

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, MUMBAI**

**BEFORE SHRI ANIKESH BANERJEE, JM &  
MS PADMAVATHY S, AM**

**I.T.A. No. 4004/Mum/2023  
(Assessment Year: 2015-16)**

<b>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>	Vs.	<b>ITO Ward - 4(1)(3),</b> Aayakar Bhavan, M.K. Road, Mumbai-400020.
<b>Appellant)</b>	:	<b>Respondent)</b>

**Appellant/Assessee by** : Mr. Himanshu Gandhi-CA  
**Revenue/Respondent by** : Shri R. R. Makwana, Sr. DR

**Date of Hearing** : 21.06.2024  
**Date of Pronouncement** : 27.06.2024

**ORDER**

**Per Padmavathy S, AM:**

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre, Delhi [for short 'the CIT(A)] dated 27.09.2023 for the AY 2015-16. The assessee raised the following grounds of appeal:

*“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 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. 1,45,000 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. 1,450 u/s 694 of the Act on allegation that appellant had paid 1% commission of artificial gain of Rs. 1,45,000 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.”*

2. The assessee is a company and filed the return of income for AY 2015-16 on 28.09.2015 declaring a total income of Nil. The Assessing Officer (AO) gathered information from ITD System that the assessee has entered into the following fictitious transactions through M/s Wellworth Share & Stock Broking Ltd and according to the AO the assessee failed to offer income derived from the said transaction.

Sr. No	Source PAN	Source PAN Name	Information F.Y.	Information Type	Information value (in Rs.)	Information date	Remarks
1	AAACW2850M	Wellworth Share &	2014-15	Fictitious Profits in	1,45,000/-	11 <sup>th</sup> Feb. 2015	BSE Equity

		Stock broking Ltd.		Equity / Derivative Trading			Derivative Profit
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3. Therefore the AO reopened the assessment under section 147 of the Income Tax Act, 1961 (the Act) for the reason of non-disclosure / non-reporting of the impugned transaction and that the income chargeable to tax has escaped assessment. The AO issued a notice under section 148 of the Act in this regard to the assessee. The assessee filed its response stating that the impugned transaction has already been declared by the assessee as part of its income from derivative transactions and submitted relevant documents in this regard. The assessee further submitted before the AO that there is no concealment of income on the part of the assessee with regard to the impugned transaction and therefore, there cannot be any addition towards the same. The AO however did not accept the submissions of the assessee and made the addition under section 68 of the Act treating the impugned transaction of Rs. 1,45,000/- as fictitious and made addition under section 68 of the Act. On further appeal the CIT(A) confirmed the addition made by the AO. The assessee is in appeal before the Tribunal against the order of the CIT(A).

4. The Id. Authorized Representative (AR) submitted that the sole reason for re-opening the assessment is that the assessee has entered into the fictitious transaction through M/s Wellworth Share & Stock Broking Ltd., and that the assessee has failed to offer the income derived by way of the said transaction. The Id. AR in this regard drew our attention to the reason recorded by the AO in page 9 of Paper Book. The Id. AR further submitted that the assessee has offered a gain of Rs. 91,72,542/- from derivative transactions entered through M/s Wellworth Share & Stock Broking Ltd which includes the impugned transaction stated in the notice of re-opening as being not disclosed. The Id. AR took the bench through the

financial statement of the assessee, the break up of the income offered towards derivative transactions, the contract note and details of transactions entered into through M/s Wellworth Share & Stock Broking Ltd. (page no. 7, 13, 47, 60 & 61 of Paper Book). The ld. AR submitted that from the combined perusal of these documents it is clear that the assessee has already disclosed the income derived from the impugned transactions and therefore, the very basis on which the re-opening does not have merits. The ld. AR further submitted that the assessee's case for AY 2014-15 was also re-opened for the similar reason stating that the assessee failed to disclose certain transactions with M/s Latin Manoharlal Securities Pvt. Ltd. and that the Co-ordinate Bench of the Tribunal in ITA No. 4006/Mum/2023 dated 05.06.2024 based on similar materials furnished by the assessee has held the re-opening to be invalid. The ld AR argued that the facts for the year under consideration being similar, the decision of the coordinate bench is applicable for the year under consideration also.

5. The ld. Departmental Representative (DR) on the other hand submitted that the re-opening is done by the AO with a reason that the assessee has entered into fictitious transactions and therefore, the same cannot be held as invalid. Accordingly, the ld. DR purported the order of the lower authorities.

6. We have heard the parties and perused the material available on record. We will first look at the reason for re-opening the assessee's case as extracted below:

*“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 Wellworth Share & Stock Broking Ltd. during the F.Y.2014-15 relevant to A.Y.2015-16:*

<b>Sr. No</b>	<b>Source PAN</b>	<b>Source PAN Name</b>	<b>Information F.Y.</b>	<b>Information Type</b>	<b>Information value (in Rs.)</b>	<b>Information date</b>	<b>Remarks</b>
1	AAACW2850M	Wellworth Share & Stock broking Ltd.	2014-15	Fictitious Profits in Equity / Derivative Trading	1,45,000	11 <sup>th</sup> Feb. 2015	BSE Equity Derivative Profit

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 2014-15 relevant to A.Y.2015-16 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”

7. From the perusal of the above, it is clear that the reasons as recorded by the AO for reopening the assessment is that certain income has escaped assessment. The argument of the assessee is that the above stated transaction has already been included as part of the income offered to tax by the assessee and therefore, there is no non-disclosure / non-reporting as has been stated in the reasons recorded. In order to substantiate the claim that the assessee has included the above transaction in the income declared our attention was drawn to various documents as extracted below:

**Schedule to Profit & Loss A/c**

Purchases	6,78,47,108.18	1,01,03,276.01
Derivative Losses in Shares	17,60,575.61**	
	<b><u>6,96,07,683.79</u></b>	<b><u>1,01,03,276.01</u></b>

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SN	Name of Broker	Nature	Amount
1	<b>Wellworth Stock &amp; Broking Ltd</b>	<b>Derivative Gain</b>	<b>91,72,545</b>
2	Aadinath Securities	Derivative Loss	(1,14,45,861)
		Intraday Gain	5,12,741
	<b>Trading Loss in Shares &amp; Commodities</b>	<b>Total</b>	<b>(17,60,575)</b>

### Break up of transactions with M/s Wellworth Share & Stock Broking Ltd

Scrip Name		Scrip Code		Buy Trades			Sell Trades			Net Position			Val Rate	Profit / (Loss)	STT (approx.)
Qty	Rate	Value	Qty	Rate	Value	Qty	Rate	Value	Val Date						
<b>4110 AADINATH SECURITIES PRIVATE LIMITED</b> ADPWOPT 15 Jan 2015 C ADPWOPT 5200.00 ALLDOPT 05 Mar 2015 P ALLDOPT 60.00 ALLDOPT 05 Mar 2015 P ALLDOPT 65.00 BHELOPT 12 Feb 2015 C BHELOPT 260.00 DLFLOPT 22 Jan 2015 P DLFLOPT 14000.00 GMRIOPT 12 Feb 2015 P GMRIOPT 12.00 IBRLOPT 12 Feb 2015 P IBRLOPT 70.00 IOBLOPT 15 Jan 2015 C IOBLOPT 7000.00 IOBLOPT 29 Jan 2015 P IOBLOPT 5500.00 JSPLOPT 19 Feb 2015 P JSPLOPT 155.00 JSWEOPT 12 Feb 2015 P JSWEOPT 100.00 LNTFOPT 22 Jan 2015 P LNTFOPT 6000.00 NHPCOPT 05 Mar 2015 P NHPCOPT 18.00 NHPCOPT 22 Jan 2015 P NHPCOPT 1600.00 RCOMOPT 29 Jan 2015 C RCOMOPT 9000.00 RPOWOPT 05 Mar 2015 P RPOWOPT 55.00															
			400,000	1.22	489,695	(400,000)	1.22	(489,695)	31-Mar-15		489,695		83		
160,000			160,000	2.75	439,507			(439,507)			439,507		75		
200,000			200,000	2.75	549,384			(549,384)			549,384		94		
100,000	7.92	791,527	100,000	3.99	399,092			392,435			(392,435)		68		
			250,000	1.98	494,969	(250,000)	1.98	(494,969)			494,969		84		
180,000	0.95	170,400	180,000	1.70	305,623	(180,000)	1.70	(305,623)			305,623		52		
180,000			180,000	1.75	314,475			(144,075)			144,075		54		
400,000			400,000	1.38	553,559	(400,000)	1.38	(553,559)			553,559		95		
400,000			400,000	1.24	494,210	(400,000)	1.24	(494,210)			494,210		84		
360,000			360,000	3.98	1,434,384			(1,434,384)			1,434,384		245		
400,000			400,000	1.80	718,816	(400,000)	1.80	(718,816)			718,816		122		
400,000			400,000	1.73	692,039	(400,000)	1.73	(692,039)			692,039		118		
120,000			120,000	1.50	179,777			(179,777)			179,777		31		
			400,000	0.88	350,971	(400,000)	0.88	(350,971)			350,971		60		
			182,000	2.72	494,161	(182,000)	2.72	(494,161)			494,161		84		
120,000			120,000	2.75	329,546			(329,546)			329,546		56		

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**Wellworth**  
*Lead you to achieve financial goal*

**MTM Summary**

From Date: 01-Apr-14  
 To Date: 31-Mar-15

Category: HO Name: HEAD OFFICE

Report Coverage: BSE Der All amounts in Rs.

Scrip Name	Scrip Code	Buy Trades			Sell Trades			Net Position			Val Rate	Profit / (Loss)	STT (approx.)
		Qty	Rate	Value	Qty	Rate	Value	Qty	Rate	Value			
4110 AADINATH SECURITIES PRIVATE LIMITED													
SYNDOPT 19 Feb 2015 P 110.00	SYNDOPT	360,000		360,000	2.48	893,315					(893,315)	533,315	152
TATPOPT 15 Jan 2015 P 7500.00	TATPOPT			340,000	1.48	503,286	(340,000)	1.48	(503,286)			503,286	86
UCOBOPT 29 Jan 2015 P 7000.00	UCOBOPT			360,000	1.38	497,663	(360,000)	1.38	(497,663)			497,663	85
<b>Total for client:</b>		<b>1,600,000</b>		<b>961,927</b>	<b>5,312,000</b>	<b>10,134,472</b>	<b>(3,712,000)</b>		<b>(9,172,545)</b>			<b>9,172,545</b>	<b>1,727</b>
<b>Total:</b>		<b>1,600,000</b>		<b>961,927</b>	<b>5,312,000</b>	<b>10,134,472</b>	<b>(3,712,000)</b>		<b>(9,172,545)</b>			<b>9,172,545</b>	<b>1,727</b>

**Contract Note pertaining to the impugned transaction**

**Contract Note Cum Bill**

**WELLWORTH SHARE AND STOCK BROKING LTD.**  
 Regd. / Corporate Office: 501, Akruji Ogion, Shreeadhanand Road, Vile Parle (East), Mumbai - 400 057.  
 Tel.: 91-22-6715 9000 (100 Lines) Fax: 91-22-6715 9090 - CIN No.: U67120MH1996PLC096977  
 E-mail: contact@wellworthshares.com Website: www.wellworthshares.com  
 SEBI Regn. Nos.: BSE:- INB / INF 011055739, NSE:- INB / INF 231055733, INE 231055739

Director / Authorized Signatory  
 Shrikant Tibrewala - Shreshth Mehta - Chetan Mehta

NSE - NSDL  
 CM SP ID - IN 562574  
 DP ID - IN 301330  
 DP NAME - SHCIL

BSE  
 CM SP ID - 653013  
 DP NAME - SHCIL

NSE - CDSL  
 DP ID - 25690  
 CM A/c No. ( ) 202550000006320  
 CM Name Wellworth Share And Stock Broking Ltd.

CLIENT CODE & NAME:  
 4110  
 AADINATH SECURITIES PRIVATE LIMITED  
 MAHAVIRSADAN, 1ST FLOOR,  
 116, BHULESHWAR ROAD,  
 MUMBAI INDIA 400002

IT PAN: AAFC3411P

Sir / Madam,

I / We have this day done by your order and on your account the following transactions:

CONTRACTNOTE NO: 67817  
 TRADE DATE: 11-Feb-15

Client Tel No: 9321480105

All amounts in Rupees  
 Unless charged specifically, brokerage is inclusive of service tax and other statutory levies.

ORDER NO.	ORDER TIME	TRADE NO.	TRADE TIME	KIND OF SECURITY	BUY QTY	SELL QTY	GROSS RATE / TRADE PRICE PER UNIT	BROKERAGE PER UNIT	NET RATE PER UNIT	CLOSING PRICE PER UNIT (For DERIVATIVE S)	NET TOTAL BEFORE LEVIES	REMARK S
Trading Code: 4110												
BSE Derivatives					100,000		4.0000	(0.0050)	3.9950	0.0000	(399,500.00)	
**SCRIP TTL**					100,000						(399,500.00)	
Gross Buy Qty: 0 Gross Sell Qty: 100,000 Buy Avg Net Rate: 0.00												
1423626708750100					180,000		1.7900	(0.0005)	1.6995	0.0000	(305,900.00)	
**SCRIP TTL**					180,000						(305,900.00)	
Gross Buy Qty: 0 Gross Sell Qty: 180,000 Buy Avg Net Rate: 0.00												
14236354617360000					80,000		1.7500	(0.0012)	1.7488	0.0000	(314,775.00)	
142363546617360000					100,000		1.0000	0.0012	1.0012	0.0000	80,100.00	
142363546617360000					100,000		0.9900	0.0012	0.9912	0.0000	90,125.00	
**SCRIP TTL**											(144,550.00)	
Gross Buy Qty: 180,000 Gross Sell Qty: 180,000 Buy Avg Net Rate: 0.95												
14236275395780000					400,000		1.8000	(0.0012)	1.7988	0.0000	(719,500.00)	
**SCRIP TTL**					400,000						(719,500.00)	
Gross Buy Qty: 0 Gross Sell Qty: 400,000 Buy Avg Net Rate: 0.00												
**TOTAL**					180,000	880,000					(1,569,450.00)	

Transaction Summary										Exchange and SEBI Details		
Exchange and Segment	Settl. Type	Pay-in / Pay-out Obligation	Securities Transaction Tax	Service Tax on Brokerage / Charges	Exchange Transaction Charges	SEBI Turnover Fees	Stamp Duty	Others (if any)	Net amount payable by client / (receivable by client)	Exch Membership Code	SEBI Registration No.	Exchange Investor Grievance Email ID
BSE Derivatives		(1,569,450.00)	296.00	368.73	477.75	3.82	38.22	955.50	(1,567,309.98)	0106	INF011055739	is@bseindia.com
Total		(1,569,450.00)	296.00	368.73	477.75	3.82	38.22	955.50	(1,567,309.98)			

Details of trade-wise levies shall be provided on request.

Transactions mentioned in this contract note cum bill shall be governed and subject to the Rules, Bye-laws and Regulations and Circulars of the respective Exchanges on which trades have been executed and Securities and Exchange Board of India from time to time. The Exchanges provide Complaint Resolution, Arbitration and Appellate arbitration facilities at the Regional Arbitration Centres (RAC). The client may approach its nearest centre, details of which are available on respective E-exchanges website. Please visit www.bseindia.com for BSE, www.mcx-mumbai.com for MCX-SX, www.nseindia.com for NSE and www.ineindia.com for INE.

E & O.E. Place: Mumbai Date: 11-Feb-15 Yours faithfully,  
 Investor Grievance Email ID: cdsigrievance@wellworthshares.com  
 Compliance Officer Details: Name: MR. CHETAN R. MEHTA. Tel no: 022 - 67159004. Email: CHETAN.MEHTA@WELLWORTHSHARES.COM  
 PAN: AAACW2850M

Director / Partner / Proprietor / Authorised signatory

8. After a combined perusal of the above documentary evidences we see merit in the contention of the Id AR that the reason for reopening being the assessee has un-disclosed income towards the impugned transaction is factually incorrect. We notice that the Co-ordinate Bench in assessee's own case for AY 2014-15 has considered a similar issue on identical facts and held that

*“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”*

9. The coordinate bench has deleted the addition for the reason that the very basis for the reopening of the assessment is found to be factually incorrect since the assessee has already disclosed the impugned transaction in its statement of income. This fact is identical to the year under consideration also as can be seen from the documents extracted herein above i.e. Financial Statements, Breakup of derivative income / loss etc. The coordinate bench has also considered the issue the transaction being held as fictitious and deleted the addition on that count also. Therefore respectfully following the above decision we direct the AO to delete the addition made under section 68 of the Act.

10. In the result, appeal of the assessee is allowed.

*Order pronounced in the open court on 27-06-2024.*

**Sd/-**  
**(ANIKESH BANERJEE)**  
**Judicial Member**

**Sd/-**  
**(PADMAVATHY S)**  
**Accountant Member**

*\*SK, Sr. PS*

**Copy of the Order forwarded to :**

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

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai