

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA RAGHUNATH KAMBLE, JUDICIAL MEMBER  
&  
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 564/Ahd/2024  
(निर्धारण वर्ष / Assessment Year : 2013-14)

<b>Chinmay Impex Private Limited</b> C/o. M. S. Chhajed & Co. CA, “Kamal Shanti”, Nr. Sardar Patel Statue, Ahmedabad, Gujarat, 380014	<b>बनाम/ Vs.</b>	<b>Income Tax Officer</b> Ward – 1(1)(3), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADCC6478J		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

अपीलार्थी ओर से /Appellant by :	Shri M. S. Chhajed, AR
प्रत्यर्थी की ओर से/Respondent by :	Shri Purushottam Kumar, Sr. DR
<b>Date of Hearing</b>	08/07/2024
<b>Date of Pronouncement</b>	15/07/2024

**ORDER**

**PER SHRI NARENDRA PRASAD SINHA, AM:**

This appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi, (in short ‘the CIT(A)’) dated 28.02.2024 for the Assessment Year 2013-14.

2. The brief facts of the case are that return of income for A.Y. 2013-14 was filed on 30.09.2013 declaring total income of Rs.13,79,950/-. Subsequently, the AO received an information from DGIT (Inv.), Mumbai that assessee had entered into reversal

trades in illiquid stock options resulting in non-genuine business profit. As per this information, a profit of Rs.28,98,000/- was generated by the assessee by trading in illiquid stock options on the BSE during the F.Y. 2012-13 relevant to A.Y. 2013-14. Based on this information, the AO recorded his reasons and reopened the case for re-assessment under Section 147 of the Act after obtaining approval of the competent authority. The assessment was completed under Section 147 r.w.s. 144B of the Act on 30.03.2022 at total income of Rs.42,77,950/-.

3. Aggrieved with the order of the AO, the assessee had filed an appeal before the First Appellate Authority, which was decided vide the impugned order.

5. Now, the assessee is in appeal is before us.

6. The assessee has taken following grounds in this appeal:

- “1. *The order passed by the Ld. CIT (A) is against law, equity & justice.*
2. *The Ld. CIT (A) has erred in law and on facts in upholding validity of reopening of assessment though Ld. PCIT has granted mechanical approval u/s 151 of the Act.*
3. *The Ld. CIT (A) has erred in law and on facts in upholding validity of reopening of assessment though Reopening of assessment is on borrowed satisfaction and without independent application of mind.*
4. *The Ld. CIT (A) has erred in law and on facts in upholding validity of reopening of assessment though the Ld. AO has assumed jurisdiction on the basis of some non specific & vague information.*

5. *The Ld. CIT (A) has erred in law and on facts in upholding validity of reopening of assessment though Reopening of assessment is based on incorrect facts.*
6. *The CIT(A) has erred in law and on facts in upholding addition made by the Ld. A.O. of Rs.28,98,000/- U/S 68 of the Act.”*

7. Shri M. S. Chhajed, the Ld. Counsel for the assessee submitted that the reopening of the case was not proper as Ld. Addl. CIT had no locus-standi in the present case and was not competent to grant approval of the satisfaction. He further submitted that the reopening was done on borrowed satisfaction and without independent application of mind. It was contended that the AO had not conducted any preliminary enquiry to verify the correctness of the information as received and that jurisdiction was assumed under Section 147 of the Act on the basis of non-specific and vague information. The Ld. AR submitted that the Ld. CIT(A) was not correct in upholding the validity of reopening of the assessment, which was based on incorrect facts. On merits, the Ld. AR submitted that the addition of Rs.28,98,000/- made under Section 68 of the Act was not correct. He explained that the profit of Rs.28,98,000/- earned by the assessee in the transaction of currency derivatives was already disclosed in the audited books of accounts of the assessee and tax was paid thereon. According to the Ld. AR, the addition as made by the AO has resulted in double taxation.

8. Per contra, Shri Purushottam Kumar, Sr. DR submitted that the reopening done by the AO was based on specific information

received in the case of the assessee. The AO had not only analyzed the information as received but had also applied his mind and verified from the records whether this income was disclosed in the accounts of the assessee or not. Ld. Sr. DR contended that it was not open for the assessee to challenge the sufficiency of the information received. He further submitted that the reason as recorded by the AO was duly approved by the PCIT, after independent application of mind. On merits, he supported the orders of the AO and the CIT(A). It was explained that the assessee did not cooperate in the course of the assessment proceeding and the details were filed by the assessee towards the fag end of limitation period i.e. only on 29.03.2022 with a request for hearing, which was allowed virtually on 30.03.2022. He also questioned the transfer of profit derived from the 'currency derivatives transaction' to 'exchange rate fluctuation account' and doubted the correctness of this treatment.

9. In rejoinder, the Ld. AR reiterated that since the assessee had already disclosed the profit derived from the currency derivatives transaction in the accounts, the addition made by the AO was wrong and led to double taxation. He, therefore, requested that matter may be set aside to the AO to verify the fact of double taxation.

10. We have considered the rival submissions and the materials brought on record. Ground Nos. 1 to 5 taken by the assessee are in respect of reopening of the case. It is found that the AO had

received an information from DGIT (Inv.), Mumbai under project Falcon regarding coordinated and premediated trading on BSE engaging in reversal trades in illiquid stock options (Stock derivation and currency derivative) resulting in non-genuine business loss/profit to the beneficiary. A specific information pertaining to assessee was received that the assessee had generated fictitious profit in equity/derivative of Rs.28,98,000/- by trading in illiquid stock options on the BSE. Based on this information, the AO had recorded his reasons under Section 147 of the Act and initiated the proceedings after obtaining the approval of the competent authority. The contention of the assessee that the reopening was based on borrowed satisfaction is not found correct. The reopening has to be based on the basis of an information in the possession of the AO. Merely because the reopening was done on the basis of information received from DGIT (Inv.), Mumbai, it doesn't mean that the reopening was done on borrowed satisfaction. The AO had applied his mind and verified the information as received. A copy of the reason recorded by the AO has been brought on record. The AO has given a specific finding in his reason that the income was Rs.28,98,000/- earned by the assessee in the derivative trading was non-genuine profit and that this income had escaped assessment. In view of detailed reason as recorded by the AO, the contention of the assessee that the reopening was done on borrowed satisfaction is not found correct. The correctness of the information as received by the AO has also not been disputed.

Further, the assessee also can't challenge the sufficiency of the information based on which the case was reopened. The objection of the assessee that approval was accorded by the Addl. CIT, is also not found correct. The approval in this case was granted by the PCIT, Ahmedabad-1 and the Addl. CIT had only recommended the case for approval. The contention of the assessee that approval was granted in a mechanical manner is also not found correct. From the copy of the approval as brought on record, it is found that the Ld. PCIT had examined the reasons as recorded by the AO, applied his mind and thereafter granted his approval on being satisfied that it was a fit case for reopening. In view of these facts, we do not find any merit in the grounds taken by the assessee against the reopening of the case. Accordingly, Ground Nos. 2 to 5 as taken by the assessee are rejected and the finding of the Ld. CIT(A) on the reopening of the case is upheld.

11. As regarding merits of the case, the assessee has admitted that profit of Rs.28,95,773.78 was generated in trading of USD derivatives, which was carried out through a broker Giriraj Stock Broking Pvt. Ltd. A copy of the contract note and the ledger account of the broker has been filed. It was explained that this profit of Rs.28,95,773.78 was taken to "Exchange Rate Fluctuation Account" and the closing balance of Rs.5,90,902.99 as appearing in the ledger account of "Exchange Rate Fluctuation" was duly disclosed as income in the audited

accounts. The assessee has pointed out that an amount of Rs.5,90,903/- was disclosed as income on account of Foreign Exchange fluctuation in Schedule-17, which was part of other income. The assessee has also submitted that all these documents were filed before the AO in the course of assessment proceeding.

12. It appears from the assessment order that assessee had made compliance and filed details only on 29.03.2022 while the case was getting barred by limitation on 31.03.2022. Therefore, the AO might not have sufficient time to verify the details as filed by the assessee. The contention of the assessee that the profit on Rs.28,98,000/- as added by the AO under Section 68 of the Act was already disclosed in the accounts of the assessee, requires verification. There is considerable force in the argument of the assessee that if this amount was already disclosed in the accounts, the addition as made by the AO will result in double taxation. The assessee has, however, not explained as to why the profit of Rs.28,98,000/- derived in trading of USD derivative through the broker Giriraj Stock Broking Pvt. Ltd was not shown separately as income and why it was taken to "Exchange Rate Fluctuation Account". The correctness of the transactions as appearing in "Exchange Rate Fluctuation Account" also requires to be verified in view of the treatment as given by the assessee. Since, the assessee had filed the details at the very fag end, these might not have been verified by the AO due to paucity of time. Therefore, in the interest of justice, we deem it proper to set aside the matter

to the file of the Jurisdictional AO with a direction to verify the contention of the assessee as well as the issues as discussed above and to decide the matter on merits of the case after giving a proper opportunity of hearing to the assessee.

13. In the result, the appeal preferred by the assessee is allowed for statistical purposes.

**This Order pronounced on 15/07/2024**

Sd/-

(SUCHITRA RAGHUNATH KAMBLE)  
**JUDICIAL MEMBER**

Ahmedabad; Dated 15/07/2024

S. K. SINHA

*True Copy*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

Sd/-

(NARENDRA PRASAD SINHA)  
**ACCOUNTANT MEMBER**

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad