

**आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर**  
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR

श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।  
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM  
आयकर अपील सं./ITA No.90/RPR/2023  
निर्धारण वर्ष /Assessment Year: 2013-14

Giridhar Jadhao F-60, Shri Ram Vatika Near Ram Mandir, Teacher Colony, Kota Raipur-492 001	Vs	Dy. CIT Circle 2(1), Raipur (C.G.)
<b>PAN No. :ACJPJ 7367A</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri R.B. Doshi, CA
राजस्व की ओर से /Revenue by	:	Shri Satya Prakash Sharma, Sr. DR
सुनवाई की तारीख / <b>Date of Hearing</b>	:	17/08/2023
घोषणा की तारीख/ <b>Date of Pronouncement</b>	:	22 /08/2023

**आदेश / ORDER**

**Per Arun Khodpia, AM :**

The captioned appeal of the assessee is directed against the order passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 24.01.2023 for the Assessment Year 2013-14, which emerged against the order of the Ld. AO vide order u/s 144 of the IT Act dated 28.03.2016. The grounds of appeal raised by the assessee are as under:

*"1. Ld. CIT (Appeals) has erred in sustaining addition of Rs.21,41,188/- on account of unexplained investment u/s 69B of the Act on account of transaction in the securities, on reference under CIB transaction under the code 502 of National and Multi Commodity Exchange contract of Rs.10 lacs or more without considering our submissions.*

*2. The impugned addition made by the Ld. AO is bad in law, illegal, unjustified, contrary to facts & law and based upon recording of incorrect facts and finding, in violation of principles of natural justice and the same should have been quashed by the Ld. CIT (Appeals).*

3. *The appellant reserves the right to amend, modify or add any of the ground/s of appeal.”*

2. The brief facts of the case are that the assessee is an individual, is salaried employee, filed his return of income on 31.03.2015, declaring total income of Rs.85,07,140/-. The case of the assessee was selected for scrutiny under CASS. Statutory notices were issued by the AO, but the appellant did neither reply to any of the notices nor attended the office of Ld. AO. The Ld. AO completed the assessment by making the addition of Rs.2,99,01,918/- u/s 144 based on the CIB information available with him.
3. Aggrieved by the order of the Assessing Officer, the assessee preferred an appeal before the Ld. CIT(A) wherein the addition made by the Assessing Officer was scaled down to Rs.21,41,188/- and the appeal of the assessee was partly allowed.
4. Dissatisfied with the order of the Ld. CIT(A), the assessee in order to challenge the decision of the Ld. CIT(A) have filed the present appeal before the ITAT, which is under adjudication before us.
5. At the outset, the Ld. AR of the assessee submitted a written synopsis, the same is extracted herein under:

*“As per ITD database assessee indulged in transaction worth Rs 2,99,01,918- in National Mulu Commodity Exchange Assessee did not make any compliance whatsoever Transaction value Rs 2,99,01,918-added u/s 69B.*

*CIT(A) Para 43 to 46*

*AO has not made a best judgement assessment. He added total volume of transactions in shares, which is not proper.  
Net result of total transactions was loss of 22.07.354-  
Although assessee claimed to have invested only 2 2 lakhs, there is no proof that it was only 2 lakhs.*

*As per the statement of broker, maximum investment during the year is 221,41,188- on 19.12.2012 Since assessee did not disclose the share transactions, this maximum amount should be treated as undisclosed investment us 698.*

**Submission of assessee**

*Statement of broker containing details of all transactions at PN 29 to 38 of PB. Net result was loss of Rs 2.07,354, PN 38 of PR Such loss not adjustable with other income of assessee and so details not filled in the ITR.*

*2 Against transactions of Rs. 2.99.01.918, assessee made investment of only Rs 2,00,000-paid to broker as margin money, on 12.07.2012 out of regular bank a/c of assessee. PN 25 of PB Broker's statement also does not show anything over & above Rs. 2,00,000- as paid by assessee. Other credit transactions are on ae of sale, on which only profit loss is to be considered.*

*4. No case that the loss was paid by assessee out of any undisclosed income source. No case made out that assessee made any investment with broker which was not out of accounted income.*

*5. Even if transactions not disclosed in return, no implication of income can arise in the transactions, in the background of facts of the case Both AO & Ld. CIT(A) erred in making sustaining addition.*

*6. Addition sustained by Ld. CIT(A) on the basis of maximum value of purchase transaction in assessee's a/c on 19.12.2012. PN 34 of PB Not justified.*

- i) It represented mere purchase of a particular share. No payment made by assessee against such purchases.*
- ii) On the same date (19.12.2012) there were transactions of sale of shares worth Rs 27,88,212.61 and purchase worth Rs. 28.08.527 55, as depicted in transaction statement at PB 34 of PB*
- iii) Net balance of Rs. 20,314.88 debited to assessee's are in ledger, at PN 26 of PB*
- iv) Purchase price proved to be adjusted paid out of sale proceeds of other shares. No case of any unaccounted payment purchase made out.*

*7. Transactions with broker could give rise to implication of income only (a) to the extent of profit loss out of such transactions and (b) payment made by assessee to the broker.*

- If no profit earned out of the transactions and.*
- If no unaccounted unexplained payment made by assessee to broker. no addition could have resulted. No addition could have been made only on the basis of highest balance in the ac of assessee with broker as it does not represent any investment made by assessee.*

*8. Addition sustained by Ld. CIT(A) is not justified."*

Based on the above synopsis, the contention of the assessee submitted by the Ld. AR that the AO has made the assessment u/s 144 i.e. best judgment assessment and has added total volume of transactions in shares as

income of the assessee, which was not proper. If the transactions are to be looked into in totality, there was a loss of Rs. 2,07,354/-, therefore, the assessee was under bonafide belief that even if such loss is not claimed there would be no loss of revenue to the exchequer, thus, it was presumed by the assessee that he was not under obligation to declare such transactions in his ITR. Before the Ld. CIT(A), it was the claim of the assessee that assessee has invested only Rs.2,00,000/- for transacting in the share trading, but the same was not considered realistic by the Ld. CIT(A) by stating that there is no proof that it was only Rs.2,00,000/-. The Ld. AR further drew our attention to page 25 of assessee's Paper Book showing the ledger account of assessee in the books of Sharekhan Ltd., wherein the assessee has made investment of Rs.10,000/- in cash while opening the account and again Rs.2,00,000/- by Cheque on 13.07.2012. It was the submission of the Ld. AR that the assessee has made no investment other than this two payments to the share broker. The Ld. AR further drew our attention at page 19 of the Paper Book showing statement of the assessee with State Bank of India, wherein the transaction pertaining to investment of Rs.2,00,000/- was reflatting on 12.07.2012. The Ld. AR further took us to page No.34 of the PB of the assessee showing the entry for sale of shares amounting to Rs.21,41,188/- co-relating the said entry with the observation of the Ld. CIT(A), wherein at para 4.6, the Ld. CIT(A) observed that the maximum investment during the year was Rs.21,41,188/- . After observing from the Sharekhan's Cash Trade Listing (Summary) the entry of Rs.21,41,188/- on 19.12.2012, the Ld. CIT(A) has concluded that

since the said amount is highest amount during the year, therefore, the addition made by the AO deserves to be restricted to Rs.21,41,188/-. The Ld. AR further submitted that the amount picked up by the Ld. CIT(A) was amount of one transaction and not the balance of the assessee's investment account. It was also indicated by the Ld. AR that the transaction of Rs.21,41,188/- was a sale transaction, just before the said transaction on the same day which was a transaction of purchase of the same script, i.e., "United Sprit" for Rs.21,23,237/-, in this transaction also the assessee has booked certain loss. It is, therefore, the submission of the Ld. AR that the observation of the Ld. CIT(A) was purely guess work not having any backing of material facts, moreover, Ld. CIT(A) has proceeded with such finding without confronting the same to the assessee to offer any explanation on the same, such action of the Ld CIT(A) was against the principle of natural justice, therefore, the same needs to be reversed and the addition made by the Ld. AO which was also on the basis of pure presumptions, needs to be deleted in its entirety.

6. The Ld. Sr. DR contrary to the submission of the assessee, strongly supported the order of the Ld. CIT(A) and requested to sustain the addition.

7. We have considered the rival submissions, material placed on records and the order of the authorities below. Admittedly the assessee has transacted certain share transactions with Sherkhan Ltd. According to the ledger account of Sharekhan Ltd., the assessee had invested an

amount of Rs.2,00,000/-, source of such investment was also proven, as the same was made by the assessee's from own funds in his bank account, wherein salary of the assessee from 'Ambuja' are reflected. It is apparent from the records that the share transactions were pulled by the Ld. Assessing Officer in aggregate, considering the same as total investment of the assessee and an addition of Rs.2,99,01,918/- was made. Since, the assessee was noncompliant before the AO, the assessment was framed u/s 144 of the Act. making addition of entire transaction in absence of any explanation by the assessee, hence was challenged, with furnishing of required information before the Ld. CIT(A). The observations of the Ld. CIT(A) were found to be misplaced so far as the amount of a transaction on a particular date, since was of highest value was picked up and considered as maximum investment by the assessee, without confronting the assessee to clarify the issue that whether such amount is actual investment or not. It is also evident that assessee has made a total investment of Rs.2,10,000/- only in share transactions and had incurred a total loss of Rs.2,07,355/- which is discernible from Cash Trade Listing (summary) of Sherkhan Ltd. Since, no cogent fact could be brought on record by the revenue that there was an investment more than more than Rs.2,10,000/-, source of the same was also evident from the Bank Statement of the assessee, we can satisfactorily agreed to the contention of the assessee that nothing can be considered as undisclosed income of the assessee u/s 69B of the Act. In background of such facts and circumstances, we are of the considered view that the addition made by

the AO, which was restricted by the Ld. CIT(A) are liable to be scrapped and we do so.

8. In the result, appeal of the assessee is allowed in terms of our observations herein above.

Order pronounced in the court on 22/08/2023.

**Sd/-  
(RAVISH SOOD)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-  
(ARUN KHODPIA)**

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 22/08/2023

*Pramod Kumar, Sr. PS (on tour)*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

**(Assistant Registrar)**

आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur

		Date	Initial	
1.	Draft dictated on			Sr.PS
2.	Draft placed before author			Sr.PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS
7.	File sent to the Bench Clerk			Sr.PS
8.	Date on which file goes to the Sr.PS			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			