

**IN THE INCOME TAX APPELLATE TRIBUNAL
"F" Bench, Mumbai**

**Before Shri Jason P. Boaz, Accountant Member
and Shri Sandeep Gosain, Judicial Member**

ITA No. 4859/Mum/2014
(Assessment Year: 2009-10)

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| Shri Vijay M. Haria 502, Sharda Chambers No.2 Bhat Bazar, Masjid Bunder Mumbai 400003 | Vs. | Income Tax Officer-13(3)(21) Room No. 428, 4 th Floor Aayakar Bhavan, M.K. Road Mumbai 400020 |
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PAN - AABPH1129C

Appellant

Respondent

Appellant by: None
Respondent by: Shri S.R. Kirtane

Date of Hearing: 23.05.2016
Date of Pronouncement: 25.05.2016

ORDER

Per Jason P. Boaz, A.M.

This appeal by the assessee is directed against the order of the CIT(A)-24, Mumbai dated 27.03.2014 for A.Y. 2009-10.

2. The facts of the case, briefly, are as under: -

2.1 The assessee (Proprietor of M/s. Blue Impex), who is in the business of manufacture, export and resale of ready made garments filed his return of income for A.Y. 2009-10 on 29.09.2009 declaring loss of ₹9,66,297/- from business and also declared loss of ₹15,03,455/- from futures and options. The case was selected for scrutiny and the assessment was completed under section 143(3) of the Income Tax Act, 1961 (in short 'the Act') vide order dated 22.12.2011, wherein the income of the assessee was determined at ₹25,93,000/-; in view of the addition of ₹25,93,000/- under section 68 of the Act on account of unexplained cash credits of ₹25,93,000/- and disallowance of the assessee's claim for short term capital loss of ₹17,60,242/-.

2.2 Aggrieved by the order of assessment for A.Y. 2009-10 dated 22.12.2011, the assessee preferred an appeal before the CIT(A)-24, Mumbai. The learned CIT(A) disposed the assessee's appeal vide the impugned order dated 27.03.2014 allowing the assessee partial relief. In the impugned order, the learned CIT(A) upheld the addition of ₹25,93,000/- in respect of unexplained cash deposits with Corporation Bank, Mandvi, Mumbai and partly allowed the assessee's claim of loss from futures and options at ₹15,03,455/- instead of ₹17,60,242/- as business loss under section 43(5) of the Act which is allowed to be set off as per the provisions of section 70 to 79 of the Act.

3. Aggrieved by the order of the CIT(A)-34, Mumbai dated 27.03.2014 for A.Y. 2009-10, the assessee has preferred this appeal before the Tribunal raising the following grounds: -

"1. The Ld. Commissioner of Income-tax (Appeals)-24, Mumbai [hereinafter referred as "CIT(A)"] erred in passing the order dated 27.03.2014 confirming the action of Ld. A.O in making following the additions and disallowances without appreciating facts and circumstances of the case. The Appellant, strongly, objects to the order passed by Ld. CIT(A) dated 27.03.2014 on the following grounds:

2. Treating the cash deposited in the bank as unexplained investment under section 69 of the Act - Rs. 25,93,000/-

(i) The Ld. CIT (A) erred in confirming the action of the Ld. A.O. in making addition of Rs. 25,93,000/- under section 69 of the Act (instead under section 68 made by the Ld. A.O.) being cash deposited in his saving bank account maintained with Corporation Bank, Mandvi, Mumbai treating the same as unexplained investment under section 69 of the Act. The Appellant prays that the addition under section 69 of the Act is without any basis and the same may be deleted.

(ii) The Ld. CIT(A) failed to appreciate that cash deposited in the saving bank account of the Appellant is generated out of cash sales made by the Appellant during the impugned assessment year and the same is duly recorded in the cash book maintained by the Appellant. Thus, the addition of Rs.25,93,000/- under section 69 of the Act is not at all justified and the same may be deleted.

(iii) The Ld. CIT(A) further failed to appreciate that the Appellant has furnished all relevant details/ evidence during the course of assessment proceedings as well as appellate

proceedings to prove the genuineness of cash transactions. Hence, treating the cash amounting to Rs.25,93,000/- deposited in the saving bank account of the Appellant as unexplained investment under section 69 of the Act is unjustified and the same may be deleted.

3. Denying the benefit of setoff of business loss against the addition made under section 69 of the Act -Rs.9,66,297/-

- (i) *The Ld. CIT(A) erred in confirming the action of the Ld. A.O. in not disallowing the benefit of setoff of business loss amounting to Rs.9,66,297/- incurred during the year against the addition of Rs.25,93,000/- made under section 69 of the Act. The Appellant prays that the denial of setoff of business loss against the income determined under section 69 is not at all justified and the same may be allowed.*

4. Disallowance of short term capital loss of Rs.17,60,242/-

- (i) *The Ld. CIT(A) erred in confirming the action of the A.O. in disallowing Short Term Capital Loss amounting to Rs.17,60,242/- incurred during the impugned assessment year without appreciating the facts and circumstances of the case. The Appellant, therefore, prays that the disallowance of Short Term Capital Loss is not at all justified. Hence, the same may be deleted.*
- (ii) *The Ld. CIT(A) failed to appreciate that during the course of the assessment proceedings, the Appellant has furnished all the relevant details called for, to prove the genuineness of Short Term Capital Loss incurred by the Appellant. Thus, disallowance of Short Term Capital Loss amounting to Rs.17,60,242/- merely on conjectures and surmises is not at all justified. Hence, the same may be deleted.*
5. *The Appellant denies any liability to pay interest under section 234B and section 234C of the Income tax Act 1961. Hence the same are not leviable.*
6. *The appellant craves leave to add, alter, amend, delete or rescind any of the grounds of appeal mentioned hereinabove.”*

4. This appeal was fixed for hearing on various dates. On one occasion, the case was adjourned at the request of the learned D.R. for Revenue and on the other dates of hearing none was present for the assessee. We find that even the notices for hearing issued by RPAD have returned unserved. On 23.05.2016, when the case was called for hearing, none was present for the assessee, but the learned D.R. was ready and present for Revenue. In these circumstances, we are of the view that the assessee is not interested in pursuing this appeal seriously and therefore proceed to dispose off this

appeal with the assistance of the learned D.R. for Revenue and the material on record.

5. Grounds 1 and 6

5.1 These grounds being general in nature, no adjudication is called for thereon. We, therefore, dismiss these grounds as infructuous.

6. Ground No. 2 ((i) to (iii))

6.1 In these grounds, the assessee assails the impugned order of the learned CIT(A) in confirming the AO's action in making the addition of ₹25,93,000/- on account of cash deposited in his bank account with Corporation Bank, Mandvi, Mumbai under section 69 of the Act. It is contended that the cash deposited in the aforesaid bank account is out of cash sales made by the assessee during the relevant period under consideration and that all relevant details/evidences in this regard were furnished before the authorities below in order to prove the genuineness of the cash deposits. It is submitted that in view of the above, the said addition be deleted as it is unjustified.

6.2 Per contra, the learned D.R. for Revenue emphatically supported the orders of the authorities below. According to the learned D.R., the AO had received AIR information that cash deposits amounting to ₹25,93,000/- had been made by the assessee in his undisclosed Corporation Bank account No. 1010822, Mandvi, Mumbai. It is only on being required to by the AO, that the assessee furnished a copy of the aforesaid bank account and his explanations vide letter dated 17.11.2011. The learned D.R. submitted that after due consideration of the assessee's averments, the AO observed that the said bank account and alleged share transactions were never disclosed in the assessee's financial statements and assessee's claim that the said cash deposits were made from cash in hand and subsequently that they were from cash sales were not supported by any material evidence and consequently brought the same to tax in the assessee's hands i.e. ₹25,93,000/- as unexplained deposits. Since the assessee also did not disclose the total transactions in shares for which the turnover was in the range of ₹9,18,15,220/-, the short term loss of ₹17,60,242/- claimed remained unsubstantiated by supporting evidence.

6.2.1 The learned D.R. referring to the impugned order submitted that the assessee's submissions at para 4.2 thereof was duly considered by the learned CIT(A) while rendering his findings. The learned CIT(A) observed that while the assessee maintained regular books of account for his business concern, M/s. Blue Impex, engaged in the business of exporting goods and got them audited, the transactions of cash deposits in the assessee's account in Corporation Bank, Mandvi, Mumbai and in respect of futures and option transactions were neither disclosed or reflected in his returns of income nor were they got audited inspite of the transactions running into crores of rupees. The learned D.R. submitted that in these circumstances the learned CIT(A) concluded that the assessee's explanation in respect of the cash deposits in the undisclosed bank account in Corporation Bank amounting to ₹25,93,000/- was not satisfactory to explain source of the same and therefore upheld the addition thereof. The learned D.R. submitted that in view of the above, the finding in impugned order of the learned CIT(A) on this issue be upheld.

6.3.1 We have heard the submissions of the learned D.R. and perused and carefully considered the material on record including the orders of the authorities below. The learned CIT(A) has after considering the findings of the AO (at para 4.2 of the impugned order) and the assessee's submissions (para 4.2 of the impugned order) has held as under: -

4.3 Decision :-

I have considered the facts of the case and the submissions made by the assessee.

4.3.1 *It is observed from the perusal of sales register and cash book and bank pass book of the savings bank account of the assessee with the Corporation Bank, Mandvi, Mumbai that cash sales as reflected in daily sales register and deposits in Corporation Bank are as follows:-*

| <i>Date</i> | <i>Particulars</i> | <i>Amount in Rs.</i> |
|-------------|--------------------|----------------------|
| 16/04/2008 | Cash | 1,75,000 |
| 24/04/2008 | Cash | 98,000 |
| 06/06/2008 | Cash | 5,000 |
| 16/06/2008 | Cash | 1,00,000 |
| 30/06/2008 | Cash | 20,000 |
| 03/07/2008 | Cash | 1,00,000 |
| 04/07/2008 | Cash | 1,00,000 |

| | | |
|------------|-------|-----------|
| 07/07/2008 | Cash | 1,50,000 |
| 19/07/2008 | Cash | 1,00,000 |
| 08/08/2008 | Cash | 1,00,000 |
| 03/10/2008 | Cash | 80,000 |
| 13/10/2008 | Cash | 1,00,000 |
| 17/10/2008 | Cash | 80,000 |
| 29/10/2008 | Cash | 1,10,000 |
| 05/11/2008 | Cash | 1,00,000 |
| 12/12/2008 | Cash | 50,000 |
| 06/02/2009 | Cash | 1,00,000 |
| 07/02/2009 | Cash | 70,000 |
| 07/02/2009 | Cash | 30,000 |
| 02/03/2009 | Cash | 2,50,000 |
| 20/03/2009 | Cash | 1,75,000 |
| 20/03/2009 | Cash | 25,000 |
| 20/03/2009 | Cash | 65,000 |
| 20/03/2009 | Cash | 1,10,000 |
| 21/03/2009 | Cash | 3,00,000 |
| | Total | 25,93,000 |

4.3.2 Perusal of the bank book and cash book maintained by the assessee in his books of account and copy of the bank pass book with Corporation Bank, Mandvi, Mumbai reveal that the entries tally exactly and the cash balance and bank balance as per books tally with audited books of account. It further appears from the cash book that assessee always had a cash on hand balance available with him and cash deposits partially came out of the cash on hand available with the assessee also. Moreover, figures of cash sales also exceeded the deposits in bank account with Corporation Bank, Mandvi, Mumbai.

