

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No. 943/JP/2024
निर्धारण वर्ष/Assessment Year : 2015-16

Raghav Commodities H-8, Chitranjan Marg, C- Scheme, Jaipur	बनाम Vs.	ITO Ward 6(2), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AARFR 1409 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Tarun Mittal, CA
राजस्व की ओर से / Revenue by : Sh. Arvind Kumar, CIT-DR

सुनवाई की तारीख / Date of Hearing : 16/10/2024
उदघोषणा की तारीख / Date of Pronouncement: 29/11/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

On being aggrieved by the order of the National Faceless Appeal Centre, Delhi dated 27/06/2024 [for short CIT(A)] the above named assessee preferred the present appeal. The dispute relates to the assessment year 2015-16. The said order of the Id. CIT(A) arises because the assessee has challenged the assessment order dated 28.05.2023 passed under section 147 r.w.s 144B of the Income Tax Act, [for short "AO"] by Faceless Assessment Unit.

2. In this appeal, the assessee has raised following grounds: -

"1. On the facts and in the circumstances of the case and in law, Id. CIT(A) has grossly erred in confirming the reopening the assessment u/s 147 of the Income Tax Act, 1961 arbitrarily.

1.1 That, Id. CIT(A) has erred in confirming the reopening of assessment solely on the basis of some information received, on the basis of which it was alleged that assessee was engaged in reversal trades in illiquid Stock Options. Appellant prays that no direct link/nexus has been established by conducting any independent enquiry before reopening the assessment and thus the reopening of assessment is merely on suspicion and without recording any subjective belief as to escapement of income (which is the pre- condition to reopening) and thus reassessment proceedings initiated are not in accordance with law and the consequent reassessment order so passed deserves to be held bad in law.

WITHOUT PREJUDICE TO ABOVE AND IN THE ALTERNATIVE:

3. On facts and in circumstances of the case, the Id. CIT(A) has grossly erred in confirming addition of Rs.8.90,52,650/- (being loss on trading of Futures and Options), by alleging that how did "assessee continue to suffer losses defying the logic of basic economics not being a rookie in this field as shares are bought and sold to make profit not incur losses. Appellant prays that no business gives assurance of only profits and losses are also part of business and so far as losses are incurred in normal course of business, the same deserve to be allowed and thus addition confirmed by Id. CTT(A), deserves to be deleted.

4. That, the Ld. CIT(A) has further erred in ignoring the fact that the assessee has been trading regularly in many blue-chip companies, from which it has earned profit as well as suffered losses. It is submitted that trading has been through online portal, where the buyers and sellers are random parties and they do not know each other. therefore there cannot even be any presumption of contact with each other Appellant prays that Id. CIT(A) has drawn adverse inference without rebutting the explanations and evidences submitted by assessee and solely by holding that suffering loss is against the principles of economics and human rationale, which deserves to be deleted.

5. The appellant craves the right to add, delete or amend any of the grounds of appeal either before or at the time of hearing of appeal."

3. Succinctly, the fact as culled out from the records is that the assessee e-filed ITR on 29.03.2017 vide Ack. No. 714982061290317 disclosing total income of Rs. 28,20,600/- from business and other sources. The firm is a trader in securities market. There was credible information with the Department that the assessee was engaged in reversal trades in illiquid Stock Options leading to pre-meditated loss of Rs. 8,90,52,650/-. It was gathered from the information that the assessee has executed many non-genuine trades in unique contracts. Hence the case was reopened after following the due proceedings u/s 148A and the case was taken up for complete scrutiny.

3.1 As is evident that the firm made reversal trades in illiquid stock options leading to pre-meditated loss thus flouting SEBI rules. Even there is an adverse SEBI order also dated 31/12/2018 whereby several reversal trades with the same counter-party on the same day in the relevant F.Y were established upon issue of notice u/s 148.

3.2 Assessee e-filed ITR in response to notice u/s 148 on 25/08/2022 vide Ack. 446933090250822 with same total income. The assessee filed an objection to reopening u/s 148 on 18/02/2023 as well as complied to notice u/s 142(1) with ledger of different brokers, bank statement and statements of accounts from different brokers in respect of its trading in securities in

various segments. Personal hearing through VC was also requested by the assessee, which was granted on 15/05/2023.

3.3 The objection of the assessee was duly disposed with a speaking order and communicated to the assessee. In compliance to notice u/s.142(1) the assessee has submitted on 30/01/2023 that its claim of loss of Rs.8,90,52,650/- arose out of trading in Futures & Options segment. It is noticed that the assessee has executed several non-genuine trades on the same day, i.e. bought and sold option contracts with the same counterparty and reversed its trades within minutes from its earlier transaction and that too at a lesser price thus incurring loss. This rapid reverse trade defies all transparent norms and basic trading rationale. No reasonable and rational investor will keep on making losses and still continue its trading endeavours. It is further noticed that it has not audited its books of accounts u/s 44AB inspite of being liable for audit u/s.44AB (as admitted in ITR).

3.4 In view of the above, it is therefore inferred that the assessee has engaged itself in rapid reversal trades only to incur loss thus flouting rules of SEBI in fact, an adverse SEBI order was also passed on 31/12/2018 in the assessee's case for such trades in the relevant Financial Year. Thus the claim of loss of Rs. 8,90,52,650/- is treated as bogus and added back

to total income and accordingly assessee was given specific show cause notice (SCN) proposing the variation. Assessee complied to SCN on 10.05.2023 and requested for personal hearing. The assessee in that contended that real income can be taxed. Even the order of the SEBI as relied wherein the SEBI categorically confirmed that the amount of disproportionate gain or unfair advantage is not quantifiable. The assessee filed various tables and comparison to prove the genuineness of trading activities done by the assessee. The Id. AO also noted that there was turnover of 152,99,48,57,969/- but there was not tax audit report. So additional SCN was issued for clarification to which there was only part compliance on 19.05.2023. Ld. AO thus noted that accounts are not corroborated by tax audit report benefit/claim of its loss of Rs. 8,90,52,625/- cannot be allowed. In view of these facts the Id. AO noted that the assessee has engaged in the rapid reversal traders only to incur loss thus, flouting rules of SEBI and in fact SEBI has also passed an adverse order in the case of the assessee. In the light of this observation the claim of loss of Rs. 8,90,52,650/- was treated as bogus and added back to total income of the assessee and accordingly the assessment order was passed on 25.05.2023.

indicating that the loss claimed by the appellant is a pre-planned bogus fictitious loss suffered to evade tax liability in connivance with the above mentioned parties. The appellant also claimed that it is not possible to know as to with which party buying or selling is to be executed but the appellant failed to give any cogent explanation that why it continued to suffer losses defying the logic of basic economics not being a rookie in this field as shares are bought and sold to make profit not incur losses.

6.4. Further, the appellant's contention in Ground No.3.1, that the order passed by SEBI is arbitrary because the order states-it is not possible to quantify the amount of disproportionate gain or unfair advantage made by the appellant. However, this contention is also not maintainable because firstly an offence which is not quantifiable does not imply that the offence is to be pardoned and on the contrary. the order is comprehensive containing all the details regarding the appellant's reverse trading, none of which the appellant could refute during the appellate proceedings. The appellant has not provided any piece of information that if the grievances of the appellant were taken to Securities Appellate Tribunal against the order passed by SEBI. The appellant in fact chose to remain non-compliant during the proceedings of SEBI showing utter disregard to the official/legal procedures. Therefore, mere assertion by the appellant that the order passed by the regulatory body, SEBI is arbitrary without taking any measure towards proving its claim has no merit. Therefore, this contention of the appellant and Ground No. 3 & 3.1 are dismissed.

7. With regard to Ground No. 4, the appellant being a regular trader in blue chip companies it is more unlikely and unconvincing that the appellant had borne loss to the tune of Rs.8.90.52,650/- going against the principles of economics and human rationale. The appellant's claim that buyers and sellers are random parties therefore it could not have been premeditated does not hold character because these are just bald statement put forward in an attempt to divert the attention of the first appellate authority from the core issue without producing any documentary evidence to contravene the findings of the Assessing Officer which in turn is based on the order of SEBI. Therefore, in view of the prevailing circumstances, this Ground No. 4 is dismissed.

8. It is apt to mention here that the appellant could not furnish the audited tax report during the reassessment proceedings as well as during the appellate proceedings in spite of multiple hearing opportunities provided to the appellant. The comprehensive submission made by the appellant is silent on this particular issue. It is needless to mention here that burden of proof lies on the appellant.

The appellant failed to discharge this primary onus of providing proof and failed to get the accounts audited although it was mandatory on the part of the appellant as per the provisions enshrined in the Act. Therefore, the veracity of the claim made remains dubious attributable to such callous and negligent attitude towards the law and official proceedings.

9. Through Ground No.5 86, the appellant has challenged the initiation of penalty proceedings u/s271A, 271B and 271(1)(c) of the Act. This ground is premature at this stage as no such penalty has yet been levied by the AO and hence, the Ground No. 5 &6 are also dismissed.

10. Through Ground No. 7, the appellant craved leave to add, alter, delete, modify or withdraw any of the above grounds at the time of hearing. No such option has been exercised. Hence, this ground of appeal is also dismissed.

11. In the result, the appeal is dismissed.”

5. As the assessee did not find any favour, from the appeal so filed before the Id. CIT(A)/NFAC, the assessee has preferred the present appeal before this Tribunal on the ground as reproduced hereinabove. To support the various grounds so raised by the Id. AR of the assessee, has filed the written submissions in respect of the various grounds raised by the assessee and the same is reproduced herein below:

“Brief facts of the case are that assessee is a partnership firm and is engaged in the trading in securities market through online system for its own and not for any client. Return of Income for the year under appeal was filed on 29.3.2017 declaring total income at Rs.28,20,600/- (APB 01-34). Thereafter, on the basis of some information stated to have been received by Id. AO from I & CI Wing and consequent upon passing of an order by SEBI, though such information was never supplied by assessing officer to the assessee despite of specific request (APB 44-56), it was presumed that assessee was engaged in reversal trades of illiquid stock options leading to premeditated losses of Rs.8,90,52,650/-, and notice u/s 148A(b) (APB 42-43) was issued to assessee. In response to notice issued u/s 148A, assessee furnished detailed reply explaining that transactions in Future &

Options trading entered into by assessee were in normal course of business and losses suffered by assessee were genuine. It was further contended that reopening for the year under consideration was time barred.

However, without considering the submission so made, the Id. AO passed the order u/s 148A(d) (APB 57-60) and accordingly notice u/s 148 was issued. Assessee, vide letter dated 18.1.2023 (APB 61-116) raised objections against the reopening of assessment, which were disposed off vide order dated 03.05.2023 (APB 117-118). During the course of assessment proceedings, various details/information were sought by Id.AO, which were provided and assessment was completed after making addition of Rs.8,90,52,650/- on allegation that losses suffered by assessee to that extent were bogus. Aggrieved of the addition so made, assessee preferred appeal before Id.CIT(A), which was decided vide order dated 27.6.2024 passed by Id.CIT(A), NFAC, whereby appeal of assessee stood rejected. Aggrieved of the order so passed by Id.CIT(A), assessee has preferred present appeal.

With this background, ground-wise submission is made as under:

Grounds of Appeal No. 1 & 1.1:

In these grounds of appeal, assessee has challenged the action of Id.ACIT in conforming the action of Id.AO in reopening the assessment by issue of notice u/s 148, arbitrarily.

In this regard, at the outset, it is submitted that initially notice for reopening the assessment was issued on 21.4.2021 u/s 148, i.e. under unamended law (i.e. prior to amendment to section 147) for reopening of assessment, on the basis of information stated to have been received from I & CI Wing. Subsequently, proceedings initiated under earlier law stood dropped in terms of the order of jurisdictional High Court in the case of assessee itself in S.B. Civil Writ Petition No. 9089/2021 which reads as under:

6. Accordingly, this Civil Writ Petition is allowed. Re-assessment issued to the petitioner under section 148 of the Income-tax Act is quashed. However, it is left open to the Assessing Authority to initiate re-assessment proceedings in accordance with the provisions of section 148(A) of the Act as amended by the Finance Act, 2021 after making due compliance as required under the law.

Thereafter, a fresh show cause notice dated 28.5.2022, was issued in consequence to the decision of Hon'ble Supreme Court in case of Union of India Vs Ashish Agarwal & Ors. Dt. 04.05.2022. Basically, Hon'ble Supreme Court, in the decision clarified that notice issued u/s 148 under the unamended Act between 01.04.2021 to 30.6.2021 are not valid in law but to give a leeway to the revenue, the Hon'ble Apex Court held that the notice issued u/s 148 be deemed to have been issued u/s 148A and the proceedings are to be conducted as per the substituted section 147 to 151 introduced by Finance Act, 2021 w.e.f. 01.04.2021. It was also held that all defences which may be available to the assessee u/s 149

and / or which may be available under the Finance Act, 2021 and in law and whatever rights are available to the AO under the Finance Act, 2021 kept open and /or shall continue to be available.

Thus, as per decision of Hon'ble Supreme Court in the case of Ashish Agarwal, notice u/s 148, even when issued under the un-amended provision has to comply with the requirement of the amended section 149 of the Act.

At this juncture, kind attention of your goodself is invited to section 149 of the Income tax Act, 1961 as substituted by the Finance Act, 2021, which reads as under:

"Time limit for notice-

149. (1) No notice under section 148 shall be issued for the relevant assessment year,—

(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);

(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year:

Provided that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section, as they stood immediately before the commencement of the Finance Act, 2021:

Provided further that.....

Provided also that

Provided also that

Explanation.—For the purposes of clause (b) of this subsection, "asset" shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.

(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151."

It is submitted that per the amended provision of section 149, no notice u/s 148 shall be issued for the relevant assessment year if three years but more than ten years have elapsed from the end of the relevant assessment year unless the AO has in his possession books of accounts or other documents or evidence which reveal that the income chargeable to tax, represented in the form of assets, which has escaped assessment amounts to or is likely to amount to Rs. 50 lacs or more for that year.

In explanation to section 149, the 'assets' has been defined to include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account. Therefore, any income escaping assessment which is in the form of assets not recorded in the books of accounts can be subject to proceeding u/s 148 where the amount of such assets is of Rs. 50 lacs or more pertaining to assessment year prior to three assessment year from the relevant assessment year. In other words, if an income escaping assessment is not represented in form of undisclosed assets having value of more than Rs. 50 lacs, the same cannot be reopened, if such income is earned prior to three years from the end of the relevant assessment year. In the present case, Id. AO has failed to bring on record any asset having value of more than Rs. 50 lacs earned by alleged undisclosed income i.e. loss in present case. Hence the transaction in the nature of alleged fictitious profit/ loss, disallowance of expenses or unrecorded expenses is not covered by the term 'assets' as defined explanation to section 149 of the Act as the explanation to section 149 stood as on the date of issue of notice u/s 148 which in the instants case is 21.04.2021.

It is submitted that, CBDT through instruction u/s 119 dt. 10.12.2021, with regard to issue of notice u/s 148 under the amended section 147 to 151 at para 5 issued the following directions:

Instructions under section 119 of the Income-tax Act, 1961 regarding uploading of information on the VRU functionality on Insight portal for implementation of risk management strategy — for issue of notice u/s 148 of the Income-tax Act, 1961 — reg---

"5. As per the provisions of section 149(1)(b) of the Act, in specific cases where the Assessing Officer has in his possession evidence which reveals that the income escaping assessment, represented in the form of asset, amounts to or is likely to amount to fifty lakh rupees or more, notice can be issued beyond the period of three years but not beyond the period of ten years from the end of the relevant assessment year. Further, the notice under section 148 of the Act cannot be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit prescribed under the provisions of clause (b), as they stood immediately before the proposed amendment. As per explanation provided to section 149 of the Act, the term "asset" shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.

5.1 In view of the above, it is directed that the information pertaining to Assessment Year 2015-16, which requires action u/s 148 of the Act shall be identified and uploaded on the VRU functionality on insight portal only as per the provisions of section 149(1)(b) of the Act."

Thus, the CBDT has also accepted the above position regarding limitation for issuance of notice u/s 148 for the period which is beyond restriction in three year.

It was submitted before Id. CIT(A) that the re-assessment proceeding u/s 147 were initiated by issuance of notice u/s 148 under Unamended Act on 21.04.2021, and

which was deemed to be the notice issued u/s 148A as per the Direction of Hon'ble Apex Court as stated above. However the Hon'ble Supreme Court in the same order also held that proceedings are to be conducted as per substituted section 147 to 151 as per Finance Act 2021 w.e.f. 01.04.2021. Moreover all defenses which may be available to assessee u/s 149 or in law as substituted by Finance Act 2021 shall be available, therefore as per the provision of newly amended sections 147 to 151 and more particularly clause (b) of section 149(1), the notice for the period beyond three year can be issued only when the AO has in his possession books of accounts or other documents or evidence which reveals that income chargeable to tax, represented in form of assets is of Rs. 50 lacs or more.

Since, in the instant case, no information/documents whatsoever was shown to have been possessed by Id.AO, which can prove that assessee had income escaping assessment represented in the form of assets of Rs.50 lacs or more, therefore, assessee raised objections against reopening, however in order disposing objections raised by assessee, Id.AO has simply stated that (APB 117-118):

"3. As per Explanation to section 149(1)(b), the shares and securities are covered in the definition of asset and order u/s.148A(d) observed that the fictitious loss is used for erosion of asset and the amount is more than 50 lakhs. The fictitious loss generated through the sale in shares/derivative is covered in the definition of asset. Hence the relevant contention is not tenable."

However, Id.CIT(A) rejected the plea of assessee by holding that provisions of section 149 were amended by Finance Act 2022 so as to include "expenditure" also and therefore case was rightly reopened.

With respect to such observations of the Id.CIT(A), it is submitted that the amendment so made is applicable w.e.f.1.4.2022, whereas in present case, initial notice u/s 148 was issued on 21.4.2021, i.e. prior to 1.4.2022 and therefore amendment so made w.e.f. 01.04.2022 will not be applicable in the instant case. Your honours would appreciate that even prior to amendment, the language used u/s 149 was unambiguous and included only "Assets" and explanation further clarified that "asset" shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account. It is submitted that though the definition of assets is inclusive, all the assets included basically are of such nature, which represent an economic resource, either immovable or movable, having value. Thus, genuine losses suffered by assessee (alleged as bogus by Id.AO) cannot be treated as "asset" by any stretch of imagination. It is further submitted that such loss was incurred by assessee while carrying out trading transactions in stock exchange thus it cannot even be held as erosion of any asset as alleged. Without prejudice to above explanation to section 149(1) (b) does not include any term like "erosion of asset", how can it include losses incurred in trading.

It is submitted that when the legislature has specified that for invoking jurisdiction u/s 148 of the Act, the AO ought to have in his possession books of account or documents or evidence refracting or revealing undisclosed assets of assessee, then the jurisdiction cannot be invoked with the aid of any material which reveal fictitious losses (alleged by Id.AO though not accepted) Reliance is placed the dictum of the Privy Council in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253, that when a statute requires a thing to be done in a particular manner, it must be done in that manner or not at all.

In the present case since, there is no such material to show that the income alleged to have escaped assessment is represented in the form of an asset, therefore the case does not qualify for proceedings u/s 148 as per the express provision of section 149 of the IT Act as it stood on the date of issue of initial notice u/s 148 i.e. 21.04.2021 and therefore it is submitted that the order passed by Id.AO is bad in law and deserves to be quashed.

As submitted above, in this case the re-assessment proceedings were initiated solely on the basis of some alleged information stated to have been received from I & CI Wing emanated as a result of order passed by SEBI. It is pertinent to note here that even order passed by SEBI does not establish charges against the assessee. It revolves around presumption that since certain transactions were reversed immediately, the same were non genuine. In fact, no enquiries whatsoever were conducted by Id.AO to cross verify these facts. It was therefore submitted before Id.CIT(A) that initiation of reopening solely on the basis of SEBI order was not correct, However, Id.CIT(A) rejected the plea of assessee by holding that SEBI order constituted Tangible material.

Your honours would appreciate that even if case is reopened on the basis of information received, still Id.AO is duty bound to conduct direct enquiries even from the other party, with whom assessee is alleged to have reversed the transactions, for which he had vital powers u/s 133(6)/131 of the Income Tax Act before issue of notice u/s 148. In the absence of such verification by Id.AO, even the fact as to how the assessee was related to counter party and how they were benefitted with such transactions remained unproved.

It is further submitted that all the F & O Trading transactions entered into by the assessee are in relation to BSE 500 companies and no evidence has been brought on record to establish that if any action was taken against any of such companies by SEBI or under Income Tax Act. It is submitted that assessee traded through Online portal of Stock Exchange, where assessee is not aware of counter party and prices are also determined by market forces and one can only predict the future variation and take advantage of the same. In fact, SEBI order is also passed on presumption basis and does not even precisely quantify the advantage alleged to have been taken by assessee as a result of trade reversal as alleged. In this scenario, action of Id.AO in reopening of assessment, solely on the basis of SEBI order (which itself is not precise, absolute and specific) without

independently verifying the matter contained therein, is against the specific provisions of section 147 of the Income Tax Act, which requires AO to record satisfaction independently.

In view of above, it is evident that the only basis of reopening of assessment and for making huge addition of Rs.8.90 crores is SEBI order, which itself is not clear about the exact amount of alleged disproportionate gain/unfair advantage, how could assessee be fastened with liability under Income Tax Act in respect of such ambiguous observations in SEBI order. Admittedly, Id.AO has not conducted any independent enquiry and has not cross verified the information received from I & CI, which is evident from his observations made in order passed u/s 148A, i.e. *“.....As all the necessary inquiries has already made by the I&CI Wing and detailed enquiry report with supporting evidences is available on INSIGHT Portal and therefore no further enquiry is needed in this case. Hence the transaction remained unexplained.”*

At this juncture, kind attention of your honours is invited to the fact that initially notice dated 23.8.2019 was issued to assessee u/s 133(6), whereby it was alleged that assessee has suffered loss to the tune of Rs.(-) 7,80,18,087.5 by trading in Illiquid Stock Options for F.Y. 2014-15 and 2015-16. Thereafter, again notice was issued on 31.10.2019 seeking various details w.r.t. A.Y. 2015-16, which were furnished by assessee vide reply dated 14.11.2019. No action whatsoever was taken by the department in this regard. Thereafter, assessee was supplied with a sheet by ITO, (I & CI), wherein loss was quantified at Rs. 8,90,52,685/- (APB 107-111). Again, assessee was supplied with another sheet (APB 112-116), whereby amount of loss was quantified at Rs.13,17,07,432/-. Therefore, assessee vide letter dated 18.3.2020 (APB 106) submitted before ITO (I & CI), that there was variation in the figures in sheet 1 (APB 107-111) and sheet 2 (APB 112-116) in respect of details of purchase and sales prices stated therein as well as in respect of Profit & Loss stated therein, however all other details were matching. It was requested by assessee that it may be apprised of the source of prices appearing in sheet 2 as no such information was available with the assessee. Subsequently, during the course of assessment proceedings, assessee requested before Id.AO that information relied for reopening and basis of alleging the transactions as non genuine may be supplied to assessee, however, no such information was provided by Id.AO to the assessee and addition was made to the tune of Rs.8,90,52,685/-. It is thus evident that Id.AO has not applied his mind at all and made addition solely on the information passed on to him and without forming his own opinion in respect of such information.

It is submitted that the validity of initiation of reassessment proceedings has to be judged with regard to the material available with the assessing officer and that too by framing the opinion strictly based on the documents and information in possession, that certain income has escaped assessment and not in a mechanical manner as has been done in the case in hand. The re-opening of the case based on the borrowed satisfaction on the information provided by some other official

without carrying out independent verification of the information with reference to return of income and financial affairs of the assessee and without recording his own independent satisfaction deserves to be held illegal.

In this regard reliance is placed on the decision of Hon'ble Delhi High court in case of Sarthak Securities Co. Pvt. Ltd. Vs. ITO reported in 329 ITR 110 wherein it has been held as under:

Reassessment – Notice – Condition precedent – Formation of belief that income escaped assessment – Assessing Officer treating share application money as bogus accommodation entries – Payments through banking channel and companies investing money genuine – No independent application of mind by Assessing Officer but acting under information from investigation wing – Notice to be quashed – Income Tax Act, 1961, ss. 147, 148.

In case of PCIT vs. RMG Polyvinyl (I) Ltd [2017] reported in 83 taxmann.com 348 (Delhi) it is held by Hon'ble Delhi High court that where information was received from investigation wing that assessee was beneficiary of accommodation entries but no further inquiry was undertaken by Assessing Officer, said information could not be said to be tangible material per se and, thus, reassessment on said basis was not justified.

Hon'ble Delhi bench of ITAT in the case of ITO vs Surender Dalal ITA No.7490/Del/2019 in its decision dated 30.1.2024 has held that:

"The ratio of the above decisions applies to the facts of the assessee's case. In the case on hand the AO is not disputing that the assessee filed return of income. If this is the fact, there is certainly a factual inconsistency in reopening the assessment that the assessee has not filed any return of income. Secondly, in the reasons stated the AO believed that the income escaped assessment only based on the report of the DDIT(Inv.) that the income had escaped more than 15 crores. However, we observe that what is the basis for 15 crores is not specified in the reasons. This is only a bald statement that the income of the assessee has escaped assessment for more than 15 crores without spelling out any details which is said to have been given in the DDIT report. Therefore, the reasons recorded in the present case at best can be treated to be a reason to suspect which is not sufficient for reopening the assessment u/s 148 of the Act. The requirement of application of mind is missing in the present case, there is no independent application of mind by the AO to tangible materials and reasons and the AO failed to demonstrate live link between tangible material and formation of reason to believe that income had escaped assessment.

15. *In view of the above, we hold that the reassessment made in the section 143(3) read with section 147 of the Act is bad in law and the re-assessment order is quashed. As we have quashed the reassessment on the preliminary legal ground of jurisdiction, various other grounds raised by the assessee on merits are not decided as they become only academic at this stage. Ground nos. 1 to 5 are allowed.*

Also the notice issued u/s 148 of the Income Tax Act, 1961 dated 27.07.2022 is bad in law for the following reasons:

1. The notice dated 27.07.2022 issued u/s 148 of the I.T. Act, 1961 is barred by limitation as per the first proviso to section 149 of the Income Tax Act, 1961.

2. The notice u/s 148 dated 27.07.2022 is invalid and bad in law as the same has been issued without a DIN.
3. The notice u/s 148 dated 27.07.2022 is invalid and bad in law being issued by the JAO as the same was not in accordance with the section 151A of the Income Tax Act, 1961.
4. The notice u/s 148 dated 27.07.2022 is invalid and bad in law as the order u/s 148A(d) is passed by JAO who again has issued the notice u/s 148 of the Income Tax Act 1961.

In support of above, reliance is placed on the order of the Hon'ble High Court of Bombay in Writ Petition No. 1778 of 2023 in the case of Hexaware Technologies Ltd. Vs. ACIT, Circle 15(1)(2), Mumbai and Others dated 03.05.2024 and order of the Hon'ble High Court of Telangana passed in the case of Smt. Madiraju Ravindramani vs The Income Tax Officer dated 14 September, 2023 in Writ Petition No. 25903 of 2023.

Headnote of decision of Hon'ble Bombay High Court in the case of Hexaware Technologies Ltd. is reproduced as under:

Section 149, read with section 148A, of the Income-tax Act, 1961 - Income escaping assessment - Time limit for issuance of notice (Illustration) - Assessment years 2013-14 to 2015-16 - Assessee, engaged in information technology consulting, software development and business process services, filed its return of income - Same was accepted and assessment was completed under section 143(3) - Assessing Officer issued a reopening notice dated 25-5-2022 on several grounds - Whether time limit to issue notice under section 148 had already expired on 1-4-2021 for assessment years 2013-2014 and 2014-2015, when section 149 was amended, therefore, reopening for assessment years 2013-2014 and 2014-2015 had already been barred by limitation on 1st April, 2021 - Held, yes - Whether, accordingly, extended period of ten years as provided in section 149(1)(b) would not have been applicable to assessment years 2013-2014 and 2014-2015, de hors proviso - Held, yes - Whether, further, for assessment year 2015-2016, erstwhile time limit of six years expired on 31-3-2022, and therefore, impugned notice under section 148 issued on 27-8-2022 was barred by restriction of first proviso to section 149 - Held, yes [Paras 24 and 26] [In favour of assessee]

Section 148, read with section 148A, of the Income-tax Act, 1961 - Income escaping assessment - Issue of notice for (Notice without DIN) - Assessment years 2013-14 to 2015-16 - Assessee, engaged in information technology consulting, software development and business process services, filed its return of income - Same was accepted and assessment was completed under section 143(3) - Subsequently, Assessing Officer issued a reopening notice under section 148 on several grounds - Whether since impugned reopening notice issued under section 148 was issued without a DIN, same was invalid and bad in law - Held, yes [Para 31] [In favour of assessee]

Section 148, read with section 148A, of the Income-tax Act, 1961 - Income escaping assessment - Issue of notice for (Jurisdiction to issue reopening notice) - Assessment years 2013-14 to 2015-16 - Whether there is no question of concurrent jurisdiction of JAO and FAO for issuance of reopening notice under section 148 or even for passing assessment or reassessment order and it is only FAO which could issue notice under section 148 and not JAO - Held, yes [Paras 35 and 36] [In favour of assessee]

Section 148, read with section 148A, of the Income-tax Act, 1961 - Income escaping assessment - Issue of notice for (Applicability of TOLA) - Assessment years 2013-14 to 2015- 16 - Whether Taxation and Other Laws (Relaxation and Amendment of certain provisions) Act, 2020 (TOLA) are not applicable for assessment year 2015-2016 - Held, yes [Para 21] [In favour of assessee]

In the circumstances it is submitted that since there was no independent application of mind by Id. AO while recording the satisfaction of escapement of income before issue of notice u/s 148 and he simply proceeded on borrowed satisfaction reached by some other officials without verifying the same, therefore, the entire proceedings initiated u/s 147 deserve to be held bad in law.

Without prejudice to grounds of appeal No. 1 & 2 taken on legal, submission on merits is as under:

Grounds of Appeal No. 3 & 4:

In grounds of appeal no. 3 & 4, assessee has challenged the action of Id. CIT(A) in confirming the action of Id.AO in disallowing loss claimed by assessee at Rs.8,90,52,650/- from trading of Futures and Options solely relying upon the conclusion drawn by SEBI in its order and without considering the submission made and evidences adduced.

Brief facts of the case are that the assessee firm traded in the securities market during the captioned assessment year and the gross volume of the transactions so executed is nearly Rs. 15299.00 crores, on which statutorily required levy i.e. SECURITIES TRANSACTION TAXES as applicable were paid besides the payment of other statutory charges and brokerage etc. which were all paid through prescribed banking channels and the net income so earned was duly offered for tax in the return of income filed, which stood processed by the department. Subsequently, case of assessee was re-opened and re-assessment order was passed u/s 147 r.w.s. 144B by making addition of Rs.8.90 crores by disallowing the losses suffered on certain filtered transactions by alleging the same as being on account of rapid reversal trades by allegedly flouting SEBI Rules.

In this regard, at the outset, it is submitted that the loss to the tune of Rs.8,90,52,650/- alleged to be non genuine was incurred w.r.t. transactions worth Rs. 12,39,89,882/-, which is merely .0810% of the turnover of Rs.15299 crores achieved by the assessee and loss suffered by assessee is merely 0.0582% of the total turnover. Your honours would appreciate that in such a heavy volume of transactions, reversal of trades, resulting into losses to the tune of .0582% of turnover, cannot be treated as so significant to infer the transactions as non genuine. As Id.AO has proceeded solely on the basis of information received from Investigation, he has completely overlooked the fact that in view of total volume of transactions, losses suffered by assessee are not so significant. Your honours would appreciate that when a person is trading on online portal and that too on a large scale, there are a number of factors that affect his decision and even a single

decision not taken in timely manner may result in huge losses and basically transactions are reversed in a short span of time in order to minimize such losses. It is pertinent to note here that while making addition, Id.AO in assessment order has alleged at page 3 of the order as under:

“that the assessee has executed several non-genuine trades on the same day, i.e. bought and sold option contracts with the same counter-party and reversed its trades within minutes from its earlier transaction and that too at a lesser price thus incurring loss. This rapid reverse trade defies all transparent norms and basic trading rationale. No reasonable and rational investor will keep on making losses and still continue its trading endeavours.” And addition of Rs.8,90,52,650/- was proposed to be made.

It is thus evident that Id.AO has treated genuine F & O transactions as non-genuine on following allegations:

- Execution of several non-genuine trade
- Buying and selling option contracts with same counter party
- Reversal of trade within minute
- No reasonable and rational investors will keep on making losses

In this regard, detailed submission was made before Id. CIT(A) (APB 212-238), however the same was brushed aside though no discrepancy whatsoever was pointed out therein and rather addition was confirmed relying upon SEBI order. It is submitted that so far as first three allegations are concerned, the same are solely based on SEBI order, without any enquiry and without even application of mind by Id.AO. Id.AO has not even brought any single evidence on record as to how was assessee related with the counter party, with whom assessee is alleged to have entered into transactions, which stood reversed subsequently. There is no iota of evidence w.r.t. action taken by SEBI or the Income Tax Department in the case of such counter party and the underlying motive of those parties behind such reversal.

So far as last allegation of Id.AO that “No reasonable and rational investor will keep on making losses” is concerned, the same is merely presumption of Id.AO as AO cannot sit in the armchair of a businessman and decide as to what decision has to be taken at a particular point of time. It is a well-known fact that no business can be carried out with an assurance to make only profits. In fact, a segment like share market, which is most volatile and affected by numerous outside factors, domestic as well as international, carries very high risk.

With this background, it is submitted that the transactions relating to Future and Options Trade (F&O Segment), in which the assessee has traded, there is a standard procedure prescribed by the exchange / SEBI while executing the transactions which has been strictly followed by the assessee firm. The detailed note on this procedure is as under:-

1. That the assessee firm had a trading account opened with recognized and government approved brokers who are members of various stock exchanges and are closely regulated by SEBI / directly which in present case for filtered transactions is

Bombay Stock Exchange (BSE) where, account is opened after due compliance of KYC norms.

2. That assessee firm has traded in future and option (F&O) Segment through aforesaid broker via online system and contract note is issued by broker for all transactions so executed which is generated with precise details of time at which transaction is executed.

3. That transactions so executed are at a price which is being reflected on BSE exchange online and is uncontrolled by assessee, as such exchanges are being operated by the government approved bodies and are on digital mode.

4. That, all the transactions entered into by assessee are subject to payment of Securities Transaction Tax.

4. That broker alongwith assessee firm has complied with all the necessary compliances as required under SEBI law for allowing a person to transact in stock exchange.

5. That transactions so executed on BSE are settled through online portal of stock exchange only and cannot be done directly with buyer or seller as they are unknown to each other. Similarly in the case of filtered transactions also payment are settled through exchange via broker only and no direct payment could be made / received.

6. Matching of transactions on the exchange is done by BSE / NSE and there is no role of assessee firm or its broker and in case transactions do not match, they are reversed by BSE and if in case any payment is not made or the payment made is not honoured by the bank then in such a case, payment is again made to BSE only and not to the seller of shares, as he or she is unknown to the buyer.

7. In case of future & options, the difference in bid and ask price is also uncontrolled and is reflected on the online portal of exchanges based on the demand and supply and such bid and ask price also varies with the strike rate of a particular script and is available online to all the traders without any control by any firm like that of assessee.

8. In case, any transaction of F&O is executed and the executant wishes to close it by squaring up, it can only be done at the prevailing price on the exchange and there is no other option except to opt offer price appearing on online system at that point.

9. As is the case of cash securities market there is no provision in F&O market of "buyer pack" or "seller freezing" and as a consequence the transaction has to be squared up at the offer price available and prevailing at that point of time on the online portal of exchange which is uncontrolled and at the end of every working day settlement of F&O transaction is carried out and difference is either paid / collected from the party.

10. It is also relevant to state that Exchange does not permit to enter into trade of F & O unless the party has sufficient margin money available and in case of failure to follow this, the broker as well as the party are penalized by Exchange.

It is thus clear that transactions in F & O segment as carried out by assessee could never be controlled by the assessee or its broker as the same are being entered into, at the online platform of recognized stock exchange and as per the Rule and Regulations of Stock Exchange and SEBI. In fact, no material or evidence whatsoever has been brought on record by Id.AO which could prove that assessee knew the counter party and was hand in glove with such party for carrying out such transactions to incur loss. Thus, basically, Id. AO made huge addition of Rs.8.90 crores, solely on the basis of information received from I & CI Wing, emanated from the order passed by SEBI in the case of assessee wherein allegation was made on presumption basis. In this regard, it was submitted before

Id.AO that SEBI, itself in its order dated 31.12.2018 has stated that *“it is not possible to quantify the amount of disproportionate gain or unfair advantage made by the Noticee. Further, there is also no material on record to assess the amount of loss caused to investors as a result of the Noticee’s default.”*, however submission of the assessee was brushed aside.

At this juncture, it is also relevant to state that the transactions under reference were carried out on BSE where selected scripts are being permitted for being traded on F&O Segment falling under the category of BSE-500 and lot size also is decided by the BSE. If any suspected transaction is noticed by the administration of BSE / SEBI it immediately suspends the trading in such script and after making necessary verification / clarification of the suspected transactions, only the suspension is revoked. In assessee’s case no transaction is executed in any script which is suspended by the BSE / SEBI during the period under reference. Your kind attention is invited to the fact that since beginning of the proceedings department alleged that assessee is indulged into reversal trade in Illiquid stocks. During the course of assessment proceedings as well as first appeal proceedings, (APB 130-131 & 226-227), a detailed list of the companies in whose scripts F & O segment transactions are carried out by assessee, was filed, which is as under:

- i. Allahabad Bank (ALBK),
- ii. Coal India Ltd. (COAL),
- iii. Bharat Heavy Electrical Ltd. (BHEL),
- iv. Punjab National Bank (PNBK),
- v. SBI Life Insurance (SBIL),
- vi. Bank of Baroda Ltd. (BOBL),
- vii. Indian Oil Corporation Ltd. (IOCL),
- viii. Exide Industries Ltd. (EXID),
- ix. Hindustan Petroleum Corporation Ltd. (HPCL),
- x. JSW Energy Ltd. (JSWE),
- xi. Andhra Bank (ANBK),
- xii. Axis Bank (AXIS),
- xiii. Oil and Natural Gas Corporation of India Ltd. (ONGC),
- xiv. Rural Electrification Corporation Ltd. (RECL)
- xv. Adani Enterprises Ltd. (ADEL)
- xvi. Ambuja Cement Ltd. (AMBC)
- xvii. Arvi Encon Ltd. (ARVI)
- xviii. Asian Paints Ltd. (ASPL)
- xix. Aurobindo Pharma Ltd. (AUPL)
- xx. Bajaj Auto (BAJT)
- xxi. Bata India Ltd. (BATA)
- xxii. Zee Entertainment Enterprises Ltd. (ZEEL)
- xxiii. Bharti Airtel (BHRT)
- xxiv. Biocon Ltd. (BIOC)
- xxv. Bank of India Ltd. (BOIL)
- xxvi. Bharat Petroleum Corporation Ltd. (BPCL)
- xxvii. Canara Bank (CANB)
- xxviii. Cipla Ltd. (CIPL)
- xxix. DLF Ltd. (DLFL)
- xxx. Dr. Reddy’s Laboratories (DRRL)

- xxxii. Engineers India Ltd. (ENGI)
- xxxiii. Honeywell Automation India Ltd. (HAIL)
- xxxiv. HDFC Bank (HDBK)
- xxxv. Housing Development and Infrastructure Ltd. (HDIL)
- xxxvi. Hindal Co (HNDL)
- xxxvii. Hindustan Unilever Ltd. (HULL)
- xxxviii. Indiabulls Housing Finance Ltd. (IBHF)
- xxxix. Industrial Development Bank of India (IDBI)
- xl. Infrastructure Development finance Corpn. (IDFC)
- xli. ITC Ltd. (ITCL)
- xlii. LT Finance Holdings Ltd. (LNTF)
- xliii. Maruti Suzuki India Ltd. (MARU)
- xliv. National Mineral Development Corpn. (NMDC)
- xlv. National Thermal Power Corpn. (NTPC)
- xlvi. PTC India Ltd. (PTCI)
- xlvii. Syndicate Bank (SYND)
- xlviii. United Bank of India Ltd. (UBIL)
- xlix. Voltas Limited (VOLT)

A bare perusal of above list reveals that none of the company could be classified as Illiquid stock and having daily volume of turnover in exchange exceeding crores of rupees. Thus the basic allegation made by department of trading in Illiquid stock is beyond understanding. It is also relevant to state that Exchange permits trading in F & O segment to very specific companies and not to all the companies and such companies has large shareholding base with heavy volumes of trade in both BSE / NSE and thus it is practically impossible for any entity to effect any such company by entering into any kind of alleged reversal trade.

Further, in response to show cause notice issued by Id.AO, assessee furnished detailed reply (APB 129-136), wherein all the allegations of Id.AO were duly controverted, which are summarised as under:

1. The assessee firm has executed contract with respect to various companies listed on the stock exchange, a long list of such companies was reproduced in reply to show cause notice, and it was explained that from perusal of list of companies, in which assessee has traded, it is seen that all of them are either BSE 500 companies or reputed companies and there cannot be any non-genuine trade carried out in these listed companies.

2. With respect to the allegation of buying and selling with the same counter party, as stated in above paras, it is reiterated that in case of online trading on Exchange portal in listed securities, there cannot be any possibility of making transactions of buying and selling with the same counter party for the sole reason that all the trades are executed through online portal and even while sitting in a same room and trying to sell from one desktop and trying to purchase from the other is not possible as the stock exchange is running on the technology of micro-nano seconds wherein predetermining the buyer and seller for a trade is humanly not possible.

3. With respect to allegation regarding reversing the trade within minutes, it is submitted that total volume of the transactions executed by the assessee firm is nearly 15,299 crore wherein numerous transactions are executed through online portal and the perception of holding trades for days require margin money as per exchange rules wherein huge amount of funds is required, of which the opportunity cost of interest is being levied with every passing day and assessee firm has ensured of minimizing the requirement of margin money by executing trade within a day itself to overcome other riders of the brokers of keeping margin money etc. Moreover whether to hold or square off a particular transaction is solely a business decision and AO cannot sit in the armchair of the assessee so as to decide what assessee should have done. It is the businessman himself who has to take a call regarding a particular transaction in a particular situation. Further in order to reduce the loss, assessee opted for "stop loss" facility where after giving command, the system automatically carried out the transaction.

4. With respect to allegation of making losses, it is submitted that the assessee firm has not made a loss and has rather earned net surplus of Rs. 28,20,601/- on which due taxes has been paid and return has been filed. It is a proven fact that any human who is trading in securities market can never earn only profits and never incur loss and same is the case with the assessee wherein it has earned surplus on certain trades and at the same time has suffered losses on other trades and the net in the case of assessee is a surplus which has to be accepted by the department and there cannot be a pick and choose theory of rejecting the losses suffered and accepting the profits earned for taxing the income.

Moreover, it is submitted that the main emphasis drawn by the department is execution of trades alleged as non-genuine and making losses which a rational investor will not do and the prices on which such transactions are executed are not genuine (emphasis of the department based on the observations of the adjudicating officer of SEBI). The very basis related to all such allegations is the rate on which such transactions are executed for which a detailed reply was furnished before Id.AO as well as Id. CIT(A), wherein the concept of rate and deviation therein was explained with screenshots taken of the transactions being executed with respect to:

- Bank - nifty related to index derivatives and the high and low on 01.02.2020 is 641.65 and 213.70 respectively and if percentage of variation is worked out over the strike price, it will be 1.43%:

Nifty Bank - BANKNIFTY

Index Watch | Option Chain

Index Derivatives Derivatives
 Stock Derivatives
 Currency

Instrument Type: Index Options | Symbol: BANKNIFTY | Expiry Date: 13FEB2020 | Option Type: Put | Strike Price: 30000.0 | [Get Data](#)

380.00
 -190.45

Prev. Close	Open	High	Low	Close
570.45	562.55	687.95	357.20	0.00

[Fundamentals](#) | [Historical Data](#)

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Date	Open	High	Low	Close	Settle Price	Contracts	Turnover (In lacs)	OI
01-Feb-2020	383.80	641.65	213.70	570.45	570.45	1359	8267.40	4580
31-Jan-2020	307.20	307.20	209.55	256.20	256.20	742	4488.44	2620
30-Jan-2020	0.00	0.00	0.00	284.15	158.40	0	0.00	0
29-Jan-2020	0.00	0.00	0.00	284.15	121.05	0	0.00	0
28-Jan-2020	0.00	0.00	0.00	284.15	164.20	0	0.00	0

Note:
In case of Option Contracts "Turnover" represents "Notional Turnover"

- Nifty- 50 related to index derivatives and the high and low on 01.02.2020 is 180.15 and 33.75 respectively and if percentage of variation is worked out over the strike price, it will be 1.22%:

Nifty 50 - NIFTY

Index Watch | Option Chain

Index Derivatives Derivatives
 Stock Derivatives
 Currency

Instrument Type: Index Options | Symbol: NIFTY | Expiry Date: 13FEB2020 | Option Type: Call | Strike Price: 12000.0 | [Get Data](#)

23.85
 -14.00 -36.99%

Prev. Close	Open	High	Low	Close
37.85	33.65	35.75	19.25	0.00

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High Low [For more Details Click Here](#)

View historical price data: For past: 7 Days [Get Data](#)

Date	Open	High	Low	Close	Settle Price	Contracts	Turnover (In lacs)	OI
01-Feb-2020	127.45	180.15	33.75	37.85	37.85	8197	74360.12	189675
31-Jan-2020	218.00	240.15	160.60	171.20	171.20	2124	19411.69	59775
30-Jan-2020	212.15	214.70	186.70	197.45	197.45	69	631.23	2625
29-Jan-2020	0.00	0.00	0.00	288.00	221.45	0	0.00	0
28-Jan-2020	0.00	0.00	0.00	288.00	179.60	0	0.00	0

- Reliance Industries Ltd. related to index derivatives and the high and low on 28.01.2020 is 54.90 and 34.50 respectively and if percentage of variation is worked out over the strike price, it will be 1.36%:

various authorities have examined this issue and have failed to unearth a single piece of evidence / material with which it could be established that assessee has taken bogus loss through reversal trade.

It is further submitted that it is not known whether any action whatsoever was taken against the opposite party or parties and any order has been passed in that or those cases who have been allegedly benefitted by such profit (against alleged bogus loss of assessee) on such transaction of reversal trade.

In the circumstances, it is submitted that the allegations of Id.AO are baseless in the scenario that no evidence of shifting the profit of the assessee firm to any other entity has been brought on record. Further, it is reiterated that trading in BSE or NSE is completely without intervention of human interface except for punching the trade and in such circumstances it cannot be said that transaction so executed is not as per rigid norms laid down by BSE or NSE more particularly when the department is not able to correlate its theory with the beneficiary and its association with the assessee.

It is further submitted that Id.AO has secluded transactions of Rs. 12,39,89,882/- as against the total transactions of Rs. 15,299 crore and alleged the same as non genuine. In this regard, it is submitted that in view of entire sequence of transactions and the nature of activity conducted by the assessee, adverse inference drawn in respect to the loss as mentioned above is merely a pick and choose method of taxing instead of holistically looking at the affairs of the business done by the assessee with his own wisdom and keeping in mind the present and future prospects of business.

It is further submitted that it is a settled principle of law that only the real income can be taxed and no singular transaction could be picked up for giving special treatment by simply relying upon certain one sided observations of some regulatory agencies which is Securities and Exchange Board of India (SEBI) in this case. It is also submitted that the entire loss as suffered by the assessee was to the advantage of some other business / investing entity and the department having full information in their hand in respect to such profit making assessee have made no enquiries which is a mandatory requirement in the event some transaction is believed to be not genuine.

Hon'ble Supreme Court in the case of CIT vs Godhra Electricity Ltd. has held as under (225 ITR 746)

“Income Tax is a levy on income. No doubt, the Income Tax Act takes into account two points of time at which the liability to tax is attracted, viz., the accrual of income and its receipt, but the substance of the matter is the income. If income does not result at all, there cannot be a tax, even though in book keeping, an entry is made about a hypothetical income, which does not materialize.”

It is submitted that assessee, vide reply dated 19.5.2023 (APB 142-144) filed during assessment proceedings, had specifically requested that in case Id.AO did not accept the submission of the assessee and decided to make addition as proposed, the assessee may be given an opportunity to cross examine any witness or evidence in relation to the transactions attributable to the loss under question. However, Id.AO passed assessment order and made huge addition to the tune of Rs.8,90,52,650/-without providing opportunity of cross examination.

Hon'ble Apex court in the case of CCE Vs. Andaman Timber Industries, (324) ELT 641 has that:

"6.According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them.

7. As mentioned above, the appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the Adjudicating Authority simply relied upon the price list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/witnesses at the price which is mentioned in the price list itself could be the subject matter of cross-examination. Therefore, it was not for the Adjudicating Authority to presuppose as to what could be the subject matter of the cross-examination and make the remarks as mentioned above."

Hon'ble Apex Court in the case of CIT vs Odeon Builders Pvt. Ltd. in Civil Appeal No. 9604-9605 of 2018 has held as under:

S. 68/69 Bogus Purchases: Disallowance cannot be made solely on third party information without subjecting it to further scrutiny. The assessee has prima facie discharged the initial burden of substantiating the purchases through various documentation including purchase bills, transportation bills, confirmed copy of accounts and the fact of payment through cheques, & VAT Registration of the sellers & their Income Tax Return. The AO has also not provided a copy of the statements to the assessee, thus denying it opportunity of cross examination.

It may also kindly be appreciated that the findings of any other agency / regulator cannot be taken as a sacrosanct to make addition under the Income Tax Act, 1961 as time and again the Hon'ble Apex Court have mandated that the Income Tax Act being a separate code, it is required to appreciate the business transaction in its true and correct spirit without being influenced by the observations made by other agencies such as Police, CBI, ED, etc.

Hon'ble Jaipur bench of ITAT in the case of Maverick Commodity Brokers Pvt. Ltd. ITA No. 27/JP/2020, (APB 150-211) while deciding the issue of disallowance of exemption u/s 10(38) on account of Long Term Capital Gain by assessing officer on allegation of Penny Stock has observed that:

"14.6 The Id. AO relied on the findings of the SIT report and SEBI report for that the Id. CIT(A) observed that these reports are pieces of information and the AO was expected to convert it into evidence by further inquiry which would comprehensively prove that it is assessee's cash which was routed and came back to the assessee in the form of Capital gain. The report of the SEBI Related to the stock market regulation and its order is not in assistance to the revenue based on these findings the CIT hold view that mere statement of third-party is not enough to make addition in the hands of the assessee and also vacated the findings of the Id. AO. The Id. CIT(A) reviewed the copies of the documents filed by the assessee wherein he is reviewed the contract notes, ledger account, bank statement, demat account, affidavit of Anil Agarwal etc. after going through this records he observed that no questions raised before the Anil Agarwal about the transaction entered by the assessee is under his knowledge not only that the Anil Agarwal retracted his statement so even on that count no addition can be made in the hands of the assessee. Then Id. CIT(A) extracted various decision that has been considered by him while considering the appeal of the assessee and the same were not reiterated here to avoid the duplication but he has mainly considered the various jurisdictional binding decision and based on those findings he allowed the appeal of the assessee.

Hon'ble ITAT, Mumbai, Special Bench in the case of GTC Industries vs., ACIT 164 ITD 1 (SB) has observed as under :

"46. "Ultimately the entire case of Revenue hinges upon the presumption that assessee is bound to have some large share in so called secret money in the form of premium and its circulation. However, this presumption or suspicion how strong it may appear to be true but needs to be corroborated by some evidence to establish a link that GTC actually had some kind of a share in such secret money, It is quite a trite law that suspicion howsoever strong may be but cannot be the basis of addition except for some material evidence record. The theory of preponderance of probability is applied to weigh the evidences of either side and draw a conclusion in favour of a party which has more favorable factors in his side. The conclusions have to be drawn on the basis of certain admitted facts and materials and not on the basis of presumptions of facts that might go against the assessee. Once nothing has been proved against the assessee with aid of any direct material especially when various rounds of investigations have been carried out then nothing can be implicated against assessee."

This may also be found relevant to observe that the determination of income under the Income Tax Act, 1961 is an objective analysis of the facts and circumstances attendant to the business activity of the entity under assessment where for e.g. certain expenditure even if not required to be incurred in the original terms of the

contract still where the business expediency call such expenditure to be necessarily incurred in circumstances of the business the same has to be allowed unless it is specifically prohibited under the Income Tax Act, 1961, thus, keeping the business expediency above everything and specially when there is no contrary evidence on record that the assessee has mingled with certain other persons to reduce its taxable income, such isolated treatment given by Id.AO to a particular set of transactions is not correct.

In view of above, in brief it is submitted that:

- Assessment was reopened solely on the basis of information received from I & CI Wing after the order of SEBI, which itself is not clear about the quantification of unfair advantage alleged to have been taken as a result of illegal trade reversals;
- The information, relied upon by Id.AO for reopening of assessment was never provided.
- There is no mention in SEBI order regarding any action being taken in the case of any of the company, in whose equity Futures/Options transactions were alleged to be traded illegally;
- There is no finding of SEBI as to exactly HOW did assessee by pass the procedure being followed on ONLINE portal and how assessee knew the counter party (as the same is not practically possible)
- No direct enquiry was made by Id.AO from third parties alleged to be counter parties with which trades were reversed nor were they cross examined by Id.AO to verify if they have been benefitted from such trade reversal;
- No discrepancy whatsoever was pointed out in the details/information furnished by the assessee and the same remained uncontroverted;
- No opportunity of cross examination of witness or evidence in relation to the transactions attributable to the loss disallowed was provided;
- Assessee has been trading regularly in many Bluechip companies, from which it has earned profit as well as suffered losses. It is submitted that trading has been through online portal, where the buyers and sellers are random parties and they do not know each other, therefore there cannot even be any presumption of contact with each other.
- All the transactions being incurred on online portal of BSE and are supported by Contract Notes and have been subjected to payment of STT.
- Actual loss suffered by the assessee as disallowed by Id.AO is 8.90 crores, which is .0582% of the total turnover of Rs.15,299 crores, thus as per concept of materiality also, reversal of trades to the extent of such small percentage cannot be treated as so material.

In view of above, it is evident that huge addition of Rs.8.90 crores has been made by Id.AO merely on conjectures and surmises and without rebutting the most specific and detailed submission made by assessee, thus the same deserves to be deleted.”

6. To support the contention so raised in the written submission reliance was placed on the following evidence / records / decisions:

S. No	PARTICULARS	PAGE NO.
1.	Copy of Acknowledgement of Return of Income and Computation of total income along with ITR Form for the A.Y. 2015-16	01-34
2.	Copy of Acknowledgement for A.Y.2015-16 filed u/s 148 dated 25.08.2022	35
3.	Copy of Financial Statements for the year ending 31.3.2015	36-41
4.	Copy of Notice dated 26.5.2022 issued u/s 148A(b) of the Income Tax Act	42-43
5.	Copy of Reply dated 13.6.2022 filed in response to notice issued u/s 148A(b) of the Income Tax Act.	44-56
6.	Copy of Order dated 27.7.2022 passed u/s 148A(d) of the Income Tax Act	57-60
7.	Copy of letter raising objections against the reopening of assessment dated 18.01.2023 along with annexures	61-116
8.	Copy of order dated 03.05.2023 disposing objections raised vide letter dated 18.01.2023	117-118
9.	Copy of letter dated 30.1.2023 filed before Id.AO during assessment proceedings along with copy of ledgers account of various brokers and their statement	119-125
10.	Copy of show cause notice dated 06.05.2023.	126-128
11.	Copy of reply dated 10.05.2023 filed in response to the show cause notice dated 06.05.2023 along with annexure containing-	129-136
(i)	Copy of detail pertaining to the loss of Rs. 8,90,52,650/- as was made available by the I & CI Wing of the Income Tax Department as modified to include certain details such as underlying price of contracts and its comparison (in percentage) with purchase, sale price and profit and loss	137-141
12.	Copy of Reply dated 19.05.23 filed in response to show cause notice dated 16.05.23	142-144
13.	Copy of notice dated 23.08.2019 issued by Income Tax Officer (I&CI)-1 calling for information u/s 133(6) of the Act.	145-146
14.	Copy of notice dated 31.10.2019 calling for information u/s 133(6) of the Act.	147-148
15.	Copy of reply dated 14.11.2019 filed in response to notice dated 31.10.2019 issued u/s 133(6) of the Act.	149
16.	Copy of order of ITAT in the case of ACIT vs. M/s Maverick Commodity Brokers Pvt. Ltd.in ITA No. 27/JP/2020	150-211
17.	Copy of written submission filed before Id CIT(A)	212-238

7. The Id. AR of the assessee in addition to the written submission vehemently argued that ground No. 1 raised by the assessee challenges the reopening of the assessment in the case of the assessee considering the development that has been made by the Finance Act, 2020, 2021 & 2022. Considering that aspect of the matter and decision of the Apex Court in the case of Ashish Agarwal and the decision of the Bombay High Court in the case of Hexaware Technologies Limited in Writ Petition No. 1778 of 2023 he submitted to considered that ground first. Considering that aspect of the matter and relying on the written submission and Id. AR of the assessee submitted that reopening in the case of assessee is illegal and bad in law.

7.1 As regards ground No. 1.1 raised by the assessee challenges the reopening basis on the fact of the case that Id. AO before issuing a notice u/s 148 of the Act has not established direct link nexus by conducting an independent inquiry and thereby reopened the assessment of the assessee mere based suspicious and without recording any subjective belief as to the escapement of the income which is the pre-conditions to reopen the case and therefore, the reopening of the assessment in the case of the assessee bad in law. Ld. AO has not recorded proper reasoning so as to justify the escapement of income.

7.2 As regards ground No. 3 & 4 raised by the assessee deals on merits of the additions made denying loss claimed by the assessee for an amount of Rs. 8,90,52,650/- (being loss on trading of Futures and Options) by merely alleging that how assessee can continue to suffer losses defying the logic of basic economics not being a rookie in this field as shares are brought and sold to make profit not incur losses. The assessee suffered losses on blue cheap company and the dealing has been done in online platform where buyers and sales are random parties and they do not know each other in that situation the denial of loss to the assessee is against the provisions of law. Ld. AR of the assessee referring to Page 145 of the paper book wherein the notice issues by ITO(I&CI)-1, Jaipur wherein the allegations advanced to the assessee for an amount of Rs. 7,80,18,087.50/- whereas Id. AO based on the same set of evidence available with the revenue alleged for an amount of Rs. 8,90,52,650/-. Thus, the revenue has no correct information and that information so if any has not been confronted to the assessee about the allegations of alleged loss denied trading as bogus claim. The Id. AR of the assessee referring to Page No. 106 being the reply dated 18.03.2020 addressed to the ITO(I&CI)-1, Jaipur wherein the assessee stated that annexure -1 wherein all the transactions

are refracted and recorded in the books of the assessee and that has not been countered.

7.3 As regards annexure-2 placed on record the working wherein variation between annexures-1 & 2 provided during the investigation carried out by ITO(I&CI)-1, Jaipur. The Id. AR of the assessee also submitted that considering the voluminous transactions done by the assessee the Security and Exchange Board of India have also conducted an inquiry against the assessee and adjudicated the matter in the case of the assessee by passing a speaking order dated 31.12.2018 in the case of the assessee found wherein the SEBI has observed as under;

“Considering the above, I am of the view that it will be appropriate to take into account the payoff of transactions between the two parties together, rather than viewing it independently. Therefore, in respect of the non- genuine trades carried out by the Noticee which resulted in creation of artificial volume in Illiquid Stock Options, it is not possible to quantify the amount of disproportionate gain or unfair advantage made by the Noticee. Further, there is also no material on record to assess the amount of loss caused to investors as a result of the Noticee’s default.”

7.4 Thus even SEBI has taken note of the fact that considering the fact on record. It was not possible for them to quantify the amount of gain or unfair advantage made by the assessee firm. There are no other observations, as regards to the loss claimed by the assessee which is as per the extensive guidelines and provisions of law and therefore, the loss claimed by the assessee cannot be denied referring to Page No. 37 of paper book being the overall profit and loss account submitted. The Id. AR of the assessee

submitted that the total volume of receipt and payment respectively recorded in the profit and loss account submitted reads as under;

To Gross Transaction Volume [Payment]	152,985,894,942.51
By Gross Transaction Volume [Receipt]	152,994,857,968.77

7.5 If that turnover with that of the loss is compared it is 0.018% turnover of the assessee, Id. AR of the assessee referring to page No. 14 & 15 of the written submissions given names listed companies in whose scripts Future and Options segment transactions carried out by the assessee. The list so provided itself reveals that none of the company could be classified as illiquid stock. All these companies are having heavy volume of turnover in security exchange. These allegations made by the revenue of trading by the assessee in illiquid stock is against the facts already on record, Id. AR again referring to the list of the companies stated that all are Bluechip company referring to Page No. 17 of written submissions. Ld. AR of the assessee submitted that the price valuation in the stock of company wherein the assessee has dealt ranges between 1.22% in the case of Nifty-50 and in the case of Reliance Industries strike price ranges at 1.36% only Id. AR of the assessee stated that the assessee has already filed all the details before Assessing Officer as well as before ITO(I&CI)-1, Jaipur concerned to the loss of Rs. 8,90,52,650/-. As regards the allegations made in SEBI order, the assessee challenged that order because same has been

passed ex-party and the assessee has challenged that order further in appeal in accordance with law and therefore, loss in fact claimed by the assessee be considered on its merits.

7.6 In summary Id. AR of the assessee first stated that re-opening of the assessment is bad in law and consequent order so passed deserves to be quashed. Second he stated that there are different accounts due to which notice issued u/s 148 dated 27.07.2022 is bad in law, as mentioned in the written submission. Third that the notice u/s 148 dated 27.07.2022 is barred by limitation as per the first proviso to section 149 and on that as mentioned in the written submission, the case was reopened by first notice u/s 148 issued on 21.04.2021 and afterwards on account of Hon'ble Supreme Court decision in the case of UOI Vs. Ashish Agarwal (supra), this notice was deemed to be notice u/s 148A(b). As the notice u/s 148 now deemed to be notice u/s 148A(b) as per the Hon'ble Supreme Court decision in the case of Ashish Agarwal, was issued in April, 2021 and ultimately the notice u/s 148 was issued on 27.07.2022, the same is barred by limitation in view of the first proviso to section 149(1), as this notice issued u/s 148 dated 27.07.2022 is for A.Y. 2015-16 which is beyond six years and thus in view of the first proviso to section 149(1), this notice could not have been issued, being barred by limitation. Ld. AR stated that issue is squarely covered with

the decision of Hexaware Technologies Ltd. As regards the merits of the case he reiterated the submission what has been made in the written submission so filed.

8. Per contra, Id. DR relied upon the detailed finding recorded in the orders of Assessing Officer and that of Id. CIT(A) on its merits of the case and for the sake of avoiding repetition, he relied upon the finding recorded in the orders of lower authorities. Ld. DR vehemently opposing to the contention raised submitted that the reassessment is not barred by limitation even considering the first proviso to section 149(1) as in special circumstances prevailing at that time on account of Covid etc., the Hon'ble Supreme Court has decided the case of Ashish Agarwal about the extension being available and TOLA being applicable. The Id. DR also argued the points as listed in the written submission so placed on record and the same is reiterated herein below :

"Kindly refer to the above mentioned case. In this case, the appellant had challenged reopening of assessment u/s 148 stating it arbitrary, barred by limitation, issued without DIN, issued by JAO and hence not in accordance with section 151A. In this regard, a detailed report was called from the AO which is self-explanatory on all these issues and enclosed with this submission for your kind perusal.

2. It is also submitted that the Ld. CIT(A) has rightly upheld the addition of Rs. 8,90,52,650/- made by the AO on account of assessee being engaged in reversal trades in illiquid stock options leading to premeditated loss of Rs. 8,90,52,650/-. This was on account of information received by the AO that the assessee had executed many non-genuine trades in unique contracts.

3. The Ld. CIT(A) has passed a speaking order in this regard quoting a detailed order of adjudicating authority of security and exchange Board of India dated 30.12.2028 in the case of this assessee. The relevant paragraphs of SEBI order are quoted below as follows for ready reference:

"2. It was observed that during the investigation period, total 2,91,643 trades comprising substantial 81.38% of all the trades executed in Stock Options Segment of BSE were found to be non-genuine trades. The aforesaid non-genuine trades resulted into creation of artificial volume to the tune of 826.21 crore units or 54.68% of the total market volume in Stock Options segment of BSE during the investigation period.

3. It was observed that the said non genuine trades were not restricted to any specific contract or between any specific set of entities. It was observed that Raghav Commodities (hereinafter referred to as "Noticee") was one of the various entities which were indulged in execution of non-genuine trades in Stock Options Segment of BSE during the investigation period. The following points narrate the dealings of the Noticee during the investigation period and the allegations against it for execution of non-genuine trades

4. As regards to all the dealings of Noticee in the Stock Options segment of BSE during the L.P., it is noted that Noticee traded in 191 unique contracts, from which it has allegedly executed non genuine trades in 191 contracts wherein it executed total 326 non-genuine trades, with similar modus operandi mentioned above, which resulted in artificial volume of total 2,91.34,000 units.

5. Summary of dealings of the Noticee in 191 Stock Options contracts in which the Noticee allegedly executed non genuine trades during the investigation period is as follows.....

21. From the above pattern of trades, I note that the Noticee had bought and sold option contracts with the same counter parties and also reversed its trades in less than 3 minutes from its earlier buy/sell trades, at substantial price difference. Such pattern of dealings suggests beyond doubt that they were not driven by market factors as none of the parameters (underlying stock price, volatility, etc.) for Option pricing, as mentioned above paragraphs, have undergone any change during the currency of trades, I note that the underlying stock price did not change to substantiate corresponding changes in the option price in a span of less than one minute. Therefore, conclude that aforesaid trades of Noticee were non genuine and have created false or misleading appearance of trading in terms of artificial volume in stock options and therefore manipulative, deceptive in nature

22. It is summarized from the above findings that the Noticee had executed non-genuine trades in 191 contracts, wherein in respect of 68 contracts, all the trades were non genuine trades and contributed to 100% artificial volumes. The

member of non-genuine trades of the Noticee had contributed to the total number of trades from the market in the above contracts, which was in the range of 3% to 100% of the trades that happened in the aforementioned contracts. The volumes generated by the Noticee in each of the above 4 contracts were artificial volume, and have contributed in the range of 5% to 100% of the total volume from the market in said contracts. Non genuine trades executed by the Noticee in above contracts had significant differential in buy rates and sell rates considering that the trades were reversed on same day

23. I note that derivative contracts by its very nature derives its value from various factors including underlying price. The transactions of the Noticee as mentioned in above paras clearly demonstrates that option contracts bought/sold were immediately reversed within span of few seconds/minutes at substantially different price, though there was no corresponding price changes in the underlying stock price. Further analysis of such trades also indicates that price differentials have been deliberately structured for manipulative purpose as one party to the contract had deliberately foregone profitable proposition at the time of executing trade. For example, the Noticee sold put option contract of "DLFLISAPR160.00PEW 1", on March 20, 2015 at 0.65 for 80,000 units. As per the terms of contract. the Noticee had sold (wrote the contract) Right to Sell Option at 160 for a premium of 0.65 to the counterparty, PADAM RAJ AGARWAL HUF. This means that the Noticee will be in a position of no profit or loss if the underlying price of the scrip is at Rs. 159.35 and the Noticee will incur a profit upto Rs 0.65 per unit for the 80,000 units if the underlying price of the scrip is between Rs. 159.35 to Rs. 160 (Strike Price (160)-Premium (? 0.65)). Further, I note that the Noticee would start incurring the loss as the underlying price of the scrip goes below Rs. 159.35. I note that the weighted average price of DLF LTD. (DLFL) on equity segment on March 20, 2015 was 161.34. Thus, it is noted that the Noticee was at a profitable position of 20.65 each for 80,000 units (ie. the Premium) at the time of writing the contract.

24. I am of the view that any rational investor who deals in derivatives market would compare the market price of the option contract with theoretical price of the options which accounts for relevant factors like underlying price, volatility, time to expiry etc. I note that the Noticee had sold the right to sell on March 20, 2015 in the contract "DLFL15APR160.00PEW 1". Any rational investor who is selling/writing such Put option expects the price of underlying stock to raise, remain the same or not to fall below the amount corresponding to the difference between the strike price and the premium (Le. Rs. 159.35 in the instant case) before the date of expiry of the contract. Since in the instant case, the expiry date of the contract is April 01, 2015. the rationale of the Option writer would be to expect the price of underlying to remain the same or go above the strike price and the rationale of the buyer would have been to expect the scrip price to fall over the remaining 7 trading days to exercise his contract. However, I note that the Noticee who was already in a profitable position to a tune of the premium at the time of writing the aforesaid contract and had 7 trading days time till the

expiry of the contract. he immediately reversed the contract by buying the options within 13 seconds from the same counterparty at a price of Rs. 3 without any change in market conditions. Such reversal of transaction with the same counterparty resulted in the Noticee deliberately incurring the loss of Rs. 2.35 (Rs. 3-Rs. 0.65) and facilitated the counterparty to make corresponding profits. I note that such a pattern of trading clearly demonstrates that Noticee at the time of selling and buying options contract did not take market parameters into consideration but had malafide intent as the price of buying and selling options were completely away from fair market prices. Had market been liquid with large number of investors, the manipulative scheme would not have been possible as the Noticee would not be able to square off its position as there would be no buyers for such contracts. The fact that the counterparties are same corroborates that the trades were not genuine and executed for manipulative purpose. I also note that loss made by the Noticee was exactly same of the profit made by the counterparty which ratifies the manipulative scheme of operations.

37. I find that the Noticee by indulging in execution of reversal trades in the Options with same entities on the same day, had created artificial volume, leading to false and misleading appearance of trading in the illiquid stock options at BSE and therefore violated the provisions of Regulations 3 (a), 3(b), 3(c), 3 (d), 4 (1), and 4 (2) (a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003. Accordingly, the Noticee is liable for monetary penalty under Section 15HA of SEBI Act.

41. After taking into consideration the nature and gravity of the violations established in the preceding paragraphs and in exercise of the powers conferred upon me under Section 15 of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, 1995, hereby impose a penalty of 25,00,000 (Rupees Twenty Five Lakhs Only) on the Noticee Le... M/s Raghav Commodities, under Section 15HA of the SEBI Act, 1992, for indulging in execution of reversal trades in Stock Options with same entities on the same day, thereby creating artificial volume, leading to false and misleading appearance of trading in the illiquid stock options at BSE.

Therefore, it is apparent that the adjudicatory authority of SEBI passed a very comprehensive order giving relevant instances and establishing beyond doubt that assessee was engaged in reversal trade in illiquid stock option leading to premeditated loss of Rs. 8,90,52,650/-. Hence, the Ld. CIT(A) concluded that appellant was involved in reverse trading with the parties viz. Narayan Capital Services Private Limited and Padam Raj Agarwal HUF at substantial price difference (lower) in less than three minutes resulting in artificial volume in the market clearly indicating that the loss claimed by the appellant is a pre-planned bogus fictitious loss suffered to evade tax liability in connivance with the above mentioned parties. During the appellate proceedings, the appellant also claimed that it is not possible to know as to with which party buying or selling is to be

executed but the appellant failed to give any cogent explanation that why it continued to suffer losses defying the logic of basic economics not being a rookie in this field as shares are bought and sold to make profit not incur losses.

Further, the Ld. CIT(A) refuted the appellant's contention that the order passed by SEBI is arbitrary because the order states-it is not possible to quantify the amount of disproportionate gain or unfair advantage made by the appellant. He further mentioned that this contention is also not maintainable because firstly an offence which is not quantifiable does not imply that the offence is to be pardoned and on the contrary, the order is comprehensive containing all the details regarding the appellant's reverse trading, none of which the appellant could refute during the appellate proceedings. The appellant has not provided any piece of information that if the grievances of the appellant were taken to Securities Appellate Tribunal against the order passed by SEBI. The appellant in fact chose to remain non-compliant during the proceedings of SEBI showing utter disregard to the official/legal procedures. Therefore, mere assertion by the appellant that the order passed by the regulatory body, SEBI is arbitrary without taking any measure towards proving its claim has no merit.

Further the Ld. CIT(A) observed that the appellant being a regular trader in blue chip companies, it is more unlikely and unconvincing that the appellant had borne loss to the tune of Rs.8,90,52,650/- going against the principles of economics and human rationale. The appellant's claim that buyers and sellers are random parties therefore it could not have been premeditated does not hold character because these are just bald statement put forward in an attempt to divert the attention of the first appellate authority from the core issue without producing any documentary evidence to contravene the findings of the Assessing Officer which in turn is based on the order of SEBI.

Also it is pertinent to mentioned that the appellant could not furnish the audited tax report during the reassessment proceedings as well as during the appellate proceedings in spite of multiple hearing opportunities provided to the appellant.

In view of the above submissions, it is requested that appeal may kindly be decided in favour of the revenue.”

8.1 Ld. DR also filed a detailed report of the Assessing Officer countering the submissions of the assessee which reads as under:-

“In this regard, counter submission on the issue(s) raised by the assessee are as under:

1. Assessee's submission: The Notice dated 27-07-2022 issued u/s 148 of the LT. Act, 1961 is barred by limitation as per the first proviso to section 149 of the Income Tax Act, 1961.

Counter submission: The contention of the assessee that the proceeding has been barred by limitation mentioned u/s 149 of the Act is not tenable in view of the Para-6 of CBDT's Instruction No. 01/2022 (F.No. 279/Misc/M-51/2022-ITJ) dated 11th May, 2022. For the sake of clarity para 6 of CBDT's Instruction No. 01/2022 is reproduced here under:-

"6.1 Operation of the new section 149 of the Act to identify cases where fresh notice under section 148 of the Act can be issued:

With respect to operation of new section 149 of the Act, the following may be seen: Hon'ble Supreme Court has held that the new law shall operate and all the defences available to assesses under section 149 of the new law and whatever rights are available to the Assessing Officer under the new law shall continue to be available. Sub-section (1) of new section 149 of the Act as amended by the Finance Act, 2021 (before its amendment by the finance Act, 2022) reads as under:-

149 (1) No notice under section 148 shall be issued for the relevant assessment year.-

- a) if three years have elapsed from the end of the relevant assessment year unless the case falls under clause (b);
- b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year;

Provided that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit specified under provisions of clause (b) of sub-section (1) of this section, as they stood immediately before the commencement of the Finance Act, 2021:

The Hon'ble Supreme Court has upheld the views of High Courts that the benefit of new law shall be made available even in respect of proceedings relating to past assessment years. Decision of Hon'ble Supreme Court read with the time extension provided by TOLA will allow extended reassessment notices to travel back in time to their original date when such notices were to be issued and then new section 149 of the Act is to be applied at that point.

6.2 Based on above, the extended reassessment notices are to be dealt with as under:

(i) A.Y. 2013-14, A.Y. 2014-15 and AY 2015-16: Fresh notice under section 148 of the Act can be issued in these cases, with the approval of the specified authority, only if the case falls under clause (b) of sub-section (l) of section 149 as amended by the Finance Act, 2021 and reproduced in paragraph 6.1 above. Specified authority under section 151 of the new law in this case shall be the authority prescribed under clause (ii) of that section.

(ii) A. Y. 16-17, A.Y. 17-18: Fresh notice under section 148 can be issued in these cases, with the approval of the specified authority, under clause (a) of sub-section (l) of new section 149 of the Act, since they are within the period of three years from the end of the relevant assessment year. Specified authority under section 151 of the new law in this case shall be the authority prescribed under clause (i) of that section."

From a plain reading of Para 6 of the above mentioned instruction, it is crystal clear that the AO required to take action in AY 2013-14, 2014-15 also as the decision of Hon'ble Supreme Court read with the time extension provided by TOLA will allow extended re-assessment notices to travel back in time to their original date when such notices were to be issued and then new section 149 of the Act is to be applied at that point.

Further, the Hon'ble Supreme Court vide order dated 03.10.2024 in the case of Union of India vs Rajeev Bansal in Civil Appeal No. 8629 of 2024 confirm that the Taxation and other laws (Relaxation & Amendement of certain provision) Act (TOLA) will remain applicable to Income Tax Act beyond the specified date.

2. Assessee's submission: The Notice u/s 148 dated 27-07-2022 is invalid and bad in law as the same has been issued without a DIN.

Counter submission: On perusal of the assessment records, it is seen that in the case information was received through Insight Portal under potential cases from the Directorate of Intelligence & Criminal Investigation regarding co-ordinated and premeditated trading on the Bombay Stock Exchange by engaging in reversal trades in illiquid stock options resulting in non-genuine business loss/gain to the beneficiary assessee and that the present assessee is a party to such manipulation as flagged by the Directorate of Income tax (System). On perusal of the information it is found that assessee has entered into securities transaction is non-genuine. After taking approval from the Worthy Pr. Chief Commissioner of Income-tax, Rajasthan Jaipur vide his order No. 4159 dated 26.07.2022, notices u/s 148 was issued to the assessee on 27.07.2022 vide DIN ITBA/AST/M/148_1/2022-23/1044161681(1) (Copies enclosed).

3. Assessee's submission: The notice u/s 148 dated 27-07-2022 is invalid and bad in law being issued by the JAO as the same was not in accordance with the section 151A of the Income Tax Act, 1961.

Counter submission: The assessee have challenged the validity of the notice issued under section 148 of the Income-tax Act, 1961 ("the Act") by challenging the jurisdiction of the Assessing Officer issuing such notice stating that the said notice was issued without jurisdiction it was not issued by National Faceless Assessment Centre, which is a requirement under the Faceless Reassessment Scheme, 2022 notified under section 151A of the Act vide notification 18/2022 dated 29.03.2022

2. Vide the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, section 151A was inserted in the Act w.e.f 01.11.2020. The provisions of the relevant section are as under:

"Faceless assessment of income escaping assessment.

151 A. (1) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of assessment, reassessment or re-computation under section 147 or issuance of notice under section 148 or conducting of enquiries or issuance of show-cause notice or passing of order under section 148A or sanction for issue of such notice under section 151, so as to impart greater efficiency, transparency and accountability by-

(a) eliminating the interface between the income-tax authority and the assessee or any other person to the extent technologically feasible;

(b) optimising utilisation of the resources through economies of scale and functional specialisation

(c) introducing a team-based assessment, reassessment, re-computation or issuance or sanction of notice with dynamic jurisdiction.

(2) The Central Government may, for the purpose of giving effect to the scheme made under sub-section (1), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification

Provided that no direction shall be issued after the 31st day of March, 2022

(3) Every notification issued under sub-section (1) and sub-section (2) shall, as soon as may be after the notification is issued, be laid before each House of Parliament"

Subsequently, in pursuance of the powers conferred by sub-sections (1) and (2) of section 151A of the Act, vide notification no. S.O. 1466(E) dated 29.03.2022 the e-

Assessment of Income Escaping Assessment Scheme, 2022 was notified. The contents of the said scheme are as under:-

"SO. 1466(E). In exercise of the powers conferred by sub-sections (1) and (2) of section 151A of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby makes the following Scheme, namely:-

1. Short title and commencement--(1) This Scheme may be called the e-Assessment of Income Escaping Assessment Scheme, 2022.

3. Scope of the Scheme. For the purpose of this Scheme,-

(a) assessment, reassessment or recomputation under section 147 of the Act,

(b) issuance of notice under section 148 of the Act.

shall be through automated allocation, in accordance with risk management strategy formulated by the Board as referred to in section 148 of the Act for issuance of notice, and in a faceless manner, to the extent provided in section 144B of the Act with reference to mu assessment or reassessment of total income or loss of assessee."

3. The aforesaid notification provides that the scope of the said scheme is for issuance of notice under section 148 of the Act and thereafter assessment, reassessment or recomputation under section 147 of the Act is to be carried out. Therefore, the said notification covers the following two procedures under the Act:-

a) Issuance of notice under section 148 of the Act.

b) Assessment/Reassessment/ Recomputation proceedings under section 147 of the Act.

The scheme clearly lays down that the issuance of notice under section 148 of the Act has to be through automation in accordance with the risk management strategy referred to in section 148 of the Act. It further lays down that the assessment/reassessment has to be in a faceless manner as provided in section 144B of the Act. The starting point of process under section 148 of the Act is information made available to the Assessing Officer. To this end, as provided in the section 148 of the Act, the Directorate of Systems randomly selects a number of cases based on the criteria of the Risk Management Strategy. The Assessing Officer has no role to play in such selection. Consequent to such selection, the information is made available to the Assessing Officer who, with the prior approval of specified authority, determines which of these cases are fit for proceedings under the section 147 of the Act as per the procedure provided in section 148A of the Act. This involves conducting enquiry, if needed and giving the assessee an opportunity of hearing. Thereafter, leaving aside the cases covered by exceptions given in

section 148A of the Act, an order is passed by the Assessing Officer, after due approval by specified approval, determining whether proceedings under section 147 of the Act may be determined in that case. If it has been concluded in the order under section 148A of the Act that it is a fit case for re-assessment proceedings, the Assessing Officer may issue a notice under section 148 of the Act to commence proceedings under section 147 of the Act. Therefore, as provided in the scheme the notice under section 148 of the Act is issued on automatic allocation of cases to the Assessing Officer based on the risk management criteria. Therefore, notices are clearly complying with the scheme. Further, it is only logical and legal that the authority that has passed the order under section 148 A of the Act determining fitness of the case for reassessment proceedings should be the one issuing notice to commence proceedings under section 147 of the Act. The fact that no further approval is required to issue notice at this stage by the Assessing Officer also lends support to this argument.

It is reiterated that the procedure outlined under section 148A of the Act is a mandatory process (for cases other than search cases) and initiation of proceedings under section 148A is based on risk assessment strategy and randomness. The notice under section 148A issued thereafter is naturally based on risk management strategy and automated allocation.

3.1 It may also be noted that the scheme provides for randomized allocation of cases. The intent behind is to ensure fair and reasonableness in the selection of cases. In the procedure for issuance of notice under section 148 of the Act this is ensured as cases selected prior to issuance of the said notice are decided on the basis of an algorithm as per the Risk Management Strategy and are, therefore, randomly selected. These cases are flagged to the JAO by the Directorate of Systems and the JAO does not have any control over the process. The cases are selected on the basis of risk management strategy in a random manner, and the JAO has no way of predicting or determining beforehand whether a case will be flagged by the Systems. Further, the selection of cases for issuance of notice under section 148 of the Act is determined after taking into account a number of factors like workload, convenience of taxpayers, technological feasibility to conduct the procedure, nature and amount of information, nature of enquiries that might be required to be conducted under section 148A of the Act as well as the period of limitation for issuance of such notices. Therefore, whether JAO or NFAC should issue such notice is decided by administration keeping in mind the end result of natural justice to the assesseees as well as completion of required procedures in a reasonable time. This is also totally as envisaged in the scheme dated 29.03.2022.

3.2 Further, consequent to the issuance of notice under section 148 of the Act as per the procedure discussed above are again randomly allocated to the Assessment Units by the National Faceless Assessment Centre as per clause (1) of sub-section (1) of section 144B of the Act. Thereafter the assessment is conducted as per the procedure provided in section 144B of the Act in a faceless manner, as is also stated in the scheme. From the above, it is quite clear that the

procedure for issuance of notices under section 148 of the Act as well as the consequent assessment proceedings are following the scheme notified under section 151A of the Act.

3.3 The assessee has challenged the jurisdiction of the Assessing Officer issuing notice under section 148 of the Act in its case in light of the notification S.O. 1466(E) dated 29.03.2022. Here it is pertinent to note that the said notification does not state whether the notice is to be issued by the NFAC or the Jurisdictional Assessing Officer ("JAO"). The said notification only speaks of the scope of the scheme with regards to the procedures covered by it and lays down the legal contours of how such procedures are to be carried out. It states that the issuance of notice under section 148 of the Act shall be through automated allocation in accordance with the risk management strategy and that the assessment shall be in a faceless manner to the extent provided in section 144B of the Act. From the above, it is apparent that in the procedure for reassessment, as it exists as on date, both these are being followed. Therefore, it will be incorrect to state that the issuance of notice by the JAO is without jurisdiction.

4. It is also pertinent to note here that under the provisions of the Act both the JAO as well as units under NFAC have concurrent jurisdiction. The Act does not distinguish between JAO or NFAC with respect to jurisdiction over a case. This is further corroborated by the fact that under section 144B of the Act the records in a case are transferred back to the JAO as soon as the assessment proceedings are completed. So, section 144B of the Act lays down the role of NFAC and the units under it for the specific purpose of conduct of assessment proceedings in a specific case in a particular Assessment Year. This cannot be construed to be meaning that the JAO is bereft of the jurisdiction over a particular assessee or with respect to procedures not falling under the ambit of section 144B of the Act. Since, section 144B of the Act does not provide for issuance of notice under section 148 of the Act, there can be no ambiguity in the fact that the JAO still has the jurisdiction to issue notice under section 148 of the Act.

5. Without prejudice to the above, it is also important to refer to the parent section, that is section 151A of the Act, as the power to notify the scheme originates in that section. In the subsection (1) of the said section it has been provided that the Central Government may notify a scheme for conduct of procedures mentioned therein by:-

- (a) eliminating the interface between the income-tax authority and the assessee or any other person to the extent technologically feasible;
- (b) optimising utilisation of the resources through economies of scale and functional specialisation;
- (c) introducing a team-based assessment, reassessment, re-computation or issuance or sanction of notice with dynamic jurisdiction.

Therefore, the parent section takes in to account that procedures may be modified under the Act or laid down taking into account their technological feasibility at the time. Further, instead of laying down specifics of the procedure, the section clarifies that the scheme so notified should make optimal utilisation of resources through economies of scale and functional specialisation. Reading it in tandem with the scheme as given in notification S.O. 1466(E) dated 29.03.2022, it is quite clear that neither the section nor the scheme speak about the detailed specifics of the procedure to be followed therein. They lay down the general principles that should be followed so as to impart greater efficiency, transparency and accountability to the procedures contained therein. The said scheme lays down that the issuance of notice under section 148 of the Act shall be through automated allocation in accordance with the risk management strategy and that the assessment shall be in a faceless manner to the extent provided in section 144B of the Act.

5.1 The specifics of the various parts of the procedure will evolve with time as the technology evolves and the structures in the Income-tax Department change. The section and the scheme have left it to the administration to devise and modify procedures with time while remaining confined to the principles laid down in the said section and scheme. By conducting the procedures under the e- Assessment of Income Escaping Assessment Scheme, 2022 at two levels, one with the JAO and other with NFAC, an attempt has been made to introduce checks and balances within the system that the assessee can submit evidences and can avail opportunity of hearing prior to commencement of any proceedings under the Act. This, ensures convenience of the assessee, equitable distribution of workload among the officers and is also compatible with the technological abilities in the Department as on date to ensure a procedure which is seamless, reasonable and fair for the assessee.

6. Hence, challenging the notice under section 148 of the Act on account of issuance by JAO is the result of incorrect reading of the section 151A as well as the e-Assessment of Income Escaping Assessment Scheme, 2022.

Further, the Hon'ble Calcutta High Court vide order dated 13.09.2023 in WPO/1549/2023 in the case of Sanghi Steel Udyog Pvt. Ltd vs. Union of India and Others, has endorsed the stand of the department on this issue and dismissed the Writ Petition filed by the assessee. Further, the decision of Hon'ble Telgana High Court in the case of Kankanala Ravindre Reddy vs. Income Tax Officer and Others has been challenged by the Department before the Hon'ble Supreme Court vide SLPO No. 003574/2024 registered on 09.02.2024 and the decision of Hon'ble Bombay High Court in the case of Hexaware Technology Ltd vs. Assistant Commissioner of Income Tax has been challenged by the Department before the Hon'ble Supreme Court by filling the SLP vide Diary No. 37843/2024 on 21.08.2024."

9. We have heard the rival contentions / arguments and perused the material placed on record. First we will deal with the ground no. 1 & 1.1 raised by the assessee challenging the validity of the reassessment on the legal ground. The bench noted that the issue which has been raised in the legal ground for part of the contention has also been recently decided by the apex court in the case of Union of India &Ors. Vs. Rajeev Bansal in the Civil Appeal No. 8629 of 2024 along with various other civil appeal numbers, as mentioned in the aforesaid decision. This landmark decision of the Hon'ble Supreme Court has a bearing over the part of the issues taken up in the present appeal along with decision of Supreme Court in the case of Ashish Agarwal. The Bench has noticed that on this issue as to whether notice u/s 148 so issued after the decision of Hon'ble Supreme Court in the case of Ashish Agarwal in May 2022 or afterwards would get barred by limitation or not, the Hon'ble Supreme Court in the latest decision in the case of Rajeev Bansal has elaborately discussed this issue. It will be useful to reproduce few paras from the aforesaid decision of Rajeev Bansal case (Supra):-

105. A direction issued by this Court in the exercise of its jurisdiction under Article 142 is an order of a court. The third proviso to Section 149 of the new regime provides that the period during which the proceedings under Section 148A are stayed by an order or injunction of any court shall be excluded for computation of limitation. During the period from the date of issuance of the deemed notice under Section 148A(b) and the date of the decision of this Court

in Ashish Agarwal (supra), the assessing officers were deemed to have been prohibited from passing a reassessment order. Resultantly, the show cause notices were deemed to have been stayed by order of this Court from the date of their issuance (somewhere from 1 April 2021 till 30 June 2021) till the date of decision in Ashish Agarwal (supra), that is, 4 May 2022.

106. *In Ashish Agarwal (supra), this Court directed the assessing officers to provide relevant information and materials relied upon by the Revenue to the assesses within thirty days from the date of the judgment. A show cause notice is effectively issued in terms of Section 148A(b) only if it is supplied along with the relevant information and material by the assessing officer. Due to the legal fiction, the assessing officers were deemed to have been inhibited from acting in pursuance of the Section 148A(b) notice till the relevant material was supplied to the assesses. Therefore, the show cause notices were deemed to have been stayed until the assessing officers provided the relevant information or material to the assesses in terms of the direction issued in Ashish Agarwal (supra). To summarize, the combined effect of the legal fiction and the directions issued by this Court in Ashish Agarwal (supra) is that the show cause notices that were deemed to have been issued during the period between 1 April 2021 and 30 June 2021 were stayed till the date of supply of the relevant information and material by the assessing officer to the assessee. After the supply of the relevant material and information to the assessee, time begins to run for the assesses to respond to the show cause notices.*

107. *The third proviso to Section 149 allows the exclusion of time allowed for the assesses to respond to the show cause notice under Section 149A(b) to compute the period of limitation. The third proviso excludes “the time or extended time allowed to the assessee.” Resultantly, the entire time allowed to the assessee to respond to the show cause notice has to be excluded for computing the period of limitation. In Ashish Agarwal (supra), this Court provided two weeks to the assesses to reply to the show cause notices. This period of two weeks is also liable to be excluded from the computation of limitation given the third proviso to Section 149. Hence, the total time that is excluded for computation of limitation for the deemed notices is: (i) the time during which the show cause notices were effectively stayed, that is, from the date of issuance of the deemed notice between 1 April 2021 and 30 June 2021 till the supply of relevant information or material by the assessing officers to the assesses in terms of the directions in Ashish Agarwal (supra); and (ii) two weeks allowed to the assesses to respond to the show cause notices.*

b. Interplay of Ashish Agarwal with TOLA

108. *The Income Tax Act read with TOLA extended the time limit for issuing reassessment notices under Section 148, which fell for completion from 20 March 2020 to 31 March 2021, till 30 June 2021. All the reassessment notices under challenge in the present appeals were issued from 1 April 2021 to 30 June*

2021 under the old regime. *Ashish Agarwal (supra)* deemed these reassessment notices under the old regime as show cause notices under the new regime with effect from the date of issuance of the reassessment notices. The effect of creating the legal fiction is that this Court has to imagine as real all the consequences and incidents that will inevitably flow from the fiction.¹⁶³ Therefore, the logical effect of the creation of the legal fiction by *Ashish Agarwal (supra)* is that the time surviving under the Income Tax Act read with TOLA will be available to the Revenue to complete the remaining proceedings in furtherance of the deemed notices, including issuance of reassessment notices under Section 148 of the new regime. The surviving or balance time limit can be calculated by computing the number of days between the date of issuance of the deemed notice and 30 June 2021.

109. If this Court had not created the legal fiction and the original reassessment notices were validly issued according to the provisions of the new regime, the notices under Section 148 of the new regime would have to be issued within the time limits extended by TOLA. As a corollary, the reassessment notices to be issued in pursuance of the deemed notices must also be within the time limit surviving under the Income Tax Act read with TOLA. This construction gives full effect to the legal fiction created in *Ashish Agarwal (supra)* and enables both the assesses and the Revenue to obtain the benefit of all consequences flowing from the fiction.

110. The effect of the creation of the legal fiction in *Ashish Agarwal (supra)* was that it stopped the clock of limitation with effect from the date of issuance of Section 148 notices under the old regime [which is also the date of issuance of the deemed notices]. As discussed in the preceding segments of this judgment, the period from the date of the issuance of the deemed notices till the supply of relevant information and material by the assessing officers to the assesses in terms of the directions issued by this Court in *Ashish Agarwal (supra)* has to be excluded from the computation of the period of limitation. Moreover, the period of two weeks granted to the assesses to reply to the show cause notices must also be excluded in terms of the third proviso to Section 149.

111. The clock started ticking for the Revenue only after it received the response of the assesses to the show causes notices. After the receipt of the reply, the assessing officer had to perform the following responsibilities: (i) consider the reply of the assessee under Section 149A(c); (ii) take a decision under Section 149A(d) based on the available material and the reply of the assessee; and (iii) issue a notice under Section 148 if it was a fit case for reassessment. Once the clock started ticking, the assessing officer was required to complete these procedures within the surviving time limit. The surviving time limit, as prescribed under the Income Tax Act read with TOLA, was available to the assessing officers to issue the reassessment notices under Section 148 of the new regime.

112. Let us take the instance of a notice issued on 1 May 2021 under the old regime for a relevant assessment year. Because of the legal fiction, the deemed show cause notices will also come into effect from 1 May 2021. After accounting for all the exclusions, the assessing officer will have sixty-one days [days between 1 May 2021 and 30 June 2021] to issue a notice under Section 148 of the new regime. This time starts ticking for the assessing officer after receiving the response of the assessee. In this instance, if the assessee submits the response on 18 June 2022, the assessing officer will have sixty-one days from 18 June 2022 to issue a reassessment notice under Section 148 of the new regime. Thus, in this illustration, the time limit for issuance of a notice under Section 148 of the new regime will end on 18 August 2022.

As is evident from the aforesaid decision of Hon'ble Supreme Court, that the example mentioned in para 112 of the aforesaid decision that for example notice issued on 01.05.2021 under the old regime, same will be deemed show cause notice u/s 148A(b) and after accounting for the all the exclusion of time, the AO will have 61 days i.e. days between 01.05.2021 to 30.06.2021, to issue a notice u/s 148 of new regime. Thus, Hon'ble Supreme Court has clarified that these notices u/s 148 are to be considered to be issued before 30.06.2021, after excluding the period of stay and other timings as mentioned in the fifth proviso to section 149(1).

In the instant case of assessee the initial notice u/s 148 deemed to be notice u/s 148A(b) was issued on 21.04.2021 and thus AO has 70 days after excluding the stay period and other exclusions mentioned in the Act. As fresh show cause notice was issued on 28.05.2022 to the assessee in consequence to the decision in the case of Ashish Agarwal the time period from 21.04.2021 to 28.05.2022 is required to be excluded in view of

decision of Hon'ble Supreme Court in the case of Shri Rajeev Bansal read with decision of Apex Court in the case of Ashish Agarwal, and after considering the time taken by Ld. AO for giving the documents and evidence to the assessee and further time of two weeks to furnish the reply by assessee, it is inferred that notice date 27.07.2022 was issued within the statutorily allowed time and same was not barred by limitation. Hence, the argument of the Id. AR of the assessee-appellant on this issue is not acceptable and therefore the same is rejected.

9.1 The other part of the argument of the Id. AR of the assessee is that the notice u/s 148 along with prior proceedings by way of notice u/s 148A(b) and other proceedings were based on borrowed satisfaction, without making any independent enquiry by AO, without applying his mind independently and without proper and reasonable satisfaction, so arrived at by Id. AO about the alleged escaped income. The Id. AO has issued the notice only on the basis of information received from I&CI Wing mainly by way of report of SEBI available on INSIGHT Portal. It was submitted that the only basis for reopening the assessment and making addition of Rs. 8.90 crore is SEBI order. However, in the order of the SEBI, it has been clearly mentioned that it is not possible to quantify the amount of disproportionate gain / unfair advantage to the noticee. Then how the Id.

AO has arrived at the amount of alleged loss of Rs. 8.90 crore being alleged bogus transaction, same has not been brought on the record by the Id. AO. It was further submitted that Id. AO has also not conducted any independent enquiry and has not cross verified the information received from I&CI Wing, which is itself evident from his observation made in the order passed u/s 148A i.e. “..... *as all the necessary enquiries has already been made by the I&CI Wing and detailed enquiry report with supporting evidences is available on INSIGHT portal and therefore no further enquiry is needed in this case. Hence the transactions remained unexplained.*”

It was also pointed out by Id. AR of the assessee – appellant that initially in the notice u/s 133(6) dated 23.08.2019 issued to the assessee, it was alleged that assessee has suffered loss to the tune of Rs. 7,80,18,087/- by trading in illiquid stock option for F.Y. 2014-15 and 2015-16. Thereafter assessee was supplied with a sheet by ITO, (I&CI) wherein loss was quantified as Rs. 8,90,52,685/- (**APB 107-111**) and afterwards another sheet (Sheet 2) was supplied to the assessee whereby loss was quantified as Rs. 13,17,07,432/- (**APB 112-116**). The assessee submitted before the ITO (I&CI) vide letter dated 18.03.2020 that there was variation in the amount in sheet 1 and sheet 2 with respect to purchase and sale

price stated therein as well as Profit & Loss stated therein and it was requested by the assessee that sources of the rates / prices appearing in sheet 2 may be apprised to the assessee as no such information was available with the assessee. However, no reply on this issue was received by the assessee from the Id. AO.

As is evident from the records that the revenue themselves was not certain about the quantum of alleged loss at the time of issue of notice u/s 148 which was thereafter deemed as notice u/s 148A(d) in view of the Hon'ble Supreme Court order in the case of Ashish Agarwal.

It is also evident that Id. AO has not applied his mind and not made any enquiry independently as admitted by Id. AO himself and has just relied upon the information supplied by I & CI Wing. The Id. AR has cited various decisions of different Hon'ble High Courts and also of Hon'ble ITAT where in such type of cases the Hon'ble Courts / ITAT have held the notice of reassessment to be invalid.

On the other hand, Id. CIT DR supported the order passed by the Id. AO and so confirmed by Id. CIT(A) on this issue. The Id. DR argued that reopening is valid. The AO had information in his possession regarding bogus loss claimed by the assessee and same was received from I& CI

Wing. This loss was exceeding Rs. 50 lacs and accordingly the case is covered within the amended provisions of section 149. In any case the view of Id. AO has been concurred by the first appellant authority and Id. CIT(A) has also held the reopening to be valid though by taking different argument.

We have considered the argument taken up by Id. AR and also perused the orders of lower authorities. It is seen that Id. AO has basically relied upon the order of SEBI passed in the case of assessee firm. The Id. AR drawn our attention to the relevant para of the order of SEBI dated 31.12.2018 wherein the SEBI has observed that:

“It is not possible to quantify the amount of disproportionate gain or unfair advantage made by the Noticee. Further, there is also no material on record to assess the amount of loss caused to investors as a result of the Noticee’s default.”

Thus it is clear that the SEBI has not quantified the amount of disproportionate gain or advantage made by the assessee. Now coming to the departmental view, it is seen that the department had given three different quantities of loss allegedly as bogus to the assessee at three different point of time. Accordingly, it becomes apparent that Id. AO was not in possession of information about the exact amount of loss suffered by assessee which is alleged to have been considered as bogus by the AO. At least, it is quite evident that no such evidence about the quantity [in terms

of amount] of loss alleged as bogus and how & on what basis the same has been treated as bogus, was supplied to the assessee, which is essential by way of natural justice to the assessee. No independent enquiry, whatsoever was done by Id. AO before reopening the assessment. The assessee repeatedly contended that the assessment has been reopened on the basis of borrowed satisfaction without independently applying the mind by the Id. AO., and to drive to home to this contention he relied on the decision of Hon'ble Delhi Court in the case of Sarthak Securities Companies Pvt. Ltd. (supra) and in another case of RMG Polyvinyl (I) Ltd. (supra) wherein it has been held that reassessment, only on the basis of information received from the Investigation Wing without making further independent enquiry by the AO, is not justified and reassessment proceedings required to be quashed. On this issue the provisions of law relating to reassessment have been amended to provide level playing field to all the stakeholders. However, legal decisions rendered in the pre-amendment era have to be thought afresh to decide which of the scenarios would warrant triggering of reassessment provisions. To reopen case information which suggest escarpment of income is a pre-requisite for invoking reassessment provisions. There are certain instances where it is deemed that the condition for information

suggesting escapement of income is satisfied which are listed in Explanation 2 to section 148. Revenue before issuing a notice under section 148 preliminary enquiry as provided in section 148A must be made and the assessee must be given an opportunity to explain that there was no escapement of income. It is the information which suggests escapement of income chargeable to tax' would prevail and not the expression 'reason to believe'. Based on these aspect of the matter here is also we do not found force on the contentions raised and that the same devoid of merits.

9.2 Now coming to the ground no 3 & 4 raised by the assessee [Ground no. 2 seems to have been numbered as 1.1 which we have dealt herein above] which are on merits of the issue raised in the re-assessment proceeding wherein the assessee challenges the action of Id. CIT(A) in confirming the action of Id.AO in disallowing loss claimed by assessee at Rs.8,90,52,650/- from trading of futures and options solely relying upon the conclusion drawn by SEBI in its order and without considering the submission made and evidences adduced. The records shows that the assessee firm is engaged in the business of trading in shares and securities. The gross volume of the transactions so executed by the

assessee firm as is evident from the profit & loss account at page 37 of the paper book reveals that the same on debit and credit side are as under :

To Gross Transaction Volume [Payment]	152,985,894,942.51
By Gross Transaction Volume [Receipt]	152,994,857,968.77

We also take note of the fact that on this transaction the assessee has suffered the statutory levy i.e. SECURITIES TRANSACTION TAXES as applicable were paid besides the payment of other statutory charges and brokerage etc. which were all paid through prescribed banking channels and the net income so earned was duly offered for tax in the return of income filed. As discussed herein above, assessment was re-opened in the case of the assessee as the information was available with the revenue about the loss claimed in illiquid stock by the assessee. Accordingly, case of assessee was re-opened and re-assessment order was passed u/s 147 r.w.s. 144B by making addition of Rs.8.90 crores by disallowing the losses suffered on certain filtered transactions by alleging the same as being on account of rapid reversal trades by allegedly flouting SEBI Rules. The submission of the assessee shows that the loss to the tune of Rs.8,90,52,650/- alleged to be non genuine was incurred w.r.t. transactions worth Rs. 12,39,89,882/-, which is merely .0810% of the turnover of Rs.15299 crores achieved by the assessee and loss suffered by assessee

is merely 0.0582% of the total turnover. As it evident that the revenue did not utter a single word about the other transaction including in question totaling volume of worth Rs. 15299 crores. Thus, when the assessee undertakes the high volume transactions allegation for reversal of trades, resulting into losses to the tune of .0582% of turnover, cannot be as having been done with a motive to suffer the loss can be seen non genuine. As Id.AO has proceeded solely on the basis of information received from Investigation, he has completely overlooked the fact that in view of total volume of transactions, losses suffered by assessee are not so significant. It is not under dispute that all the transaction were undertaken on the online portal and that too on a large scale, there are a number of factors that affect his decision and even a single decision not taken in timely manner may result in huge losses and basically transactions are reversed in a short span of time in order to minimize such losses. The allegation for small part of the transaction without bringing anything contrary establishing records placed on record by the assessee is not correct. The allegation against the assessee even has not been proved by the investigating agency SEBI vide their order dated 31.12.2018 that they fail to fix the quantum. Even while making the assessment the Id. AO made vague allegation which is made at page 3 of the order and is reads as under:

“that the assessee has executed several non-genuine trades on the same day, i.e. bought and sold option contracts with the same counter-party and reversed its trades within minutes from its earlier transaction and that too at a lesser price thus incurring loss. This rapid reverse trade defies all transparent norms and basic trading rationale. No reasonable and rational investor will keep on making losses and still continue its trading endeavours.” And addition of Rs.8,90,52,650/- was proposed to be made.

As is evident that Id.AO has treated genuine F & O transactions as non-genuine on the count that (a) Execution of several non-genuine trade, (b) Buying and selling option contracts with same counter party, (c) Reversal of trade within minute (d) No reasonable and rational investors will keep on making losses. The allegations i.e. (a) to (c) are purely based on the inputs of the SEBI and that too without any enquiry and independent observation countering the records which again based on the regulation of SEBI. Ld.AO has not even brought any single evidence on record as to how was assessee related with the counter party, with whom assessee is alleged to have entered into transactions, which stood reversed subsequently. There is no iota of evidence w.r.t. action taken by SEBI or the Income Tax Department in the case of such counter party and the underlying motive of those parties behind such reversal. Even the SEBI confessed that there are unable to quantify the allegation amount. This allegation of the assessee is only part of the transaction and not for the voluminous transactions undertaken by the assessee firm. The assessee on this issue made a detailed submission as is evident from the submission made in the paper

book (APB 212-238), however the same was not considered. There is not a single adverse observation whatsoever on the records and that of the contention treating that part of the transactions as not genuine except the information inputs from the SEBI. We also take note of the fact that the allegation of the revenue changes, first vide notice u/s. 133(6) it was alleged that assessee suffered loss to the tune of Rs. 7,80,18,087.50/- whereas in the sheet supplied by ITO (I & C I) the same was at Rs. 8,90,52,685/- and the assessee again was supplied with a sheet wherein the loss was computed at Rs. 13,17,07,432/-. Thus, the explanation of the assessee cannot be compared with that of the complete no explanation and the evidence in writing supported by the third party record has much validity then that of the oral allegation without any support. Thus, we do not find any merits in the arguments of the revenue while denying the loss of Rs. 8,90,52,650/- to the assessee. As regards the contention "No reasonable and rational investor will keep on making losses" is concerned, the same is merely presumption of Id.AO as AO has not seen that the assessee has offered the positive income of Rs. 28,20,600/- out of voluminous activities conducted by the assessee for an overall amount of around 15299 crores. Considering the segment in which the assessee is dealing i.e. share market, which is most volatile and affected by numerous

outside factors, domestic as well as international, carries very high risk and the part of the loss claimed by the assessee cannot be denied without bringing anything on record against the assessee and the claim of the loss by the assessee supported by the third party records and there is no iota of doubt raised in those records which has been issued after following certain procedure as prescribed by the market regulator i.e. SEBI. Not only that transactions in F & O segment as carried out by assessee could never be controlled by the assessee or its broker as the same are being entered into, at the online platform of recognized stock exchange and as per the Rule and Regulations of Stock Exchange and SEBI. In fact, no material or evidence whatsoever has been brought on record by Id.AO which could prove that assessee knew the counter party and was hand in glove with such party for carrying out such transactions to incur loss. Thus, basically, Id. AO made addition of Rs.8.90 crores, solely on the basis of information received from I & CI Wing, emanated from the order passed by SEBI in the case of assessee wherein allegation was made on presumption basis. We get more support to our view based on the finding of the SEBI that they failed to quantify the allegation itself suggest benefit of doubt is in favour of the assessee vide order dated 31.12.2018 SEBI has stated that *"it is not possible to quantify the amount of disproportionate gain or unfair*

advantage made by the Noticee. Further, there is also no material on record to assess the amount of loss caused to investors as a result of the Noticee's default." We also take note from the records that the transactions under reference were carried out on BSE where selected scripts are being permitted for being traded on F&O Segment falling under the category of BSE-500 and lot size also is decided by the BSE. If any suspected transaction is noticed by the administration of BSE / SEBI it immediately suspends the trading in such script and after making necessary verification / clarification of the suspected transactions, only the suspension is revoked. In assessee's case no such observations were made by the regulator with proof. During the course of assessment proceedings as well as first appeal proceedings, (APB 130-131 & 226-227), a detailed list of the companies in whose scripts F & O segment transactions are carried out by assessee, was filed, which is as under:

- i. Allahabad Bank (ALBK),
- ii. Coal India Ltd. (COAL),
- iii. Bharat Heavy Electrical Ltd. (BHEL),
- iv. Punjab National Bank (PNBK),
- v. SBI Life Insurance (SBIL),
- vi. Bank of Baroda Ltd. (BOBL),
- vii. Indian Oil Corporation Ltd. (IOCL),
- viii. Exide Industries Ltd. (EXID),
- ix. Hindustan Petroleum Corporation Ltd. (HPCL),
- x. JSW Energy Ltd. (JSWE),
- xi. Andhra Bank (ANBK),
- xii. Axis Bank (AXIS),
- xiii. Oil and Natural Gas Corporation of India Ltd. (ONGC),
- xiv. Rural Electrification Corporation Ltd. (RECL)

- xv. Adani Enterprises Ltd. (ADEL)
- xvi. Ambuja Cement Ltd. (AMBC)
- xvii. Arvi Encon Ltd. (ARVI)
- xviii. Asian Paints Ltd. (ASPL)
- xix. Aurobindo Pharma Ltd. (AUPL)
- xx. Bajaj Auto (BAJT)
- xxi. Bata India Ltd. (BATA)
- xxii. Zee Entertainment Enterprises Ltd. (ZEEL)
- xxiii. Bharti Airtel (BHRT)
- xxiv. Biocon Ltd. (BIOC)
- xxv. Bank of India Ltd. (BOIL)
- xxvi. Bharat Petroleum Corporation Ltd. (BPCL)
- xxvii. Canara Bank (CANB)
- xxviii. Cipla Ltd. (CIPL)
- xxix. DLF Ltd. (DLFL)
- xxx. Dr. Reddy's Laboratories (DRRL)
- xxxi. Engineers India Ltd. (ENGI)
- xxxii. Honeywell Automation India Ltd. (HAIL)
- xxxiii. HDFC Bank (HDBK)
- xxxiv. Housing Development and Infrastructure Ltd. (HDIL)
- xxxv. Hindal Co (HNDL)
- xxxvi. Hindustan Unilever Ltd. (HULL)
- xxxvii. Indiabulls Housing Finance Ltd. (IBHF)
- xxxviii. Industrial Development Bank of India (IDBI)
- xxxix. Infrastructure Development finance Corpn. (IDFC)
- xl. ITC Ltd. (ITCL)
- xli. LT Finance Holdings Ltd. (LNTH)
- xlii. Maruti Suzuki India Ltd. (MARU)
- xliii. National Mineral Development Corpn. (NMDC)
- xliv. National Thermal Power Corpn. (NTPC)
- xlv. PTC India Ltd. (PTCI)
- xlvi. Syndicate Bank (SYND)
- xlvii. United Bank of India Ltd. (UBIL)
- xlviii. Voltas Limited (VOLT)

The name of all these listed scrips reveals that none of the company could be classified as Illiquid stock and having daily volume of turnover in exchange exceeding crores of rupees. Thus the basic allegation made by department of trading in Illiquid stock is not correct. It is also relevant to state that Exchange permits trading in F & O segment to very specific companies and not to all the companies and such companies has large

shareholding base with heavy volumes of trade in both BSE / NSE and thus it is practically impossible for any entity to effect any such company by entering into any kind of alleged reversal trade. Moreover in the assessment proceeding all the allegations of Id.AO were duly controverted by the assessee. We also take note of the fact that Id.AO has secluded transactions of Rs. 12,39,89,882/- as against the total transactions of Rs. 15,299 crore and alleged the same as non genuine. Looking to the entire sequence of transactions and the nature of activity conducted by the assessee, adverse inference drawn in respect to the loss considered is merely a pick and choose method of taxing instead of holistically looking at the affairs of the business done by the assessee with his own wisdom and keeping in mind the present and future prospects of business which are supported by the tangible material, transacting with normal banking account and having paid the required security transaction tax by the assessee. As held by the apex court in the case of CIT vs Godhra Electricity Ltd. (225 ITR 746) holding that "Income Tax is a levy on income. No doubt, the Income Tax Act takes into account two points of time at which the liability to tax is attracted, viz., the accrual of income and its receipt, but the substance of the matter is the income. If income does not result at all, there cannot be a tax, even though in book keeping, an entry is

made about a hypothetical income, which does not materialize.” We also take note of the fact that the assessee fairly vide reply dated 19.5.2023 (APB 142-144) filed during assessment proceedings, had specifically requested that in case Id.AO did not accept the submission of the assessee and decided to make addition as proposed, the assessee may be given an opportunity to cross examine any witness or evidence in relation to the transactions attributable to the loss under question. However, Id.AO passed assessment order and making addition without providing the due evidence and opportunity to the assessee. Therefore, as submitted by the Id. AR of the assessee the addition made is required to be deleted based on the following summarized points:

- Assessment was reopened solely on the basis of information received from I & CI Wing after the order of SEBI, which itself is not clear about the quantification of unfair advantage alleged to have been taken as a result of illegal trade reversals;
- The information, relied upon by Id.AO for reopening of assessment was never provided.
- There is no mention in SEBI order regarding any action being taken in the case of any of the company, in whose equity Futures/Options transactions were alleged to be traded illegally;
- There is no finding of SEBI as to exactly HOW did assessee by pass the procedure being followed on ONLINE portal and how assessee knew the counter party (as the same is not practically possible)
- No direct enquiry was made by Id.AO from third parties alleged to be counter parties with which trades were reversed nor were they cross examined by Id.AO to verify if they have been benefitted from such trade reversal;
- No discrepancy whatsoever was pointed out in the details/information furnished by the assessee and the same remained uncontroverted;
- No opportunity of cross examination of witness or evidence in relation to the transactions attributable to the loss disallowed was provided;

- Assessee has been trading regularly in many Bluechip companies, from which it has earned profit as well as suffered losses. It is submitted that trading has been through online portal, where the buyers and sellers are random parties and they do not know each other, therefore there cannot even be any presumption of contact with each other.
- All the transactions being incurred on online portal of BSE and are supported by Contract Notes and have been subjected to payment of STT.
- Actual loss suffered by the assessee as disallowed by Id.AO is 8.90 crores, which is .0582% of the total turnover of Rs.15,299 crores, thus as per concept of materiality also, reversal of trades to the extent of such small percentage cannot be treated as so material.

Based on the discussion so recorded here in above we considered the grounds of appeal no. 3 & 4 raised by the assessee and we direct the Id. AO to delete the addition of Rs. 8,90,52,650/-.

In the result, the appeal of the assessee is partly allowed as indicated herein above.

Order pronounced in the open court on 29/11/2024.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 29/11/2024

*Ganesh Kumar, Sr. PS

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

1. The Appellant- M/s Raghav Commodities, Jaipur
2. प्रत्यर्था / The Respondent- ITO, Ward 6(2), Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 943/JP/2024)

आदेशानुसार / By order,
सहायक पंजीकार / Asst. Registrar