

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

**BEFORE DR.BRR KUMAR, VICE PRESIDENT
SHRI TR SENTHIL KUMAR, JUDICIAL MEMBER**

I.T.A. No.533/Ahd/2024
(Assessment Year: 2012-13)

Shipra Ajay Khare, 41, Shreenath Bunglows-2, Chandkheda, Ahmedabad-382424.	Vs.	The Income Tax Officer, Ward-2(2)(5), Ahmedabad.
[PAN No.BESPK7852K]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Hardik Vora, A.R.
Respondent by:	Shri Rignesh Das, Sr. DR

Date of Hearing	12.12.2024
Date of Pronouncement	19.12.2024

ORDER

PER: DR. BRR KUMAR, VICE PRESIDENT:

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, vide order dated 24.01.2024 passed for the Assessment Year 2012-13.

2. The Assessee has taken the following grounds of appeal: -

1. *On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming disallowance of loss of Rs.73,92,761/-*
2. *On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming addition of Rs.57,16,595/- on account of profit on F & O transactions.*
3. *On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming rejection of books of accounts u/s.145(3) of the Act.*

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4. *On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming non-acceptance of revised audit report and books of accounts.*
5. *On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming reliance on MOU and calculating notional profit without considering that the person with whom MOU was signed has cheated several people and absconded.*
6. *It is therefore prayed that the above addition/disallowance made by the assessing officer may please be deleted.*
7. *The Appellant craves leave to add, alter or delete any grounds either before or in the course of hearing of the appeal.*

3. The assessee is an individual and engaged in the business of trading/ share transaction (NSE and NSE(F&O)) had claimed purchase of Rs.12,17,48,605/- and sales at Rs.11,51,97,494/- and reported closing stock at Rs.41,13,100/- along with unsettled positions in its P&L account balance sheet. On further verification, the AO had called for information u/s 133(6) of the Act from the share broker Kunverji Fin Stock Pvt. Ltd. of the assessee and it was found that there was a difference of Rs.5,60,816/- between the opening balance and closing stock for the year under review which clearly indicated concealment of some transactions made during the year to evade taxation. Thereafter, the AO issued notices to the assessee requiring to furnish details related to share transactions in question and after receipt of the reply, the assessment was finally concluded on 16.03.2015, disallowing Rs. 11,17,777/- the loss claimed as per ITR filed by the appellant and making addition Rs.57,16,595/- to the profit of the assessee worked out by the AO.

4. Aggrieved by the order of the Assessing Officer, the assessee has filed appeal before the Id. CIT(A) who dismissed the appeal of the assessee.

5. Aggrieved, the assessee filed appeal before the Tribunal.

6. Before the Tribunal, it was submitted that the assessee has been a victim of bogus share transaction by Kunverji Fin Stock Pvt. Ltd. and the assessee has later rightly audited her accounts after realising that the stock broker has cheated her. It was submitted that the stock broker is in jail because of the fraud perpetuated by him and the assessee has fallen in the trap of the broker. It was argued that no doubt there was an agreement between the assessee and the stock broker wherein all the losses were borne by the stock broker and the profits are shared between the stock broker and the assessee. It was submitted that the profits earned by the assessee to the tune of Rs.57,16,000/- during the year if taken into consideration only profits earned and by ignoring the losses incurred. It was further submitted that assessee has also incurred net loss to the tune of Rs.73,92,761/- if the transactions are considered taking into the profits earned and losses incurred to determine the net profits earned during the year. It was argued that the AO has considered only profit but not the loss incurred which is against the established fundamentals. It was argued that even if the transactions are considered as being entered by the assessee the factum of incurring net losses cannot be ignored.

7. We have gone through the entire day-wise derivatives statement and find that the assessee has incurred net loss of Rs.73,92,761/-. Now the

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question before us was whether the transaction of the assessee shall be considered as a whole or only profit to be considered as taxable as per the agreement. It is also fact that the assessee has fallen into fraud perpetuated by the one namely Rajesh who was running Kunverji Fin Stock Pvt. Ltd. and in fact the assessee has not received any amount from stock broker. Keeping aside the agreement of sharing the profits but not losses, if the transactions are considered independently, the assessee had factually incurred losses. Hence, picking up profit and ignoring loss is not a right way of taxation though an agreement exists between the stock broker and the assessee wherein the losses are stomached by the stock broker himself. Further, keeping in view the fact that the broker himself has perpetuated fraud, the transaction of the assessee has to be considered *in toto* based on the realities over the profit and loss incurred. It is also fact on record that the margin monies given by the assessee are also been forfeited. Hence, keeping in view we hold that that no addition on account of profit is called for in the case of the assessee.

8. In the result, the appeal filed by the assessee is allowed.

This Order pronounced in Open Court on 19.12.2024

Sd/-
(TR SENTHIL KUMAR)
JUDICIAL MEMBER

Sd/-
(DR. BRR KUMAR)
VICE PRESIDENT

(True Copy)
Ahmedabad; Dated 19.12.2024
Manish, Sr. PS

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

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

आदेशानुसार/ BY ORDER,

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