

आयकर अपीलीय अधिकरण
पटना पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PATNA BENCH AT KOLKATA**

[वर्चुअल कोर्ट]
[Virtual Court]

श्री जॉर्ज माथान, न्यायिक सदस्य
एवं
श्री रकेश मिश्रा, लेखा सदस्य
के समक्ष
Before

**SHRI GEORGE MATHAN, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 108/PAT/2020
Assessment Year: 2011-12**

| | | |
|---|-----|---|
| ITO, WARD-2(1), Patna <i>(Appellant)</i> | Vs. | M/s. Sun Comtech Pvt. Ltd. <i>(Respondent)</i> |
| PAN: AAEC51519D | | |

Appearances:

Department represented by : Ashwani Kr. Singal, JCIT.

Assessee represented by : Sujit Singhania, CA.

Date of concluding the hearing : 01-April-2025

Date of pronouncing the order : 24-June-2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is against the order of the Commissioner of Income Tax (Appeals)-1, Patna [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2011-12 dated 13.08.2020, which has

been passed against the assessment order u/s 143(3) r.w.s. 147 of the Act, dated 22.12.2018.

2. The Revenue is in appeal before the Tribunal raising the following grounds of appeal:

“(i) On the facts and in the circumstances of the case, the Ld. CIT(A) erred in law in deleting the addition of Rs 1,04,90,377/- without appreciating the fact that the assessee has booked contrived loss of commodity trading done in synchronized manner to evade tax.

(ii) On the facts and in the circumstances of the case, the Ld. CIT(A) erred in law by deleting the addition ignoring the fact that the assessee was found indulged in booking contrived commodity losses and thereby indulged in organised way of tax evasion.

(iii) On the facts and in the circumstances of the case, the assessee is involved in organised tax evasion activity by booking contrived commodity loss through premeditated synchronized trading. Accordingly, this case is covered under exceptional clauses of CBDT Circulars for filing further appeal.

(iv) Any other grounds that may be urged at the time of hearing.”

3. Brief facts of the case are that the assessee company is engaged in the business of commodity trading and the case was reopened by issuing notice u/s 148 of the Act. In response to the notice issued, the assessee filed the return of income showing total income of ₹7,06,150/- and tax was also paid u/s 115JB of the Act at ₹22,21,835/-. On the basis of the information received from the Investigation Directorate, Kolkata, information was called for from the assessee and after considering the reply received, the assessment was made by assessing the total income at ₹1,11,96,530/- after disallowing a sum of ₹1,04,90,377/- on account of commodity trading loss. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who deleted the addition of ₹1,04,90,377/- made by the Ld. AO.



Aggrieved with the order of the Ld. CIT(A), the Revenue has filed the appeal before this Tribunal.

4. Rival contentions were heard and the submissions made have been examined.

5. Ground nos. (i) and (ii) are regarding deletion of the addition of ₹1,04,90,377/- by the Ld. CIT(A) without appreciating the fact that the assessee had booked contrived loss of commodity trading done in a synchronized manner to evade tax while ground no. (iii) is relating to the case being covered under the exceptional clause of the CBDT Circular for filing further appeal. The Ld. AO noted that information had been received from the Investigation Directorate, Kolkata regarding systematic evasion of tax by various clients/members of National Multi Commodity Exchange (in short 'NMCE') along with a report detailing modus operandi adopted for misusing NMCE platform for booking contrived losses through pre-mediated synchronized trade for the purpose of setting off genuine commodity profits. A list of such broker company/counter party clients was also provided by the Directorate and the name of the assessee's brokers and related counter party clients figured in the list. The assessee was asked to furnish complete details of commodity transactions with copy of relevant ledger account for the FY 2010-11 along with the broker-wise details of commodity trading with copies of contract notes. The summary details of broker-wise commodity profit/loss are as under:

| Sl.No. | Broker | Amt of Profit / (Loss) |
|--------|----------------------------------|------------------------|
| 01 | Subh Commodities Pvt. Ltd. | (7465920) |
| 02 | Marina Commotrade Pvt. Ltd. | (3024457) |
| 03 | Fast Commodity Markets Pvt. Ltd. | 11969973 |
| | Profit | 1479596 |



5.1. The transactions were analysed with reference to the documents furnished by the assessee and it was found by the Ld. AO that the modus operandi described in the report for evasion of tax through manipulative commodity trading existed in the case of the assessee. There was manipulative trading in the last quarter and the report of the Investigation Directorate stated that tax evader clients used to book fictitious losses on NMCE platform when they had already earned commodity profits in the earlier part of the year and contrived losses were booked to offset or minimise the profit. The Ld. AO noted that the assessee had earned commodity profit of ₹1,19,69,973/- for which the transactions were done during the beginning of the financial year from April, 2010 to May, 2010 with M/s. Fast Commodity Markets Ltd., the broker and in the last quarter of the financial year commodity trading losses amounting to ₹1,04,90,377/- in respect of the commodity trading done through the brokers namely M/s. Subh Commodities Pvt. Ltd. and M/s. Marina Commotrade Pvt. Ltd. were shown, which was a planned attempt of tax evasion by the assessee company. On perusal of the contract notes, it was found by the Ld. AO that almost each buy-sell pair of a day resulted in loss. The company bought commodity at a high rate and sold at a lower rate and each such squared off transactions led to almost consistent loss, which is evident from the perusal of the contract notes. In the case of transactions made through M/s. Marina Commotrade Pvt. Ltd. at the end of FY 2010-11, only losses of ₹30,24,457/- had been booked. So, the low-high trade pattern was very much discernible in the case of assessee. A perusal of the Contract Notes further revealed that full squaring off transaction during the day occurred invariably with a loss and the transactions were squared off within the same day with the intended motive to book loss by



manipulative ways facilitated by the brokers. The assessee was confronted with the above findings by the Ld. AO vide office letter dated 04.12.2018 and was asked to show cause as to why the commodity trading loss of ₹74,65,920/- pertaining to M/s. Subh Commodities Pvt. Ltd. and loss amounting to ₹30,24,457/- in respect of M/s. Marina Commotrade Pvt. Ltd. should not be treated as manipulative/fictitious loss and disallowed accordingly. Reference was also made to the NMCE, Ahmedabad calling for trade ledger of the assessee company and on analysing the trade ledger received from the NMCE, it transpired that the counter parties of the assessee company of each intraday sale and purchase were the same. The transactions of purchase and subsequent sale or *vice versa* were executed by the assessee company in a fraction of a minute or within seconds, which led to losses invariably. Relevant extracts from the assessment order in this regard are as under:

“On analysis of commodity trade ledger received from the National Multi-Commodity Exchange of India Ltd., Ahmedabad (NMCE) it transpired that the counter party of the assessee company of each intraday sale and purchase are the same. The transaction of purchase and subsequent sale or vice versa were executed by the assessee company in fraction of minute or second which leads to invariable loss. Putting in simple words, the assessee company makes buying of commodity from a party on a given day and execute sale of such commodity on the same day to the same party deliberately at lower price to achieve intended commodity loss. The full squaring off transaction during a day invariably with a loss is a clear cut indicator of synchronized trading which is very much found in the assessee’s case. On sample basis, trade ledger of some of the party is given hereunder which explicitly establish the above findings.

(Subh Commodity)
ARIHANT SHARECOM PRIVATE LIMITED

| Product Name | Trade Time | B.S | Qty | Price | Multiple Factor | Value | SS Gap |
|------------------|------------------------|-----|-----|---------|-----------------|-------------|--------|
| SACK FUTURES | 30/03/2011 01:30:14 PM | BUY | 25 | 3429.50 | 125 | 10717187.50 | 2 |
| SACK FUTURES | 30/03/2011 01:30:16 PM | BUY | 25 | 3429.50 | 125 | 10717187.50 | 4 |
| SACK FUTURES | 30/03/2011 01:32:49 PM | BUY | 50 | 3429.50 | 125 | 21434375.00 | 30 |
| SACK FUTURES | 30/03/2011 01:32:51 PM | BUY | 50 | 3429.50 | 125 | 21434375.00 | 17 |
| RAW JUTE FUTURES | 24/03/2011 12:16:00 PM | BUY | 25 | 3407.60 | 100 | 8519000.00 | 22 |
| RAW JUTE FUTURES | 24/03/2011 12:16:09 PM | BUY | 25 | 3407.60 | 100 | 8519000.00 | 29 |



| | | | | | | | |
|------------------|------------------------|------|----|---------|-----|-------------|----|
| RAW JUTE FUTURES | 24/03/2011 12:16:11 PM | BUY | 25 | 3407.60 | 100 | 8519000.00 | 30 |
| SACK FUTURES | 30/03/2011 01:21:54 PM | SELL | 25 | 3378.60 | 125 | 10558125.00 | 16 |
| SACK FUTURES | 30/03/2011 01:21:54 PM | SELL | 25 | 3378.60 | 125 | 10558125.00 | 12 |
| SACK FUTURES | 30/03/2011 01:35:54 PM | SELL | 25 | 3378.50 | 125 | 10557812.50 | 2 |
| SACK FUTURES | 30/03/2011 01:35:55 PM | SELL | 25 | 3378.50 | 125 | 10557812.50 | 3 |
| SACK FUTURES | 30/03/2011 01:36:06 PM | SELL | 25 | 3378.50 | 125 | 10557812.50 | 5 |
| SACK FUTURES | 30/03/2011 01:36:14 PM | SELL | 25 | 3378.50 | 125 | 10557812.50 | 8 |
| RAW JUTE FUTURES | 24/03/2011 12:20:05 PM | SELL | 1 | 3390.60 | 100 | 339060.00 | 5 |
| RAW JUTE FUTURES | 24/03/2011 12:20:34 PM | SELL | 1 | 3373.80 | 100 | 337380.00 | 2 |
| RAW JUTE FUTURES | 24/03/2011 12:20:57 PM | SELL | 1 | 3356.90 | 100 | 335690.00 | 2 |
| RAW JUTE FUTURES | 24/03/2011 12:22:10 PM | SELL | 25 | 3340.40 | 100 | 8351000.00 | 12 |
| RAW JUTE FUTURES | 24/03/2011 12:22:12 PM | SELL | 25 | 3340.40 | 100 | 8351000.00 | 13 |
| RAW JUTE FUTURES | 24/03/2011 12:22:14 PM | SELL | 22 | 3340.40 | 100 | 7348880.00 | 9 |

OM PRAKASH BANKA HUF

| Product Name | Trade Time | B_S | Qty | Price | Multiple Factor | Value | SS Gap |
|----------------|------------------------|------|-----|--------|-----------------|------------|--------|
| COPPER FUTURES | 03/02/2011 06:03:00 PM | SELL | 3 | 452.50 | 1000 | 1357500.00 | 4 |
| COPPER FUTURES | 03/02/2011 06:03:22 PM | BUY | 1 | 457.00 | 1000 | 457000.00 | 1 |
| COPPER FUTURES | 03/02/2011 06:03:44 PM | BUY | 1 | 461.55 | 1000 | 461550.00 | 0 |
| COPPER FUTURES | 03/02/2011 06:04:30 PM | BUY | 1 | 463.85 | 1000 | 463850.00 | 4 |

ANUSUYA AJITSARIA

| Product Name | Trade Time | B_S | Qty | Price | Multiple Factor | Value | SS Gap |
|-------------------------|------------------------|------|-----|--------|-----------------|------------|--------|
| ALUMINIUM 5 TON FUTURES | 01/02/2011 05:32:09 PM | BUY | 6 | 115.75 | 5000 | 3472500.00 | 6 |
| ALUMINIUM 5 TON FUTURES | 01/02/2011 05:33:11 PM | BUY | 3 | 115.75 | 5000 | 1736250.00 | 7 |
| ALUMINIUM 5 TON FUTURES | 01/02/2011 05:35:02 PM | SELL | 9 | 112.95 | 5000 | 5082750.00 | 4 |

MRIDULA AGRAWALA

| Product Name | Trade Time | B_S | Qty | Price | Multiple Factor | Value | SS Gap |
|----------------|------------------------|------|-----|--------|-----------------|------------|--------|
| COPPER FUTURES | 29/01/2011 11:40:56 AM | BUY | 15 | 451.05 | 1000 | 6765750.00 | 6 |
| COPPER FUTURES | 29/01/2011 11:41:54 AM | SELL | 15 | 437.85 | 1000 | 6567750.00 | 8 |

(Marina Commodity)**TULSHYAN METALS PRIVATE LIMITED**

| Product Name | Trade Time | B_S | Qty | Price | Multiple Factor | Value | SS Gap |
|----------------|------------------------|-----|-----|--------|-----------------|------------|--------|
| NICKEL FUTURES | 16/03/2011 01:22:50 PM | BUY | 1 | 113.75 | 5000 | 568750.00 | 0 |
| NICKEL FUTURES | 16/03/2011 01:23:01 PM | BUY | 1 | 114.30 | 5000 | 571500.00 | 0 |
| NICKEL FUTURES | 16/03/2011 01:23:06 PM | BUY | 1 | 114.85 | 5000 | 574250.00 | 0 |
| NICKEL FUTURES | 16/03/2011 01:23:45 PM | BUY | 1 | 115.40 | 5000 | 577000.00 | 0 |
| NICKEL FUTURES | 16/03/2011 01:23:57 PM | BUY | 5 | 115.45 | 5000 | 2886250.00 | 0 |
| NICKEL FUTURES | 16/03/2011 01:24:12 PM | BUY | 5 | 115.45 | 5000 | 2886250.00 | 3 |
| NICKEL FUTURES | 16/03/2011 01:25:50 PM | BUY | 10 | 115.45 | 5000 | 5772500.00 | 6 |
| NICKEL FUTURES | 16/03/2011 01:28:12 PM | BUY | 12 | 115.45 | 5000 | 6927000.00 | 9 |
| NICKEL FUTURES | 16/03/2011 01:28:23 PM | BUY | 12 | 115.45 | 5000 | 6927000.00 | 7 |
| ZINC FUTURES | 21/03/2011 03:59:29 PM | BUY | 12 | 115.45 | 5000 | 6927000.00 | 4 |
| ZINC FUTURES | 21/03/2011 03:59:40 PM | BUY | 12 | 115.45 | 5000 | 6927000.00 | 2 |
| ZINC FUTURES | 21/03/2011 04:04:10 PM | BUY | 1 | 113.75 | 5000 | 568750.00 | 0 |
| ZINC FUTURES | 21/03/2011 04:04:30 PM | BUY | 1 | 114.30 | 5000 | 571500.00 | 0 |
| ZINC FUTURES | 21/03/2011 04:05:56 PM | BUY | 1 | 114.85 | 5000 | 574250.00 | 0 |
| ZINC FUTURES | 21/03/2011 04:06:09 PM | BUY | 1 | 115.40 | 5000 | 577000.00 | 0 |



| | | | | | | | |
|----------------|------------------------|------|----|--------|------|-------------|----|
| ZINC FUTURES | 21/03/2011 04:06:55 PM | BUY | 8 | 115.45 | 5000 | 4618000.00 | 6 |
| NICKEL FUTURES | 16/03/2011 01:17:26 PM | SELL | 1 | 113.20 | 5000 | 566000.00 | 3 |
| NICKEL FUTURES | 16/03/2011 01:17:29 PM | SELL | 23 | 113.20 | 5000 | 13018000.00 | 4 |
| NICKEL FUTURES | 16/03/2011 01:28:33 PM | SELL | 1 | 114.85 | 5000 | 574250.00 | 0 |
| NICKEL FUTURES | 16/03/2011 01:28:41 PM | SELL | 1 | 114.25 | 5000 | 571250.00 | 0 |
| ZINC FUTURES | 21/03/2011 03:57:32 PM | SELL | 1 | 113.65 | 5000 | 568250.00 | 0 |
| ZINC FUTURES | 21/03/2011 03:58:50 PM | SELL | 10 | 113.20 | 5000 | 5660000.00 | 2 |
| ZINC FUTURES | 21/03/2011 03:59:16 PM | SELL | 11 | 113.20 | 5000 | 6226000.00 | 13 |
| ZINC FUTURES | 21/03/2011 03:59:55 PM | SELL | 5 | 113.20 | 5000 | 2830000.00 | 1 |
| ZINC FUTURES | 21/03/2011 04:00:15 PM | SELL | 5 | 113.20 | 5000 | 2830000.00 | 1 |
| ZINC FUTURES | 21/03/2011 04:01:03 PM | SELL | 5 | 113.20 | 5000 | 2830000.00 | 1 |
| ZINC FUTURES | 21/03/2011 04:02:17 PM | SELL | 5 | 113.20 | 5000 | 2830000.00 | 2 |
| ZINC FUTURES | 21/03/2011 04:02:35 PM | SELL | 4 | 113.20 | 5000 | 2264000.00 | 1 |
| ZINC FUTURES | 21/03/2011 04:03:06 PM | SELL | 12 | 113.20 | 5000 | 6792000.00 | 9 |

SAKET SINGHAL

| Product Name | Trade Time | B_S | Qty | Price | Multiple Factor | Value | SS Gap |
|----------------|------------------------|------|-----|---------|-----------------|-----------|--------|
| NICKEL FUTURES | 16/03/2011 01:14:27 PM | BUY | 3 | 1184.70 | 250 | 888525.00 | 0 |
| NICKEL FUTURES | 16/03/2011 01:14:36 PM | SELL | 3 | 1149.80 | 250 | 862350.00 | 1 |

SHRESTHA BENEFICIARY TRUST

| Product Name | Trade Time | B_S | Qty | Price | Multiple Factor | Value | SS Gap |
|----------------|------------------------|------|-----|---------|-----------------|------------|--------|
| NICKEL FUTURES | 16/03/2011 01:17:04 PM | SELL | 17 | 1149.80 | 250 | 4886650.00 | 0 |
| NICKEL FUTURES | 16/03/2011 01:17:13 PM | BUY | 17 | 1184.70 | 250 | 5034975.00 | 0 |

RASHI MAHESHWARI

| Product Name | Trade Time | B_S | Qty | Price | Multiple Factor | Value | SS Gap |
|----------------|------------------------|------|-----|---------|-----------------|------------|--------|
| NICKEL FUTURES | 16/03/2011 01:10:20 PM | BUY | 2 | 1184.70 | 250 | 592350.00 | 0 |
| NICKEL FUTURES | 16/03/2011 01:10:57 PM | BUY | 1 | 1158.40 | 250 | 289600.00 | 0 |
| NICKEL FUTURES | 16/03/2011 01:11:04 PM | BUY | 8 | 1184.70 | 250 | 2369400.00 | 0 |
| NICKEL FUTURES | 16/03/2011 01:10:37 PM | SELL | 2 | 1149.80 | 250 | 574900.00 | 0 |
| NICKEL FUTURES | 16/03/2011 01:10:50 PM | SELL | 8 | 1149.80 | 250 | 2299600.00 | 0 |
| NICKEL FUTURES | 16/03/2011 01:10:54 PM | SELL | 1 | 1149.80 | 250 | 287450.00 | 0 |

5.2. The assessee was confronted with the above findings which emerged from the information received from the NMCE, Ahmedabad. Copy of ledger account of few such counter parties were provided to the assessee as per the following details:

| S. No. | Product | Date | Broker | Counter Party | Counter Party Broker |
|--------|-------------------------|------------|-----------------------------|---|--------------------------------|
| 01 | Zinc Futures | 21/03/2011 | Marina Pvt. Ltd. Commotrade | Lalit Kumar & Rajesh Kumar | Nature Dealcomm Pvt. Ltd |
| 02 | Aluminium 5 Ton Futures | 15/03/2011 | Marina Pvt. Ltd. Commotrade | Tulshyan Metals Pvt. Ltd. | Zaliog Commodities Pvt. Ltd. |
| 03 | Raw Jute Futures | 24/03/2011 | Subh Commodities Pvt. Ltd. | Subh Metals, Unit of Sardar Melcast Pvt. Ltd. | Shaharsh Comm Services Pvt Ltd |
| 04 | Rape/ Mustard | 28/03/2011 | Subh Commodities Pvt. Ltd. | HEMANT KUMAR AGARWAL | SAHAL COMMODITIES PVT LTD |

5.3. The assessee replied to the show cause letter denying the findings of manipulative losses alleged by the Ld. AO and stated that while drawing conclusion of fictitious losses, all the facts and documents such as contract notes, bank statements, copy of ledgers and confirmations from the brokers were ignored, which otherwise clearly proved the genuineness of transactions and actual losses which occurred to the assessee. It was stated that the inference drawn from the information received from NMCE is a figment of imagination and non-conclusive in nature. The Ld. AO has further concluded as under:

*“I have examined the contention put forward by the assessee. The findings of contrived losses booked by the assessee misusing NMCE platform is based on documents such as trade ledger received from the NMCE which explicitly incorporate all details of execution of trade orders by the assessee. The assessee was specifically confronted with the manner he adopted to book fictitious losses for setting off genuine profit and therefore indulged in synchronized commodity trading. The findings of contrived losses has been derived on a comprehensive analysis of commodity trade ledger of the assessee with reference to kind of commodity, date and time of order and value of sale purchase as well as counterparty clients which the assessee has not controverted with any supporting documents in his reply submitted to this office. The assessee did not offer any reply on the specifics details of transactions appearing in the trade ledger. The sample of trade transaction in the case of some of the parties has been reproduced in the foregoing Para of the order which reveals that the counter party of each intraday sale and purchase are the same. The transaction of purchase and subsequent sale or vice versa executed by the assessee company in fraction of minute or second which leads to invariable loss. **The commodity selected for trading are usually illiquid items free from the volatility of the market and is easy for price manipulation which provided scope to the assessee to carry out sale and purchase at its sweet will and to achieve objective of booking loss misusing the NMCE platform. The assessee company makes buying of commodity from a party on a given day and execute sale of such commodity on the same day to the same party deliberately at a lower price to achieve intended commodity trade loss.** The full squaring off transaction during a day invariably with loss which a prudent businessman would never do is an established indicator of synchronized trading which is very much existed in*

*the assessee's case. Further it is noted that the credential of brokers of the assessee through which commodity trading with loss were conducted is very much suspicious and dubious. As per the report of Investigation Directorate, Kolkata, the name of assessee's broker M/s Subh Commodities Pvt. Ltd. finds mentioned in the list of its paper/jamakarhchhi broker. **The NMCE, Ahmedabad in his letter dated 05.12.2018 also reported that M/s Marina Commotrade Pvt. Ltd. (CL0337) was suspended by the Exchange and M/s Subh Commodities Pvt. Ltd. (CL0369) was declared a defaulter.** The above broker facilitated the synchronized trading at the instance of the assessee. Having regard to the above findings, the contention of the assessee that inference drawn on manipulative loss is based on imagination and non-conclusive is not tenable.*

On the strength of above discussed facts and findings, it is conclusively proved and established that the assessee company has booked contrived commodity trading losses by resorting to manipulative ways and misusing NMCE, Platform. With the above findings, it is concluded that the commodity trading loss incurred through brokers M/s Subh Commodities Pvt. Ltd. & M/s Marina Commotrade Pvt. Ltd. aggregating to Rs. 10490377/- are fictitious & contrived losses booked through synchronized trading which is wholly disallowed and added to the income of the assessee."

{emphases supplied}

5.4. In the course of the appeal before the Ld. CIT(A), the assessee raised objection to the initiation of proceedings u/s 147 of the Act and also to the addition of ₹1,04,90,377/-. It was contended that the assessment for AY 2011-12 had already been completed, therefore, a concluded assessment cannot be reopened u/s 147 of the Act because at the time of assessment, the Ld. AO had already verified all the points during the previous assessment done u/s 143(3) of the Act, which were being raised during the course of the reassessment proceeding. The assessee relied upon the judicial pronouncements in the case of **Income-tax Officer vs. Lakhmani Mewal Das [1976] 103 ITR 437 (SC)[30-03-1976]** which has been extracted in the appeal order and also in the cases of **Commissioner of Income-tax vs. Kelvinator of India Ltd. [2002] 123 Taxman 433 (Delhi)/[2002] 256 ITR 1 (Delhi)/[2002]**

174 CTR 617 (Delhi)[19-04-2002] and Kumar Stores vs. Commissioner of Income-tax [2012] 21 taxmann.com 91 (Patna)/[2012] 340 ITR 90 (Patna)/[2012] 250 CTR 62 (Patna)[20-05-2011]. However, the Ld. CIT(A) went through the assessment order and the submissions made by the assessee and found no merit and hence the ground relating to reopening was dismissed. The relevant extract of the findings from the order of the Ld. CIT(A) is as under:

“Appellate findings and decision

I have gone through the assessment order and submission made by the appellant. It seems from the submission made by appellant that the appellant has challenged the reopening proceeding we found no merit and has this ground is therefore dismissed.”

5.5. As regards the addition of ₹1,04,90,377/-, the relevant extract from the order of the Ld. CIT(A) is as under:

“Ground of Appeal No. 2: For that, the learned AO has erred in the facts and circumstances of the case in arbitrarily disallowing the commodity trading loss amounting to Rs 1,04,90,377- and adding the same said amount to the total income of the appellant is wrong, illegal and unjustified.

The Assessing Officer has made an addition on account of Commodity trading loss on transactions made through broker namely M/s Shubh Commodities Pvt Ltd. & M/s Marina Commotrade Pvt Ltd. In this regard, we would like to mention here that, the Assessing Officer has mentioned in 3rd last Para of Page 2 of his order that the transactions is made through NMCE platform. It means the genuineness of the transaction is beyond doubt, as Commodity trading can be done by anyone on NMCE platforms.

On same platform, assessee has done transaction with 3 brokers, which is also mentioned in table in Page 2 of the Assessment Order.

The A.O. has made certain remarks and also mentioned transactions done with M/s Shubh Commodities Pvt Ltd. & M/s Marina Commotrade Pvt Ltd., whereas he is totally silent on transactions with Fast Commodity Markets Pvt Ltd.

If the transactions are wrong, all 3 transactions of the broker should be wrong and if the transactions are right, all 3 of them should be right because all the transactions are made on same platform of NMCE.

The A.O. has taken around that the transaction was squared up in the same day, in this we would like to mention here that the transaction was squared up in the same day is not illegal if the same was illegal the terminal itself does not allow to do so, therefore the view taken by A.O is unjustified and illogical.

Therefore, the pick and choose or the Ad-hoc approach taken by the A.O. that transaction of 2 brokers are wrong and 1 broker is right is totally doubtful and beyond expectation.

In view of this, it is requested to kindly allow the commodity losses through these 2 brokers i.e. M/s Shubh Commodities Pvt Ltd. & M/s Marina Commotrade Pvt Ltd. so as to make justification that all transactions made through NMCE platform are right and not ill mind.

Appellate findings and decision

I have gone through the assessment order and submission made by the AR of the appellant. In his assessment order the A.O. has narrated the factual sequence of events related to the trade done on behalf of the appellant by the two commodity brokers namely Subh Commodities Pvt. Ltd. & M/s Marina Commotrade Pvt. Ltd. Complete details have been obtained by the A.O. have been examined and brought on record and in the assessment order including details submitted by the appellant as well as obtained directly from NSME, Ahmedabad in response to notice u/s 133(6). The A.O. has not mentioned any variation or discrepancy between the copies of account as submitted by the appellant during the course of assessment proceedings and as provided by NSME, Ahmedabad. Thereafter while bringing on record and mentioning all these details and reproducing the same in the assessment order, the A.O. has concluded that the nature of intraday transaction and consequential commodity loss incurred on account of the same is by itself a sufficient indication to conclude that the appellant has entered into a colorable transaction with the intention of obtaining entry of commodity loss to offset earlier commodity profit.

Thus, it is a situation where the A.O. himself mentioned that all these transactions are entered into on the NMSE platform and therefore legally permissible, but it is only the result of these legally permissible transactions conducted on a legal platform that the A.O. objects upon.

In my opinion, the result of these transactions i.e. commodity loss may by itself appear to be suspicious to the AO as the same are off setting the earlier

commodity profit, yet before coming to any conclusion about this issue, the A.O. is required to bring on record, the result of some enquiry, or a basis or evidence either categorical or at least sufficient to lead to "preponderance to probability" before coming to any conclusion.

Merely providing and reproducing complete factual details, and thereafter, mentioning that these transactions appear to be suspicious and then drawing a conclusion based on merely these two aspects appears to be a conclusion based on surmises and conjectures.

The disallowance of loss of Rs. 1,04,90,377/- on account of commodity trading has no merit as the A.O. has arbitrarily disallowed the loss without specifying any proper reason on the basis of pick and choose as loss arises from the two brokers namely Subh Commodity Pvt. Ltd. and Marina Commotrade Pvt. Ltd. has been disallowed and profit arises from one another broker has been ignored. The amounts to making an addition on the basis of conjecture and does not appear to be maintainable in my opinion.

In view of the above, the addition of Rs.1,04,90,377/- made by the A.O. is therefore deleted."

6. Rival contentions were heard and the details were examined. The Ld. AR stated that the case is not covered under the exceptional clauses as it is not an organized tax evasion of capital gains but is a business transaction. The counter party are the same and the Ld. AO is only taking the loss and not the profit but the profit is higher than the loss. It was stated that the net profit of ₹14,79,589/- is already accounted for. The assessee traded in Jute, Copper, Aluminium, Nickel and Zinc and the purchase and sale were through Stock Exchange and the same transactions were carried out in 3, 4 and 5 days while some transactions were carried out on the same day. If the assessee is of the view that he was going to carry more loss than he squares off the transactions. There was profit in Zinc and Nickel commodities and the profit from these transactions is taken from the Stock Exchange, but only the loss transactions have been discussed.



7. We have considered the submissions made. The Ld. AO has examined in detail the nature of transactions and has concluded that the subsequent transactions squared off on the same day were carried out so as to incur loss and to offset the profit earned by the assessee in the earlier period of the financial year. The Ld. CIT(A) appears to have ignored that the inquiry was done not only by the Investigation Directorate but details were also called for from the NMCE and on the basis of the analysis of the details, the Ld. AO concluded that the transactions were manipulative in nature. As an illustration the transactions in Nickel Futures on 16.03.2011 were carried out through Saket Singhal at the price of ₹1184.70 (value: ₹888525.00) at 01:14:27 PM and the same have been sold on the same day at the price ₹1149.80 (value: 862350.00) at 01:14:36 PM i.e. within a span of 09 seconds. An investor does not invest for earning losses within a few seconds. Similarly, in the case of Nickel Futures carried out on the same day with Shrestha Beneficiary Trust, despite knowing that the transaction had resulted in loss earlier, the assessee carries out the sale transaction at the price of ₹1149.80 (value: 4886650.00) at 01:17:04 PM and buy transaction at the price of ₹1184.70 (value: 5034975.00) at 01:17:13 PM. Most of these transactions which resulted in loss have been carried out during the period from 16.03.2011 to 30.03.2011 except for a very few transactions which were carried out from 29.01.2011 to 03.02.2011, i.e. all these transactions have been carried out in the last quarter of the financial year. The Ld. AO has mentioned that these transactions were carried out to offset the profit earned from the commodity exchange, which is apparent from the analysis of transactions as the buy and the sell transactions have been settled on the same day within a span of a few seconds or at the most a few



minutes and as is illustrated above, despite incurring the loss, the assessee indulged into a sale transaction and within a span of 09 seconds squared off the transaction through a buy transaction, thereby incurring the loss in the same commodity through Shrestha Beneficiary Trust in which loss had already been incurred three minutes back through squared off transaction from Saket Singhal. This defies the test of human probability and of a prudent businessman that despite incurring losses, repetitive transactions were carried out which can be for no other purpose except to incur a loss. The transactions through the brokers have been concluded in the case of Rashi Maheshwari, Shrestha Beneficiary Trust, Saket Singhal within a span of either a few seconds or within less than a minute. Similar is the case for the transactions carried out with other brokers, which defies business prudence and logic, leading to the conclusion that the assessee apparently had wanted to incur loss. The Ld. CIT(A) has mentioned that in his opinion the commodity loss may by itself appear to be suspicious to the Ld. AO as the same is offsetting the earlier commodity profit, yet before coming to any conclusion about this issue, the Ld. AO is required to bring on record, the result of some enquiry, or a basis or evidence either categorical or at least sufficient to lead to the preponderance of probability before coming to any conclusion and merely providing and reproducing complete factual details, and thereafter, mentioning that these transactions appear to be suspicious and then drawing a conclusion based on merely these two aspects appears to be a conclusion based on surmises and conjectures. Apparently, the Ld. CIT(A) has not noted the difference between the facts and conjectures. The facts are what the Ld. AO has noted on the basis of the transactions carried out and the copy of ledger which was obtained from the NMCE

and the same cannot be termed as conjecture. In fact the Ld. CIT(A) has not appreciated the facts and analysis carried out and has granted relief to the assessee without appreciating the same. The transactions carried out within a span of a few seconds and resulting in loss are not genuine transactions. In the case of **Sumati Dayal vs. Commissioner of Income-tax [1995] 80 Taxman 89 (SC)/[1995] 214 ITR 801 (SC)/[1995] 125 CTR 124 (SC)[28-03-1995]** the Hon'ble Supreme Court has held as under:

“It is, no doubt, true that in all cases in which a receipt is sought to be taxed as income, the burden lies on the department to prove that it is within the taxing provision and if a receipt is in the nature of income, the burden of proving that it is not taxable because it falls within exemption provided by the Act lies upon the assessee. But in view of section 68, where any sum is found credited in the books of the assessee for any previous year, the same may be charged to income-tax as the income of the assessee of that previous year if the explanation offered by the assessee about the nature and source thereof is, in the opinion of the Assessing Officer, not satisfactory. In such case there is prima facie evidence against the assessee, viz., the receipt of money, and if he fails to rebut the same, the said evidence being un rebutted, can be used against him by holding that it is a receipt of an income nature. While considering the explanation of the assessee, the department cannot, however, act unreasonably.

In the instant case, the amount was credited in capital account in the books of the appellant. The appellant had offered her explanation about the said receipts being her winnings from races. The said explanation had been considered in the light of the sworn statement of the appellant and other material on record. The ITO and the AAC had not accepted the explanation offered by the appellant. The two members constituting the majority in the Settlement Commission had also taken the same view. There was no dispute that the amounts were received by the appellant from various race clubs on the basis of winning tickets presented by her. What was disputed was that they were really the winnings of the appellant from the races. This raised the question whether the apparent could be considered as real. Apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real and that the taxing authorities are entitled to look into the surrounding circumstances to find out the reality and the matter has to be considered by applying the test of human probabilities. The Chairman of the Settlement Commission, in his dissenting opinion, had

laid emphasis on the fact that the appellant had produced evidence in support of the credits in the form of certificates from the racing clubs giving particulars of the crossed cheques for payment of the amounts for winning of jackpots, etc. The Chairman had rejected the contention regarding lack of expertise in respect of the appellant and had observed that the expertise was the last thing that was necessary for a game of chance and anybody had to go and call for five numbers in counter and obtain a jackpot ticket and that books containing information are available which are quite cheap. This was a superficial approach to the problem. The matter had to be considered in the light of human probabilities. The Chairman of the Settlement Commission had emphasised that the appellant did possess the winning ticket which was surrendered to the race club and in return a crossed cheque was obtained. It was a neutral circumstance, because if the appellant had purchased the winning ticket after the event, she would be having the winning ticket with her which she could surrender to the race club. The observation by the Chairman of the Settlement Commission that the 'fraudulent sale of winning ticket was not an usual practice but was very much of an unusual practice', ignored the prevalent malpractice that was noticed by the District Taxes Enquiry Committee and the recommendations made by the said Committee which led to the amendment of the Act by the Finance Act, 1972 whereby the exemption from tax that was available in respect of winnings from lotteries, crossword puzzles, races, etc. was withdrawn. Similarly the observation by the Chairman that if it was alleged that these tickets were obtained through fraudulent means, it was upon the allegor to prove that it was so, ignored the reality. The transaction about purchase of winning ticket took place in secret and direct evidence about such purchase would be rarely available. An inference about such a purchase had to be drawn on the basis of the circumstances available on the record. Having regard to the conduct of the appellant as disclosed in her sworn statement as well as other material on the record, an inference could reasonably be drawn that the winning tickets were purchased by the appellant after the event. The majority opinion after considering surrounding circumstances and applying the test of human probabilities had rightly concluded that the appellant's claim about the amount being her winning from races, was not genuine. It could not be said that the explanation offered by the appellant in respect of the said amounts had been rejected unreasonably and that the finding that the said amounts were income of the appellant from other sources was not based on evidence.

Therefore, no case was made out for interference with the order of the Settlement Commission.”

7.1. Further in the case of **Commissioner of Income-tax vs. Durga Prasad More [1971] 82 ITR 540 (SC)[26-08-1971]**, the Hon'ble Supreme Court has also held as under:

“8. Now we shall proceed to examine the validity of those grounds that appealed to the learned judges, (it is true that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real party who relies on a recital in a deed has to establish the truth of those recitals, other wise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. A little probing was sufficient in the present case to show that the apparent was not the real. The taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents.

9. Now, coming to the question of onus, the law does not prescribe any quantitative test to find out whether the onus in a particular case has been discharged or not. It all depends on the facts and circumstances of each, case. In some cases, the onus may be heavy whereas, in others, it may be nominal. There is nothing rigid about it. Herein the assessee was receiving some income. He says that it is not his income but his wife's income. His wife is supposed to have had two lakhs of rupees neither deposited in banks nor advanced to others but safely kept in her father's safe. Assessee is unable to say from what source she built up that amount. Two lakhs before the year 1940 was undoubtedly a big sum. It was said that the said amount was just left in the hands of the father-in-law of the assessee. The Tribunal disbelieved the story, which is, prima facie, a fantastic story. It is a story that does not accord with human probabilities. It is strange that the High Court found fault with the Tribunal for not swallowing that story. If that story is found to be unbelievable as the Tribunal has found, and in our opinion rightly, then the position remains that the consideration for the sale proceeded from the assessee and, therefore, it must be assumed to be his money.

10. It is surprising that the High Court has found fault with the Income-tax Officer for not examining the wife and the father-in-law of the assessee for proving the department's case. All that we can say is that the High Court has ignored the facts of life. It is unfortunate that the High Court has taken a superficial view of the onus that lay on the department.



11. *It is true that neither the principle of res judicata nor the rule of estoppel is applicable to assessment proceedings. But the fact that the assessee included the income of the premises in his returns for several years, and that after objecting to the inclusion of that income in his total income in the assessment year 1942-43, in the absence of any satisfactory explanation, is undoubtedly a circumstance which the taxing authorities were entitled to take into consideration.”*

8. Therefore, considering the totality of facts and circumstances of the case and going by the preponderance of probability, Ground nos. 1 and 2 are allowed in favour of the revenue as the transactions are colourable in nature and have been apparently carried out to incur losses through contrived/manipulative transactions. The learned CIT appeal has failed to appreciate the substance of the transactions and has granted relief merely on the form of them without realising that the transactions carried out on the NMCE platform do not *per se* become genuine merely because they have been carried out on that platform. Thus, the order of the Ld. CIT(A) is set aside and the order of the Ld. AO is hereby confirmed.

9. In the result, the appeal filed by the Revenue is allowed.

Order pronounced in the open Court on 24th June, 2025.

Sd/-

[George Mathan]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 24.06.2025

Bidhan (P.S.)



Copy of the order forwarded to:

1. **ITO, WARD-2(1), Patna.**
2. **M/s. Sun Comtech Pvt. Ltd., 313, N.P. Centre, New Dak Bunglow Road, Patna, Bihar-800001.**
3. CIT(A)-1, Patna.
4. CIT-
5. CIT(DR), Patna Bench, Patna.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata