

**IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI NARENDER KUMAR CHOUDHRY, JM

**ITA No. 518/Mum/2023**

(Assessment Year: 2013-14)

Mr. Sukesh Vinod Goel,  
Shop No.22, Link Way Estate,  
New Link Road, Malad (W),  
Mumbai 400 064

**(Appellant)**

Vs.

Income Tax Officer,  
Ward 9(3)(4),  
Mumbai-400 020

**(Respondent)**

**PAN No. AAEPG0153E**

**Assessee by** : Mr. Mahaveer Jain, CA  
**Revenue by** : Mr. Rajsingh Meel, Sr. AR

**Date of hearing:** 07.08.2023  
**Date of pronouncement :** 18.08.2023

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. ITA No. 518/Mum/2023 is filed by Mr. Sukesh Vinod Goel (assessee /appellant) for A.Y. 2013-14 against the appellate order passed by the National faceless appeal Centre, Delhi [the learned CIT (A)] dated 11<sup>th</sup> January, 2023, wherein the appeal filed by the assessee against the assessment order passed by the Income Tax Officer, Ward 9(3)(4), Mumbai (the learned AO) under section 143 (3) dated 31<sup>st</sup> March, 2016 was dismissed.
02. Assessee is aggrieved and has raised following grounds of appeal:-



"1. Ld. CIT (A) on the facts and circumstances and in law erred in disallowing the interest payments of Rs 2150888/- u/s 40(a)(a) of the Act by holding that the appellant was able to get his books of accounts audited.

2. That the Ld. CIT(A) on the facts and circumstances of the case and in law erred in making an addition of Rs. 25,48,191/- on account of F&O Business Income not appreciating the fact that the same has already been offered to tax.

3. That the Ld. CIT (A) on the facts and circumstances of the case erred in accepting Ld ACT finding that appellant has accepted that he has not declared F&O profit of Rs 25,48,191 earned from M/s Kali commodity pvt. Ltd.

4. That the Ld. CIT(A) erred in the facts and circumstances of the case and in law by holding long term capital gain u/s 10(38) as bogus and making an addition of Rs 18,50,118/- u/s 68 on account of unexplained cash credit.

5. That the Ld. CIT(A) erred in the facts and circumstances of the case and in law by not considering the merits of the case and passing the order in limine"

03. Fact shows that assessee is an individual and is regularly filing its return of income. For A.Y. 2013-14 assessee filed his return of income on 29<sup>th</sup> June,

2013 declaring a total income of ₹ 1,864,050/-. The return of income was picked up for scrutiny by issuing notice under section 143 (2) of the Act. Assessment order under section 143 (3) of the Act, was passed by the learned Assessing Officer on 31<sup>st</sup> March, 2016 wherein he made an adjustment with respect to

- i. Disallowance under section 40 (a)(ia) of the Act of ₹ 2,150,888/-,
- ii. Addition of future and option business income of ₹ 2,548,191/-,
- iii. Additions of ₹18,50,118 under Section 68 of the Act.

04. Thus, the total income of the assessee was assessed at ₹ 84,14,246/- against the returned income of ₹ 18,65,015/.

05. Assessee aggrieved with the order of the learned Assessing Officer preferred an appeal before the learned CIT (A). The learned CIT (A) passed an order without hearing the assessee, as notices issued to the assessee are not complied with. The learned CIT (A) on the merits confirmed the addition/disallowance of ₹21,50,888/- for non-deduction of tax at source on interest paid to resident individuals on unsecured loan. He also confirmed the addition of ₹ 2,548,191/- as according

to him this profit was not declared in the return of income. The learned CIT (A) also decided the issue of addition under section 68 of the Act, of ₹ 18,50,118 being bogus claim of long-term capital gain claimed as exempt under section 10 (38) of the Act. Aggrieved with the appellate order the assessee is in appeal before us.

06. The learned Authorized Representative submitted that assessee has made a detailed submission dated 20<sup>th</sup> February, 2019 before the learned CIT (A) but same has not been considered at all. Later on appeals migrated to NFAC.

07. Even on the merit he submitted that

- a. with respect to non-deduction of tax at source the assessee has paid the interest on whose payment the tax has not been deducted however, the assessee relied upon the second proviso to section 40 (a)(ia) of the Act, which exempted assessee from disallowance on certain conditions. The assessee submitted all those details and stated that those taxpayers have already offered the interest income in the return of income and also submitted the certificate of the CA in the requisite form. Therefore, the disallowance does not occur.



b. On the issue of the addition of ₹ 2,548,191/- on account of future and option business income, the claim of the learned Authorized Representative was that that assessee has claimed a net future and option loss of ₹ 957,641 after considering the profit and loss from various transaction through brokers that included the two brokers alleged by the learned assessing officer. The learned Assessing Officer has stated that assessee has declared losses from future and options segment amounting to ₹ 9.92 lakhs however, the learned Assessing Officer has alleged that assessee has not disclosed the profit of ₹ 25,48,191/- being profit from M/s Kali Commodity Pvt. Ltd. The learned Authorized Representative stated that loss of ₹ 957,641 have been computed after duly accounted for the above profits. The above loss has remained after adjusting all the future and option profit earned by the assessee including the profits of ₹ 2,548,191. The assessee also submitted the Ledger copy of the profits earned and therefore, it was the claim of the learned Authorized Representative that the learned assessing officer has incorrectly held that the profit of ₹ 2,548,191/- has not been offered by the assessee. He submitted that net loss is after accounting for those profit.



Accordingly, the addition made by the learned Assessing Officer and confirmed by the learned CIT (A) is not proper.

- c. On the issue of the addition of long-term capital gain under section 10 (38) of the Act as bogus to the extent of ₹ 1,850,118 and added under section 68 of the Income-tax Act, 1961 (the Act). The learned Authorized Representative submitted that the assessee has purchased 10,000 shares of Utkarsh Agency at ₹ 10 each on 21<sup>st</sup> February, 2011 in physical form. The broker's note from Warner M Ltd was also produced and the bank statement showing payment of ₹ 1 lakh was also shown to the learned Assessing Officer. The assessee thereafter got these shares dematerialized and later on Utkarsh Agency was amalgamated with Scan Infrastructure Private Limited and accordingly, 10,000 shares of that company were converted into 5000 shares of the new entity. Those shares were sold by the assessee in A.Y. 2013-14 and broker note of D.B. & Co. was also submitted. The assessee has given the complete documentary evidences before the learned assessing officer, however, the learned AO has made the addition on the basis of suspicion. The assessee further relied upon the several

judicial precedents where the addition could not have been made.

d. The learned Authorized Representative submitted that despite making the proper submission before the learned CIT (A) by way of written submission, he confirmed addition without considering the same.

08. The learned Departmental Representative vehemently submitted that the assessee has not represented its case before the learned CIT (A), even after the dates were given by him and therefore, there is no error in the order of the learned lower authorities.

09. We have carefully considered the rival contentions and perused the orders of the learned lower authorities. The fact shows that the addition was made in the assessment order passed under section 143 (3) of the Act dated 31<sup>st</sup> March, 2016 against which the assessee preferred an appeal before the learned CIT (A). Before us, the assessee has submitted a paper book wherein it was stated that the above paper book was submitted before the learned CIT (A)-16, Mumbai. The detail written submission was placed before us containing 9 pages which is copy of submission before CIT (A). Later on, the appeal of the assessee was migrated to the faceless appeal Centre and the above submission

was not considered therein. However, we also find that the learned CIT (A) issued notices on 19<sup>th</sup> January, 2018, 12<sup>th</sup> February, 2018 and 13<sup>th</sup> March, 2018 as well as 6<sup>th</sup> November, 2018. But assessee did not respond to those notices. Further, on the change of incumbent a final notice was also issued to the assessee on 7<sup>th</sup> November, 2022 which was also not responded by the assessee. In view of this, the learned CIT (A) passed the appellate order ex parte. However, it is also the fact that the submission made before CIT (A) were also not considered which were already on file. On carefully looking at the paper book we find that assessee has submitted the copy of income tax return and CA certificate of all those parties to whom the interest was paid showing that those parties have accounted for those interest as their income supported by CA Certificate , therefore disallowance under section 40(a)(ia) of the Act, could not have been made. Further, the Ledger account of the future and options segment also shows that the income shown by the assessee and net losses were disclosed. With respect to the earning of the shares profit under section 10(38) of the Act, the assessee has submitted the available documentary evidences but same were not examined. In view of this, the learned CIT(A) has passed appellate order without considering the information already placed on record. Hence, we restore this appeal back to the file of the learned CIT



(A). The assessee is also directed to upload the written submission and all the documentary evidences that he would like to place before the learned CIT (A)'s e-portal as soon as the first notices are received. After that the learned CIT (A) may decide the issue on the merits after giving an opportunity of hearing to the assessee, if asked for.

010. Accordingly the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 18.08.2023.

Sd/-  
(NARENDER KUMAR CHOUDHRY)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 18.08. 2023

*Sudip Sarkar, Sr.PS*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai