It is the availability of funds with them which determines the creditworthiness of the companies. The balance sheet submitted by the assessee shows that they have enough reserves and surplus of funds available in their business.

14. Coming to the next issue of transferring the funds for making investment and maintaining very low bank balance of the investors have no relevance to determine the genuineness of the transaction. Further AO observed that the assessee has not declared any dividend. It cannot be a criteria to determine the genuineness of the transaction. It is the independent decision of the investors to make the investment in the respective companies. The declaration of the dividend is purely depends upon future profit of the company. After considering the details and various documents produced before the AO and submitted in the form of paper book, it clearly shows that the share capital issued by the assessee is genuine and even there is no premium involved in the issue of shares, therefore, genuineness cannot be doubted for issue of shares. Further AO treated the issue of shares as

accommodation entry, he made 2% as commission which also deserves to be deleted. Accordingly, Ground Nos.A & B raised by the assessee are allowed.

15. With regard to Ground Nos.C & D, at the time of hearing, ld. AR of the assessee brought to our notice that Ground Nos.C and D are with reference to the amount of loss in intraday transactions on the stock exchange not being set-off against intraday profits in the computation of income of the AO. He submitted that the observations and conclusions on this point are contained in page 5 of the assessment order spread between pages 12 and 13 therein and according to the AO, the assessee had entered into transactions totalling Rs.1383.15 Crores under the Codes 01, 02 and 03. Assessee sustained a loss of Rs.3.53 Crores+ under Code 03. He submitted that according to the AO the said loss under Code 03 had emerged out of non-STT paid speculative business transactions which fell within the ambit of Sec.43(5) of the Act. The AO further asserts that the Assessee had adjusted the loss against the normal business profits of the year, which according to him, was not in conformity with the provisions of the Act. After serving a show cause notice to the Assessee and obtaining a reply from the Assessee to the effect that Code 03 transactions were normal transactions even though non-speculative in nature, the AO however, rejected the same to deny set-off of the loss incurred under Code 03 against the profits from other similar transactions.

16. Ld. AR brought to our notice that before the NFAC, the assessee submitted that the ruling of the AO (that the loss of Rs. 3,53,89,637/- from intraday transactions,) was speculative u/s. 43(5) of the Act and so was not adjustable as normal business loss, was erroneous and untenable for the AO had ignored the nature of business of the assessee and the provisions of the Act related thereto. The business of the assessee was to trade in equity derivatives and commodity derivatives and spot markets. The treatment of profit or loss arising from those various segments individually and in separate compartments was unjustified. It was also pointed out that if the loss from intraday equity segment was to be considered as speculative on the ground of non-levy of CTT then the profit from commodity derivatives on which also no STT was chargeable had also to be considered as speculative. In this way, both the loss and profit being of the same nature and genre the profit and loss had to be set-off against each other. It was also pointed out that in commodity trading, there is specific CTT exemption as per Government notification. The NFAC, however held that the intraday purchase and sale under Code 03, was speculative in nature due to the factum of there being no transfer or delivery. He submitted that by so saying, the NFAC, ignored the very nature of intraday trading business. That business, by its very nature cannot compel the transfer and delivery on the same day for any transaction to consummate. That is practically impossible to do intraday. It is for this reason that

Sec.43(5) of the Act was amended by Finance Act, 2015 to provide for not deeming such transaction as speculative.

17. He submitted that in this connection Clauses (d) and (e) of sub-Section(5) of Sec.43 of the Act and the proviso to that with Explanation (i) and (ii) thereto are relevant and important. Clause (d) of the First Proviso to sub-Sec.(5) of Sec.43 of the Act with the Explanation which came into effect through Finance Act, 2005 w.e.f. 01.04.2006 and Finance Act, 2013 w.e.f. 01.04.2014 respectively reads as under:-

"[(d) an eligible transaction in respect of trading in derivatives referred to in clause [(ac)] of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) carried out in a recognized stock exchange; [or]]

(i) "eligible transaction" means any transaction,-

(A) carried out electronically on screen-based systems through a stock broker or sub-broker or such other intermediary registered under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) in accordance with the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) or the Securities and Exchange Board of India Act, 1992 (15 of 1992) or the Depositories Act, 1996 (22 of 1996) and the rules, regulations or bye-laws made or directions issued under those Acts or by banks or mutual funds on a recognized stock exchange; and...."

18. Likewise, Clause (e) of the First Proviso to Sec.43(5) of the Act with the Explanation reads as under:-

[(e) an eligible transaction in respect of trading in commodity derivatives carried out in a [recognized stock exchange] [, which is chargeable to commodities transaction tax under Chapter VII of the Finance Act, 2013 (17 of 2013),]]"

(ii) "eligible transaction" means any transaction,-

(A) Carried out electronically on screen-based systems through member or an intermediary, registered under the bye-laws, rules and regulations of the [recognized stock exchange] 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 stock exchange]; and.....

The AO has agreed to the profit in the CTT paid commodity derivates of Rs. 6,27,50,102/- and has subjected the same to an assessment as business income. He has also assessed the same as business income. However, the loss of Rs. 4,42,20,153/- derived from agricultural commodities which were otherwise CTT exempt, has not been set-off against the profit. The AO has evidently made a distinction between the profit and loss from commodity derivatives based solely on the impost of CTT. The AO has omitted to consider the amendment effected to Sec.43(5) of the Act as quoted in the para 5.4 *supra*. In this way the order of the AO is erroneous both on facts and in law. The NFAC also did not read the law correctly by omitting to read the amendment in the law as aforesaid. It specifically ignored the amendment to the Sec.43(5) of the Act as explained through the two Explanations adduced to proviso (d) and (e) of Sec.43(5) of the Act.

19. Accordingly, he submitted that in this way, the order of the Authorities below disallowing a set-off of loss Rs.3,53,89,637/- against the profit of Rs.4,42,20,153/- is incorrect on facts and unsustainable in law.

20. On the other hand, ld. DR of the Revenue relied on the orders of the lower authorities.

21. Coming to the next issue of denying the set off of loss claimed by the assessee, we observe that the assessee is in the business of trading in share market with different schemes like commodity trading, F&O trading,

currency trading and intra-day transactions. The AO observed that the assessee has entered into transactions under the Code 01, Code 02 and Code 03 refers to the intra-day transactions without payment of STT made speculative business transactions. With reference to provisions of section 43(5) of the Act, the AO observed that the speculative transactions of non-payment of STT falls within the ambit of provisions of section 43(5) however the same cannot be adjusted against the normal business profit of the year and accordingly, he denied the loss suffered by the assessee from the intra-day transactions. Before us, ld. AR of the assessee submitted that the AO has agreed to the profit in the Commodity Transaction Tax (CTT) paid for commodity derivatives, the same was assessed as business income, however loss sustained by the assessee derived from agricultural commodities which were otherwise CTT exempt was not allowed to set off against the business profit otherwise derived from the similar derivatives. It was also submitted that AO has failed to consider the amendment made in section 43(5) of the Act and submitted that there is no discrepancy between derivatives transactions which suffer CTT/STT or not.

22. After considering the detailed submissions and material facts available on record, we observe that the AO has not appreciated the transactions on the basis of amended provisions of section 43(5), therefore, for the sake of complete justice, we are inclined to remit this issue to the file of AO to verify

the claim of the assessee considering the amended provisions of section 43(5) of the Act and pass order in accordance with law. Accordingly, Ground Nos.C & D raised by the assessee are allowed for statistical purposes.

23. Ground No.E is regarding levy of penalty u/s 271(1)(c) of the Act which is consequential in nature, hence not adjudicated.

24. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on this 24th day of September, 2025.

Sd/-	**sd/-**
(CHALLA NAGENDRA PRASAD)	**(S.RIFAUR RAHMAN)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 24.09.2025
TS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI