



आयकर अपीलिय अधिकरण, राजकोट न्यायपीठ, राजकोट।
IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND
DR. DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकर अपील सं./ITA No.428/RJT/2025
निर्धारण वर्ष /Assessment Year: (2015-16)
(Physical Hearing)

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| Ashvin Dineshbhai Jadav Block No.62, Quarter No.377, Gujarat Housing Board, 6-Naandi Park, b/h SNK School, university Road, Rajkot-360 005 | बनाम/ Vs. | Income-tax Officer, Ward-1(1)(1), Rajkot, Aayakar Bhavan, Race Course Ring Road, Rajkot-360 001 |
| स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No.: AKXPJ 8016 E | | |
| (Assessee) | | (Respondent) |

निर्धारिती की ओर से/Assessee by : Shri Mehul Ranpura, AR
राजस्व की ओर से/Respondent by : Shri Abhimanyu Singh Yadav, Sr. DR
सुनवाई की तारीख/Date of Hearing : 23/12/2025
घोषणा की तारीख/Date of Pronouncement : 29/01/2026

आदेश /ORDER

Per, Dr. Arjun Lal Saini, AM:

Captioned appeal filed by the assessee, pertaining to assessment year (AY) 2015-16, is directed against the order passed under section 250 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 19.04.2025 by the National Faceless Appeal Centre (NFAC), Delhi/ Commissioner of Income Tax (Appeals) [in short 'Ld.CIT(A)'] which in turn arises out of an assessment order passed by the Assessing Officer (in short 'AO') u/s 143(3) of the Act, dated 28.12.2017.

2. The grounds of appeal raised by the assessee are as follows:

1. *The grounds of appeal mentioned hereunder are without prejudice to one another.*



2. *The Id. CIT(A) erred on facts as also in law in confirming addition made of Rs.41,64,500/- on the alleged ground that the assessee failed to prove identity and creditworthiness and genuineness of transaction of depositors in respect of unsecured loans of Rs.41,64,500/-. The addition confirmed is unjustified and uncalled for, which deserves to be deleted, may kindly be deleted.*
3. *Your Honour's assessee craves leave to add, to amend, alter, or withdraw any or more grounds of appeal on or before the hearing of appeal.”*

3. The relevant material facts, as culled out from the material on record, are as follows. In this case, the return of income has been e-filed on 10/08/2015, declaring total income at Rs.2,41,760/-. Subsequently, the case was selected for scrutiny assessment under CASS. Statutory notice u/s 143(2) of the Income-tax Act, 1961 was issued on 29/07/2016, which was duly served upon the assessee. In response to these notices, the assessee himself attended the proceedings time to time. The assessee is having income from Salary and Business activity. During the course of assessment proceedings and on perusal of details furnished, by the assessee, particularly return of income and computation of income, it was noticed by the assessing officer that the assessee has shown income from job work and salary. Besides, no other income/loss has been either shown or claimed by the assessee in his uploaded return of income. Since, the very basis of reason for selection of this case under scrutiny was Securities transaction and as the assessee's submission and return of income was completely silent on the issue, therefore, necessary clarification in this respect has been called for from the assessee. Simultaneously, assessing officer issued notice under section 133(6) of the Act, (inquiry letter) to the agent i.e. M/s Angel Broking Pvt. Ltd., calling the details of the transactions carried out by the assessee during the period under review. In response, M/s Angel Broking Pvt. Ltd submitted its reply on 21/08/2017. Perusal of the same threw light over the fact that assessee has entered into securities and derivatives transaction, also,



perusal of furnished details brought to light that assessee made a total payment of Rs. 41,64,500/- to the M/s Angel Broking Pvt. Ltd. The details of transactions are as follows:

| Segment | Profit/loss (amount in Rs.) |
|---------|--------------------------------|
| BSE | Rs.67,809/- (loss) |
| NCDX | Rs.6,94,800/- (loss) |
| MCDX | Rs.18,63,380/- (loss) |
| FNO | Rs.8,54,942/- (loss) |
| Total | Rs.34,80,931/- (loss incurred) |

The assessing officer noticed that assessee has incurred an aggregate loss of Rs. 34,80,931/-, on securities transactions. In light of this necessary clarification w.r.t investment/transaction carried out with M/s Angel Broking Pvt Ltd, called for from the assessee.

4.In response, the assessee furnished submission before the assessing officer, on 24/11/2017 wherein he categorically stated that he accepted deposits aggregating to Rs.39,78,000/- from 218 persons (Assessee's customers and friends), Rs.18000/- in cash from each of the person and money so received was utilized for payment of margin money to M/s. Angel Broking Pvt. Ltd. Further, he also stated therein that, these accepted deposits were to be repaid in future to the depositors. Since, details mentioned in the furnished list of depositors were incomplete in order to verify the identity genuineness & creditworthiness of the lender/depositors. Thus, assessee was requested to furnish complete postal address and other details of these depositors. In reply, the AR of the assessee, furnished the requisite details. Since, the list of depositors were very exhaustive in nature, therefore, assessing officer issued 133(6) notices on 28 & 29/11/2017 on sample basis.



5. The assessee submitted relevant documents and evidences before the assessing officer along with written submissions. However, assessing officer rejected the contention of the assessee and held that the assessee has failed to prove identity, capacity and genuineness of the transaction to the tune of Rs.41,64,500/-. Therefore, whole amount of Rs.41,64,500/- was considered as income of the assessee from undisclosed sources and accordingly an addition of Rs.41,64,500/- was made in the total income of the assessee.

6. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before Ld. CIT(A), who has confirmed the action of Assessing Officer. The ld.CIT(A) observed that the claim of the assessee seems to be more likely and it is evident that assessee is not in a position to prove cash receipts or temporary deposits from other individuals, as the required supporting evidence has not been furnished in this regard, either before the A.O during scrutiny proceedings, nor in the first round of appeals before CIT(Appeals) nor in the present proceedings before me, despite ample opportunities given. As the assessee has completely failed to explain the cash deposits in his bank account, the addition made by the assessing officer was upheld by the learned CIT(A).

7. Further aggrieved by the order of Ld. CIT(A), assessee is in appeal before us.

8. Learned Counsel for the assessee argued that assessee has derived income of Rs.39,00,000/- from trading in the shares, securities, commodities etc, in off market transactions. The said income was received in cash, which was deposited in his bank account. The sauda summary reports of NCDX and MCDX were submitted by the assessee.



The assessee had traded through M/s Angel commodities Broking Pvt. Ltd. Regarding the source of payment made to M/s. Angel Broking Pvt. Ltd, taken advice from his accountant friend, who suggested him to arrange the transactions by way of showing funds received from friends and clients as temporary advances/deposits. Accordingly, as per the advice of friends, the assessee submitted before the AO, the list of deposits who had made advances to the assessee. However, the actual source of cash deposits in the bank account was the income of Rs.39,00,000/-derived from off-market trading. It was also submitted by the Id.Counsel that the assessing officer while passing the assessment order treated the income of Rs. 41,64,500/- as undisclosed income however did not allow the set off of losses incurred of Rs. 34,80,931/- in share transactions. Hence, addition made by the assessing officer may be deleted and set-off may be allowed.

9. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

10. We have given our thoughtful consideration to rival contention. We have perused case file as well as paper books furnished by assessee. All grounds raised by the assessee are against the addition of Rs.41,64,500/- u/s 68 of the Act as unexplained cash credit. There is only one issue to be decided, whether the assessee is able to explain the source of cash deposits. The assessee is working as a terminal operator and back-office manager for the firm, namely M/s. Shiv Investments, which is a sub-broker of M/s Angel Broking Pvt Ltd. During the year under consideration, the assessee had salary income and income from job-work activities. Apart from that the assessee had derived income of Rs.



39,00,000/-from trading in the shares, securities, commodities etc. in the "off market" transactions and had incurred loss of Rs. 34,80,931/- from transactions related to securities/commodities. Upon receipt of the notice from the assessing officer, the assessee consulted a relative who was a tax practitioner. He suggested to arrange the transactions by way of showing temporary advances / deposits received in cash from friends and clients, which were deposited into the bank account used for making payments. Therefore, according to his instruction, the assessee furnished the list of depositors and submitted the same vide letter dated 24.11.2017. However, we note that the actual source of cash deposits in the bank account was the income of Rs. 39,00,000/-derived from off-market trading.

11. Thereafter, the assessing officer issued notice u/s 133(6) on sample basis to depositors which went unattended. Therefore, the assessing officer issued show-cause notice alleging that the assessee had failed to prove identity, genuineness and creditworthiness of depositors. On receipt of the notice, the assessee sought advice from another tax professional and explained the entire case. In response, the assessee submitted a detailed reply dated 25.12.2017, providing accurate details of the transactions undertaken. The assessee explained that as a terminal operator at M/s Shiv Investments, sub-broker of M/s Angel Broking Private Limited, he used to receive trading tips and advice from brokerage houses and client groups. Based on these tips, the assessee engaged in trading shares, securities, and derivatives both through stock exchanges and in off-market transactions. The assessee further clarified that income of Rs.39,00,000/- was earned in cash from off-market trading activities and subsequently deposited in the bank account at the State Bank of India, Rajkot, at periodic intervals. Along with the income from off-market transactions, the assessee incurred a trading loss of Rs. 34,80,931/-, which was supported by statements



furnished by M/s. Angel Broking Private Limited. Copy of bank statement is submitted before the Bench. In this regard, at the outset it is submitted that the assessing officer while passing the assessment order treated the income of Rs. 41,64,500/- as undisclosed income however did not allow the set off of losses incurred of Rs. 34,80,931/- in share transactions. It is also submitted by the assessee that the details of loss incurred by the assessee during the year under consideration was duly on record of the assessing officer. Segment wise loss incurred is as under:

| Sr No | Segment | Amount of Loss | Remarks |
|-------|---------|----------------|---|
| 1 | NCDX | (6,94,800) | Copy of transaction summary report is attached at Annexure-3 |
| 2 | MCDX | (18,63,380) | Copy of transaction summary report is attached at Annexure-4 |
| 3 | BSE | (67,809) | Copy of statement is attached at Annexure-5 |
| 4 | FNO | (8,54,942) | Copy of statement is attached at Annexure-6 |
| | Total | (34,80,931) | |

Further, all the transactions were carried out through Angel Broking, a registered broker. As per section 43(5) of the Act, the loss incurred on trading of securities/commodities does not fall under the definition of speculative business and hence, the loss is relating to non-speculative business and the same is available for set off against intra head of account. The AO ought to have allowed set off of business loss incurred in the intra head of account as provided in section 70(1) of the Act.

12. We also find that amendment for not allowing set off of loss against the income determined under section 68/69/69A/69B/69C/69D of the Act is effective from 01.04.2017, whereas the assessment years in assessee's case is 2015-16. Therefore, the assessee under consideration is eligible for



set off of loss. In this connection reliance is placed on the following decisions:

(i) Hon'ble High Court of Rajasthan in the case of Aacharan Enterprises (P) Ltd v/s PCIT [2020] 117 taxmann.com 745 (Rajasthan) held as under:

"5. Indisputably, the provisions of section 115BBE as existed prior to the amendment does not provide that the losses shall not referred to be allowed to be set off against the income section 115BBE and it is only to dispel the uncertainty prevailing on the issue, the provision was amended. A bare perusal of the provisions makes it abundantly clear that it cannot be applied retrospectively. Moreover, now vide circular No. 11/2019, the CBDT has clarified in unequivocal terms that the term 'or set off of any loss' was inserted vide the Finance Act, 2016 w.e.f. 1.4.17 and therefore, an assessee is entitled to claim set off of loss against the income determined under section 115BBE of the Act till the Assessment Year 2016-17. It is further clarified that the pending assessment and litigation on this issue shall be handled accordingly. In this view of the matter, the contention sought to be raised by the Revenue as aforesaid, cannot be countenanced by this Court."

(ii) Hon'ble high Court of Kerala in the case of Vijaya Hospitality and Resorts Ltd. Vs Commissioner of Income-tax [2020] 114 taxmann.com 91 (Kerala) held as under:

"Section 115BBE, read with sections 68, 71 and 263, of the Income-tax Act, 1961 Tax on income referred to in section 68 to section 69D (Set of loss) Assessment year 2013-14 During year, assessee filed its return of income and claimed set off of carried forward loss (unabsorbed portion of depreciation) Same was allowed - Principal Commissioner invoked revision under section 263 on ground that assessee's income included deemed income being unexplained cash credit under section 68 which is not classified under any heads of income under section 14 therefore, set off of brought forward loss against this deemed income was not correct. Whether amendment brought in section 115BBE(2) by Finance Act, 2016 whereby set off of losses against income referred to in section 68 was denied, would be effective from 1-4-2017 - Held, yes - Whether, therefore, during relevant assessment year, there was no bar existed with respect to allowing set off of carried forward unabsorbed depreciation on fixed assets against deemed income under section 68-Held, yes [Para 14] [In favour of assessee]"

(iii) Hon'ble ITAT Delhi Bench 'A' in the case of ACE Infracity Developers (P.) Ltd. V DCIT held as under:



“7.... It also further mentions that the pre-amended provision of section 115BBE of the Act did not convey the intention that losses shall not be allowed to be set-off against income referred to in section 115BBE of the Act and hence, the amendment was made vide the Finance Act, 2016. Thus keeping the legislative intent behind amendment in section 115BBE(2) vide the Finance Act, 2016 to remove any ambiguity of interpretation, the Board is of the view that since the term 'or set off of any loss' was specifically inserted only vide the Finance Act 2016, w.e.f. 1-4-2017, an assessee is entitled to claim set-off of loss against income determined under section 115BBE of the Act till the assessment year 2016-17. Since, CBDT Circular No. 11/2019 dated 19-6-2019 was issued after the order of the CIT(A), the CIT(A) did not have the benefit of the circular. Therefore, we are of the view that the Circular applies in the present assessee's case as the Assessment Year before us is that of A.Y. 2015-16 and till A.Y. 2016-17, the assessee is entitled to claim set-off of loss against income determined under section 115BBE of the Act. The appeal of the assessee is allowed.7.1 In result, the appeal of the assessee is allowed.”

13. In light of the above, facts and circumstances and the position of case law, on the subject, we note that the income derived by the assessee of Rs. 39,00,000/- in the off-market transactions is eligible to be adjusted against the loss of Rs. 34,80,931/-. Hence, the addition made by the assessing officer amounting to Rs 41,64,500/- by treating the payment to Angel Broking Private Limited as unexplained is unjustified and the same is directed to be deleted.

14. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 29/01/2026.

Sd/-

(Dr. Dinesh Mohan Sinha)

न्यायिक सदस्य/ **Judicial Member**

Rajkot

Date: 29/01/2026

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

- अपीलार्थी/ The Assessee
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT

Sd/-

(Dr. Arjun Lal Saini)

लेखा सदस्य/**Accountant Member**

//True Copy//



- आयकर आयुक्त(अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, सूरत/ DR, ITAT, SURAT
- गार्ड फाईल/ Guard File

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot