

आयकर अपीलीय अधिकरण, कोलकाता पीठ “एसएमसी”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH: KOLKATA
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 160/Kol/2023
Assessment Year: 2014-15

Neelesh Choudhury (PAN: AABHN 8212 Q)	Vs.	ITO, Ward-36(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	19.07.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	08.08.2023
For the Appellant/ निर्धारिती की ओर से	Smt. Anuradha Poddar, Advocate Shri Pranit Bag, Advocate
For the Respondent/ राजस्व की ओर से	Shri B. K. Singh, JCIT, Sr. D.R

ORDER / आदेश

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)"] dated 28.01.2023 for the AY 2014-15.

2. Issue raised in ground no. 1 is against the order of Ld. CIT(A) confirming the addition of Rs. 4,99,502/- as made by the AO on account of unexplained cash credit u/s 68 of the Act.

3. Facts in brief are that during the assessment proceedings, the AO noted that the assessee has done transactions through National Multi –Commodity Exchange of

India Ltd. through broker M/s Seja Traders Pvt. Ltd. who is a member of National Multi Commodity Exchange of India Ltd. The quantity was 50 @ Rs. 6,730/- on 23.04.2013 which were sold on 25.04.2013 after two days @ 6,830/- through same member. According to the AO the assessee has brought back his unaccounted money in the books of account through the claim of bogus commodity profits by routing his money through banking channel. According to AO, assessee with the help of broker has taken the commodity profit to the tune of Rs. 4,99,502/- without being registered as client with the broker in consideration of @ 2% to 3% of commission and finally added the same to the income of the assessee as unexplained cash credit and applied the provision of Section 115BBE of the Act. Thus the total addition made by the AO was Rs. 5,11,990/-.

4. In the appellate proceedings, the Ld. CIT(A) confirmed the order of AO by holding that the assessee has brought back his money in the books of account through the claim of bogus commodity profits without execution of the transactions over the platform of the said exchange i.e National Multi Commodity Exchange of India Limited.

5. After hearing the rival contentions and perusing the material on record, we find that the assessee has earned commodity profit on purchase and sale of commodity through broker M/S Seja Traders Pvt . Ltd. who was member of National Multi Commodity Exchange of India with FMC registration no. duly mentioned on the contract note dated 23.04.2013. We note that these commodities were sold through the same broker on 25.04.2013. The Contract Notes for purchase and sale are attached with page 1 and 2 which is extracted as under:

Authorized Signatories : Jhulan Sharma, Santanu Bose
 (Subject to exclusive jurisdiction of the courts in Ahmedabad only)
SEJA TRADERS PRIVATE LIMITED
 MEMBER : NATIONAL MULTI-COMMODITY EXCHANGE OF INDIA LIMITED
 FMC REGN. NO. : NMCE / TM / CORP0277(TM0006)

Regd. & Dealing Off : 124, Rabindra Sarani, Kolkata - 700 007

To, Non Member Client Name/Code No. : SC04
NEELSH CHOUHURY HUF
 10, OLD POST OFFICE STREET
 KOLKATA - 700001
 PAN NO : AABNH212Q

Contract Note No. : 005061/1314
 DATE : 23/04/2013

To be stamped as per the provisions applicable under the relevant Stamp Act

BOUGHT FOR YOU								SOLD FOR YOU			
Order No.	Trade No.	Trade Time	Quantity	Price	Brokerage Total	Amount (Rs.)	Contract Specifications	Quantity	Price	Brokerage Total	Amount (Rs.)
0135521102221659	367	10:15:24	50	6790.00	336.50	33650371.16	ISANGSF CP15Jun2013				
						33650371.16	Total				

OTHER LEVIES, IF ANY : Brok 336.50 & Tax 34.66
 Net amount receivable (Rs.) 33650371.16

Brokership has been charged as stated and has been at rates not exceeding the official scale of brokerages and indicated separately.
 This contract is subject to the Rules, Bye-Laws and Regulations and usages of National Multi-Commodity Exchange of India Limited, Ahmedabad.
 In the event of any claim (whether admitted or not) difference or dispute arising between you and me / us out of these transactions, the matter shall be referred to Arbitration as provided in the Rules, Bye-Laws and Regulations of the National Multi-Commodity Exchange of India Limited, Ahmedabad.
 This contract constitutes and shall be deemed to constitute as provided overleaf and agreement between you and me / us that all claims (whether admitted or not), differences and dispute in respect of any dealings transactions and contracts of a date prior or subsequent to the date of this contract (including any question whether such dealings, transactions or contracts have been entered into or not) shall be submitted to and decided by arbitration as provided in the Rules, Bye-Laws and the provisions printed overleaf form a part of the contract.

Kolkata: 23/04/2013
 Date: 23/04/2013
 Page No: 1
 (See Overleaf)

Yours faithfully,
 For SEJA TRADERS PRIVATE LIMITED
 Director / Authorized Signatory
 Member : National Multi-Commodity Exchange of India Ltd.
 PAN No. : AAMCS7396E

Authorized Signatories : Jhulan Sharma, Santanu Bose
 (Subject to exclusive jurisdiction of the courts in Ahmedabad only)
SEJA TRADERS PRIVATE LIMITED
 MEMBER : NATIONAL MULTI-COMMODITY EXCHANGE OF INDIA LIMITED
 FMC REGN. NO. : NMCE / TM / CORP0277(TM0006)

Regd. & Dealing Off : 124, Rabindra Sarani, Kolkata - 700 007

To, Non Member Client Name/Code No. : SC04
NEELSH CHOUHURY HUF
 10, OLD POST OFFICE STREET
 KOLKATA - 700001
 PAN NO : AABNH212Q

Contract Note No. : 005117/1314
 DATE : 25/04/2013

To be stamped as per the provisions applicable under the relevant Stamp Act

BOUGHT FOR YOU								SOLD FOR YOU			
Order No.	Trade No.	Trade Time	Quantity	Price	Brokerage Total	Amount (Rs.)	Contract Specifications	Quantity	Price	Brokerage Total	Amount (Rs.)
0040010553063237	3068	14:35:58					ISANGSF CP15Jun2013	25	6830.00	170.75	17074011.66
0040010553063255	3069	14:35:58					ISANGSF CP15Jun2013	25	6830.10	170.75	17075063.66
						0.00	Total				

OTHER LEVIES, IF ANY : Brok 341.50 & Tax 35.10
 Net amount payable (Rs.) 34149823.32

Brokership has been charged as stated and has been at rates not exceeding the official scale of brokerages and indicated separately.
 This contract is subject to the Rules, Bye-Laws and Regulations and usages of National Multi-Commodity Exchange of India Limited, Ahmedabad.
 In the event of any claim (whether admitted or not) difference or dispute arising between you and me / us out of these transactions, the matter shall be referred to Arbitration as provided in the Rules, Bye-Laws and Regulations of the National Multi-Commodity Exchange of India Limited, Ahmedabad.
 This contract constitutes and shall be deemed to constitute as provided overleaf and agreement between you and me / us that all claims (whether admitted or not), differences and dispute in respect of any dealings transactions and contracts of a date prior or subsequent to the date of this contract (including any question whether such dealings, transactions or contracts have been entered into or not) shall be submitted to and decided by arbitration as provided in the Rules, Bye-Laws and the provisions printed overleaf form a part of the contract.

Kolkata: 25/04/2013
 Date: 25/04/2013
 Page No: 1
 (See Overleaf)

Yours faithfully,
 For SEJA TRADERS PRIVATE LIMITED
 Director / Authorized Signatory
 Member : National Multi-Commodity Exchange of India Ltd.
 PAN No. : AAMCS7396E

We have also examined the differential bill of Seja Traders Pvt. Ltd. showing the amount payable to the assessee on account of commodity profits was Rs. 4,99,502/- which has been remitted into the assessee bank account with HDFC bank in which the

said profit received vide cheque on 14.05.2013 and was accordingly credited. We have also examined the statement of computation in which the said commodity profit was shown as income from other sources and tax was duly paid thereon. Now the AO rejected the claim of the assessee on the ground of this being modus operandi to bring back the unaccounted money into the books. Ld. CIT(A) has simply affirmed the assessment order. We have examined the contract notes for purchase and sale as has been extracted above and also the bank statement of HDFC Bank and computation of income. We find that the assessee has executed these transactions through broker M/S Seja Traders Pvt. Ltd. which was a member of Multi Commodity at that point of time and therefore we are in agreement with the conclusion drawn by Co-ordinate Bench in the case of Sujay Kumar Shah vs. ITO in ITA No. 2493/Kol/2017 for AY 2011-12 dated 30.08.2019 wherein the similar issue has been decided in favour of the assessee wherein also the broker M/s Seja Traders Pvt. Ltd. was same. The operative part is extracted below:

2. The assessee's former substantive grievance challenges the correctness of both the lower authorities' action treating this profits of Rs.64,99,393/- derived in commodity trading activity carried out through M/s. Seja Traders Pvt. Ltd amounting to Rs.64,99,393 as unexplained cash credit u/s. 68 of the Act. The CIT(A)'s detailed discussion affirming the Assessing Officer's action reads as under:

"6.2 Ground No. 1 of the appeal relates to the issue of addition of Rs.64,99,393/- u/s. 68 which was claimed as commodity profit earned. The AO found that the appellant has claimed receipt of income from M/s. Seja Traders Pvt. Ltd claiming receipt in his client's account M/s. Sai Baba Trading Co. having client code BJ112 against which enquiry was made by National Multi Commodity of Exchange of India Ltd and on receipt of such information it revealed that there was no such transactions recorded in the data base. The National Multi Commodity of Exchange of India through its letter dated 21-01-14 has informed as under:-

"On scrutiny of the Contract Notes, issued by M/s. Seja Traders Private Limited, in the account of the client Sai Baba Trading Co., under client code BJ112, it is to inform you that the client is a non-existent in data base of the Exchange under not only with M/s. Seja Traders Private Limited, but also under any of the members of the Exchange. Hence, all the traders as shown in the contract notes under reference are not only fictitious but also fraudulent in nature. Further, on scrutiny of the Sauda Summary (as attached with your letter, said to be issued by the member M/s. Anand Rathi Commodities Limited, under client code GKOS376), it has been noticed that those traders might have been executed on other Exchanges like- the Multi Commodity Exchange (MCX) and the National Commodity and Derivatives Exchange (NCDEX) Mumbai, therefore, you may please approach them for verification of the trades. Further, our point wise reply to your queries is as under:-

1. Yes, the brokers – M/s. Seja Traders Private Limited and M/s. Anand Rathi Commodities Limited were registered with us as the Trading Member and Trading Cum Clearing Member under codes TM0008 and CL0141 respectively.

2. With regard to the genuineness of the contract notes- as explained hereinabove, those are fraudulent in nature, as no such client in the name Sai Baba Trading Co. under client code BJ112 with PANALRPS1195G ever existed with M/s. Seja Traders Private Limited, on with any of the members of the Exchange. Hence, trades mentioned in the contract notes are not genuine as the same are not matching with our database. With regard to the Sauda Summary, it seems that it may belong to other Exchanges like - Multi Commodity Exchange (MCX) and National Commodity and Derivatives Exchange (NCDEX) Mumbai, while, client code GKOS376 is also non-existent client with the Trading Cum Clearing Member of our Exchange i.e. M/s Anand Rathi Commodities Limited."

6.2.1 Perusal of aforesaid fact shows that the appellant is non-existent in the data base of Exchange and its traders name M/s Seja Traders Private Limited is also non-existent under any of the members of Exchange. The AO concluded that - "The assessee was engaged in the commodity trading through various exchanges "during the year. During the year he had derived a profit of Rs.6499392.59 and incurred loss of Rs.644821.75. He had set off the trading results and posted a profit of Rs.54570.84. Since, the alleged profit of Rs.6499392.59 was proved to be false, bogus and fraudulent, the same cannot be treated as profit from speculation business. Therefore, the set off will not be allowed. Simultaneously the credit of Rs.6499392.59 by way of profit entered into the books of accounts of the assessee is treated as cash credit u/s 68 the source of which remains unexplained and the sum so credited may be charged to income tax as income of the assessee of the previous year. The matter was confronted to the assessee vide this office letter no.Cir-44/Kolj13-14/763, dt.20-22013 asking him to show cause as to why the bogus profit shown which is actually a fraudulent transaction amounting to Rs.6499392.59 will not be treated cash credit u/s 68 of the Income Tax Act, 1961." Once such profit was-assessed u/s 68, the set off of loss claimed from M/s Anand Rathi Commodities Limited could not given to the appellant as income assessed u/s 68. Since it is a separate head of income, therefore, no set off of loss arose from M/s Anand Rathi Commodities Limited brokers has been given. The above act of the appellant clearly shows that appellant incurred loss on account of commodity transactions which was dealt with M/s Anand Rathi Commodities Limited and with intention to overcome the said loss, the appellant brought his unaccounted money under the guise of commodity profit through M/s Seja Traders Private Limited which related transactions were non-existent in any of the Exchange and contract notes and transaction details were found bogus which clearly shows that it was in order to square of the loss from the share transactions which has not been allowed by the AO. The appellant has simply relied over the confirmations of M/s Seja Traders Private Limited. In this case it is clear that the transactions are claimed to be off market and payment is received through cheque but the appellant has not been able to proof as who was the person who has purchased the aforesaid transactions and who is the person who has suffered the loss on account of those transactions. If it was off market transactions, it was onus Of the appellant to get it confirmed from the 3rd party also along with it's return of income. But the appellant also failed to do so. therefore, it is basically an accommodation entry taken through cheque meaning thereby that the appellant himself introduced his own money and brought it in his books in order to set off his loss of the current year under the guise of commodity profit. Therefore, the action of the AO is hereby upheld and the ground of appeal is dismissed."

3. Learned Authorised representative vehemently contends during the course of hearing that both the lower authorities have erred in law and on facts in adding foregoing commodity profits as unexplained cash credits than speculative income derived from commodity income. Learned Counsel emphasizes that the fact that assessee has carried out its commodity transactions through a registered commodity broker M/s. Seja Traders Pvt. Ltd. He thus prays for acceptance of assessee's instant grievance.

4. The Revenue on the other hand highlights the fact that commodity exchange herein has denied that assessee carried out his commodity transaction on his platform. It further draws strong support from the lower authorities' action treating assessee's impugned profits as unexplained cash credits

5. We have given our thoughtful consideration to rival contentions. The assessee's detailed paper book (pages 1-172) comprising of his submissions/additional submissions filed before the CIT(A), the Assessing Officer's remand report dated 2305-2017, his rejoinder, return, balance sheet, tax audit report, DCIT's letter dated 03.03.2014, copy of ledger with M/s. Seja Traders Pvt. Ltd. in his books and viceversa, copy of accounts' confirmation by said party; respectively stands perused. The assessee's broker firm, M/s. Seja Traders Pvt. Ltd. is admittedly registered with commodity exchange

and his detailed evidences comprising of bank statements, confirmation of brokerage and ledger accounts prove that he had indeed paid and received the impugned sum in lieu of commodity transactions only. This tribunal's in (2009) 30 SOT 44 Acchyalal Shaw v/s. ITO & (2006) 6 SOT 247 Mukesh R Marolia v/s. Addl. CIT, hold that the necessary inference in such a backdrop that it is an instance of off market transactions only. We thus hold fact that both the lower authorities' have erred in adding/treating assessee's speculation income as unexplained cash credits u/s. 68 of the Act. The assessee succeeds in his former substantive ground therefore. . The assessee's second argument challenges correctness of the impugned addition that he had received the cheque amount in question on 6th, 9th, 13th, 17th, 23rd and 26th Sept., 2011 i.e. in next financial year than financial year 2010-11 relating to the impugned assessment is rendered infructuous in view of our foregoing findings.

6. Next comes the assessee's latter issue of sundry creditors addition of Rs.17,00,000/- made in both lower proceedings pertaining to Abed Ali, Ajay Mal and Tapan Ghosh. Copies of them voter I.Ds Card along with ledger accounts are part of record in the paper book. It transpires during the course of hearing that very issue of sundry creditors had reasons in preceding assessment year 2010-11 as well stands accepted in his favour as tribunal's co-ordinate bench's decision dated 28.12.2018 stand accepted.

We therefore delete the impugned addition by adopting judicial consistency”.

Since the facts of case are similar to the one as decided by the Co-ordinate Bench, we therefore set aside the order of Ld. CIT(A) and direct the AO to delete the addition.

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

Order is pronounced in the open court on 8th August, 2023

Sd/-

(Sonjoy Sarma /संजय शर्मा)

Judicial Member/न्यायिक सदस्य

Sd/-

(Rajesh Kumar/राजेश कुमार)

Accountant Member/लेखा सदस्य

Dated: 8th August, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Neelesh Choudhury, 10, Old Post Office Street, Ground Floor, Govt. Place, Kolkata-700001
2. Respondent – ITO, Ward-36(1), Kolkata
3. Ld. CIT(A)- NFAC, Delhi
4. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
 ITAT, Kolkata Benches, Kolkata