INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCHES, MUMBAI

BENCH: SMC

BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

ITA 3458/MUM/2026 निर्धारण वर्ष/Assessment Year: **2016-17**)		
KAMAL RAMPRASAD GUPTA 33, 3RD FLOOR, SAHAKAR BUILDING, B ROAD, CHURCHGATE, MUMBAI-400020, MAHARASHTRA	**Vs.**	**DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE 6(1)(1)** DCIT, CIRCLE 6(1)(1), MAHARISHI KARVE ROAD, AAYAKAR BHAWAN MUMBAI-400020, MAHARASHTRA
अपीलार्थी **Appellant**		प्रत्यर्थी **Respondent**
Permanent Account Number of Assessee**:**		**AABPG5067C**
अपीलार्थी द्वारा/Appellant represented by:		**Shri Rahul Sarda, Advocate**
प्रत्यर्थी द्वारा/Respondent represented by:		**Shri Brajendra Kumar (SR. DR.)**

सुनवाई की तारीख / Date of conclusion of hearing:	**17-Jun-2026**
घोषणा की तारीख / Date of pronouncement:	**31.08.2026**

आदेश / ORDER

PER SHRI SANDEEP GOSAIN, JUDICIAL MEMBER:

This appeal is filed by the Assessee against the order of Ld. ADDL JCIT (A) - 5, Kolkata vide DIN: ITBA/APL/S/250/2025-26/1084431284(1) dated 05-Jan-2026 for the Assessment Year 2016-17. The Assessee has raised the following grounds of appeal:

1)	*The CIT (A) failed to appreciate that the original return of income filed by the Appellant on 02.09.2016 contained omission/ wrong statement as trading in futures & options (F&O) had been treated as a 'speculative transaction', whereas the said activity was a normal business activity.*

	Therefore, the Appellant was justified in revising the return of income and the revised return of income filed on 17.11.2016 ought to have been accepted by the AO
2)	*The CIT (A) failed to appreciate that in the revised return of income, the loss from trading in F&O was correctly set off against other incomes and/ OR carried forward as normal business loss. Since a revised return substitutes the original return from the date on which the original return was filed, the income/ set off/ losses carried forward ought to have been permitted as offered by the Appellant in revised return of income without the adjustments made by the AO*
3)	*The CIT (A) failed to appreciate that in the revised return, the Appellant had not claimed any new loss which was not claimed in the original return, and hence, the bar under section 139(3) did not apply to the facts of the case*

2. ***Ground Nos. 1 to 3*** raised by the assessee are interrelated and interconnected and pertain to the action of the learned Commissioner of Income Tax (Appeals) [“CIT(A)”] in upholding the order of the Assessing Officer (“AO”) rejecting the claim of the assessee with regard to the treatment and carry forward of business loss as declared in the revised return of income. Since these grounds arise from the same set of facts and involve a common issue, I deem it appropriate to adjudicate the same together by way of this consolidated order.

3. I have heard the learned representatives of both the parties and perused the material available on record, including the orders of the lower authorities and the judicial precedents relied upon before me. The issue arising for consideration in the present appeal is whether the AO was justified in disregarding the revised return of income filed by the assessee under section 139(5) of the Income-tax Act, 1961 (“the Act”) and in determining the business loss and its carry forward with reference to the original return of income.

4. From the records I noticed that, the assessee originally filed its return of income on 02.09.2016. According to the assessee, while filing the original return,

it inadvertently treated the loss arising from Futures and Options ("F&O") transactions as speculative business loss and, consequently, did not set off the said loss against the income of the year, but claimed the same as a loss to be carried forward. Subsequently, upon noticing the error, the assessee filed a revised return of income on 17.11.2016 under section 139(5) of the Act, wherein the F&O loss was treated as non-speculative business loss and the same was set off against the income of the year to the extent permissible, with the balance business loss being claimed for carry forward.

5. The comparative position emerging from the original return vis-à-vis the revised return is reproduced below:

Sr. No.	Particulars	Original ROI (Rs.)	Revised ROI (Rs.)
a.	Income/ (loss) from speculative transactions	(1,24,57,322) **pg. 44**	1,86,124 **pg. 93**
b.	Normal/ ordinary business income/ (loss) [non-speculation]	(1,47,747) **pg. 43, 44**	(1,27,91,193) **pg. 92, 93**
c.	Total business income/ (loss) **(a) + (b)**	(1,26,05,069)	(1,26,05,073)
d.	STCG (no dispute – AO has accepted the figures)	16,34,395	16,34,395
e.	Income from other sources (no dispute – AO has accepted the figures)	25,87,819	25,87,819
f.	Total income before set off of current year losses **(d) + (e)**	42,22,214	42,22,214
g.	Losses of current year to be set off against total income [**higher of (b) and (f)**]	1,47,747 **pg. 53**	42,22,214 **pg. 102**
h.	Balance income after set off	40,74,467 **pg. 54**	0 **pg. 103**
i.	Business loss to be carried forward to future years	1,24,57,323 **pg. 54**	83,82,855 **pg. 103**
j.	Refund claimed	2,50,010 **pg. 40**	10,35,220 **pg. 89**