4.3.3 First of all, it appears from the records that assessee has maintained two types of accounts, one in the business name of Blue Impex which was engaged in the business of exporting goods to various countries and whose accounts are tax audited by a tax auditor and another set of personal accounts of which transactions are partially reflected in the pass book of savings bank account of assessee with Corporation Bank, Mandvi, Mumbai and these entries/transactions do not figure anywhere in the business books of the assessee in the name of Blue Impex. Assessee has also not got his accounts in respect of future and options transactions as well as share purchase and sale transactions audited from a tax auditor even though the volume of transactions run into crores of rupees.

4.3.4 Assessee has shown cash sales totalling Rs. 25,93,000/- from time to time and these are reflected in the sales register and the total gross sales of Rs. 54,11,64,156/- and net sales of ₹50,39,11,658/- are reflected in the P&L Account and the Balance Sheet of the assessee and these are also audited by the auditors. Even though the cash sales of Rs.25,93,000/- are reflected in the total sales of Rs.54,11,64,156/

50,39,11,658 in accounts and cash and bank balance figures of the business accounts in the name of Blue Impex tally, the entries of transfer of cash totalling Rs. 25,93,000/- exactly tally with the requirement of cash of the assessee to make payment to third parties from his savings bank account with Corporation Bank, Mandvi, Mumbai (CBMM) for trading in shares and on forwarding in futures and options and/or for giving interest free loans to parties from time to time. It is little odd that cash sale are occurring two or three days prior to deposit of cash in bank account with Corporation Bank, Mandvi, Mumbai (CBMM) and to necessitate payments by the assessee. However, there are no cash sales other than these cash sales totalling Rs. 25,93,000/- especially when assessee had a huge turnover of Rs.54,11,64,256/50,39,11,658/- and these cash sales are hardly half a percent of total sales. Moreover, the entries of cash transfer totalling Rs. 25,93,000/- from the business accounts to the personal account are not reflected in books of the assessee Blue Impex either as a loan to the individual account or by way of debit to the capital account of the assessee as reflected in the books of account of Blue Impex. Either whenever cash was transferred from the business account of Blue Impex which are audited, the sum transferred should have been reflected in the books as a loan or as a reduction of capital account, but that has not been done, which indicates that entries to the extent of Rs.25,93,000/- are cooked up and/or adjusted in audited books of account to adjust the cash deposits of Rs. 25,93,000/-. One possibility is the adjustment of these cash deposits towards the non disclosed share trading loss of Rs. 11,60,242/- which was detected by the Assessing Officer for which payments were made from Corporation Bank, Mandvi, Mumbai account and the balance amount of Rs.8,32,758/- (25,93,000 - 17,60,242) may have been adjusted towards some other payments or inflating the bank balance with CBMM which resulted in the bank balance of Rs.9,34,885/61 by assessee in CBMM as on 31/3/2009. (Since, the accounts of the assessee are not audited for personal transactions in trading in futures and options and shares,)

4.3.5 Thus, it is concluded that these cash sales transactions totalling Rs. 25,93,000/- and the deposits of the same with CBMM are dubious in nature because 1) these transactions have taken place two or three days before deposits of cash in bank account with CBMM, 2) there are no other cash sales other than these cash sales of Rs. 25,93,000, 3) cash transfer from the business accounts of the assessee are not reflected either as a loan/advance or a reduction in capital with Blue Impex, 4) Share Trading Loss of Rs. 17,60,242/- which occurred on account of trading in shares was not disclosed in the return of income, 5) names of the purchasers of goods are not available with the assessee 6) assessee could have earned more by exporting these goods and assessee has not been able to identify the goods sold. This clearly indicates that assessee has manipulated his accounts and whenever he needed cash, he has disclosed the amount required as

cash sales in his business books and immediately gone ahead with transferring cash from his business accounts to his savings account with CBMM, however, these transactions were not reflected in business accounts which were audited by the tax auditor. It is once again repeated that the savings bank account with CBMM does not form part of assessee's business accounts of Blue Impex and the personal accounts of the assessee with CBMM and Broker/Middleman/Agent are not audited even though transactions run into crores of rupees and were made in more than 100 companies. Even though, assessee has maintained accounts meticulously and entries of cash transactions tally in principle, however, the entries of cash transfer from the business accounts to the personal accounts are not reflected anywhere in business accounts of Blue Impex. Thus, it is held that the deposits of cash made in CBMM account appear to be transfer, to have come by way of cash from Blue Impex to the personal account with Corporation Bank, Mandvi, Mumbai, the entries were systematically made to give them a colour of legitimacy to account for unaccounted cash deposits with Corporation Bank, Mandvi, Mumbai from time to time as per requirement for payments. In nutshell, additions of Rs.25,93,000/- made by the Assessing Officer are hereby confirmed because assessee has failed to satisfactorily explain the source of deposit of cash of ₹25,93,000/- in CBMM and therefore provisions of section 69 of I.T. Act, 1961 are clearly attracted in the case. In nutshell, ground number A in part and ground number 2 and 3 relating to taxation of cash credits of ₹25,93,000/- of the assessee's appeal are dismissed."

6.3.2 After taking into consideration the submissions of the learned D.R. for Revenue and the findings of the learned CIT(A) (supra), we find that all the submissions put forth by the assessee have been addressed and rebutted in detail by the learned CIT(A). We are of the considered view that, except for raising these grounds, the assessee has failed to bring on record any material evidence to controvert the findings of the learned CIT(A). We, therefore, see no reason to interfere with or deviate from the findings of the learned CIT(A) that the assessee has failed to satisfactorily explain the source of cash deposits of ₹25,93,000/- in his undisclosed bank account with Corporation Bank, Mandvi, Mumbai and consequently dismiss grounds 2(i) to (iii) of the assessee's appeal.

7. Ground No. 3(i)

7.1 In this ground, the assessee contends that the learned CIT(A) erred in confirming the AO's action in denying the assessee the benefit of set off

of business loss of ₹9,66,297/- incurred during the year against the addition of ₹25,93,000/-.

7.2 Per contra, the learned D.R. for Revenue supported the finding of the learned CIT(A) in the impugned order in denying the assessee's claim for set off of business loss of ₹9,66,297/- against the income of ₹25,93,000/- under section 69 of the Act, as no evidence has been brought on record to controvert the findings of the learned CIT(A).

7.3.1 We have heard the learned D.R. at length and perused and carefully considered the impugned order of the learned CIT(A). The learned CIT(A), after considering the submissions of the assessee and relevant provisions of law, has held as under at para 5.1 of the impugned order: -

“5.1 Decision:-

Assessee has submitted in ground No. 4 of the assessment order that AO has not allowed set off of net business loss of Rs.9,66,297/- (Business Loss of ₹15,03,455- minus Business Profits of Rs.53,71,580/- against the addition of Rs.25,93,000/- made under section 68 of I.T. Act, 1961 and the Assessing Officer has erred in denying the same. First of all the income of Rs.25,93,000/- is assessable to tax under section 69 of I.T. Act, 1961 which is enshrined in chapter VI of I.T. Act, 1961 and each section starting from 68, 69, 69A, 69B and 69D of I.T. Act, 1961 is a separate head of income in itself and income taxed under each one of these sections is taxable as 'Income of the assessee of that previous year/financial year' and provisions of section relating to set off of and carry forward of losses from one head of income mentioned in section 70 to 79 of chapter IV of I.T. Act, 1961 refers to "Income from House Property, income from business, Income from Capital Gains/Loss and Income from Other Source" and none of these sections mentions anything about set off of losses from business and or capital loss and/or house property against "Income from section 68, 69, 69A, 69B, 69C and 69D of I.T. Act, 1961" but mention about setting off against the "Income from House Property, Business Income, Income from other sources and Capital Gains" only. Thus, the provisions of section 70 to 79 of I.T. Act, 1961 are crystal clear and set off of losses from house property, business, capital gains and other sources can be set off only against the incomes from "Income from House Property, Business Income, Capital Gains and Income from other sources" as per limitations placed in section 70 to 79 of I.T. Act, 1961 only and not against any income which is charged/chargeable to tax under section 68 to 69D of I.T. Act, 1961. Therefore, assessee's claim for setting off of loss of Rs.9,66,297 /- against the income of Rs.35,93,000/- under section 69 of I.T. Act, 1961 which is erroneously mentioned as section 68 of I.T. Act, 1961, is not allowable and the

same is rejected. In this connection, reliance is also placed on the decision of Chandigarh ITAT in the case of Income Tax Officer, Ludhiana vs. Dulari Digital Photo Services Pvt. Ltd. 2012/53/SOT/210 /Chandigarh. The quantification and set off of losses of Rs.9,66,297/- is further subject to comments made in following paragraphs. In nutshell, ground of appeal number A (4) is rejected.”

7.3.2 After taking into account the submissions of the learned D.R. for Revenue and the finding of the learned CIT(A) (supra), we find that the contentions of the assessee have been addressed by the learned CIT(A). In our considered view, except for raising these grounds, the assessee has failed to bring on record any material evidence to controvert the findings of the learned CIT(A). We are, therefore, of the opinion that there is no cause for interference with or deviation from the findings of the learned CIT(A) that the assessee's claim for setting off loss of ₹9,66,297/- against the income of ₹25,93,000/- taxed under section 69 of the Act is not tenable, and consequently dismiss ground No. 2 raised by the assessee.

8. **Ground No. 4(1) & (ii)**

8.1 In these grounds, the assessee contends that the action of the AO in disallowing the short term capital gains (STCL) of ₹17,60,242/- is not justified, as he had furnished all the relevant details to establish the genuineness thereof.

8.2 The learned D.R. supported the finding of the learned CIT(A) in the impugned order in disallowing the STCL of ₹2,56,787/- out of ₹17,60,242/- claimed by the assessee, as no material evidence has been brought on record to controvert the findings of the learned CIT(A) that the business loss from futures and options is to be treated as ₹15,05,455/- and allowed to be set off as per sections 70 to 79 of the Act.

8.3.1 We have heard the learned D.R. for Revenue and perused and carefully considered the material on record. It is seen that the learned CIT(A), after considering the submissions of the assessee, has held as under at paras 6.1 to 6.1.5 of the impugned order: -

6.1 Decision:-

6.1.1 Assessee has disputed the disallowance of short term capital loss Rs.17,60,242/- on the ground that the assessee had submitted all

the details in respect of these share transactions of purchase and shares totalling Rs.9,35,75,657/- (Purchases/Rs.9,18,15,220/- (Sales) which were made out of funds invested with In venture growth with whom assessee had deposited funds out of his savings bank with Corporation Bank, Mandvi, Mumbai and has submitted that the short term capital loss of Rs.17,60,242/- should be allowed.

6.1.2 It appears from the return of income that assessee had disclosed a net loss of Rs.9,66,297/- as follows and since the tote income was computed at a loss of Rs.9,66,297/-, deductions under chapter VIA of Rs.1,15,000,- though calmed and computed, were not claimed to be allowable in view of chapter VI-A of I.T. Act, 1961 as follows:-

| | |
|--|-----------|
| Income from Business or Profession (Chapter IVD) | -9,66,297 |
| Profit as per Profit and Loss Account | 537,158 |
| Total | 5,37,158 |
| Allowance depreciation is Rs. 77,164/-, but restricted to Rs. 0/- available profits. | |
| Income from Future & options | -1503455 |
| | -1503455 |
| Total | -966297 |

(3) Assessee's authorised representative in his submissions filed on 21/1/2014 in paragraph 3(vii)(d) has submitted as follows:-

"In the paragraph 4.3(d) of the assessment order, the ld AO mentioned about the statement furnished by the appellant showing Short Term Capital Loss of Rs.17,60,242/-. The appellant submits that, due to an inadvertent mistake, the same was not reflected in the statement of income filed alongwith return of income. The appellant submits that as he is having loss; the same will not affect the income or tax liability for the impugned assessment year. The appellant submits that no adverse inference can be drawn against him relying on the contents of sub paragraph of the assessment order."

Perusal of this statement made by the assessee's representative means that this loss of Rs.17,60,242/- which was not claimed in the return of income, and was exclusive of the business loss of Rs.15,03,545/- in future and options claimed in the return of income. However, the facts of the case speak otherwise and these are discussed in following paragraphs.

6.1.3 It is quite apparent that assessee had shown business income from trading at Rs.5,37,158/- without deducting allowable depreciation u/s. 32 of I.T. Act, 1961 of Rs. 77,164/- and loss from the business of futures and options at Rs. 15,03,455/- in the return of income filed on 22/9/2009 and a refund of Rs. 40,000/- was claimed. Thus, prima facie, assessee had disclosed and claimed loss of Rs.15,03,455/- from futures and options in the return of income. During the assessment proceedings, assessee's CA had furnished

details of Rs.17,60,242/- in respect of transactions in shares and securities which were not disclosed in the return of income and it is the claim for this loss of short term capital loss of Rs.17,60,242/- was disallowed by the Assessing Officer.

6.1.4 The transactions in futures and options which resulted in loss of Rs.15,03,455/- and which was shown as a business loss of Rs.15,03,455/- in the return of income, were not reflected in the P&L Account and Tax Audit Report which mention only about trading in readymade garments and textiles and only the net profit of Rs.5,37,157/- is reflected in the P&L Account of the assessee and the so called net loss of Rs.15,03,455/- in futures and options is also not reflected either in the P&L Account or in the capital account of the assessee. Moreover, if the business loss in futures and options of Rs. 15,03,455/- was incurred the assessee would have made payment of Rs.15,03,455/- to the person/party who made transactions in futures and options on assessee's behalf and if so assessee would have made payment to this person/party. Perusal of the copy of bank account and explanatory statement of the bank account and cash book does not reveal any payment made by the assessee to this person/party notwithstanding the conclusions arrived at by the AO in paragraph 4.3(g) of the assessment order that assessee has filed a copy of global report indicating the loss on F&O transactions which resulted in loss of Rs.15,03,455/-. Assessee has not filed any details and documents and evidence regarding these transactions of futures and options which resulted in loss of Rs.15,03,455/- even though the Assessing Officer in his computation of total income has clearly mentioned the words "STC Loss as per Return" and when the Assessing Officer has specifically mentioned about the "Short Term Capital Loss" of Rs.17,60,242/- he has referred to the "Business Loss of Rs.15,03,455/- mentioned in the computation of total income after business profits of Rs.5,37,158/- in the return of income and nothing else. Moreover, the loss of Rs.15,03,455/- is not reflected anywhere in accounts at all and is outside the books of account and the only possibility is that these transactions relating to the loss of Rs.15,03,455/- are reflected in the savings bank account with Corporation bank Mulund, Mumbai mentioned in earlier paragraphs of this order and this loss of Rs.15,03,455/- relating to futures and options is nothing but the short term capital loss of Rs. 17,60,242/- quantified by assessee by mentioning details of futures and options transactions in purchases and sales of shares which are nothing but the transactions in futures and options in shares because the details of these transactions do not mention anything about the date of purchase and sale and dates of taking and giving delivery of shares and securities. Thus the loss of Rs. 17,60,242/- in shares and securities is nothing but the loss in futures and options of Rs. 15,03,455/- with a difference of Rs.2,56,787/- which is discussed in next paragraphs. Therefore it is held that the loss of Rs. 15,03,455/-

reflected in the computation of total income instead of Rs.17,60,242/- represents nothing but business loss in futures and options and the same is allowed as per the details furnished by the assessee. It is also held that the alternate contention in the assessee's and his representative's submission that loss of Rs. 17,60,242/- is different from the loss of Rs. 15,03,455/- in futures and options, is also not valid because the entries for the same are not reflected anywhere in business accounts which are audited and is also not reflected in the savings account with Corporation Bank, Mandvi, Mumbai, and if it were so, the loss of Rs.15,03,455/- will be taxable under section 69/69C of I.T. Act, 1961 and, therefore, the alternate contention made during the appellate proceedings is also rejected on facts and in law.

6.1.5 *Prima facie*, this loss of Rs.17,60,242/- which was denied as short term capital loss of Rs.17,60,242/- in the computation of total income worked out by the Assessing Officer in the assessment order, was nothing but the business loss of Rs.15,03,455/- in futures and options claimed in the return of income with the difference of Rs.2,56,787/- (17,60,242 - 15,03,455) was either a component which was not disclosed in the computation of revised loss Rs.17,60,242/- in the assessment/ appellate proceedings or loss/expenses of Rs.2,56,787/- which was wrongly claimed. Assessee has failed to furnish the details of this difference of Rs.2,56,787/- and since these transactions were not subjected to audit even though the loss of Rs.15,03,455/- from futures of options was shown as business loss in the return of income, it is not possible to comment about this loss of Rs.2,56,787/- and therefore, the same is hereby disallowed. In nutshell, the loss from future and options is adopted at ₹15,03,455/- instead of ₹17,60,242/- and the same is treated and classified as business loss under section 43(6) I.T. Act, 1961 and is allowed. it is also held that the classification of business loss of Rs.15,03,455/- as short term capital loss of Rs. 17,60,242/- by the Assessing Officer was erroneous and the loss of Rs. 15,05,455/- instead of Rs. 17,60,242/- shall be treated as business in futures and options and allowed to be set off as per the provisions of section 70 to 79 of I.T. Act, 1961. In nutshell, assessee's grounds of appeal at serial numbers B(5) and (6) of the appeal memo are **partly allowed subject to the modifications** and directions issued in the above paragraphs."

8.3.2 After taking into consideration the submissions of the learned D.R. for Revenue and the findings of the learned CIT(A) (supra), we find that the contentions put forth by the assessee have been addressed in detail by the learned CIT(A) in coming to the findings that the business loss of ₹15,05,455/-, instead of ₹17,60,242/- as claimed by assessee, shall be treated as business loss in futures and options and be allowed to be set off as per the provisions of section 70 to 79 of the Act. No material evidence has been placed before us to controvert this finding of the learned CIT(A).

Consequently, ground No. 4(i) and (ii) of the assessee's appeal are dismissed.

9. **Ground No. 5**

9.1 In this ground, the assessee denies himself liable to be charged interest under section 234B and 234C of the Act. The charging of interest is consequential and mandatory and the AO has no discretion in the matter. This proposition has been upheld by the Hon'ble Apex Court in the case of Anjum Ghaswala (252 ITR 1) (SC) and we, therefore, uphold the decision of the AO in charging the said interest. The AO is, however, directed to recompute the interest chargeable under section 234B and 234C of the Act, if any, while giving effect to this order.

10. In the result, the assessee's appeal for A.Y. 2009-10 is dismissed.

Order pronounced in the open court on 25th May, 2016.

Sd/-
(Sandeep Gosain)
Judicial Member

Sd/-
(Jason P. Boaz)
Accountant Member

Mumbai, Dated: 25th May, 2016

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -24, Mumbai*
4. *The CIT - 13, Mumbai*
5. *The DR, "F" Bench, ITAT, Mumbai*

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

n.p.