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

BEFORE SHRI G. S. PANNU, VICE PRESIDENT
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

I.T.A. No.1847/DEL/2019 (A.Y 2010-11)

(THROUGH VIDEO CONFERENCING)

Mr. Ankur Bagoria 1411, Maliwara, Nai Sarak, Chandni Chowk, Delhi ALVPB7382G **(APPELLANT)**	Vs	ITO Ward-29(2) New Delhi **(RESPONDENT)**

Appellant by	**Sh. K. Sampath, Adv & Sh. V. Raja Kumar, Adv**
Respondent by	**Sh. Ashok Gautam, Sr. DR**

Date of Hearing	**11.03.2021**
Date of Pronouncement	**05.04.2021**

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against order dated 21.12.2018 passed by CIT(A)-16, New Delhi for assessment year 2010-11.

2. The grounds of appeal are as under:-

1. "That the Ld. Commissioner of Income Tax (Appeals) has erred in law as well on facts in confirming the additions made by the AO to the returned income.

2. That the Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in sustaining the action of AO for reassessment u/s

147 by issuance of notice u/s 148 of the It Act, without appreciating that neither the mandatory requirements of section 148 of the Income Tax Act nor the pre-conditions for invoking the provisions u/s 147 of the Income Tax Act, stood satisfied.

3. That the Ld. Commissioner of Income Tax (Appeals) is not justified in sustaining the addition U/s 68 of the Income Tax Act for an amount of Rs. 16,00,000/- received back from Sh. Mandeep Kishore Goel through banking channel for which confirmation along with assessment particulars were placed on records. The Ld. CIT(A) has upholded the addition without appreciating that the amount was brought forward balance from earlier years and supporting documents were also furnished.

4. That Ld. CIT(A) has further erred in law as well as on facts in sustaining an addition of Rs.75,59,000/- being amount received from various clients. While doing so the Ld. CIT(A) has failed to appreciate that the same had duly been recorded in the books of accounts maintained by the assessee and produced for examination. Further all the clients have duly confirmed the same by means of account confirmation.

5. That the Ld. C1T(A) has proceeded to confirm addition of Rs.75,59,000/- without appreciating that all the clients have duly appeared before the AO during the course of assessment proceedings and confirmed the fact of investments made by them in the statement recorded on Oath.

6. That the Ld. CIT(A) has erred both on facts and in law in sustaining the action of the AO by holding that valid, proper and meaningful opportunity has been allowed to the assessee. That even otherwise, the Ld. CIT(A) while sustaining the additions, has completely disregarded the detailed submissions and evidences furnished, as such the assessment made is untenable.

7. That the Ld. CIT(A) has erred both in law as well as on facts in sustaining the charge of interest u/s 234A&B of the I.T. Act."

3. The return of income was filed by the assessee declaring total income of Rs. 1,80,240/-. The Assessing Officer was in receipt of information that the assessee had made cash deposits in different banks namely DCB Bank and Kotak Mahindra Bank and then transferred the amounts to commodity broker namely M/s Jurassic Finance and Consultant Pvt. Ltd. The case was reopened after recording the reasons as per the provisions of Section 147 (b) read with Section 151 of the Income Tax Act, 1961. The assessee claimed that various persons had given him cash to trade on their behalf on MCX. The assessee also claimed that he has earnbed commission income by trading on MCX on behalf of others and has received around Rs. 4,25,000/- to Rs. 4,75,000/- for the same in Financial Year 2009-10 i.e. Assessment Year 2010-11. The Assessing Officer held that the claim of the assessee is false and the genuineness of cash transactions is in doubt. Accordingly, the Assessing Officer made addition of Rs.91,59,000/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that in the assessment for AY 2011-12, the Assessing Officer held that the advances for business on the MCX transactions as received from several individuals by the assessee sub-broker were not for business but were cash credits. After confirmation of those finding in the assessment by the CIT(A) vide order dated 08.03.2016, the AC Issued notice: on 31.03.2017 to the assessee for reassessment for the subject year. The reassessment was completed u/s 147/ 143(3) of the Act on 293 2.2017. The order of the CIT(A) which confirmed the reassessment order is impugned in these proceedings. More particularly in the reassessment, the Assessing Officer had summoned 18 individuals to the MCX trade transactions carried out during the year by the assessee sub-broker through the aegis of the main broker viz., Jurassic Finance & Consultants Private Ltd. The personal depositions of the individual u/s 131 of the Act were recorded in which they

had categorically confirmed the transactions. Yet the Assessing Officer construed the total advances extended by the individuals to the assessee for trade in a sum of Rs. 75,59,000/- as cash credits u/s 68 of the Act. While doing so, the Assessing Officer added a further sum of Rs. 16,00,000/- in account of Sh. Mandeep Kishore Goel from whom payment had been received back in respect of an earlier advance. In this way, the Assessing Officer after rejecting all evidences including the testimonies and the written explanation vide letter dated 28.12.2017, added a total sum of Rs. 90,55,000/- to the income of the assessee. The Ld. AR further submitted that the findings of the Assessing Officer in the reassessment was confirmed by the CIT(A) thereby dismissing the appeal of the assessee. The Ld. AR submits that the reassessment order of the Assessing Officer and its confirmation in appeal by the CIT(A) are both erroneous and misconceived both of which merit to be quashed, the Ld. AR further pointed out that the current reassessment proceeding for the year owes its origin and source to the regular assessment order for AY 2011-12 on which basis entirely the subject reassessment proceedings were initiated. The Tribunal Delhi Bench in ITA No. 3191/D/2016 dated 12.11.2020 for AY 2011-12 in para 5.1 had rejected the Assessing Officer's findings of the advances received by the assessee for MCX transactions from his individual customers as being in the nature of cash credits u/s 68 of the Act, in the subject year all the customers of the assessee had duly appeared before the Assessing Officer who had intricately examined them u/s 131 of the Act. From their statements, it can be seen that each one of them had confirmed the MCX transactions and the confirmed account of each individual customer, transaction by transaction, establishes beyond an iota of doubt that every advance from each individual customer was received for trading and out of which trading activity carried out on different dates at the MCX. The Ld. AR further pointed out that the net commission income as earned from these transactions has been accepted by the Assessing Officer while computing the assessment. While doing so, the Assessing Officer has duly allowed deduction for the commission paid to the main Broker Jurassic

Finance & Consultants Private Ltd. in whose case the commission as earned from the assessee also stands returned for assessment. All credits in the two Bank accounts of the assessee with Kotak Mahindra Bank and DCB Bank were reconciled with the accounts of customers which fact the Assessing Officer has himself acknowledgement in the reassessment order, it is thus evident that the Assessing Officer adopted a self-contradictory approach. The Assessing Officer plainly accepts that the individual customers have stated to have given the particular amount to the assessee. For the fact that the amounts advanced were much in excess of the annual income of the individuals, it could not be correctly concluded by the Assessing Officer that the individuals lacked credit worthiness. No individual had ever deposed that the; advances were paid by him out of current years' income. There was overwhelming end irrefutable material on the record of reassessment to establish the fact of the absolute end unblemished genuineness of the transactions. The Ld. AR further submitted that Mandeep Kishore Goel who was a debtor of the assessee as on 31.03.2010 had repaid that debt due to the assessee in the current year. Just by seeing the credit in the bank account for such repayment, the Assessing Officer wrongly assumed the same to be a cash credit, the requital of an existing debt by a debtor to his creditor can never constitute a cash credit amenable to an addition u/s 68 of the Act. The addition so made on this account is grossly erroneously and wholly untenable. The Ld. AR further submitted that none of the case laws cited and relied upon by the revenue authorities are applicable to the facts of the case. The same case laws as cited by the revenue authorities in the AY 2011-12 in assessment and appeal have been held by the Tribunal to be distinguishable in para 5.1 of the order. For the above reasons, the Ld. AR prayed that relying upon past precedent and the material and evidence existing on the records of the subject year, the two additions of Rs. 75,59,000/- and Rs. 16,00,000/- as made in assessment and assailed vide Ground Nos. 1 and 3 to 6 be quashed with appropriate directions for consequential reliefs as well on Ground No. 7. The Ld. AR further submits that Ground No. 2 is not pressed

6. The Ld. DR relied upon the assessment order and the order of the assessee CIT(A).

7. We have heard both the parties and perused the material available on record. As related to Ground No. 2, the same is not pressed by the assessee, hence, the same is dismissed. As relates to Ground No. 1 & 3 to 6, the current reassessment proceedings for the year of its origin and source to the regular assessment order for Assessment Year 2011-12 on which basis the present reassessment proceedings were initiated, the Tribunal in ITA No. 3191/Del/2016 dated 12/11/2020 for Assessment Year 2011-12 observed in Para 5.1 that the findings of the Assessing Officer relating to additions received by the assessee for next transactions from his individual customers is being in the nature of cash credits u/s 68 of the Act are not correct. In the present assessment order, the Assessing Officer has examined customers of the assessee u/s 131 and statements were also filed. Each one of them has confirmed the MCX transaction and the confirmation account of each individual customers, transaction by transaction was submitted before the Assessing Officer. Thus, the assessee has established the three limbs of genuineness, creditworthiness and identity of the transactions as contemplated by various decisions of the High Court and Supreme Court envisaged u/s 68 of the Act. The CIT(A) and the Assessing Officer both have totally ignored these facts and therefore, Ground Nos. 1, 3 and 6 are allowed. As related to Ground No. 7, the same is consequential; hence we direct the Assessing Officer to give proper consequential benefit regarding the interest under Section 234A and 234B of the Act as per the provisions of law. Therefore, the appeal of the assessee is partly allowed.

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

Order pronounced in the Open Court on this 05th Day of May, 2021.

Sd/-	***Sd/-***
(G. S. PANNU)	**(SUCHITRA KAMBLE)**
VICE PRESIDENT	**JUDICIAL MEMBER**

Dated: 05/04/2021
*R. Naheed **

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI