

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.494/SRT/2019

(निर्धारणवर्ष / Assessment Years: (2015-16)

(Virtual Court Hearing)

Assistant Commissioner of Income-tax, Circle-1[3], Room No.301, 3 rd Floor, Anavil Business Centre, Adajan-Hazira Road, Adajan, Surat-395007	Vs.	Manoj Ganeshlal Bhatia B-703, Opera House Building, Nr. Agarsen Bhavan, City Light Road, Surat-395007
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AACPB 9748 E		
(अपीलार्थी /Assessee)		(प्रत्यर्थी /Respondent)

निर्धारिती की ओर से /Assessee by : Shri Mehul K.Patel, Advocate

राजस्व की ओर से/Revenue by : Shri Ashok B. Koli, CIT-DR

सुनवाई की तारीख/ **Date of Hearing** : 21/03/2023

घोषणा की तारीख/**Date of Pronouncement** : 16/06/2023

आदेश / O R D E R

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned appeal filed by the Revenue, pertaining to Assessment Year (AY) 2015-16, is directed against the order passed by the Learned Commissioner of Income-tax (Appeals)-2, Surat [Ld. CIT(A) for short] dated 28.08.2019 which in turn arises out of an assessment order passed by Assessing Officer under section 143(3) of the Income Tax Act, 1961 [hereinafter referred to as the "Act"] dated 29.12.2017.

2. Grounds of appeal raised by the Revenue are as follows:

"1) Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the addition of Rs.3,97,77,965/- made on account of profit from future & options ignoring that assessee has failed to tender evidence and explanation in this regard?"

2) Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the addition of Rs.5,60,54,528/- made on account of unexplained increase in capital holding that the capital accumulation is fully explained on the basis of capital in the ITR of A.Y 2011-12 and accumulated income in the ROI for A.Y 2012-13 to A.Y 2014-15 ignoring that assessee has shown NIL capital balance in ITR filed for A.Y 2014-15?"

3) Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the addition of Rs.80,70,224/- made on account of investments in F&O and equities from unexplained sources holding that the same was found explained from the withdrawal from Firms and bank transfers along with profits from F&O STCG, LTCG and other profits, ignoring that during the assessment proceedings assessee could not explain the source of Rs.80,70,244/- over and above the withdrawals from firms and bank transfers?

4) It is, therefore, prayed that the order of the Ld. CIT(A) may be set aside and that of the Assessing Officer may be restored to the above extent.”

3. Now we shall take grounds of Revenue's appeal in seriatim. Ground No.1 raised by the Revenue relates to deletion of addition of Rs.3,97,77,965/- made on account of profit from future and options ignoring that assessee has failed to tender evidence and explanation in this regard.

4. The relevant material facts, as culled out from the material on record, are as follows. The assessee filed its return of income declaring Rs.1,27,27,980/- on 29.07.2016. The case of assessee was selected for scrutiny notice u/s 143(2) of the Act dated 05.07.2017. As per details filed, the assessee has traded in futures and options in individual capacity during the year. The main source of assessee's income is from business and profession comprising income from individual business in trading of future and options and profit from its partnership firm. The assessee also shown income from short term capital gain on listed securities and income from other sources comprising interest and dividend income.

5. During the assessment proceedings, the assessing officer observed that there is difference in profit earned from future and options. On verification of the details submitted during the course of scrutiny proceedings, it was observed by the Assessing Officer that assessee has made trading in futures and options in individual capacity. The assessee has traded in Futures and Options through four share brokers namely, M/s Motilal Oswal Securities Ltd., J.M. Financial Services Pvt. Ltd., Jainam Share Consultants and Nirmal Bang. From trading of Future and Options, the assessee has shown profit of Rs.77,57,945/-. Further on perusal of the total investment, total sales and net profit from the above four brokers, it was shown that the assessee has earned total net profit of Rs.3,97,77,965/-. There was a huge difference in the receipt shown by the assessee in its return of income and net

income determined from the trading of future and options. In this regard, Assessing Officer issued show cause notice as to why the difference in profit should not be treated as unaccounted income and added to its total income. The contents of the show cause notice of Assessing Officer is reproduced below:

“On perusal of your return of income filed by you as well as written submission filed by you on 14.08.2017, it is seen that you have traded in futures and options purchase through the four parties namely M/s Motilal Oswal Securities Ltd., M/s J M. Financial Services Ltd., M/s Jainam Share Consultants and M/s Nirmal Bang and you have shown total profit of Rs.77,57,945/- from Futures and Options trading. On perusal of the statements showing transaction undertaken by you during F.Y 2014-15 in the trading of Future & Options. It is seen that there is huge difference in the profit shown by you in ROI. The details of total investments, sales and profit thereon earned by you in different derivatives from above four parties are as under:

Sr. No.	Name of the parties	Total investment (amount in Rs)	Total sales receipt (amount in Rs)	Net profit (Amount in Rs.)
1	Jainam Share Consultant Pvt. Ltd.	35,31,533/-	35,48,991/-	(-) 38,86,586/-
2	Nirmal Bang Securities Pvt. Ltd.	5,91,101/-	7,59,859/-	(-)1,68,758/-
3	J.M. Financial Services Pvt. Ltd.	2,62,74,330/-	2,07,77,317/-	54,97,013/-
4	Motilal Oswal Securities Ltd.	5,72,16,719/-	1,11,85,781/-	4,60,30,938/-

5.2 From the above details, it is very clear that you have earned total profit/gain from trading of future and options of Rs.4,74,72,607/-, whereas you have shown only profit of Rs.77,57,945/- in your return of income. Thus, there is a difference of Rs.3,97,14,662/- of the profit earned by you in trading of future and options. In this regard, you are requested to show cause as to why the difference of Rs.3,97,14,662/- earned from trading of future and options should not be treated as unaccounted income and added to your total income.”

6. In response to above show cause notice of the Assessing Officer, the assessee submitted its reply before the Assessing Officer, which is reproduced by the Assessing Officer in the assessment order in para-5.3 at page 4 to 6 of assessment order. The assessee in its reply stated that figure of net profit shown in the show cause notice was wrong and the arithmetically incorrect figure of net profit as per table in show cause notice, as worked out by the Assessing Officer. As per assessee, it is loss to the tune of Rs.5,13,41,735/-(loss). Whereas the assessee has shown profit of Rs.77,57,945/- from future and options. The assessee also submitted reconciliation of total figures of investment and sales as per ledger

account of the parties. Therefore assessee submitted the working of future and options, ledger copy of brokerage / parties confirmation, the ledger copy from the respective parties and ledger account of future and option etc. The assessee also submitted ledger account of all the parties which reflects the following entries, in the books of accounts:

- i. Gross total future & options sale*
- ii. Future & option purchases*
- iii. Shares & Debentures purchase*
- iv. Shares & Debentures sales*
- v. Demat charges*
- vi. Service tax on shares*
- vii. Security transaction tax*
- viii. Brokerage on share trading*
- ix. Other charges*
- x. Dividend on shares*
- xi. Bank transfers*

From the above entries, only the entries related to gross total future & options sale and purchase i.e (i) and (ii) are to be considered for calculation of profit/loss from future and option trading.

A breakup of all entries as per ledger account of all parties is mentioned and all entries can be correlated to the ledger account and it shows the profit as reflected in the ROI.

Thus there cannot be addition of single rupee to profit of Rs.77,57,945/- from Future & Option trading.

7. However, the Assessing Officer rejected the contention of assessee and observed that the assessee has stated that the figure mentioned in his ledger with regard to individual share brokers and that ascertained in the SCN are different and imaginary. The said contention of the assessee is totally baseless and uncalled for. Therefore, assessing officer had called for information u/s 133(6) of the Act from the relevant share brokers and had obtained the gain loss statement in the case of the assessee. The gain / loss statement so ascertained was differentiated separately in an excel sheet and on the basis of the said statement the profit derived by the

assessee had been ascertained. The said excel sheet reflecting the difference pertaining to **Motilal Oswal** is given hereunder:

Sr.No.	(+)	(-)	Sr.No.	(+)	(-)	Sr.No.	(+)	(-)
1	(+)	(-)	31	6641.5	3040	61	45127.5	34170
2	4625	66330	32	18428.75	325365	62	5216.25	19520
3	1250	66330	33	76640	527386.3	63	79787.5	23110
4	4720	82080	34	36120	201130	64	1906903	1350
5	47960	239690	35	8100	1495	65	92750	13240
6	35520	49940	36	81520	43225	66	1031450	10240
7	3353760	823680	37	3900	6487	67	19020	70040
8	99915	234080	38	66500	90880	68	107635	11280
9	158835	47850	39	43820	15707	69	19880	104240
10	4530	24235	40	8205	29910	70	57560	108720
11	6365	440492	41	14670	2713.75	71	1604220	1400
12	1229040	130890	42	3540	288642	72	340	36037
13	14540	74205	43	34600	107741.3	73	1001.25	6177
14	446055	99290	44	21100	75890	74	3446.25	3200
15	1726720	36100	45	140	26885	75	18125	38667
16	79505	379000	46	59000	43055	76	513.75	50600
17	1200	2405	47	184087	41388	77	9095	594145
18	19240	44142	48	214491.3	260	78	339392.5	1377
19	1130320	9120	49	3221963	217.5	79	20730	27860
20	380	2600	50	15735	1390	80	21830	4652
21	19605	3705	51	25475	7280	81	1071310	50070
22	5725	21306	52	97255	166275	82	4400	225385
23	79435	5110	53	43105	4460	83	14260	129447
24	16700	539460	54	2121720	323127.5	84	32720	11097
25	24240	343870	55	6090	2170	85	5210	84552
26	123260	111050	56	1520	9935	86	51880	5168
27	8190	233320	57	90880	28937	87	25080	1073
28	11530	71150	58	12065	74520	88	4080	9555
29	818960	37900	59	4012.5	1640	89	896040	17340
30	365.5	20800	60	874675	2440	90	320	21720

Sr No.	(+)	(-)	Sr. No.	(+)	(-)	Sr No.	(+)	(-)	Sr. No.	(+)	(-)
91	6148.75	11480	121	26692	2186	151	62425	-	181	59720	
92	34680	13600	122	1936690	30000	152	188550	-	182	54160	
93	118950	5810	123	21200	88700	153	130250	-	183	58320	
94	9880	13030	124	158551	128420	154	535	-	184	14720	
95	28780	9790	125	10677	18827	155	14222	-	185	44960	
96	11480	62310	126	2090	29863	156	13960	-	186	1920	
97	17400	26710	127	4566662	2812	157	1040	-	187	521260	
98	7470	42610	128	17540	344095	158	84250	-	188	3920	
99	19730	6345	129	192843	-	159	26265	-	189	141000	
100	3470	131140	130	7555923	-	160	335	-	190	2691	
101	44870	20520	131	24500	-	161	16700	-	191	17645	
102	5860	257285	132	17027	-	162	33080	-	192	172770	
103	154130	30838	133	76072	-	163	20720	-	193	38310	
104	20760	12212	134	88617	-	164	206040	-	194	45600	
105	16560	10753	135	13462	-	165	45240	-	195	500040	
106	39360	41360	136	54957	-	166	5240	-	196	3510	
107	8960	10212	137	4620	-	167	31640	-	197	14660	
108	228880	3735	138	38855	-	168	84240	-	198	110100	
109	19120	32820	139	16685	-	169	3060	-	199	3560	
110	30320	90155	140	19600	-	170	17040	-	200	3135	
111	20200	53345	141	47130	-	171	266146	-	201	35	
112	14630	74880	142	36390	-	172	18431	-		4585735	
113	1008165	43960	143	38110	-	173	3877605	-	12980		
114	37650	3760	144	94955	-	174	4900	-	57216719	11236366	
115	34220	31260	145	32590	-	175	600	-			
116	1040	11979	146	5350	-	176	10435	-			
117	8617.5	423370	147	6060	-	177	2056	-			
118	9990	86640	148	21512	-	178	26580	-			
119	2503695	2410	149	40135	-	179	128400	-			
120	35520	277260	150	1020	-	180	31120	-			

8. Thus as per the above statement the Assessing Officer noted that total gains derived by the assessee from Motilal Oswal is Rs.5,72,16,719/- and loss Rs.1,12,36,366/- resulting into net gain of Rs.4,59,80,353/-. The above chart has been prepared date-wise i.e. from 1.4.14 to 31.3.2015.

9. The excel sheet reflecting the difference pertaining to **Nirmal Bang** is given hereunder:

Sr.No.	(+)	(-)
1	3680	4972
2	7280	73487
3	116080	33120
4	54640	21560
5	23790	26229
6	38626	11080
7	594	55621
8	28150	58897
9	36080	181173
10	27720	17896
11	1105	1680
12	1153	8252
13	10822	77814
14	28947	79810
15	8641	121792
16	51866	46643
17	90709	17683
18	12215	16593
19	49003	59384
20		82
21		4882
23		2270
24		1009
	591101	759858

10. The excel sheet reflecting the difference pertaining to **J M Financial** is given hereunder:

Sr.No.	(+)	(-)	Sr.No.	(+)	(-)	Sr.No.	(+)	(-)
1	36799	239743	31	316085	76532	61	72404	55070
2	142324	72807	32	96894	541523	62	479563	36019
3	239229	31418	33	3613	122755	63	1039864	172871
4	148448	2232	34	60259	278910	64	276135	89499
5	476356	131230	35	685484	1291	65	46180	12446
6	297914	166684	36	79546	28130	66	47846	19318
7	4588069	145380	37	196873	74914	67	52118	97582
8	4025	80933	38	9579	125051	68	18996	251605
9	694072	963878	39	200942	215388	69	257528	104657
10	203306	26115	40	325127	6327	70	396533	8991
11	1886308	301077	41	6271	288921	71	301488	26592
12	661055	79107	42	14440	16905	72	95850	357421
13	56378	31364	43	14861	219976	73	58623	1444858
14	110275	45253	44	112543	111524	74	8506	704775

15	11294	35525	45	79361	1537341	75	63555	307003
16	2866	90847	46	728458	170202	76	86182	11356
17	14619	383199	47	1018276	66026	77	14813	88714
18	746	71057	48	183510	5845	78	85074	14845
19	459769	113341	49	36310	11086	79	33211	1639
20	1540602	18258	50	125863	24989	80	7338	36573
21	204893	2552	51	215238	48289	81	2665	56856
22	776568	155745	52	204238	32943	82	37212	66457
23	562925	244302	53	9344	175424	83	6513	369061
24	69170	404100	54	39280	231834	84	35429	656362
25	206493	7424	55	13501	105304	85	15825	113247
26	121364	84969	56	23578	14327	86	12375	356858
27	55880	5670	57	121763	589322	87	37655	56192
28	302752	257877	58	31164	1655	88	35197	19627
29	23375	2133935	59	59790	197798	89	767105	1709064
30	202070	590549	60	87861	2563	90	658624	87808

Sr.No	(+)	(-)	Sr.No.	(+)	(-)
91	1894283	103709	121	41023	-
92	139269	42797	122	58229	-
93	24172	2613	123	41888	-
94	23705	934268	124	3211	-
95	4711	8176	125	77187	-
96	420844	10361	126	79238	-
97	12209	63776	127	26222	-
98	7412	49670	128	1340	-
99	65937	99987	129	13602	-
100	27857	19274	130	16924	-
101	15004	52079	131	4380	-
102	1192808	21348	132	3281	-
103	650621	2684	133	55797	-
104	47048	9231	Total	26274217	20663317
105	16634	26185			
106	2743	7188			
107	320508	4263			
108	364840	10819			
109	48992	3457			
110	7789	29522			
111	4846	169160			
112	8153	43680			
113	38539	416758			
114	10291	7148			
115	13518	98785			
116	73227	103347			
117	2094	-			
118	10624	-			
119	119021	-			
120	28143	-			

11. Thus, as per the above, the net gains derived by the assessee was Rs.2,62,74,217/- and net loss at Rs.2,06,63,317/- resulting into net gain of Rs.56,10,900/-

12. The excel sheet reflecting the difference pertaining to Jainam Share Consultants Pvt. Ltd. is given hereunder:

Sr.No.	(+)	(-)	Sr.No.	(+)	(-)	Sr.No.	(+)	(-)
1	3545	1061232	31	43726	16398	61	37420	99960
2	63343	851781	32	43720	103808	62	55545	26860

3	8049	20494	33	19828	10595	63	-	15470
4	41776	1816894	34	10305	9755	64	-	217780
5	15640	43856	35	18640	89560	65	-	36780
6	36393	7449	36	95160	2340	66	-	22960
7	43601	126686	37	29960	6378	67	-	10689
8	37476	33035	38	41760	13328	68	-	29226
9	36501	64785	39	7560	6718	69	-	10387
10	28201	71509	40	64880	6320	70	-	13417
11	99948	83497	41	640	67220	71	-	36123
12	121000	13057	42	85290	29100	72	-	99842
13	121120	58430	43	207310	9180	73	4107063	7993649
14	41420	15490	44	76895	193388	74		
15	33160	4030	45	24165	94743	75		
16	7240	42360	46	1635	12315	76		
17	4885	344700	47	15730	24051	77		
18	17805	188639	48	370	105891	78		
19	3100	111310	49	100960	40786	79		
20	31940	38236	50	419950	5244	80		
21	43114	20776	51	612380	286130	81		
22	87999	3960	52	116700	276070	82		
23	37562	21970	53	31740	3060	83		
24	129190	19580	54	1750	8000	84		
25	60680	8890	55	35640	25010	85		
26	56750	73931	56	277040	35360	86		
27	26730	22530	57	44760	295680	87		
28	2520	11700	58	32200	107000	88		
29	52270	19550	59	39299	17640	89		
30	72926	8890	60	148320	121550	90		

13. Thus as per the above, the net gains derived by the assessee was Rs.41,07,063 and net loss of Rs.79,93,649/- resulting into net loss of Rs.38,86,586/-.

14. Thus, the net gain and loss derived from each broker was tabulated by the assessing officer as follows:

Name of the broker	Gains	Loss	Net gain or loss
Motilal Oswal	57216719	11236366	4,59,80,353
Nirmal Bang	5,91,101	7,59,858	(1,68,757/-)
JM Financials	2,62,74,217	2,06,63,317	56,10,900
Jainam Securities	41,07,063	79,93,649	(38,86,586)
		Net income	4,75,35,910

15. From the above analysis, the Assessing Officer noted that the total profit derived from trading in Futures and Options comes to Rs.4,75,35,910/-. The assessee has shown total profit amounting to Rs.77,57,945/- but the actual profit is Rs.4,75,35,910/-. Hence, the difference comes to Rs.3,97,77,965/- (4,75,35,910 – 77,57,945), which was added to the total income of the assessee by the assessing officer.

16. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Learned CIT(A) who has partly deleted the addition made by the Assessing Officer. The Id CIT(A) observed that the Assessing Officer's working of net gain from the brokers gain/loss statement is misleading figure and not the actual profits. The assessing officer was given opportunity to consider the reconciliation tables and submit remand on the same. However, in the remand report dated 29.12.2018, the assessing officer has ignored the issue of reconciled statement and did not offer any comments. The main reason for discrepancies was analyzed by the Id CIT(A), and after proper analysis the addition of Rs.3,97,77,965/- was deleted and only addition of Rs.60,088/- pertaining to incorrect loss computation by the assessee was hereby confirmed by Id CIT(A). Aggrieved by the order of the Id. CIT(A), the Revenue is in appeal before us.

17. Learned CIT-DR for the Revenue, argued that during the assessment stage, on verification of the details submitted by the assessee with respect to trading in future and option business, it was observed by the assessing officer that the assessee has shown a net profit of Rs.77,57,945/- for the year under consideration. However, considering the all aspects of this line of business, assessing officer has found that assessee has earned net profit of Rs.4,74,72,607/- against the profit declared by the assessee of Rs.77,57,945/-. The observations of the assessing officer after verification of the ledger accounts of the share brokers are given in the assessment order. The assessing officer has observed that assessee has shown wrong profit from the business of future and option and concealed the actual profit up to Rs.3,97,77,965/-for the year under consideration. The Id CIT-DR also stated that assessee has failed to tender satisfactory and acceptable evidence and explanation in regards to the Future and Option income. Thus, the complete acceptance of the explanations of the assessee by the CIT(A) are flawed and erroneous. Therefore, Id DR prays the Bench that addition made by the assessing officer may be sustained.

18. Shri Mehul K. Patel, Learned Counsel for the assessee begins by pointing out that during assessment proceedings as well as during appellate proceedings, the

assessee has given reconciliation tables of net gain worked by the Assessing Officer *vis-a-vis* net gain worked by the assessee and these tables bring out the facts and reasons where the Assessing Officer took figures of incorrect column to arrive at net gain, different from assessee's working. The Ld Counsel explained that assessee has shown that the delivery based and commodity transactions profits were taken along with Future and Option gain/loss in the case of Jainam Share. Similarly, in the case of Motilal Oswal Securities Ltd, the assessing officer took the figure of net amount column whereas the figure in the Profit and Loss amount column was to be taken for working out the profit. Further, the column of net amount indicated value of roll over transactions which is not the actual profit but the Future and Option transactions which has not been settled and carried over to the next settlement cycle. This led to adding up of all such rollover Future and Option transaction, and therefore assessing officer computed incorrect net gain. This way, ld Counsel defended the order of ld CIT(A).

19. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position. In order to prove the genuineness of the transaction, the ld Counsel, submitted following documents and evidences, viz: (i) Computation of income (Pb pages 1-5) (ii) Balance sheet and P&L account(Pb pages 6-7); (ii) assessee's reply dated 12.10.2017 to Assessing Officer(Pb pages 8-9); (iv) assessee's reply dated 11.09.2017 to Assessing Officer with annexures pages 11 to 27; (v) contra ledger account of assessee from 4 parties(Pb pages 28 to 81) (vi) ledger account in assessee's books of 4 parties (Pb from pages 82 to 103); (vii) Assessee's reply to assessing officer dated 13.11.2017 (Pb pages 104 to 105) (viii) ledger of IDBI savings (Pb pages 106-111); (ix) Capital account in magic fashions (Pb pages 112 to 113), (x) Capital account in N.M. Fashions (Pb page No.114); (xi) Return of income of assessee AY. 2014-15 (Pb pages 115 to 141), (xii) Assessee's reply dated 22.11.2017 before A.O(Pb pages 168 to 196), (xiii) Profit and Loss statement of Jairam Share Consultants (Pb pages 170 to 172), (xiv) Documents relating to Nirmal Bang Securities (Pb pages 173 to 174), and documents relating to J.M. Financial (Pb pages 175 to 191), (xv) Documents and evidences relating to Motilal

Oswal (Pb pages 192 to 196), (xvi) Copy of return of Magic Fashions (Pb pages 197), (xvii) Copy of retirement deed from N.M. Fashions (Pb pages 198 to 204) (xviii) Assessee's reply dated 06.12.2017 to assessing officer (Pb pages 205 to 207), (xix) Statement of income A.Y 2015-16 (Pb pages 208 to 2010), (xx) Capital account dated 31.03.2015 (Pb page 211), (xxi) Cash marketing gain statement (Pb pages 212 to 215), (xxii) Ledger account of Magic Fashions (Pb pages 216 to 217), (xxiii) Ledger account of N.M. Fashions (Pb pages 218 to 220), (xxiv) Bank book of IDBI Bank (Pb pages 221 to 240) (xxv) Assessee's reply dated 18.12.2017 to assessing officer with documents(pages 241 to 247), (xxvi) break-up of Jairam share (Pb pages 248 to 251), (xxvii) Break-up of Motilal Oswal shares (Pb pages 252 to 258), (xxviii) Break-up of Nirmal Bang (Pb pages 259 to 263), (xxix) Break-up of J.M Financial shares (Pb pages 264 to 272), (xxx) Returns of income assessee for A.Y 2011-12 and capital account of assessee as on 31.03.2012 and 31.03.2013 (xxxi) Letter of Ld. CIT(A) with remand report of assessing officer dated 29.12.2018, paper book pages 379 to 385 and re-joinder of assessee of the remand report dated 02.04.2019(Pb pages 386 to 391).

20. We have gone through the above documents and evidences submitted by the assessee and observed that assessee earned profit from future and option trading through four brokers namely: M/s Motilal Oswal Securities Ltd, JM Financial Securities Pvt, Jainam Share Consultant and Nirmal Bang where from total profits of Rs.77,57,945/- was shown in the computation of total income and return of income (ROI) of current assessment year (AY). Based on analysis of details filed during assessment proceedings, the assessing officer had worked out net gain/loss from four share brokers as under:

<i>Name of the broker</i>	<i>Gains</i>	<i>Loss</i>	<i>Net gain or loss</i>
<i>Motilal Oswal</i>	<i>57216719</i>	<i>11236366</i>	<i>4,59,80,353</i>
<i>Nirmal Bang</i>	<i>5,91,101</i>	<i>7,59,858</i>	<i>(1,68,757/-)</i>
<i>JM Financials</i>	<i>2,62,74,217</i>	<i>2,06,63,317</i>	<i>56,10,900</i>
<i>Jainam Securities</i>	<i>41,07,063</i>	<i>79,93,649</i>	<i>(38,86,586)</i>
		<i>Net income</i>	<i>4,75,35,910</i>

Based on the above working of gain/loss from four brokers, the assessing officer concluded that net income from Future and Option should have been shown by assessee at Rs.4,75,35,910/- as against Rs.77,57,945/- shown by the assessee in the

return of income. We note that Assessing Officer considered the reply of the assessee during assessment proceedings, however held in para 5.4 (page 6 of assessment order) that above net income was worked out from the gain/loss statement called from brokers u/s 133(6) of the Act. The Assessing Officer reproduced excel sheet working of net gain/loss in the assessment order and did not accept the assessee's objection to the figures ascertained. Thus, addition of Rs.3,97,77,965 (Rs.4,75,35,910 -Rs.77,57,945) was made to the total income of the assessee.

21. In the appellate proceedings, the assessee explained the reason for working of net income of Rs.3,97,77,965/- by the Assessing Officer. The assessee has shown from the details of the same gain/loss statement analyzed by the Assessing Officer that in the case of Jainam Share Consultants Pvt. Ltd., the Assessing Officer considered all transactions including commodity trading and shares trading to arrive at net loss of Rs.38,86,586/- as against assessee's working of profit at Rs.55,129/-. The assessee stated and shown from Profit & Loss account that profits in the form STCG was shown separately for commodity trading and shares trading. For Nirma Bang Securities Pvt, Net loss of Rs.1,68,757/- worked out by the Assessing Officer as against assessee's working of loss of Rs.2,28,845/-, the assessee accepted the mistake due to entry of accountant and offered to surrender excess loss claim of Rs.60,088/-. For JM Financial Ltd., net gain of Rs.56,10,900/- worked out by the assessing officer as against net gain of Rs.54,97,015/- worked out by the assessee, the assessee has shown that the assessing officer took incorrect figure of Rs.12,446/- (**loss**) as against actual loss of Rs.1,26,446/- and another profit figure of Rs.2,15,238/- was taken as against actual profit of Rs.2,15,351/-. For Motilal Oswal Securities Ltd, net gain of Rs.4,59,80,353/- worked out by the assessing officer as against net gain of Rs.24,34,645/- worked out by the assessee, the assessee has shown that the assessing officer's working took into account the figures of net amount column whereas only the profit/loss column of Future & Option transaction should have been considered for actual profit working. This has led to adding up the value of rolled over transactions for next settlement cycle as net gain giving rise to abnormally high figure as compared to assessee's working.

22. The Id CIT(A) noted that assessee has given reconciliation tables of net gain worked by the Assessing Officer vis-a-vis net gain worked by the assessee and these tables bring out the facts/reasons where the assessing officer took figures of incorrect column to arrive at net gain different from assessee's working. The assessee has shown that the delivery based and commodity transactions profits were taken alongwith Future & Option gain/loss in the case of Jainam Share. Similarly, in the case of Motilal Oswal Securities Ltd, the assessing officer took the figure of net amount column whereas the figure in the Profit & Loss amount column was to be taken for working out the profit. Further, the column of net amount indicated value of roll over transactions which is not the actual profit but the F&O transactions which has not been settled and caried over to the next settlement cycle. This led to adding up of all such rollover F&O transaction giving incorrect net gain working by the Assessing Officer.

23. Considering the above reconciliation, the Id CIT(A) noted that Assessing Officer's working of net gain from the brokers gain/loss statement is misleading figure and not the actual profits. The Assessing Officer was given opportunity to consider the reconciliation tables and submit remand on the same. However, in the remand report dated. 29.12.2018, the Assessing Officer has ignored the issue of reconciled statement and did not offer any comments. The main reason for discrepancies was analysed by the Id CIT(A) and it was noted by Id CIT(A) that in the working profits from Motilal Oswal Sec. Ltd., all the transactional value of F & O rolled over was misread as profits by the Assessing Officer. Once this column of rolled over F & O transaction are considered properly, the assessee's profit working was found to be correct. Similarly, in the case of Jainam Share, the share trading and commodity trading transactions were added with F & O transactions leading to incorrect loss figure. In view of these facts and circumstances, the Id CIT(A) held that the difference in profits worked out by the Assessing Officer from Future & Option transactions are incorrect and not sustainable. Thus, the addition of Rs.3,97,77,965/- was deleted and only addition of Rs.60,088/- pertaining to incorrect loss computation by the assessee was confirmed by Id CIT(A). We have

gone through the above findings of Id CIT(A) and noted that there is no infirmity in the order passed by Id CIT(A). That being so, we decline to interfere with the order of Id. CIT(A) in deleting the aforesaid additions. His order on this addition is, therefore, upheld and the grounds of appeal of the Revenue are dismissed.

24. Ground No.2 raised by the Revenue relates to deleting the addition of Rs.5,60,54,528/- made on account of unexplained increase in capital.

25. Succinct facts qua the issue are that during the assessment proceedings, the Assessing Officer noted that capital balance shown for current assessment year (AY) by the assessee was Rs.3,60,54,528/- whereas in the Income Tax Return for assessment year 2014-15, capital balance shown was Nil. Thus, the Assessing Officer issued a show cause notice to the assessee stating as to why the capital of Rs.5,60,54,528/- should not be considered as unexplained capital introduced. In response to the show cause notice, the assessee had replied to the assessing officer that the capital balance as per Income Tax Return of assessment year 2011-12 was Rs.3,73,88,803/- as on 31.03.2011 and it was mere mistake in filing up the balance sheet figures in the Income Tax Return for AY 2014-15 which led to Nil opening capital in ITR of AY 2015-16. The Assessing Officer did not accept the submission of the assessee and added the amount of Rs.5,60,54,528/- to the total income of the assessee, as an unexplained capital introduced.

26. On appeal by assessee, the Id CIT(A) deleted the addition. The Id CIT(A) held that the capital accumulation of Rs.5,60,88,803/- was fully explained by assessee on the basis of capital in the Income Tax Return of assessment year 2011-12 and accumulated incomes duly shown in the return of income for assessment years 2012-13, 2013-14, 2014-15 and current assessment year. In the remand report on this issue, the Assessing Officer has not given any adverse comments. Hence, Id CIT(A) deleted the addition therefore, Revenue is in appeal before us.

27. Learned DR for the Revenue vehemently argued that Id CIT(A) was erred in holding that the capital accumulation is fully explained on the basis of capital in the

Income Tax Return of assessment year (A.Y.) 2011-12 and accumulated income in the return of income (ROI) for A.Y. 2012-13 to A.Y. 2014-15 ignoring that assessee has shown NIL capital balance in ITR filed for A.Y. 2014-15. The DR further stated that assessee himself has contended that in the return for the A.Y. 2014-15, assessee had not filed the figures of balance sheet, hence the return of income for the said year reflected Nil capital. In case the assessee was having capital balance during the said year, it was mandatory for the assessee to reflect the actual figures in his return of income. Failure to furnish the same is a mistake on his own part, hence by contending now without any evidence that assessee had capital balance during the previous year would not suffice. Therefore, Id DR contended that addition made by the Assessing Officer should be sustained.

28. On the other hand, Shri Mehul K.Patel, Id Counsel for the assessee, pleaded that the capital balance of Rs.5,60,88,803/- includes opening capital of Rs.4,11,58,447/- as well profits of current assessment year from partnership firms, Future & Option profits, interest income, STCG/LTCG, dividend etc. The Id Counsel has also furnished summary of capital balance starting from AY 2011-12 taking capital of Rs.3,73,88,803/- as on 31.03.2011 and duly explained capital accumulation of Rs.5,60,88,803/- till current assessment year. This way, Id Counsel defended the order passed by Id CIT(A) and stated that Id CIT(A) has passed a speaking order therefore the same may be upheld.

29. We have heard both the parties. We note that assessee challenged the addition on account of increased capital by Rs.5,60,54,528/-. In the assessment order, the Assessing Officer noted that the capital balance shown for current assessment year was Rs.3,60,54,528/- whereas in the Income Tax Return for assessment year 2014-15, the capital balance shown was Nil. Thus, the Assessing Officer had issued show cause notice to the assessee, asking as to why the capital of Rs.5,60,54,528/- should not be considered as unexplained capital introduced. The assessee had replied to the assessing officer that the capital balance as per Income Tax Return of assessment year 2011-12 was Rs.3,73,88,803/- as on 31.03.2011 and it was mere mistake in filing up the balance sheet figures in the

Income Tax Return for A.Y. 2014-15 which led to Nil opening capital in Income Tax Return of A.Y. 2015-16. The Assessing Officer did not accept the submission of the assessee and added the same to the total income as unexplained capital introduced. During the appellate proceedings, the assessee explained that the capital balance of Rs.5,60,88,803/- include opening capital of Rs.4,11,58,447/- as well as profits of current assessment year from partnership firms, Future and Option profits, interest income, STCG/LTCG, dividend etc. The assessee has also furnished summary of capital balance starting from AY 2011-12 taking capital of Rs.3,73,88,803/- as on 31.03.2011 and duly explained capital accumulation of Rs.5,60,88,803/- till current assessment year. The Id CIT(A) after considering submissions and explanations of the assessee, observed that the capital accumulation of Rs.5,60,88,803/- was fully explained by the assessee on the basis of capital in the Income Tax Return of assessment year 2011-12 and accumulated incomes duly shown in the return of income for assessment years 2012-13, 2013-14, 2014-15 and current assessment year. In the remand report on this issue, the Assessing Officer has not given any adverse comments, therefore Id CIT(A) held that the addition of Rs.5,60,88,803/- is not sustainable in the eye of law and deleted the addition. We have gone through the above findings of Id CIT(A) and noted that conclusions arrived at by the CIT(A) are correct and admit no interference by us. We, approve and confirm the order of the CIT(A) and dismiss ground No.2 raised by the Revenue.

30. Coming to the ground No.3 raised by the Revenue, which relates to deleting the addition of Rs.80,70,224/- made on account of investments in Future &Option and equities.

31. Learned DR for the Revenue submitted that investments in Future &Option were made by the assessee from unexplained sources. Therefore, Id CIT(A) erred in deleting the addition holding that the same was found explained from the withdrawal from Firms and bank transfers along with profits from F&O, STCG, LTCG and other profits, ignoring the fact that during the assessment proceedings, assessee could not explain the source of Rs.80,70,244/- over and above the

withdrawals from firms and bank transfers, therefore, Id DR contended that addition made by the assessing officer may be sustained.

32. On the other hand, Id Counsel argued that assessee has filed a reconciliation chart explaining the source of funds for investment of Rs.1,49,65,879/-. As per this chart, the assessee has corroborated that total bank payments to the share brokers amounted to Rs.57,20,655/- out of which Rs.10,86,275/- was found received back from share brokers. Further, the profits from Future & Option transaction of current assessment year at Rs.77,47,945/-, STCG of Rs.18,23,343/- and LTCG of Rs.1,38,095/- added up to Rs.97,19,383/- toward investment in share/debentures/mutual fund. Another profit earned of Rs.6,42,351/- from transaction with J.M. Financial Pvt Ltd further added the total investments of Rs.1,49,96,114/-. Therefore, Id Counsel argued that since the assessee explained the increased investment in shares/debentures, which were duly explained by assessee from his books of accounts, hence Id Counsel contended that order passed by Id CIT(A) may be upheld.

33. We have heard both the parties. We note that Revenue has challenged the addition of Rs.8070,224/- pertaining to investment in Future & Option and share transaction. In the assessment order the assessing officer observed that the investment in shares/debentures/mutual fund as on 31.03.2015 was Rs.8,62,858/- whereas the said investment, as on 31.03.2015 increased to Rs.1,58,28,737/-. Thus, the Assessing Officer queried for source of funds for increased investment of Rs.1,49,65,879/- (Rs.1,58,28,737 - Rs.8,62,858). The assessee had explained before the assessing officer that the investment in shares etc., was made from withdrawals from partnership firms M/s Magic Fashion and M/s N.M. Fashion through bank transaction. However, the assessing officer could only notice withdrawal from the said firms up to Rs.62,95,655/- and concluded that Rs.80,70,224/- was investment from unexplained sources. During the appellate proceedings, the assessee has filed a reconciliation chart explaining the source of funds for investment of Rs.1,49,65,879/-. As per this chart, the assessee has corroborated that total bank payments to the share brokers amounted to Rs.57,20,655/- out of which

Rs.10,86,275/- was found received back from share brokers. Further, the profits from F&O transaction of current assessment year at Rs.77,47,945/- STCG of Rs.18,23,343/- and LTCG of Rs.1,38,095/- added upto Rs.97,19,383/- toward investment in share/debentures/mutual fund. Another profit earned of Rs.6,42,351/- from transaction with J.M. Financial Pvt Ltd, further added the total investments of Rs.1,49,96,114/-. Thus, the assessee explained that increased investment in shares/debentures were duly explained from his books of accounts. The Id CIT(A) after considering the relevant documentary evidences and reconciliation chart, observed that the assessing officer did not consider the major profits from Future & Option / shares transaction while concluding unexplained income of Rs.80,70,224/- . In the remand report, the Assessing Officer's observation is detached from what the assessee has explained on the issue of source of fund for Rs.1,49,96,114/-. No concrete findings of defects in assessee's submission could be pointed out by the assessing officer. The assessing officer had accepted the withdrawals from firms and bank transfers upto Rs.62,95,655/-and adding the profits on F&O, STCG, LTCG and other profits duly adds upto investments of Rs.1,49,96,114/-. Thus, assessee's explanation of source of fund for Rs.1,49,65,879/- was found to be duly explained. Hence, Id CIT(A), based on the above facts, held that there is no case for sustaining addition of Rs.80,70,224/-, as unexplained investment, therefore Id CIT(A) deleted the same. We have gone through the above findings of Id CIT(A) and noted that conclusion reached by Id CIT(A) is correct therefore we agree with the findings of Id CIT(A) and dismiss ground No.3 raised by the revenue.

34. In the result, appeal filed by the Revenue is dismissed

Order is pronounced on 16/06/2023 by placing result on notice board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सूरत /Surat / दिनांक/ Date: 16/06/2023
Dkp Outsourcing Sr.P.S.

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

// True Copy //

By Order

Sr. Private Secretary/Private
Secretary/ Assistant Registrar,
ITAT, Surat