

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No. 278/M/2024  
Assessment Year: 2015-16**

Mr. Kishor Ghevarchand Jain 3 <sup>rd</sup> Floor, Porwal Bhawan, Near Vaishya Mandir Hall, Kasarhat, Kalyan Thane - 421301. <b>PAN: AAZPJ6248E</b>	Vs.	Circle -1, Kalyan D.C.I.T. 1 <sup>st</sup> Floor, Mohan Plaza, Wayale Nagar, Khadak Pada, Kalyan (W.) - 421301.
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Bhupendra Shah, A.R.  
Revenue by : Shri P. D. Chougule (Addl. CIT), Sr. D.R.

Date of Hearing : 13 . 05 . 2024  
Date of Pronouncement : 29 . 05 . 2024

**O R D E R**

**Per : Ratnesh Nandan Sahay, Accountant Member:**

1. This appeal has been filed by the appellant against the Order of the Ld. CIT (Appeals) passed u/s. 250 of the Income Tax Act [the 'Act' in short] vide its DIN & Order No. ITBA/NFAC/S/250/2023-24/1057548827(1) Dated 31/10/2023 for the Assessment Year 2015-16.
2. The following ground of appeal have been raised:

*“1. On the facts and in the circumstances of the case and in law, the FAO erred in closing the assessment proceeding before the time limit given to the appellant to file the response to a notice dated 23.03.2022 issued by the Id. FAO asking to show cause why assessment should not be completed on the basis of draft assessment order and doing so is unfair, grossly prejudicial, defective and contrary to the principle of natural justice and provisions of the Income Tax Act, 1961 and the Rules made thereunder by giving any 2 days' time.*

*2. The JAO erred in initiating proceedings u/s.147*

*a. Although it was to be issued by the FAO*

*b. merely on the information received from investigation wing without application of mind;*

*c. on suspicion and doubts and for making roving enquiries*

*d. without making any independent inquiry himself;*

*e. Without any new tangible material information related to the transaction*

*f. the approval of Principal Commissioner of Income Tax is without requisite objective satisfaction and is given in a mechanical manner*

*g. after the expiry of four years from the end of the relevant assessment year*

*h. assessment was already passed u/s 143(3) of the Act and as there was no failure on the part of the appellant to disclose all facts*

*i details of which had already been provided during the original assessment proceedings and after applying his mind, the Assessing Officer had passed the order u/s 143(3) of the Act, which amounts to "change of opinion".*

*3. On the facts and in the circumstances of the case and in law, the Ld. A.O. erred in making an addition of Rs. 1,20.10,900/- being profit earned by appellant from trading in currency derivatives as unexplained investment u/s. 69 of the Act*

*a. by failing to appreciate that appellant has already offered an amount of Rs.1,20,10,900/- as income from business in its return of income and addition of the same as unexplained investment u/s. 69 of the Act will tantamount to double addition*

*b. nowhere proving that the transaction carried out by appellant are non-genuine;*

*c. the transaction in currency derivative carried out by appellant are on a recognised stock exchange:*

*d. there was no action against appellant or its brokers from SEBI for trading in currency derivatives;*

*e. the transaction carried out by appellant are through a web based trading portal wherein the identity of buyer and seller are not disclosed;*

*f. the price of the currency derivatives are driven by global market and Appellant cannot manipulate the same*

*g. there is no reference of any non genuine transaction carried out by appellant in the project Falcon report received from investigation department;*

*h. the name of the seller for all the transactions are not same.*

*4. On the facts and in the circumstances of the case and in law, the learned Assessing Officer erred in making addition of Rs.2.40,218/- u/s. 69C of the Act as unexplained expenditure incurred for alleged non genuine transactions in consequence to aforesaid addition without any proof of such expenditure being incurred which is a prerequisite for invoking the said section*

*5. The FAO erred in assessing income under the head 'Income from Other Sources' at Rs.1,58.62.228/- after having disallowed Rs.1,22.51,118/- and thereby erred in making additional disallowance of Rs.36,11,110/- without assigning any reasons.*

*6. In the facts and circumstances of the case and in law, the learned CIT[A] NFAC erred in*

*confirming all the additions and dismissed all the grounds*

*7. The Ld. A.O. erred in charging interest u/s. 234B and 234C of the Act*

*8. The Ld. A.O. erred in initiating penalty proceedings under section 271(1)(c)*

*[B] General:-*

- The appellant reserve rights to add alter or delete any portion of this appeal before its conclusion.*
- This appeal is filed late and delay may be condoned*
- A detailed paper book will be filed at the time of hearing.”*

3. The appellant has also filed the application to condone the delay of 18 days in filing the appeal before the ITAT (Mumbai) on the ground that their old accountant, who used to look after their taxation matters, had suddenly left and the new accountant was not well conversant with their accounts. Therefore, the delay of 18 days was *bona fide* and genuine and therefore, the same may be condoned.
4. We have considered the prayer made by the appellant and accordingly, condone the delay of 18 days in filing the appeal before the ITAT (Mumbai).
5. Now coming to the facts of the case, it was noticed by the Assessing Officer that the assessee had done some bogus transactions in “F” & “O” trading and earned fictitious profit

thereon. Accordingly reasons were recorded u/s. 147 of the Income Tax Act and the case was reopened after taking the necessary approval of the competent authority. In the reasons recorded by the Ld. assessing officer, it was stated that an investigation was carried out by the income tax department to unearth tax evasion scam in “F” & “O” derivative segment in which syndicate of share brokers and entry operators were involved who provided bogus loss/profit to various entities by trading on the platform of VSE, NSE, USE etc. in equity derivative option segment as well as future segment. The modus operandi have been discussed in detail in the body of the assessment order.

6. In response to the notice issued u/s 148 of the Act, the assessee filed income tax return on 31/05/2021. Subsequently, the copy of reasons recorded u/s.147 of the Income Tax Act was supplied to the assessee and further, statutory notices u/s.142(1) and 143(2) of the Act were issued from time to time requiring the assessee to file the necessary documents to explain the case on merit.
7. The assessing officer, after considering all aspects of the case, made an addition of Rs.1,20,10,900/- to the total income of the assessee as unexplained investments u/s.69 of

the Act. A sum of Rs.2,40,280/- was also added to the total income of the assessee u/s.69C of the Act on the ground that the assessee might have paid the entry operators in lieu of the services provided by them to facilitate the entire process.

8. Aggrieved by the order of the Ld. Assessing Officer, an appeal was filed before the Ld. CIT Appeal. The Ld. CIT Appeal dismissed the appeal of the assessee on the ground that the assessee did not produce any submission, evidence or documents to substantiate his claim that the entire transactions were genuine one.
9. The appellant has preferred this appeal before the Tribunal against the impugned order of the Ld. CIT Appeal. During the course of hearing before us, the appellant admitted that no compliance was made before the Ld. CIT Appeal as their old accountant who used to look after their taxation matters had suddenly left his job.
10. We have considered the submission made by the appellant stated as above and we are of the view that matter needs to be adjudicated before the Ld. CIT Appeal again as the appellant could not explain the entire transactions claimed by him to be genuine.

11. We, therefore, remand the matter back to the file of the Ld. CIT Appeal to decide the issue afresh by providing the appellant adequate opportunity of being heard as requested by him. The Appellant is also directed to appear before the Ld. CIT Appeal and produce all relevant details, documents, evidence, etc. before him to explain his case.

12. In the result, the appeal is allowed in aforesaid terms.

**Order pronounced in the open court on 29.05.2024.**

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

**Sd/-  
(RATNESH NANDAN SAHAY)  
ACCOUNTANT MEMBER**

Mumbai, Dated: 29.05.2024.  
*Snehal C. Ayare, Stenographer*

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

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.