

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER AND  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.3417/M/2023  
Assessment Year: 2015-16**

**ITA No.3418/M/2023  
Assessment Year: 2014-15**

**ITA No.3419/M/2023  
Assessment Year: 2020-21**

**ITA No.3420/M/2023  
Assessment Year: 2018-19**

M/s. Crosseas Capital Services P. Ltd., Suite 37, 5 <sup>th</sup> Floor, Martin Burn House, 1 RN Mukherjee Road, Kolkata, West Bengal - 700 001 <b>PAN: AACCC5470H</b> (Appellant)	Vs.	Assistant Commissionr of Income Tax (Central Circle)-2(4), 802, 8 <sup>th</sup> Floor, Pratishtha Bhavan, Old CGO Annexe, Maharishi Karve Road, Mumbai – 400 020 (Respondent)
--	-----	---

**Present for:**

Assessee by : Shri Firoze B. Andhyarujina , A.R. &  
Shri Maneck Andhyarujina, AR.

Revenue by : Shri H.M. Bhatt, D.R.

Date of Hearing : 06.02.2024

Date of Pronouncement : 26.02.2024

**O R D E R**

**Per Bench :**

All these four appeals are filed by the assessee against the different orders of Commissioner of Income Tax passed under section 250 of the Act pertaining to assessment year 2018-19 &

2020-21. For the sake of convenience all these appeals are adjudicated together by taking the ITA No.3418/M/2023 for A.Y. 2014-15 as a lead case and its findings will be mutatis mutandis applicable to the other appeals wherever these are applicable.

### **ITA No.3418/M/2023**

2. The assessee has raised the following grounds before us:

#### **“ON REASSESSMENT/JURISDICTION:**

*1.1 In the facts and circumstances of the case and in law, the Learned Commissioner of Income tax (Appeals) - 48, Mumbai ["the ld. CIT(A)"] erred in confirming the action of the assessing officer ["the AO"] in framing the assessment u / s 143(3) r.w.s. 147 of the Income Tax Act, 1961 ["the Act"] without appreciating that the necessary pre-conditions for initiation as well as completion of a re- assessment were not fulfilled in the present case.*

*1.2 In the facts and the circumstances of the case, and in law, the entire reassessment and the consequential assessment order passed by the Ld. AO and as confirmed by the Ld. CIT(A) is bad, illegal and void for want of jurisdiction.*

#### **ON MERITS:**

*2.1 In the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) erred in confirming the action of the Ld. AO in erroneously computing the Income from House Property at Rs.5,25,000/- instead of Rs.3,67,500/- as claimed by the Appellant in its return of income.*

*2.2 While doing so the Ld. CIT(A) failed to appreciate that:*

*(i) The Ld. AO grossly erred in not granting the standard deduction at 30% as claimed;*

*(ii) The CIT(A) has affirmed the said erroneous computation without any independent reasoning or basis whatsoever; and;*

*(iii) Such an action of the Ld. CIT(A) is contrary to the settled law as regards the duty of the Ld. CIT(A) in this regard.*

*2.3 It is submitted that in the facts and circumstances of the case and in law no such disallowance was called for.*

*3.1 In the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) erred in confirming the action*

*of the Ld. AO in disallowing an amount of Rs. 2,50,000/- being club membership fees paid to Willingdon Club as expense not related to business.*

*3.2 While doing so the Ld. CIT(A) failed to appreciate that:*

*(i) the said expenditure was incurred wholly and exclusively for the purpose of business;*

*(ii) the said claim is appropriately made by the Appellant in accordance with law, satisfying all the requisite conditions and has been consistently allowed over the past years even in scrutiny assessments; and;*

*(iii) the said claim was disallowed by the AO on an erroneous understanding of the law which was confirmed by the CIT(A) based on extraneous and irrelevant considerations while ignoring the relevant and material considerations and evidences in this regard.*

*3.3 It is submitted that in the facts and circumstances of the case and in law no such disallowance was called for.*

