

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

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)**

**ITA No. 1664/MUM/2024  
Assessment Year: 2010-11**

ITO-34(3)(2),  
Room No. 233, Kautilya Bhawan,  
Mumbai-400051.

**Appellant**

**Vs.**

Prenish Umakant Pachbhaiye,  
A5, Duhil Castle, Hanuman Road,  
Vile Parle,  
Mumbai-400057.

**PAN NO. ANJPP 4784 G  
Respondent**

Assessee by : Mr. Pranjal, Karandikar  
Revenue by : Mr. Krishnakumar, Sr. DR

Date of Hearing : 01/10/2024  
Date of pronouncement : 22/10/2024

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal has been preferred by the Revenue against order dated 18.07.2019 passed by the Ld. Commissioner of Income-tax (Appeals) – 1 [in short ‘the Ld. CIT(A)’] for assessment year 2010-11, raising following grounds:

- 1. The Ld. CIT(A) has also failed to consider the fact that the assessee has not produced the books of accounts which he*



*was required by law to maintain and get them audited given the fact that the turnover of the assessee was Rs.34,59,58,110/-*

2. Briefly stated, facts of the case are for the year under consideration, no regular return of income was filed by the assessee. Subsequently, in view of the individual transaction statement (ITS) and annual information report (AIR), the assessee was found to be engaged in trading on multi commodity exchange worth Rs.34,59,58,110/-. Accordingly, in view of no return of income filed, the case of the assessee was reopened by way of issue of notice u/s 148 of the Income-tax Act, 1961 (in short 'the Act') dated 31.03.2017, which was duly served upon the assessee. Thereafter, the reassessment proceedings were commenced and statutory notices were issued but no compliance was made on the part of the assessee. The Assessing Officer ultimately completed the reassessment at a total income of Rs.12,10,85,338/- being the 35% profit component of the entire trade amount and held the same as unexplained cash credit u/s 68 of the Act.

3. On further appeal before the Ld. CIT(A), the assessee submitted that various notices issued by the AO were not served upon the assessee as the assessee moved from Mumbai to Nagpur. In view of the additional evidences filed by the assessee, the Ld. CIT(A) called for a remand report from the Assessing Officer. In remand proceedings, the Ld. Assessing Officer examined the additional evidences and accepted the transactions of the assessee



as genuine. The Ld. CIT(A) in the impugned order has reproduced the verification which was carried out by the Assessing Officer in remand proceedings, which is extracted as under:

*"6.3 The present AO has correctly carried out such verification and reported that- "During the year under consideration the assessee had a loss of Rs. 6,93,098/- from speculation loss in trading through multi commodity exchange. The source. of Rs. 6,93,098/- has been verified and it is seen that as per the capital account of the assessee, he has sufficient creditworthiness and also the loss has been paid through his bank account." Further the AO has now confirmed that- "The assessee also had taxable income from capital gains amounting Rs. 11,772/- and income from other sources amounting to Rs. 50,857/-. After deduction under chapter VI-A, the net taxable income of the assessee comes to Rs. 36,625/-As the taxable income, was below the taxable limit no return of income was filed by the assessee for A.Y. 2010-11."*

*6.4 The efforts take by the present A to examine and unravel the correct facts of the appellant's actual income/ loss is commendable. Considering her report on the subject, the appellant's income for AY 2010-11 is required to be assessed at Rs.36,625/- only, instead of Rs. 12,10,85,338/- which is directed to be deleted. The AO is directed to reduce the tax demand by giving effect to this order, immediately, as such high demand raised in the present case is adversely affecting the appellant."*

4. Aggrieved with the finding of the Ld. CIT(A), the Revenue is in appeal before the Tribunal by way of raising grounds as reproduced above.

5. We have heard rival submission of the parties and perused the relevant material on record. In the case, there was non-representation by the assessee before the Assessing Officer, however on submission of the relevant documents before the Ld. CIT(A), remand report was called for from the Assessing Officer.



During remand proceedings before the AO, he verified the claim of the assessee and the Ld. CIT(A) accordingly deleted the addition. In our opinion, once the Assessing Officer himself has verified the claim of the assessee and recommended for deletion of the addition, we do not find any infirmity in the order of the Ld. CIT(A) in deleting the addition. The action of the Assessing Officer of recommending the deletion of the addition on one hand and then filing the appeal against the same cannot be appreciated, unless the Assessing Officer who has filed appeal has found any malafide error in the remand report. No such observation has been made by the Ld. Departmental Representative (DR) alleging any malafide in remand report, therefore, in such circumstances; the Assessing Officer is not justified in preferring the appeal, once he himself has verified the claim of the assessee. Accordingly, we reject the grounds raised by the Revenue.

6. In the result, the appeal of the Revenue is accordingly dismissed.

**Order pronounced in the open Court on 22/10/2024.**

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

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Mumbai;  
Dated: 22/10/2024  
Rahul Sharma, Sr. P.S.



**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,  
(Assistant Registrar)  
**ITAT, Mumbai**