6. From the above comparison, it is evident that the assessee had disclosed the loss arising from F&O transactions even in the original return and had claimed the same for carry forward, albeit under the head of speculative business loss. In the revised return, the assessee did not introduce any fresh or additional loss. Rather, the assessee corrected the nature/classification of the F&O loss by treating

the same as non-speculative business loss and consequently recomputed the set-off and the resultant loss eligible for carry forward. Significantly, the aggregate business loss remained substantially the same, being Rs. 1,26,05,069 in the original return and Rs. 1,26,05,073 in the revised return. Further, the amount claimed to be carried forward stood reduced from Rs. 1,24,57,323 in the original return to Rs. 83,82,855 in the revised return.

7. The AO, however, did not accept the treatment adopted by the assessee in the revised return and proceeded to determine the income with reference to the original return. As recorded in paragraph 8 of the assessment order, the AO was of the view that the revised return could not be filed for claiming carry forward of a loss which, according to him, had not been validly claimed in the original return. The AO further observed that a return claiming business loss ought to have been filed within the time prescribed under section 139(1) of the Act.

8. The assessee challenged the aforesaid action before the learned CIT(A). However, the learned CIT(A) upheld the action of the AO, inter alia, by relying upon the judgment of the Hon’ble Supreme Court in the case of ***PCIT v. Wipro Ltd., reported in 446 ITR 1 (SC)***.

9. I have carefully considered the rival submissions and the material available on record. It is not in dispute that the original return of income was filed within the time prescribed under section 139(1) of the Act and that the revised return was thereafter filed within the time permitted under section 139(5) of the Act. The explanation furnished by the assessee is that the treatment of F&O transactions as speculative transactions in the original return was an inadvertent error, which was subsequently noticed and corrected by filing the revised return.

10. In this regard, it is relevant to note that proviso (d) to section 43(5) of the Act excludes eligible derivative transactions carried out on a recognised stock exchange from the definition of "speculative transaction", subject to the conditions prescribed therein. Thus, where the conditions of the said provision are satisfied, the resultant profit or loss from such derivative transactions is to be considered as business profit or loss and not as speculative business profit or loss.

11. The assessee has also contended that the treatment adopted in the original return was not a consistent position followed by it in the earlier years. It has been submitted that in Assessment Years 2013-14 and 2014-15, the derivative transactions were treated as ordinary business transactions and the corresponding income/loss was accepted as such by the Department. Therefore, the observation of the AO that the assessee had consistently treated F&O transactions as speculative transactions in the preceding years does not appear to be borne out from the material placed on record.

12. I also find merit in the contention of the assessee that the doctrine of ***"change of opinion"*** relied upon by the AO has no application in the present proceedings. The doctrine of change of opinion is relevant in the context of reassessment proceedings under section 147/148 of the Act and cannot, by itself, be invoked to curtail the statutory right available to an assessee under section 139(5) to revise a return of income for the purpose of correcting an omission or a wrong statement made therein.

13. The more substantial issue, however, relates to the applicability of the judgment of the ***Hon'ble Supreme Court in the case of PCIT v. Wipro Ltd. (supra)***, which has been relied upon by the learned CIT(A).

14. On a careful consideration of the said judgment, I find that the facts obtaining in ***Wipro Ltd.*** are materially distinguishable from the facts of the present case. In ***Wipro Ltd.***, the controversy before the Hon'ble Supreme Court concerned the exercise of an option in respect of an exemption provision, namely section 10B(8) of the Act, and the assessee had specifically opted not to claim the exemption in the original return. The claim of exemption was subsequently sought to be made through the revised return. The Hon'ble Supreme Court, in that factual and statutory context, held that a revised return under section 139(5) could not be used for withdrawing a claim made in the original return and subsequently taking a contrary stand for claiming the benefit.

15. However, the facts of the present case stand on a materially different footing. Here, the assessee had disclosed the loss arising from the F&O transactions in the original return itself and had also claimed the said loss for carry forward. The revised return did not introduce a new loss or make a fresh claim for carry forward of an otherwise undisclosed loss. The revision was undertaken for correcting the nature of the loss, namely, from speculative business loss to non-speculative business loss, and for giving consequential effect to such correction in the computation of total income and carry forward of the balance business loss.

16. Thus, the distinction between the present case and ***Wipro Ltd.*** (supra) is material. In ***Wipro Ltd. (supra)***, the assessee had consciously not claimed the exemption in the original return and sought to claim the exemption for the first time through the revised return. In the present case, the assessee had disclosed the loss in the original return itself and had claimed the same for carry forward. The revised return merely corrected the character of the loss and the consequential computation.

17. Likewise, in ***Wipro Ltd. (supra)***, the revised return involved a contrary stand in relation to the claim of exemption. In the present case, there was no withdrawal of an earlier claim followed by a fresh and contrary claim. The same loss was disclosed in both returns, with only its correct statutory classification being adopted in the revised return.

18. It is further significant to state that the revised return did not result in the introduction of any fresh or additional business loss. On the contrary, the aggregate business loss remained substantially identical and the amount claimed for carry forward was reduced from Rs. 1,24,57,323 to Rs. 83,82,855.

19. It is also relevant to bear in mind that the ratio of a judgment has to be applied having regard to the facts and the statutory provision involved in that case. The decision in ***Wipro Ltd. (supra)*** arose in the context of an exemption provision and the exercise of an option contemplated under section 10B(8) of the Act. The present controversy, on the other hand, concerns the validity and effect of a revised return filed under section 139(5), particularly where the assessee seeks to correct an erroneous statement regarding the character of a loss which had already been disclosed in the original return. Therefore, in my considered view, the ratio of ***Wipro Ltd. (supra)*** cannot be mechanically extended to the facts of the present case.

20. The assessee has further relied upon the decision of the Hon'ble ***Gujarat High Court in PCIT v. Babubhai Ramanbhai Patel, reported in 84 taxmann.com 32***, in support of the proposition that a validly filed revised return substitutes and completely replaces the original return and has to be considered as such for the purpose of assessment. The said proposition also supports the assessee's contention that, where a revised return is validly filed under section 139(5), the assessment is required to be made after taking into consideration the

revised return, subject, of course, to the validity of the revision and the claims made therein.

21. I also find that the other objections raised by the AO do not, in the facts of the present case, provide sufficient justification for disregarding the revised return. The allegation that the revised return was an afterthought merely because it resulted in a higher refund cannot, by itself, be determinative. A higher refund, if any, may be a natural and consequential result of a correct computation of income after applying the provisions of the Act. The relevant question is whether the revised return was validly filed under section 139(5) and whether the revised computation is legally sustainable.

22. Similarly, the reliance placed by the AO upon the decision of the ***Hon'ble Madras High Court in CIT v. Southern Petro Chemical Industries Corporation Ltd.*** requires reconsideration in view of the subsequent legal position and the decisions relied upon by the assessee. In any event, the AO was required to examine the revised return in the light of the statutory provisions and the applicable judicial precedents rather than rejecting the revised computation merely on the ground that it differed from the original return.

23. Considering the totality of the facts and circumstances of the case, I am of the considered view that the revised return filed by the assessee cannot be disregarded merely because the revised computation results in a different treatment of the loss already disclosed in the original return. The assessee has furnished an explanation that the original treatment of the F&O loss as speculative loss was an inadvertent error and that the error was subsequently corrected through the revised return filed under section 139(5) within the prescribed time. The revised return does not disclose any fresh or additional loss; rather, it corrects the character of the loss and gives consequential effect to such correction.

24. In view of the above discussion, and without expressing any final opinion on the allowability of the entire claim on merits, I deem it appropriate, in the interest of justice, to restore the matter to the file of the Assessing Officer for fresh adjudication.

25. The Assessing Officer is directed to consider the revised return filed by the assessee under section 139(5) of the Act and examine the claim of the assessee regarding the treatment of F&O transactions as non-speculative business transactions and the consequential set-off and carry forward of business loss, in accordance with law. Needless to say, the assessee shall be afforded adequate opportunity of being heard and shall be permitted to furnish all necessary documents and explanations in support of its claim.

26. Before parting, we make it clear that our decision to restore the matter back to the file of AO shall in no way be construed as having any reflection or expression on the merits of the dispute which shall be adjudicated by AO independently in accordance with law.

27. Accordingly, Ground Nos. 1 to 3 stands allowed for statistical purposes.

28. In the result, the appeal of the assessee is allowed for ***statistical purposes.***

Order pronounced in the open court on 31.08.2026.

Sd/-
SANDEEP GOSAIN
JUDICIAL MEMBER

Mumbai
Dated: 31.08.2026

RY-SrPS

Copy to:

1	**KAMAL RAMPRASAD GUPTA, 33, 3RD FLOOR, SAHAKAR BUILDING, B ROAD, CHURCHGATE, MUMBAI-400020, MAHARASHTRA**
2	**DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE 6(1)(1), DCIT, CIRCLE 6(1)(1), MAHARISHI KARVE ROAD, AAYAKAR BHAWAN, MUMBAI-400020, MAHARASHTRA**
3	THE PCIT / CIT,
4	THE D.R., ITAT, MUMBAI BENCH
5	GUARD FILE

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