*4.1 In the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of the Ld. AO in disallowing an amount of Rs. 77,259/- being fees paid to Stock Exchanges [BSE & NSE] treating the same as not allowable as per Explanation to section 37(1).*

*4.2 While doing so the Ld. CIT(A) failed to appreciate that:*

*(i) The said charges paid to the Stock Exchanges [BSE & NSE] do not fall under the exclusions carved out by the Explanation to Section 37(1);*

*(ii) nature of expenses incurred wholly and exclusively for the purpose of business; and;*

*The same are incurred in the routine course of business and are in the*

*(iii) In any case, the disallowance is contrary to the extant law and judicial precedents in this regard*

*4.3 In the facts and circumstances of the case and in law, the disallowance made by the Ld. AO and as affirmed by the Ld. CIT(A) deserves to be deleted.*

*5. In the facts and circumstances of the case and in law, the Ld. AO erred in levying interest u/s 234B & 234C of the Act on the Appellant.*

*6. The appellant craves leave to add, amend, alter, modify or delete all or any of the grounds raised in the appeal.”*

**Ground No.1 : On the issue of validity of reassessment proceedings**

3. Fact in brief is that the assessee has filed return of income declaring total income of Rs.3,60,72,400/- and assessment under section 143(3) of the Act was completed on 29.12.2016 and total income was assessed at Rs.3,62,29,900/-. Subsequently the assessment was reopened vide issuing of notice under section 148 of the Act on 05.03.2021. The assessment was reopened on the basis of information received from DGIT (Investigation) that an amount of Rs.66.2 lakhs has been transferred by the assessee during the assessment year 2014-15 to Shri Sanjeev Joshi for trading through Cross Seas Global Ltd. which had been established in BVI by the Director Shri Rajesh Baheti mainly to conduct trading in international stock exchange using funds channeled through informal money transfer link. Therefore in the reason for reopening recorded by the Assessing Officer (AO) it was mentioned that income to the extent of Rs.66,20,000/- had escaped assessment as assessee had failed to disclose fully and truly all material facts necessary for its assessment in this case in terms of the provisions of section 147 of the Act. However, the AO has passed the order under section 147 read with section 143(3) on 30.03.2022 assessing the total income of Rs.3,65,57,159/- after making only additions with respect to the disallowance of club membership fees of Rs.2,50,000/- and disallowance of penal charges paid by the assessee to the BSE and NSE to the amount of Rs.77,259/-.

4. On the issue of reopening the issue Ld. Counsel contended before us that AO has not made any addition on the basis of which the case of the assessee was reopened for reassessment. He further submitted that if no addition is made on the basis of which the assessment was reopened then AO cannot make any other addition in the reassessment proceedings.

5. On the other hand, the Ld. D.R. supported the order of lower authorities.

6. Heard both the sides and perused the material on record.

7. Without reiterating the fact as discussed above, we have perused the copy of reasons recorded placed at page No.4 & 9 of the paper book filed by the assessee. The AO recorded reasons for reopening of the assessment on 23.11.2021 for the assessment year 2014-15. At para 3 of the reasons recorded the AO has referred that an amount of USD 100,000 i.e Rs.66.2 lakhs has been transferred by the assessee to one Sh. Sanjeev Joshi for trading through cross Seas Global Ltd. which had been established by the Director Shri Rajesh Baheti mainly to conduct trading in international stock exchange using funds channeled through informal money transfer links. The AO had discussed the information in the reasons recorded that information of tax evasion against the assessee company was received and stated that an amount of Rs.66,20,000/- had escaped assessment as assessee had failed to disclose fully and truly all material facts necessary for its assessment in this case in terms of the provisions of section 147 of the Act.

8. However, after perusal of the assessment order passed inconsequential to the reasons recorded for reopening of the assessment it is noticed that the AO has made an addition on the issue of club membership fees and issue of penal charges paid by the assessee to the BSE & NSE and no other addition has been made on the issue on the basis of which the reassessment was initiated.

9. We have gone through the reasons recorded and it is clearly established that the AO has not made any addition on the issue which was subject matter of reopening the assessment in the case of the assessee. During the course of appellate proceedings before us the Ld. Counsel has also referred the decision of Hon'ble Jurisdictional High Court of Bombay in case of CIT vs. Jet Airways (I) Ltd. (2010) 195 Taxman 117 (Bombay).

10. With the assistance of the Ld. Representatives we have perused the above referred decision of the Hon'ble Jurisdictional High Court of Bombay wherein it was held that if after issuing a notice under section 148 the AO accepts the contention of the assessee and holds that income for which he had initially formed a reason to believe that it had escaped assessment, has, as a matter of fact, not escaped assessment, it is not open to him to independently assess some other income, if he intends to do so, a fresh notice under section 148 of the Act would be necessary, legality of which would be decided in the event of a challenge by the assessee. We have also perused the decision of Hon'ble High Court of Gujarat relied upon the Ld. Counsel in the case of CIT vs. Mohmed Juned Dadani (2013) 30 taxmann.com 1 (Gujarat) wherein it has been

held that when on ground on which reopening of assessment was based, no addition was made by the AO, he could not make addition on some other grounds which did not form part of reasons recorded by him.

11. We have also perused the decision of Hon'ble Delhi High Court in case of Oriental Bank of Commerce vs. Addl. CIT (2014) 49 taxmann.com 485 (Delhi) relied upon the Ld. Counsel wherein Hon'ble High Court held that if no additions were made in respect of reasons given for reopening of assessment, it was not open to AO to independently assess some other income. Considering the above facts and judicial findings as discussed above, we find that the reassessment order passed in the case of the assessee is not sustainable and the same is quashed. Accordingly, ground No.1 is decided in favour of the assessee.

#### **Ground Nos.2 to 4**

12. Since we have quashed the reassessment as not sustainable therefore the addition made on other issues are not required any adjudication. In the result, the appeal of the assessee in ITA No.3418/M/2023 for A.Y. 2014-15 is allowed.

#### **ITA No.3417/M/2023 for A.Y. 2015-16**

13. The assessee has raised the following grounds before us:

##### **“ON REASSESSMENT / JURISDICTION:**

*1.1 In the facts and circumstances of the case and in law, the Learned Commissioner of Income tax (Appeals) - 48, Mumbai [ "the Id. CIT(A) " ] erred in confirming the action of the assessing officer [ "the A O^ prime prime ] in framing the assessment u / s 143(3) r.w.s. 147 of the Income Tax Act, 1961 [ "the Act" ] without appreciating that the necessary pre-conditions for initiation as well as completion of a re-assessment were not fulfilled in the present case.*

*1.2 In the facts and the circumstances of the case, and in law, the entire reassessment and the consequential assessment order passed by the Ld. AO and as confirmed by the Ld. CIT(A) is bad, illegal and void for want of jurisdiction.*

**ON MERITS:**

*2.1 In the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) erred in confirming the action of the Ld. AO in disallowing the loss of Rs. 4,93,135/- being trading loss incurred on buying and selling of shares of Tilak Venture Limited.*

*2.2 While doing so the Ld. CIT(A) failed to appreciate that:*

*(i) The said loss has been wrongly disallowed by the AO based on extraneous and irrelevant considerations while completely ignoring the relevant material and considerations and the evidences furnished by the Appellant in this regard; and;*

*(ii) The said disallowance is even contrary to law and the same has been confirmed by the Ld. CIT(A) without giving any independent reasoning whatsoever*

*2.3 It is submitted that in the facts and circumstances of the case and in law no such disallowance was called for.*

*3.1 In the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) erred in confirming the action of the Ld. AO in disallowing an amount of Rs. 2,50,000/- being club membership fees paid to Willingdon Club as expense not related to business.*

*3.2 While doing so the Ld. CIT(A) failed to appreciate that:*

*(i) the said expenditure was incurred wholly and exclusively for the purpose of business;*

*(ii) the said claim is appropriately made by the Appellant in accordance with law, satisfying all the requisite conditions and has been consistently allowed over the past years even in scrutiny assessments; and;*

*(iii) the said claim was disallowed by the AO on an erroneous understanding of the law which was confirmed by the CIT(A) based on extraneous and irrelevant considerations while ignoring the relevant and material considerations and evidences in this regard.*

*3.3 It is submitted that in the facts and circumstances of the case and in law no such disallowance was called for.*

*4.1 In the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of the Ld. AO in disallowing an amount of Rs. 2,02,666/- being fees paid to Stock Exchanges [BSE & NSE] treating the same as not allowable as per Explanation to section 37(1).*

*4.2 While doing so the Ld. CIT(A) failed to appreciate that:*

*(i) The said charges paid to the Stock Exchanges [BSE & NSE] do not fall under the exclusions carved out by the Explanation to Section 37(1);*

*(ii) The same are incurred in the routine course of business and are in the nature of expenses incurred wholly and exclusively for the purpose of business; and;*

*(iii) In any case, the disallowance is contrary to the extant law and judicial precedents in this regard*

*4.3 In the facts and circumstances of the case and in law, the disallowance made by the Ld. AO and as affirmed by the Ld. CIT(A) deserves to be deleted.*

*4. In the facts and circumstances of the case and in law, the Ld. AO erred in levying interest u / s 234B & 234C of the Act on the Appellant.*

*5. The appellant craves leave to add, amend, alter, modify or delete all or any of the grounds raised in the appeal.”*

14. The fact in brief is that return of income declaring total income of Rs.6,16,65,270/- was filed on 30.09.2015. The case was subjected to scrutiny assessment and assessment under section 143(3) of the Act was passed on 18.12.2017 determining the assessed income at Rs.6,76,11,000/-. Subsequently the case was reopened on the basis of information received from central circle-2(2), Kolkata wherein it was informed that M/s. Tilak Venture Ltd. was a penny stock listed on BSE and this company had been used to facilitate introduction of unaccounted income of members of beneficiaries in the form of exempt capital gain or STCL in their books of accounts. Thereafter the case of the assessee was reopened by issuing a notice under section 148 of the

Act on 23.12.2021. The assessment under section 147 read with section 143(3) of the Act was finalized on 31.03.2022 assessing the total income at Rs.6,85,56,801/-. Further facts of the case are discussed while adjudicating the ground of appeal filed by the assessee.

**Ground No.2 : Disallowance of loss of Rs.4,93,135/- being trading loss**

15. During the course of assessment the AO stated that the scrip M/s. Tilak Venture Ltd. has been used to provide bogus LTCG to various beneficiaries. After perusal of the detail filed by the assessee the AO observed that the assessee has traded in the aforesaid scrip which was used to facilitate introduction of unaccounted income in the forms of capital gain or short term loss in their books of accounts. Therefore the AO has disallowed the amount of loss of Rs.4,93,135/- booked by the assessee in the aforesaid scrip M/s. Tilak Venture Ltd.

16. The assessee filed appeal before the Ld. CIT(A) and the Ld. CIT(A) has dismissed the appeal of the assessee.

17. The Ld. Counsel submitted that at the time of assessment the assessee has filed the complete information related to trade transaction carried out in BSE & NSE. In this regard the assessee has referred copy of letter dated 06.11.2017 placed in the paper book filed before the AO. He further submitted that during the course of original assessment as required by the AO complete information pertaining to trade/investment details were provided in

a CD on 10.11.2017 vide letter dated 20.11.2017 placed in the paper book.

18. Further on merits the Ld. Counsel submitted that the assessee has purchased and sold the shares on BSE and the assessee has neither claimed LTCG nor claimed STCL. He further submitted that the assessee has shown trading loss of Rs.4,93,135/- under the head trading business income.

19. On the other hand, the Ld. D.R. supported the order passed by the lower authorities.

20. Heard both the sides and perused the material on record. Without reiterating the facts as discussed above the case of the assessee was reopened on the basis of information received from the AO, Central Circle-2(2), Kolkata that the assessee has done trading transaction in the scrip M/s. Tilak Venture Ltd. which has been used to provide accommodation entries in the form of LTCG & STCL.

21. This is an undisputed fact that the assessee has claimed trading loss in respect of trade transaction carried out in the scrip M/s. Tilak Venture Ltd. and the assessee has not claimed any LTCG or STCL as alleged by the AO. Further we have noticed that during the original assessment the assessee has submitted the daily trade transactions in annexure 10 to the AO vide letter dated 06.11.2017 and further scripwise profit earned or loss incurred were provided in a CD on 10.11.2017 which was also acknowledged by the AO vide a letter dated 20.11.2017. Looking to the above facts and materials placed on record we find that the lower authorities could not substantiate that the assessee has obtained LTCG &

STCL by trading in the scrip M/s. Tilak Venture Ltd. since the assessee has reported the same as trading loss under the head business income.

22. In view of the above facts and circumstances we do not find any justification in the findings of Ld. CIT(A). Therefore, ground No.2 of appeal of the assessee is allowed.

**Ground No.3 : Disallowance of Rs.2,50,000/- being club membership fees paid to Willingdon club.**

23. During the course of assessment the AO noticed that the assessee has debited an amount of Rs.2,50,000/- to the profit & loss account towards club membership fees. On query the assessee explained that the assessee has taken corporate membership of the Willingdon sports club and paid Rs.25,00,000/- for the membership for a period of 10 years and it has debited an amount of Rs.2,50,000/- to the profit & loss account in each year proportionately as corporate membership fees. The assessee further explained that the clubs are used by each to meet various clients to keep the relationships as beneficiary for the business of the assessee company. However, the AO has not agreed with the submission of the assessee and stated that director of the assessee company was nominee of the assessee in whose favour the membership was taken. Therefore there was possibility that director of the assessee company has used the club membership for his personal use. Therefore the claim of aforesaid amount as a business expense was disallowed and added to the total income of the assessee.

24. The assessee filed the appeal before the Ld. CIT(A) and the Ld. CIT(A) has dismissed the appeal.

25. During the course of appellate proceedings before us the Ld. Counsel contended that club membership expenses were incurred wholly and exclusively for the business purpose of the assessee. He placed reliance on the following decisions:

1. *JP Morgan India P Ltd vs The ACIT (ITA No. 670/MUM/2006)*
2. *Gujarat Pipavav Port Ltd Vs ITO (ITA No. 3361/Mumm/2019)*
3. *Otis Elevator Co. (India) Ltd vs CIT reported in (1992) 195 ITR 682 (Bom)*
4. *Swiss Re Services India Pvt Ltd vs DCIT in 1323 of 2012*
5. *CIT vs Samtel Colour Limited reported in (2010) 326 ITR 425 (Del)*
6. *MKJ Tradex Ltd vs DCIT (ITA No. 1044/Kol/2016)*
7. *CIT vs United Glass Manufacturing Co Ltd [2012] 28 taxmann.com 429 (SC)[12-09-2012]*

26. On the other hand, the Ld. D.R supported the order passed by the lower authorities.

27. The assessee has claimed the expenses incurred pertaining to club membership of the Willingdon sports club which he explained that it was used for the purpose of business for meeting various kinds of people to keep the relationships and making new contacts for the benefit of the assessee company.

28. We have perused the decision of Hon'ble Bombay High Court in case of Otis Elevator Co. (India) Ltd. as referred above wherein it is held that club membership fees for employees incurred by the assessee was business expenditure under section 37 of the Act.

29. We find that the AO has not brought any material on record to substantiate that how the corporate club membership expenses were incurred for the personal benefit of the directors of the company. Therefore considering the decision of Hon'ble

jurisdictional High Court of Bombay and other decisions referred above we find merits in the submissions of the assessee. Therefore, this ground of appeal of the assessee is allowed.

**Ground No.4 : Disallowance of an amount of Rs.2,02,666/-being fees paid to stock exchange (BSE & NSE)**

30. During the course of assessment proceedings the AO noticed that an amount of Rs.2,02,666/- has been incurred by the assessee on the certain charges levied upon by the exchangers. The AO was of the view that these expenses incurred by the assessee were on the nature of penal charges and prohibited by law. Therefore, claim of such claim was disallowed.

31. The assessee filed appeal before the Ld. CIT(A) and the Ld. CIT(A) dismissed the appeal of the assessee.

32. The Ld. Counsel referred the various judicial pronouncements on the issue that charges paid to the BSE & NSE are not penal in nature. He referred various judicial pronouncements.

33. Heard both the sides and perused the material on record.

34. On the other hand, the Ld. D.R. relied upon the order passed by the lower authorities.

35. During the course of assessment proceedings the AO did not allow the claim of MWPL charges of Rs.1,572/- which was disallowed. The assessee explained that the aforesaid expenses were permitted by law and these expenses were exclusively incurred for the business purpose of the assessee company. The Ld.

Counsel has referred the decision of ITAT, Mumbai in the case of ITO vs. M/s. The Stock & Bond Trading Co. in ITA No.6459/M/2008 for A.Y. 2005-06 order dated 11.02.2010 wherein it is held that lease line charges paid by the assessee company to stock exchange were in the nature of reimbursement of charges paid by the members of stock exchange and delay in making delivery of shares due to deficiencies were payment made in regular course of business and not for infraction of law as per provision of section 37(1) of the Act. Further, we have seen that Hon'ble Jurisdictional High Court of Bombay in the case of CIT vs. M/s. The Stock and Bond Trading Company in Income Tax Appeal No.4117 of 2010 order dated 14<sup>th</sup> October 2011 held that payments made to the stock exchange by the assessee for violation of their regulations are not amounting to an offence or which is prohibited by law, therefore invocation of explanation to section 37 of the Act is not justified.

36. Similarly, we have also noticed the various other judicial pronouncements referred by the Ld. Counsel holding that penalty levied upon the assessee by the stock exchange for maintaining short margin cannot be equated with the penalty levied for infraction of any law and hence proviso to section 37(1) of the Act would not apply. Considering the decision of Hon'ble Jurisdictional High Court of Bombay and ITAT, we direct the AO to delete the impugned additions. Therefore, this ground of appeal is allowed.

**Ground No.1 of A.Y. 2015-16**

37. Since we have allowed the appeal of the assessee on merits, therefore this ground of appeal pertaining to validity of reassessment not required any adjudication.

**ITA No.3420/M/2023 for A.Y. 2018-19**

38. Since similar issue on identical facts we have adjudicated vide ground of appeal No.2 & 3 in the case of the assessee vide ITA No.3417/M/2023 for A.Y. 2015-16 as above therefore applying the findings of the same mutatis mutandis to this appeal of the assessee and hence ground Nos.2 & 3 of the appeal of the assessee are allowed.

**ITA No.3419/M/2023 for A.Y. 2020-21**

39. The similar issue on identical facts, we have adjudicated vide ground Nos.2 & 3 of the appeal of the assessee vide ITA No.3417/M/2023 for A.Y. 2015-16 as above wherein the issue was decided in favour of the assessee. Therefore applying the findings mutatis mutandis of Nos.2 & 3 in ITA No.3417/M/2023 for A.Y. 2015-16 to the ground Nos.1 &2 of the appeal of the assessee the ground Nos.2 & 3 are also allowed.

40. In the result, all the four appeals filed by the assessee are hereby partly allowed.

**Order pronounced in the open court on 26.02.2024.**

**Sd/-  
(AMIT SHUKLA)  
JUDICIAL MEMBER**

**Sd/-  
(AMARJIT SINGH)  
ACCOUNTANT MEMBER**

Mumbai, Dated: 26.02.2024.

\* Rohit, P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench  
//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.