

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH MUMBAI

**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 736/MUM/2025
Assessment Year: 2015-16**

Income Tax Officer-41(3)(1) Mumbai - 400051	Vs.	Deepak Omprakash Kanodia 3/28, The Malad Coop. Hsg. Soc. Ltd., Poddar Park, Malad(east),Mumbai-400097. (PAN: AACPK6408Q)
(Appellant)		(Respondent)

AND

**Co No. 142/MUM/2025
Assessment Year: 2015-16
(Arising out of ITA No. 736/MUM/2025)**

Deepak Omprakash Kanodia 3/28, The Malad Coop. Hsg. Soc. Ltd., Poddar Park, Malad (east), Mumbai-400097. (PAN: AACPK6408Q)	Vs.	Income Tax Officer-41(3)(1)
(Appellant)		(Respondent)

Present for:

Assessee : Shri Rakesh Joshi, CA
Revenue : Shri Annavaram Kosuri, Sr. DR

Date of Hearing : 15.07.2025
Date of Pronouncement : 31.07.2025

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the Revenue and Cross Objection filed by the assessee are against the order of Ld. CIT(A), National Faceless Assessment Centre, New Delhi, vide order No. ITBA/NFAC/S/250/2024-25/1070925389(1), dated 05.12.2024 passed against the assessment order of NFAC, Delhi, u/s. 147 r.w.s

143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 25.05.2023 for AY 2015-16.

2. Grounds taken by the Revenue are reproduced as under:

1. *Whether on the facts and in circumstances of the case and in law, the Id. CIT(A) erred in allowing the F&O loss of Rs. 60,48,850/- in derivative transactions which was pre arranged and fictitious in nature?*
2. *Whether on the facts and in circumstances of the case and in law, the Id. CIT(A) erred in admitting additional evidence in the form of contract notes without allowing the assessing officer to examine the same as mandated under Rules 46A(1) of the Income Tax Rules, 1962?*
3. *Whether on the facts and in circumstances of the case and in law, the Id. CIT(A) failed to appreciate that the assessee purchased options and has failed to exercise the subsequent transactions to validate the position taken and deliberately allowed it to expire to generate loss?*
4. *Whether on the facts and in circumstances of the case and in law, the la. CIT(A) failed to appreciate the decision of Hon'ble apex court in the case of Rakhi trading Pvt. Ltd., wherein it has marked nobody intentionally trades for a loss and such intentional trading for loss is not a genuine dealing in securities?*

2.1. Grounds of cross objection by the assessee are as under:

1. *On the facts and circumstances of the case as well as in law, the Learned Assessing Officer has erred in reopening the assessment u/s.147 of the Income Tax Act, 1961, without considering the facts and circumstances of the case.*
2. *On the facts and circumstances of the case as well as in law, the Learned Assessing Officer has erred in passing the assessment order u/s.147 r.w.s 144B of the Income Tax Act, 1961, which is time barred as per the provision of the Act, therefore, the impugned assessment order is bad in law and required to be quash.*

3. At the outset, Ld. Counsel for the assessee pointed out that the appeal by the revenue is not tenable on account of low tax effect in view of CBDT circular No.9 of 2024, dated 17.09.2024, since the addition which was made and in subject matter of appeal is of Rs. 60,48,850/- relating to F&O loss in derivative transactions. The tax effect on the said addition as mentioned by the Revenue in its Form No.36 is Rs.45,98,903/-. On a query by the bench whether the case is covered by any exception as listed in the said CBDT circular, nothing cogent was place on record by the revenue. Accordingly, in terms of the said CBDT circular the appeal by the revenue is not maintainable and is

thus dismissed as not maintainable. However, liberty is granted to the revenue to file miscellaneous application in case at a later point of time, it is found that the issue is covered by the exceptions in the said CBDT Circular.

4. Assessee has filed its cross objection against the appeal of the revenue, contesting on the legality of the assessment reopened u/s. 147. Since, the appeal of the revenue has been dismissed as not maintainable on account of low tax effect, the cross objection so filed by the assessee against the said appeal is rendered infructuous. Accordingly, cross objection filed by the assessee is dismissed as infructuous.

5. In the result, both appeal by the revenue and cross objection by the assessee are dismissed.

Order is pronounced in the open court on 31 July, 2025

Sd/-

(Sandeep Gosain)
Judicial Member

Sd/-

(Girish Agrawal)
Accountant Member

Dated: 31 July, 2025

Anandi.Nambi, Steno.

Copy to :

- 1 The Appellant
- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
- 5 CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai