

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH, 'SMC-1': NEW DELHI  
(Through Video Conferencing)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER AND  
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.8559/Del/2019  
Assessment Year : 2011-12**

**Geeta Gupta,  
1216, Chah Rahat,  
Near Jama Masjid,  
Delhi-110006,  
PAN-AIQPG3564P**

**Vs. Income Tax Officer,  
Ward-48(1),  
New Delhi**

**(Appellant)**

**(Respondent)**

Appellant by : Sh. Devesh Gupta, Advocate,  
Respondent by : Ms. Shivani Bansal, Sr. DR

Date of hearing : 09.03.2021  
Date of pronouncement : .03.2021

**ORDER**

**PER R.K. PANDA, AM :**

This appeal filed by the assessee is directed against the order dated 19.08.2019 of the learned CIT(A)-16, New Delhi, relating to Assessment Year 2011-12.

2. Facts of the case, in brief, are that the assessee is an individual. On the basis of information available with the Department that the assessee has entered into multi commodity transactions of Rs.60,59,30,000/- and that the assessee did not file the return of income for AY 2011-12, the Assessing Officer reopened the case of the assessee under section 147 of the Income Tax Act, 1961 (in short 'the Act') after

obtaining prior approval of the competent authorities. Accordingly, notice u/s 148 of the Act was issued on 31<sup>st</sup> March, 2018, requiring the assessee to file income tax return but assessee did not comply with the same. There was also no response to the notice dated 10.10.2018 issued u/s 142(1) of the Act. The Assessing Officer, therefore, completed the assessment, determining total income of the assessee at Rs.60,59,300/- being 1% of Rs.60,59,30,000/- of the transaction by invoking the provisions of section 144 of the Act.

3. Before the learned CIT(A), the assessee made elaborate arguments. It was submitted that as per information obtained from the broker u/s 133(6) of the Act, it is clear that the assessee had made loss of Rs.1,74,811/- and yet the Assessing Officer made addition by adopting profit rate of 1% on the commodity transaction without any basis. The learned CIT(A) called for a remand report from the Assessing Officer. The Assessing Officer submitted that the MCX details show a profit of Rs.1,22,018/- instead of loss of Rs.1,74,811/- as reflected in the transaction summary of the broker. Based on the arguments advanced by the assessee, the copy of the remand report as well as the rejoinder of the assessee to such remand report, the learned CIT(A) accepted the claim of loss incurred by the assessee at Rs.1,74,811/-. However, he went on to decide the source of investment in the purchase of commodity futures. He noted that the assessee has purchased futures commodities of Rs.77,651,79,128/-. In order to buy or sell commodities on the exchange, the user must deposit specific amount of money with the broker, which is

called the margin money. The submission of the assessee is that there is deposit of only Rs.2 lakhs with the broker against the existing balance of Rs.2,69,648/- was not accepted by him. He noted that an amount of Rs.2 Lakhs was paid to Angel Broking on 03.04.2010 and Rs.1,00,000/- on 10.11.2010. It was submitted by the assessee that an amount of Rs.1 Lakh was in the nature of a contra entry while Rs.2,00,000/- was given by her son Shivang Gupta on 03.04.2010.

3.1. However, the learned CIT(A) rejected the above contentions of the assessee and held that an amount of Rs.4 Lakhs has been invested by the assessee from her unexplained sources. The relevant observations of the CIT(A) reads as under:-

*“The above counts were examined vis-à-vis the bank account of the appellant reproduced above.*

*There is clearly no wrong credit/debit of Rs.1,00,000/- in the broker’s account that has been reversed. So, the claim of a contra entry is not acceptable. Also, the appellant has claimed that Rs.2,00,000/- was given by the appellant’s son.*

*However, it is noted that the credit in the broker account is on 01.04.2010 whereas the purported cheque given by the son is on 03.04.2010 and is reflected as a credit in the account of the appellant on 03.04.2010 and debited from her account on 05.04.2010. This claim of the appellant is clearly fallacious. Also, the credit of Rs 1,00,000/-each on 10.03.2011 and 10.10.2011 has not been explained. In fact, as noted from bank account reproduced supra, it is noted that the payments to the broker are preceded by credits through NEFT/RTGS from various accounts/sources which have not been explained by the appellant. So, clearly Rs 4,00,000/- invested during the year under consideration is from unexplained sources and falls within the aegis of Section 69C of the Income Tax Act. I confirm the addition of Rs 4,00,000/- on this account. The AO is also directed to procure the margin money statement from the broker and verify that the amount of margin*

*money paid by appellant matches the amount reflected in the bank account/ledger account as reproduced supra. If the margin money as per margin money statement exceeds the amount reflected in the aforementioned accounts, the said amount may be treated as the unexplained margin money.”*

4. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds of appeal:-

- a. That on facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred and is not justified in making the addition of Rs.4,00,000/- from unexplained sources u/s 69C of the Act.*
- b. That the alleged addition has been made by Hon'ble CIT(A) without going through the ledger account of the broker as well as the bank account of the assessee appellant which were filed and available on record.*
- c. That the Hon'ble CIT(A) erred in making the addition of Rs.1,00,000/- out of Rs.4,00,000/- on the alleged ground of accepting the debit and credit entries of the said amount existing in the ledger account of the broker and also in the bank of the assessee.*
- d. Addition of Rs.4,00,000/- is erroneous, arbitrary, bad in eyes of law and is liable to be cancelled.*
- e. That the aforesaid grounds of appeal are without prejudice to each other.*

5. The learned counsel for the assessee, strongly challenged the order of the learned CIT(A) in sustaining the addition of Rs.4,00,000/- u/s 69C of the Act. The learned counsel for the assessee referring to the bank account of the assessee Ms. Geeta Gupta maintained with HDFC Bank, Chowri Bazar submitted that an amount of Rs.2,00,000/- was transferred on 03.04.2010 from her son's account. He submitted that an amount of Rs.2,00,000/- was paid on 05.04.2010 after the credit of above amount. Similarly, another amount of

Rs.1,00,000/- was paid to Angle commodity after transfer of Rs.1,00,000/- from her son's account. Referring to the said bank account, he drew the attention of the Bench to the contra entry on 03.11.2010 i.e. the debit and credit of Rs.1,00,000/- each. He accordingly submitted that no addition is called for on account of unexplained sources.

6. The learned DR, on the other hand, heavily relied on the order of the CIT(A).

7. We have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We find from the details furnished by the assessee in the paper book that the assessee received an amount of Rs.2,00,000/- from her son Mr. Shivang Gupta, proprietor of M/s Arts & Crafts of India. The bank account of M/s Arts & Crafts India reflects the transfer of an amount of Rs.2,00,000/- to Geeta Gupta on 03.04.2010. Similarly, there is again transfer of Rs.1,00,000/- to the account of Geeta Gupta on 03.11.2010. However, the learned CIT(A) failed to consider the contra entry of Rs.1,00,000/- on 03.11.2010, because there is a clear mention of inward Cheque returned. We, therefore, find merit in the arguments of the learned counsel for the assessee that the payment of Rs.3,00,000/- to Angel Commodities Broking (P) Ltd. stands explained being amount received from the bank account of son of the assessee Mr. Shivang Gugpta and there is a contra entry of Rs.1,00,000/- due to cancellation of cheque and

therefore, there is no need of any addition of Rs.1,00,000/- to the total income of the assessee. In this view of the matter, we set-aside the order of the learned CIT(A) and direct the Assessing Officer to delete the addition of Rs.4,00,000/- made by him and sustained by the learned CIT(A). The grounds raised by the assessee are accordingly allowed.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 19.03.2021

**Sd/-**  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(R.K. PANDA)**  
**ACCOUNTANT MEMBER**

Delhi/Dated- 19.03.2021

*Shekhar*

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

By Order

Assistant Registrar,  
ITAT, Delhi