

**IN THE INCOME-TAX APPELLATE TRIBUNAL, MUMBAI "SMC" BENCH, MUMBAI
BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER
ITA No. 7991/MUM/2025 (AY:2009-10)**

Nitin Gupta 47/47, Balkrishna Niwas, 2 nd Panjarapole Lane, Mumbai – 400011.	vs.	Income Tax Officer 19(2)(4) Piramal Chamber, Mumbai - 4000011
PAN/GIR No: AAFPG6744C		
(Appellant)		(Respondent)
Appellant by		Ms. Khushali Desai
Respondent by		Shri V. Vinod Kumar (Sr. DR)
Date of Hearing		26.02.2026
Date of Pronouncement		27.02.2026

ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal filed by the assessee emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'Act') by the Addl./Jt. Commissioner of Income-Tax (Appeals), [in short, 'CIT(A)'], dated 19.09.2025 for the assessment year (AY) 2009-10.

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

"1. On the facts and circumstances of the Appellant's case and in law, the Ld. CIT(A) erred in confirming the action of the Id. AO in re-opening the assessment u/s 147 by issue of notice dated 30.03.2016 u/s 148, which is merely due to change in opinion and therefore reopening is bad in law.

2. On the facts and circumstances of the Appellant's case and in law, the Ld. CIT(A) erred in confirming the action of the Id. AO in re-opening the assessment u/s 147 by issue of notice dated 30.03.2016 u/s 148, which is barred by limitation of law in view of the first proviso to the Sec 147 of the Income Tax Act, 1961.

3. On the facts and circumstances of the Appellant's case and in law, the Ld. CIT(A) erred in confirming the action of the Id. AO in treating the F & O loss incurred by the appellant as non-genuine and bogus transaction as per the grounds stated in the order or otherwise.

4. On the facts and circumstances of the Appellant's case and in law, the Ld. CIT(A) erred in confirming the action of the Id. AO in making the disallowance of Rs. 2,14,222/- on account of F & O loss incurred by the appellant as non-genuine and bogus transaction as per the grounds stated in the order or otherwise.

5. The Appellant craves leaves to alter, amend, withdraw or substitute any ground or grounds or to add any new ground or grounds of appeal.”

3. Facts of the case, in brief, are that the assessee filed his return of income for the AY 2009-10 on 21.04.2016 declaring total income at Rs.3,60,270/-. The case was reopened u/s 147 of the Act and notice u/s 148 was issued on 30.03.2016. After hearing the assessee, order u/s 143(3) rws 147 of the Act was passed on 28.12.2016 by making addition of Rs.2,14,222/- on account of claim of loss by misusing client code modification (CCM) in F&O to segment on NSE.

4. Aggrieved by the order of AO, the assessee filed appeal before the CIT(A). The CIT(A) issued 9 notices as per the table given in page 4 of the appellate order. However, there were no response from the appellant. Therefore, the CIT(A) was of the view that the appellant is not interested in providing any details and is also not interested in perusing the appeal. He referred to the decisions in the case of B.N. Bhattacharjee and Another, 118 ITR 461 (SC) and Chemipol vs. Union of India in Excise Appeal no. 62 of 2009 (Bombay HC) and dismissed the appeal of the assessee.

5. Aggrieved by the order of CIT(A), the assessee filed appeal before the Tribunal. The Ld. AR of the appellant submitted that the CIT(A) has passed an ex-parte order in violation of the principles of natural justice. He submitted that the order passed by the CIT(A) is not as per sub-section (6) of section 250 of the Act. He submitted that the appellant is ready with all the materials and details in support of the grounds raised in the appeal before the CIT(A). The Ld.AR requested that in the interest of justice the assessee may be granted another opportunity to argue his case on merit before the CIT(A).

6. On the other hand, the Ld. Sr. DR of the revenue supported the order of CIT(A). He submitted that the CIT(A) granted 9 opportunities to the assessee to file his reply along with necessary details and evidence in support of the grounds raised in the appeal. However, there was neither any request for adjournment nor any submission by the assessee. Therefore, the CIT(A) has rightly dismissed the appeal of the appellant.

7. We have heard both parties and perused the materials on record. There is no dispute that the CIT(A) issued 9 notices u/s 250 of the Act to the assessee but there was no compliance to the said notices. The appellant has only stated that the principles of natural justice were not adhered to by the CIT(A) without explaining the reasons for the non-compliance to the notices issued by the CIT(A). However, we find that the order of the CIT(A) is also not as per the mandate of

sub-section (6) of section 250 of the Act, which states that the order of the CIT(A) shall be in writing stating the points for determination, the decision thereon and the reason for the decision. It is clear from a reading of the impugned order that it is not as per the requirements of section 250(6) of the Act. Therefore, without discussing further on the matter, we are of the considered opinion that the order of CIT(A) needs to be set aside to be framed afresh in accordance with law. Accordingly, we set aside the order of the CIT(A) and restore the matter back to his file subject to payment of cost of Rs. 5,000/- (Rupees Five Thousand only) to the Prime Minister's National Relief Fund within 30 days from receipt of this order. Subject to the payment as above, the order of CIT(A) is set aside and he is directed to decide the appeal on merit after granting adequate and reasonable opportunity of being heard to the assessee. The assessee is directed to be vigilant and submit explanation and details as may be required by the CIT(A). Accordingly, the appeal is allowed for statistical purpose.

8. Since we have set aside the order of CIT(A) and restored the matter back to his file on fresh adjudication, the other grounds become academic in nature and do not need adjudication.

9. In the result, the appeal of the assessee is allowed for statistical purpose.

Order is pronounced on 27.02.2026.

Sd/-

(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-

(BIJYANANDA PRUSETH)
ACCOUNTANT MEMBER

*Aniket Chand; Sr. PS
MUMBAI

Date: 27.02.2026

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, MUMBAI
6. Guard File

By Order

Assistant Registrar
ITAT, MUMBAI