

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER**

ITA Nos. 7293 & 7294/Del/2019  
(Assessment Year : 2015-16)

Satya Prakash Sharma 3051/2, Gali Kalyan Singh, Ram bazaar, New Delhi – 110 006  <b>PAN No. AMFPS 0402 H</b> <b>(APPELLANT)</b>	Vs.	ITO Ward – 47(4) New Delhi  <b>(RESPONDENT)</b>
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Assessee by	Shri Mayank Patwari, C.A.
Revenue by	Shri Om Prakash, Sr. D.R.

Date of hearing:	16.06.2022
Date of Pronouncement:	14.09.2022

**ORDER**

**PER ANIL CHATURVEDI, AM:**

These two appeals filed by the assessee are directed against the orders dated 25.06.2019 & 26.06.2019 passed by the Commissioner of Income Tax (Appeals)-16, New Delhi relating to Assessment Year 2015-16 being quantum appeal and penalty appeal respectively.

2. Brief facts of the case as culled out from the material on record are as under :-

3. The assessee is an individual who filed his return of income for the A.Y. 2015-16 on 30.09.2015 declaring total income of Rs.2,95,690/-. The case was selected for scrutiny and thereafter notices under section 143(2) and 142(1) of the Act, 1961 were issued and served upon the assessee. The AO noted that there was no compliance from the side of the assessee. He, therefore, passed the assessment order under section 144/143(3) vide order dated 28.12.2017 and determined the total income of the assessee at Rs.17,44,257/-. On such additions, AO also levied the penalty u/s 271(1)(c) of the Act.

4. Aggrieved by the order of AO, assessee carried the matter in appeal before the Ld CIT(A) who vide order dated 25.06.2019 in Appeal No.10068/2018-19 (being the quantum appeal) and order dated 26.06.2019 in Appeal No.10069/2018-19 (being the penalty appeal) dismissed the appeals of assessee.

5. Aggrieved by the order of the Ld CIT(A), the assessee is now in appeal before the Tribunal and has raised the following grounds:

- “1. *On the facts and circumstances of the case, the order passed by Ld. CIT(A) is bad both in eyes of law and on facts.*
2. *That the Ld CIT(A) has erred in law as well as on facts by the confirming the order of Ld AO passed u/s 144/143(3) of the Income Tax Act, 1961.*
3. *That the Ld CIT(A) has erred in law as well as on facts by confirming the assessment order made by Ld AO without providing reasonable opportunity of being heard.*
4. *That the Ld CIT(A) has erred in law as well as on facts upholding the addition of Rs.3,37,713/- on account of profit*

*earned from delivery of shares reflected in contracts notes by ignoring submissions to the contrary.*

5. *That the Ld CIT(A) has erred in law as well as on facts by upholding the addition of Rs.5,02,826/- on account of profit earned from the derivatives transactions by ignoring submissions to the contrary.*
6. *That the Ld CIT(A) has erred in law as well as on facts by upholding the addition of Rs.6,08,028/- on account of net loss incurred from transactions in F&O by ignoring submissions to the contrary.*
7. *That the Ld CIT(A) has erred in law as well as on facts by rejecting the claim of set off of losses by treating as loss on F&O transactions cannot be set off against profit earned from other share transactions.*
8. *That the Ld CIT(A) and Ld AO has erred in law as well as on facts in levying the interest u/s 234B, 234C and 234D of the Act, 1961.*
9. *That the Ld CIT(A) and the Ld AO has erred in law and on facts in initiating the penalty proceedings u/s 271(1)(c) of the Act.*
10. *That the appellant craves leaves to add, alter, delete, rectify and modify any of the grounds of appeal before or at the time of hearing of appeal.”*

6. In penalty appeal, the grounds raised as under:

1. *“On the facts and circumstances of the case, the order passed by Ld CIT(A) is bad both in eyes of law and on facts.*
2. *That the Ld CIT(A) has erred in law as well as on facts by confirming the penalty imposed u/s 271(1)(c) amounting to Rs.3,56,080/-.*
3. *That the Ld CIT(A) and the Ld AO has erred in law as well as facts without drawing the satisfaction while initiating the penalty that whether the appellant concealed the particulars of income or furnished inaccurate particulars of income.*
4. *That the Ld. CIT(A) and Ld AO erred in law as well as in facts by initiating the penalty merely based on assessment order and finding given in quantum appeal without providing the proper evidence proving the concealment of income by appellant.*

5. *That the Ld CIT(A) and the Ld AO has erred in law and on facts in initiating the penalty proceedings u/s 271(1)(c) of the I.T. Act, 1961.*
6. *That the appellant craves leave to add, alter, delete rectify and modify any of the ground of appeal before or at the time of hearing the appeal.”*
7. Before me, at the outset, Learned Authorized Representative for the assessee submitted that though in the quantum appeal bearing No.7294/Del/2019 the assessee has raised various grounds of appeal, he will argue mainly on Ground Nos.4 & 5.
8. During the course of assessment proceedings, the AO noted that the case of the assessee was selected for limited scrutiny through CASS for the reason that there was large value of sale of option in Securities (derivatives) reported in Securities Transaction Tax return and large value of sale of futures (derivative) reported in Securities Transaction Tax Return. The AO noted that notices issued under section 143(2) and 142(1) of the Act, 1961 had remained un-complied with. The AO issued notices under section 133(6) to Multiplex Capital Ltd., the Broker of the Assessee, and sought the details about the transactions. On the basis of the information provided by the broker, the AO noted that assessee had made gains of Rs.3,37,713/- for the share transactions undertaken during the year. According to AO since the assessee had not shown the aforesaid gains as its income, he made the addition of Rs.3,37,713/-.

9. AO also noted that assessee had undertaken transaction in derivatives during the year and the net position of derivatives transactions provided by the broker is reproduced by the AO in the order. On the basis of information provided by the broker, AO noted that assessee had earned Rs.5,02,086/- from the derivative transactions and since the assessee was not reported the gains in the return of income, the AO made the impugned addition.

10. The AO also noted that assessee had incurred net loss of Rs.6,08,028/- in the future and option. The AO noted that assessee has not furnished any details with regard to losses nor had furnished any details with regard to source from where the payments were made to the broker. He, therefore, held the amount of Rs.6,08,028/-, the loss claimed by the assessee to be unexplained expenditure and made its addition.

11. On all such additions penalty u/s 271(1)(c) of the Act was levied by AO and the same was confirmed by CIT(A).

12. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 25.06.2019 dismissed the appeal of assessee. Aggrieved by the order of CIT(A), assessee is now in appeal before Tribunal.

13. Before me, the Learned Authorized Representative for the assessee pointed at the paper book page nos.1 to 7 being the

summary of the contract notes. He submitted that during the year assessee had entered into 214 contracts listed in the summary but, the AO / Learned CIT(A) considered only 84 contracts listed at Serial No.1 to 84 but have not considered the contracts listed from Serial No.85 to 214. He, therefore, submitted that the issue needs to be decided after taking into consideration all the 214 contracts entered into by the assessee. He, therefore, prayed that the matter be restored back to the file of AO with necessary directions. He further gave an undertaking that assessee will furnish all the required details called for by the authorities.

14. The Learned DR on the other hand did not seriously objected to the prayer of the assessee to restore the matter to the file of AO.

15. I have heard the rival submissions and perused the material available on record. It is an undisputed fact that during the year under consideration, assessee had entered into 214 contracts for purchase / sale of derivatives. I find force in the contention of the assessee that AO has proceeded to make the addition on the basis of 84 contracts as noted in the assessment order whereas according to the assessee he has entered into 214 contracts, the details of which are furnished in the paper book. I am, therefore, of the view that one more opportunity be given to the assessee to put forth his submissions before the AO. The AO is, therefore,

directed to consider the matter in issue afresh by considering all the contracts entered into by the assessee. The assessee is also directed to promptly furnish all the details as called for by the authorities. I, accordingly, restore the matter back to the file of AO with the above directions.

16. Since the quantum appeal is set aside to the file of AO, I am not deciding the penalty appeal as it is consequential in nature. The AO will be liberty to pass appropriate orders on the penalty order, after deciding the quantum appeal. With these observations, the penalty appeal is also sent back to the file of AO for fresh adjudication, after providing due opportunity of being heard to the assessee.

**17. In the result, both the appeals of the assessee are allowed for statistical purposes.**

**Order pronounced in the open court on 14.09.2022**

**Sd/-**

**(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

Date:- 14.09.2022

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**Copy forwarded to:**

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI