

आयकर अपीलिय अधीकरण, न्यायपीठ – “B” कोलकाता,  
*IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH “B” KOLKATA*

Before **Shri S.S.Godara, Judicial Member** and  
**Dr. A.L. Saini, Accountant Member**

**ITA No.641/Kol/2018**  
Assessment Year :2008-09

Sangeeta Kesharwani 134F, Sukhi Sansar Apartment, Salkia School Road, Golabari, Howrah- 711 106 <b>[PAN No.AGVPK 8338 A]</b>	<b>V/s.</b>	Income Tax Officer Ward-47(3), 3, Govt. Place (West), Kolkata-700 001
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Pinki Shaw, AR
प्रत्यर्थी की ओर से/By Respondent	Shri Probhas Roy, JCIT-DR
सुनवाई की तारीख/Date of Hearing	13 -11-2019
घोषणा की तारीख/Date of Pronouncement	20-11-2019

**आदेश /ORDER**

**PER S.S.Godara, Judicial Member:-**

This assessee's appeal for assessment year 2008-09 arises against Commissioner of Income Tax (Appeals)-14 Kolkata's order dated 31.01.2018 passed in case No.68/CIT(A)-14/Wd-47(3)/2016-17 upholding Assessing Officer's action imposing penalty of ₹25,000/- involving proceedings u/s 271A of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. The assessee's sole substantive grievance pleaded in the instant appeal challenges correctness of both the lower authorities action imposing u/s 271A for not maintaining books of account regarding derivatives trading in stock exchange. The Assessing Officer as well as CIT(A) are of the view that the assessee's future and options transactions (F&O) value reads a figure of

₹15,77,30,672.32 in the impugned assessment year and therefore, she was supposed to maintain her books of account u/s.44AB of the Act. There is dispute that the assessee's profits u/s44AF @ 0.25% on turnover come to ₹39,49,110/- as against the statutory threshold limit of ₹40 lac u/s 44AF of the Act in the relevant previous year. The tribunal's co-ordinate bench's decision in *Banwari Sitaram Pasari (HUF) vs. ACIT* (2013) 140 ITD 320/29 taxmann.com (Pune Trib.) holds that the turnover in such case of trading of commodities as a speculation activity does not involve total transactions' figure as adopted by both the lower appellate proceedings. We therefore delete the impugned penalty forming subject-matter of instant lis on this count alone.

3. This assessee's appeal is allowed.

Order pronounced in the open court 20/11/2019

Sd/-  
(लेखा सदस्य)  
( A.L.Saini)  
(Accountant Member)  
Kolkata,

Sd/-  
(न्यायिक सदस्य)  
(S.S.Godara)  
(Judicial Member)

\*Dkp

दिनांक:- 20/11/2019 कोलकाता ।

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant-Sangeeta Kesharwani, 134F, Sukhi Sansar Apartment, Salkia School Road, Golabari, Howrah-711 106
2. प्रत्यर्थी/Respondent-ITO Wd-47(3), 3, Govt. Place (West), Kolkata-700 001
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
कोलकाता ।