

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

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER**

**AND**

**SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER**

**ITA NO. 4006/MUM/2023 (A.Y: 2014-15)**

<b>M/s. Aadinath Securities Pvt Ltd</b> C/o CA Himanshu Gandhi 16 <sup>th</sup> Floor, D Wing, Trade World Kamala Mills Compound Senapati Bapat Marg, Lower Parel Mumbai - 400013  <b>PAN: AAFCA3411P</b> <b>(Appellant)</b>	v.	<b>ITO Ward 4 (1)(3)</b> Aayakar Bhavan Maharishi Karve Road New Marine Lines, Churchgate Mumbai-400020  <b>(Respondent)</b>
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<b>Assessee Represented by</b>	<b>:</b>	<b>Shri Himanshu Gandhi</b>
<b>Department Represented by</b>	<b>:</b>	<b>Shri Harmesh Lal</b>
<b>Date of conclusion of Hearing</b>	<b>:</b>	<b>03.06.2024</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>05.06.2024</b>

**ORDER**

**PER NARENDRA KUMAR BILLAIYA (AM)**

1. This appeal by the assessee is preferred against the order dated 27.09.2023 by National Faceless Appeal Centre, Delhi [hereinafter in short "Ld. CIT(A)"] pertaining to A.Y.2014-15.

2. The grievance of the assessee read as under: -

"1. On the facts and circumstances of the case and law, the Ld. CIT(A) failed to consider that notice issued u/s 148 of the Income Tax Act, 1961 (the Act) dated 31.03.2021 which is bad in law and require to be quashed.

2. On the facts and circumstances of the case and law, the Ld. CIT(A) failed to consider that the permission obtained u/s 151 of the Act is not in accordance with law, as permission is given by PCIT in mechanical manner. Therefore, resultant proceedings u/s 148 are also bad in law and require to be quashed.

3. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming addition of Rs. 1,27,52,200 under section 68 of Income Tax Act, 1961 on allegation that appellant had obtained artificial profit from illiquid stocks options without considering the facts that appellant had earned genuine profit and same is already offered for tax.

4. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming addition of Rs. 1,27,522 u/s 69A of the Act on allegation that appellant had paid 1% commission of artificial gain of Rs. 1,271 522 without considering the facts that appellant had neither paid any commission nor commission was claimed as expenses. Hence provisions of section 69C of the Act are not applicable.

5. Without prejudice to the above, On the facts and circumstances of the case and law, the Ld. CIT(A) failed to consider that addition cannot be made on different nomenclature when tax rates are same.

6. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in charging interest under section 234B of Income Tax Act, 1961.

7. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in invoking penalty u/s 271(1)(c) and 271(1)(b) of Income Tax Act, 1961.

8. Appellant craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing."

3. Briefly stated the facts of the case are that the, assessee filed its return of income on 25.09.2014 declaring NIL income. Assuming jurisdiction conferred upon him by the provisions of section 148 of Income-tax Act, 1961 (in short "Act"), the Assessing Officer issued notice dated 31.03.2021 stating the he has reasons to believe that income chargeable to tax for the year under consideration has escaped assessment within the meaning of section 147 of the Act. Issues as per reasons recorded for reopening the assessment read as under: -

**Issues as per reasons recorded for reopening**

The assessee company has e-filed its return of income for A.Y.2014-15 on 25.09.2014 declaring total income of Rs. Nil.

2. As per information gathered from the ITD System as well as e-filing portal, it is noticed that the assessee company M/s Aadinath Securities Pvt.Ltd. has entered into the following fictitious transactions through M/s Latin Manharlal Securities Pvt. Ltd. during the F.Y.2013-14 relevant to A.Y.2014-15 :

Sr. No.	Source PAN	Source PAN Name	Information F.Y.	Information Type	Information value(in Rs.)	Remarks
1	AAACL2767L	Latin Manharlal Securities Pvt. Ltd.	2013-14	Fictitious Profits in Equity / Derivative Trading	10,06,200/-	BSE Equity Derivative Profit

2	AAACL2767L	Latin Manharlal Securities Pvt. Ltd.	2013-14	Fictitious Profits in Equity / Derivative Trading	15,20,000/-	BSE Equity Derivative Profit
3	AAACL2767L	Latin Manharlal Securities Pvt. Ltd.	2013-14	Fictitious Profits in Equity / Derivative Trading	2,42,000/-	BSE Equity Derivative Profit
4	AAACL2767L	Latin Manharlal Securities Pvt. Ltd.	2013-14	Fictitious Profits in Equity / Derivative Trading	7,00,000/-	BSE Equity Derivative Profit
5	AAACL2767L	Latin Manharlal Securities Pvt. Ltd.	2013-14	Fictitious Profits in Equity / Derivative Trading	7,00,000/-	BSE Equity Derivative Profit
6	AAACL2767L	Latin Manharlal Securities Pvt. Ltd.	2013-14	Fictitious Profits in Equity / Derivative Trading	8,00,000/-	BSE Equity Derivative Profit
7	AAACL2767L	Latin Manharlal Securities Pvt. Ltd.	2013-14	Fictitious Profits in Equity / Derivative Trading	9,00,000/-	BSE Equity Derivative Profit
8	AAACL2767L	Latin Manharlal Securities Pvt. Ltd.	2013-14	Fictitious Profits in Equity / Derivative Trading	10,00,000/-	BSE Equity Derivative Profit
9	AAACL2767L	Latin	2013-14	Fictitious Profits	22,00,000/-	BSE Equity

		Manharlal Securities Pvt. Ltd.		in Equity / Derivative Trading		Derivative Profit
10	AAACL2767L	Latin Manharlal Securities Pvt. Ltd.	2013-14	Fictitious Profits in Equity / Derivative Trading	6,40,000/-	BSE Equity Derivative Profit
11	AAACL2767L	Latin Manharlal Securities Pvt. Ltd.	2013-14	Fictitious Profits in Equity / Derivative Trading	11,20,000/-	BSE Equity Derivative Profit
12	AAACL2767L	Latin Manharlal Securities Pvt. Ltd.	2013-14	Fictitious Profits in Equity / Derivative Trading	60,000/-	BSE Equity Derivative Profit
13	AAACL2767L	Latin Manharlal Securities Pvt. Ltd.	2013-14	Fictitious Profits in Equity / Derivative Trading	2,64,000/-	BSE Equity Derivative Profit
14	AAACL2767L	Latin Manharlal Securities Pvt. Ltd.	2013-14	Fictitious Profits in Equity / Derivative Trading	16,00,000/-	BSE Equity Derivative Profit
				<b>Total Rs.</b>	<b>127,52,200/-</b>	

3. The assessee company has failed to offer this income derived by way of transactions entered, hence, the income is undisclosed and the nature and source of transactions remains unexplained.

4. On account of non-disclosure/ non-reporting of the transactions entered by the assessee company, the total income of the assessee company for the financial

year 2013-14 relevant to A.Y.2014-15 has escaped assessment as per provisions of Section 147 of the I.T.Act and thus it has led to the escapement of income to such extent.

3. In view of the above, you may submit your response with supporting documents (if any) on the above mentioned issues to undersigned electronically in 'E-proceedings' facility through your account in e-Filing website([www.incometaxindiaefiling.gov.in](http://www.incometaxindiaefiling.gov.in)) at your convenience on or before 13/07/2021

4. The entire quarrel revolves around whether transactions through M/s. Latin Manharlal Securities Pvt., Ltd., resulting into the aforementioned profit has been shown in the books of accounts of the assessee. The profit and loss account for the year under consideration is as under: -

**AADINATH SECURITIES PVT., LTD.,**  
**PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDED 31<sup>ST</sup> MARCH 2014**

		Schedule No.	Year ended 31 <sup>st</sup> march, 2014	year ended 31 <sup>st</sup> march, 2013
I.	Revenue from operations	8	10,058,736.28	7,178,769.07
II.	Other income	9	511,823.11	907,894.25
III.	total revenue (I + II)		10,570,559.39	8,086.663.32
IV	EXPENSES			
	Purchase of Traded Goods	10	10,103.276.01	10638582.52
	(Increase) Decrease in inventory of traded	11	(1,744,758.88)	218679.94
	Employees Benefit Expenses	12	--	--
	Other EXPENSES	13	562,844.04	497501.86
			8921361.17	11354,764.32
v.	Profit Before Exceptional and Extraordinary items and TAX (III – IV)		1,649,198.22	(3,268,101.00)
VI	Exceptional Items		--	--
VII	Profit before Extraordinary Items and Tax (V – VI)		1,649,198.22	(3,268.101.00)
VIII	Extraordinary Items		--	--
IX	Profit before Tax (VII – VIII)		1,649,198.22	(3,268.101.00)
X	Tax Expense:			
	Tax Adjustment of earlier written back / W/o		---	(5,000.00)
XI	Profit for the Year (IX – X)		1,649,198.22	(3,273,101.00)
XII	Profit for the year (XII)		--	--
XIII	Earnings per equity Share @10/- each			
	(1) Basic		1.25	(2.48)
	(2) Diluted		1.25	(2.48)

As per our report of even date attached

For A.K. Dawda & CO.  
Chartered Accountants

Sd/-  
(A.K. Dawda)  
M.No. 30249  
Proprietor

For Aadinath Securities Pvt Ltd.

Sd/-  
Director

Sd/-  
Director

Place: Mumbai  
Date: 02/09/2014

5. Note - 8 is as under: -

**AADINATH SECURITIES PVT., LTD.,**  
**SCHEDULES FORMING PART OF THE BALANCE SHEET AS AT 31.03.2014**

	AS AT 31.03.2014 Rupees	AS AT 31.03.2013 Rupees
<b>Note 8</b>		
<b>Revenue from operations</b>		
Sales	8,935,826.04	7,178,769.07
Trading Gains in shares & Commodities	1,122,910.24	
	10,058,736.28	7,178,769.07

6. The trading gains in shares and commodities mentioned hereinabove is bifurcated as under: -

SN	Name of Broker	Nature	Amount
1	Latin Manharlal Securities Pvt. Ltd.	Derivative Gain	1,27,27,019
2.	Spectrum	Derivative Gain	14,39,510
3.	Aadinath Securities	Derivative Loss	(1,56,53,034)
		Intraday Gain	19,982
4.	CD Equi Search Pvt., Ltd.,	Derivative Gain	25,83,459
		Intraday Gain	5,974
	Trading Gains in Shares & Commodities	Total	11,20,910

7. From the above details, it can be seen that the derivative gain of ₹.1,27,27,019/- from M/s. Latin Manharlal Securities Pvt., Ltd., is duly recorded in the financial statements returned for the year under

consideration. Therefore, the very basis for the reopening of the assessment is found to be factually incorrect. A close perusal of the notice and the observations of the Assessing Officer show that the entire proceedings revolve around the fact that the alleged parties have claimed losses and accordingly evaded taxes. Whereas the facts discussed hereinabove show that the assessee has earned derivative gains of ₹.1,27,27,019/- from M/s. Latin Manharlal Securities Pvt., Ltd. Therefore, the entire observations / basis of the assessment is factually incorrect. Since the assessment has been reopened on the wrong facts the impugned assessment order deserves to be quashed.

**8.** As mentioned elsewhere, the assessee has included the profit of ₹.1,27,27,019/- in its profit and loss account for the year under consideration, however, while concluding the assessment order the Assessing Officer has again made addition of ₹.1,27,52,200/- by holding as *"It is held that the assessee has routed back its own undisclosed money in the guise of profit from alleged share transaction and the same is added to the income of the assessee under section 68 of the Income-tax Act."*

**9.** In our humble opinion, even if the income of ₹.1,27,27,019/- is not genuine may be even illegal, then also in our understanding of the law the same cannot be added under section 68 of the Act as unexplained cash credit. In our considered opinion the Assessing Officer ought to have reduced the amount of ₹.1,27,27,019/- from the income side and then proceeded further.

**10.** For the sake of completeness, let us do this exercise. The assessee has shown revenue from operations ₹.1,00,58,737/- which includes ₹.1,27,27,019/-. If the Assessing Officer is of the opinion that this amount is illegal earned from non-genuine transaction then reducing the same will result into the loss of (-) ₹.26,68,283/- and if ₹.1,27,27,019/- is added under section 68 of the Act then the assessee is eligible for set-off of ₹.26,68,283/- which will make the entire exercise tax neutral. Since the amendment has been brought in the statute from A.Y. 2017-18 and as clarified by the CBDT Circular No. 11 of 2019 wherein it has been clarified that upto A.Y. 2016-17 the losses can be set-off from the additions made under section 68 of the Act.

**11.** Considering the facts of the case in totality from all possible angles be it factual or legal, we do not find merit in the impugned assessment.

The Ld. CIT(A) grossly erred in confirming the same and therefore the orders of the authorities below deserve to be set-aside. The Assessing Officer is directed to delete the impugned addition.

**12.** In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 05<sup>th</sup> June, 2024.

**Sd/-**  
**(SANDEEP SINGH KARHAIL)**  
**JUDICIAL MEMBER**

Mumbai / Dated 05.06.2024  
Giridhar, Sr.PS

**Sd/-**  
**(NARENDRA KUMAR BILLAIYA)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

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

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**