

IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

BEFORE SHRI B.R. BASKARAN (AM) & SHRI SANDEEP GOSAIN (JM)

I.T.A. NO. 1409/MUM/2011
(Assessment Year 1993-1994)

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| Shri Bhupendra C. Dalal Bhupen Chambers, Ground floor, Dalal Street, Fort, Mumbai 400 001. | Vs. | DCIT OSD II/CR 7 4 th floor, Aayakar Bhavan, M.K. Road, Mumbai 400 020. |
| (Appellant) | .. | (Respondent) |

PAN No.AABPD3308H

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|-------------------------|------------------|
| Assessee by : | Shri Vipul Joshi |
| Department by : | Dr. P. Daniel |
| Date of Hearing : | 13.05.2016 |
| Date of Pronouncement : | 09.12.2016 |

ORDER

PER B.R.BASKARAN, ACCOUNTANT MEMBER:-

The appeal of the assessee is directed against the order passed by Ld CIT(A)-40, Mumbai for assessment year 1993-94.

2. The facts relating to the assessee are discussed in brief. The assessee is a registered broker in shares and securities and is registered with Bombay Stock Exchange. He was also one of the recognised brokers for dealing in Government Securities. The assessee has also carried on trading activities in securities on his own account. A major securities scam was unearthed in the year 1992, which led to enactment of a special Act known as "Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992. The assessee was also implicated as a person involved in the securities scam. A custodian was appointed to take control of all the assets of persons implicated

in the scam. All the persons so implicated were called as "Notified persons". Hence the assessee became one of the notified persons. Prior to the enactment of the above said Special Act, a Committee named as "Janakiraman Committee" was appointed to probe the scam related matters. A Joint Parliamentary Committee was also formed to investigate into the matters.

3. The CBI conducted search on the assessee on 22.06.1992 and the income tax department conducted search on the assessee on 16.10.1992. The appeals under consideration have been filed in the second round of proceedings. The assessments were originally completed after the search operations. The assessee challenged the assessment orders by filing appeal before Ld CIT(A) and then the matters were taken before the ITAT by both the parties on the issues decided by Ld CIT(A) against each of them. Before the Tribunal, the assessee contended that the assessing officer had made huge additions on the basis of certain materials, which were not confronted with him. Hence, the Tribunal set aside the orders of tax authorities and restored all the matters to the file of the Assessing officer with the direction to complete the assessments afresh after providing all the materials, which were relied upon by the AO to make additions, to the assessee. Consequently, the present assessment orders were passed by the assessing officer in the second round of proceedings. The assessee again challenged the assessment orders by filing appeals before Ld CIT(A) and both the parties have filed the appeals under consideration challenging the orders passed by Ld CIT(A) on the issues decided against each of them.

4. The assessee has filed returns of income for AY 1987-88 to 1991-92. However the assessee did not file returns of income for AY 1992-93 and 1993-94. It was explained that he could not file the return of income for those years, since all the records were seized by the CBI/revenue and further he

was constrained to undergo imprisonment and to face enquiries of various investigating agencies.

5. In the order dated 09-11-2016 passed by us in the hands of the assessee for AY 1987-88 to 1989-90, we have discussed in brief the nature of business activities carried on by the assessee. The discussions are available in paragraph 5 to 13 of the order. The same may be read as part of this order also.

A) ADDITION ON ACCOUNT OF RECEIPT FROM A.D.NAROTTAM – Rs.6.00 crores (Ground No.4A in assessee's appeal)

6. The AO noticed that a sum of Rs.6.00 crores was found credited in the assessee's bank account maintained with Bank of Karad on 20-04-1992. The AO found that the above said amount was transferred from the account of Shri A.D. Narottam. Hence the AO made enquiries with Shri A.D. Narottam, who stated that he received a sum of Rs.6.00 crores from Hiten P Dalal and transferred the same to the assessee upon instructions from Hiten Dalal. When enquired with the assessee, he did not furnish any reply. Hence the AO obtained a copy of B-3 voucher No.4046 from the CBI, which contained following narration:-

"Received from A.D.Narottam on a/c of Hiten P Dalal for Bank of America for settlement of 18.4.1992"

The credit advice note prepared by the Bank of Karad read as under:-

"Being the amount transferred from the current a/c of A.D.Narottam as per instructions."

Hence the AO took the view that the impugned amount was not transferred in connection with any security transaction and accordingly concluded that the

assessee is the ultimate beneficiary of the above said sum of Rs.6.00 crores. Accordingly he assessed the same as unexplained cash credit. The Ld CIT(A) also confirmed the same by holding that the assessee has failed to support his claim that the impugned amount was received in connection with the Security transaction, i.e., the assessee has failed to obtain a confirmation letter from Bank of America. Accordingly the Ld CIT(A) concluded that the money has come to the assessee without any corresponding liability against him. i.e., the assessee has failed to furnish the reason for transferring the above said amount from the account of A.D. Narottam.

7. We heard the parties and perused the record. There is no dispute with regard to the fact that the assessee has received the impugned amount of Rs.6.00 crores from the account of A.D.Narottam, who in turn paid the same on behalf of Shri Hiten P Dalal. The contention of the assessee is that the above said amount was received in the normal course of business transactions in connection with the security transaction entered with Bank of America. Accordingly it was submitted that the amount of Rs.6.00 crores was received on 16.4.1992 on behalf of Bank of America and hence the assessee remitted the same to Bank of America on 21.4.1992.

8. We notice that the tax authorities have made this addition only on the reason that the concerned security transactions were not properly explained. We notice that the claim of the assessee that he has paid the amount of Rs.6.00 crores was not verified by examining the accounts of the assessee. Further it is stated that the AO has made certain enquiries with Bank of America, but the result of such enquiry was not made known to the assessee. It is pertinent to note that Shri A.D. Narottam has stated that he has paid the above said amount of Rs.6.00 crores by receiving the same from Hiten P Dalal upon his instructions. The assessee has also stated in the B-3 voucher that it was received on a/c of Hiten Dalal. Hence, effectively, the transaction was

between the assessee and Shri Hiten P Dalal. It appears that no enquiry was made with Hiten P Dalal. It is also a known fact that the assessee prepares the B-3 voucher in connection with a business transaction only. Further the assessee has also furnished copy of debit advice issued by Bank of Karad at page 233 of Paper book, which states the name of "Bank of America" and "11.5% 2010 F.V 200 cr.". In our view, this debit advice makes clear that the amount of Rs.6.00 crores was paid to Bank of America in connection with a Security transaction, i.e., a business transaction.

9. We notice that all records of the assessee were seized by CBI and also by the Income tax department. Hence there would be difficulty on the part of the assessee to explain the transactions. The AO is also on the record that the assessee has not filed any return of income for the year under consideration. The AO has generated the books of accounts, apparently incomplete sets, from the computers seized by the department. Hence the impugned addition has also been made only on account of lack of clarity of the transactions. We notice that the tax authorities have harped upon the receipt of Rs.6.00 crores from Shri A.D. Narottam and they ignored the claim of the assessee that the above said amount was paid back to Bank of America.

10. There is no doubt that the source of the payment of Rs.6.00 crores to the assessee was the amount received by Shri A.D. Narottam from Shri Hiten P Dalal. Hence the AO himself was satisfied that the immediate source available with Shri A.D. Narottam. According to tax authorities, the purpose of receipt of Rs.6.00 crores was not properly explained by the assessee. In the case of incomplete records and details, in our view, it requires to be examined as to whether the explanations given by the assessee are reasonable or not. In the instant case, we are of the opinion that the assessee has given a reasonable explanation of the nature of receipt of

Rs.6.00 crores, since the same was transferred to Bank of America from the account of the assessee and the further the debit advice prepared by the bank also indicates that the same was in connection with a security transaction.

11. In view of the above, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the addition of Rs.6.00 crores discussed above.

B) ADDITION IN RESPECT OF AMOUNT RECEIVED FROM HITEN DALAL
(Ground 4B in assessee's appeal)

12. The AO noticed that the assessee has received a sum of Rs.3.55 crores on 18.4.1992 in the bank account maintained with Bank of Karad. It was ascertained that this amount was transferred from Andhra bank account of Shri Hiten Dalal. Hence the AO issued summons to Shri Hiten Dalal and he was asked to explain the nature of this payment made to the assessee. Shri Hiten Dalal explained that the payment was made from his bank account under the instructions from Shri A.D. Narottam. He also stated that the account of Shri A.D.Narottam is debited with the above said amount. However, Shri A.D. Narottam denied all these transactions and submitted that he did not give any such instruction.

13. The assessee explained that the amount of Rs.3.55 crores represents DOR on 11.5% GOI-2010 security receivable from Hiten Dalal on behalf of Bank of America. Accordingly the assessee had prepared voucher no.4025. The assessee also submitted that he has paid a sum of Rs.2.00 crores out of the above said amount to Bank of America, which has also been confirmed by the Bank of America, vide its letter dated 19-09-1995. But the AO took the view that the assessee along with other persons such as A.D. Narottam, Shri Hiten Dalal and shri J.P. Gandhi have siphoned off funds from banking system. Further the impugned transaction has been denied by Shri A.D.

Narottam. Accordingly the AO took the view that the assessee has failed to prove that the payment of Rs.3.55 crores was received in connection with security transactions. Hence the AO assessed the above said receipt as income of the assessee. The Ld CIT(A) also confirmed the order by observing that there is no proof that actual security transactions were carried out and delivery of security was made.

14. We heard the parties on this issue. The Ld A.R contended that the assessee has received the above said amount of Rs.3.55 crores in connection with the security transactions carried on behalf of Bank of America. On the contrary, the Ld D.R submitted that the assessee has failed to prove the said claim. We notice that the assessee has claimed to have furnished a letter from Bank of America confirming receipt of Rs.2.00 crores from the assessee out of the amount of Rs.3.55 crores. We notice that the tax authorities have not considered the above said letter. Further, the assessee has also not submitted details about the payment of balance amount of Rs.1.55 crores. Thus, the assessee is solely relying upon the payment of Rs.2.00 crores to prove that the payment was received/made in connection with security transactions. We have noticed that the Ld CIT(A) has observed that the assessee has not furnished any proof to prove that actual security transactions were carried out. However, the assessee has claimed the same as DOR transactions, wherein the delivery of securities will not be there.

15. In view of the above, we are of the opinion that both the parties have failed to substantiate their stand. Accordingly, we are of the view that this issue requires fresh examination at the end of the AO. Accordingly, we set the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO for fresh examination.

C) ADDITION ON ACCOUNT OF RECEIPT FROM J.P. GANDHI (Ground No. 4C in assessee's appeal)

16. The AO noticed that the assessee has received a sum of Rs.51.00 lakhs from J.P. Gandhi on various dates. When enquired about the same, Shri J.P.Gandhi confirmed that he has made the payment in partial settlement of amount due to the assessee. He also stated that he was liable to pay the assessee a sum of Rs.89,23,835 as on 1.4.1992. Since the assessee as well as Shri J.P.Gandhi has not filed income tax returns for AY 1992-93 and 1993-94, the AO held that the genuineness of the claim of opening balance was not proved by the assessee. In the earlier years, the various transactions entered between Shri J.P.Gandhi and assessee were not accepted. Hence the AO assessed the above said amount of Rs.51.00 lakhs as income of the assessee. The Ld CIT(A) also confirmed the same.

17. We heard the parties on this issue. We notice that the impugned amount of Rs.51.00 lakhs has been received by the assessee from Shri J.P. Gandhi and he has also confirmed the same. It was stated that the same was on account payments towards partial settlement of existing liability. The Ld A.R submitted that the vouchers prepared by the assessee also states that they were received against the existing liability. We notice that the AO has made the addition only on the reasoning that Shri J.P. Gandhi has not filed return of income with Balance Sheet. We are of the view that the same may not be the correct reason to make the addition, since the supporting documents clearly show that the payment was made on account of existing liability. Thus, the payment has been made in the normal course in connection with the business transactions. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete this addition.

D) ADDITION ON ACCOUNT OF PROFIT FROM SECURITY TRANSACTIONS ENTERED WITH HARESH DALAL (Ground No.4D in assessee's appeal)

18. The AO noticed that the assessee has purchased 11.5%-2010 security from Shri Hareesh Dalal and sold the same back to him. In those transactions, the assessee has made a profit of Rs.2.50 crores. When confronted, the assessee accepted the same, but submitted that the profit from security transactions should be ascertained for the whole year, instead of making addition in respect of one transaction. The Ld CIT(A) also confirmed the addition made by the AO.

19. We heard the parties on this issue and perused the record. There is no dispute between the parties that the assessee has made a profit of Rs.2.50 crores from the transactions entered with Shri Hareesh Dalal. Hence the addition made by the AO needs to be sustained. However, the AO should ensure that the same income is not assessed again while computing the profit from security transactions, while giving effect to this order.

E) ADDITION ON ACCOUNT OF RECEIPT OF DOR (Ground No.4E in assessee's appeal)

20. The AO made an addition of Rs.6.07 crores on the basis of "Receipt vouchers (B-3 vouchers)". The Ld CIT(A) has also confirmed the same.

21. The contention of the assessee is that the DOR receipts forms part of security transactions. Further, he has also made payments towards DOR to the tune of Rs.2.97 crores. In certain cases, the AO rejected the claim of payments on the reasoning that the vouchers are self made. The Ld A.R submitted that the AO has assessed the receipts on the basis of self made vouchers only. He further submitted that certain payments have been made through banking channels. Accordingly the Ld A.R submitted that the AO should have assessed only net income from all the securities transactions.

22. We heard Ld D.R on this issue. However, we find merit in the contentions of the assessee. When the AO has assessed the DOR receipts on the basis of self made vouchers, we are of the view that the payment claimed to have been should be deducted. It is claimed that most of the payments have been made through banking channels. If the AO doubts about the genuineness of payment in respect of any item, he could have asked the assessee to furnish explanations in respect of specific items or could have made his own enquiries. The rejection of payment of DOR on generalized basis is not sustainable. In any case, there is merit in the contentions of the assessee that the net income from all securities transactions should be determined. Accordingly we are of the view that this issue requires fresh examination at the end of the AO. Accordingly we set aside the order passed by Ld CIT(A) and restore the same to the file of the AO with the direction to ascertain net income from securities transactions after confronting the same with the assessee and assess the same.

F) ADDITION ON ACCOUNT OF NEGATIVE BALANCE OF SECURITIES (Ground No. 4F in assessee's appeal):-

23. The AO has prepared the quantity details of securities dealt in by the assessee and has noticed that certain securities have been sold without having the same in stock. Hence the AO added the value of those securities amounting to Rs.17,92,300/- as "negative stock"

24. In the immediately preceding year, we have set aside identical issue for carrying out fresh examination. In this year, the assessee has contended that he could not provide a proper reconciliation as the AO has given only summary position of the statement and not actual working was given. In the earlier years, we have discussed about the method of accounting followed by the assessee and also about the nature of business activities of the assessee.

In earlier years, the assessee has attempted to reconcile the difference. In this year, no such reconciliation was given. Hence, we are of the view that the assessee may be provided with one more opportunity to reconcile the difference noticed by the assessing officer. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to examine this issue afresh by providing the detailed workings made by him in order to arrive at the negative balance of securities.

G) ADDITION ON ACCOUNT OF BADLA TRANSACTIONS ENTERED ON BEHALF OF THE CLIENTS (Ground No.4G in assessee's appeal):-

25. During the course of assessment proceedings conducted in the hands of Shri Haresh Dalal and Shri M J Patel, the AO noticed that the assessee has entered into Badla transactions with the above said parties. They reported that the assessee has earned Badla charges of Rs.18,30,628/- from Haresh Dalal and Rs.10,37,240/- from M J Patel.

26. The assessee submitted that major part of badla charges would belong to his own clients. Accordingly he pleaded that the entire amount cannot be taken as his income. However, the AO assessed the aggregate amount of Rs.28,67,968/- as income of the assessee. The Ld CIT(A) also confirmed the same.

27. We have heard the parties on this issue. We notice that the AO has assessed the above said income on the basis of report received from two brokers. No reference has been made to the books of accounts/computer records of the assessee. There is no dispute that the books of accounts of the assessee were incomplete. The assessee has pleaded that major portion of badla charges belong to his clients. Identical submission made in the earlier years has been accepted. According to the assessee, the details of share transactions are available in Sr. No.30 of the list of books given in Annexure I

to remand report and contract files are available in Sr. No.20 & 21. We notice that the tax authorities have not examined the books of accounts and submissions made by the assessee. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to examine this issue afresh by duly considering the explanations and books of accounts/computer records of the assessee. The assessee should be provided with copies of all records available with the AO in this regard.

H) ADDITION ON ACCOUNT OF UNEXPLAINED INVESTMENTS IN SHARES & SECURITIES (Ground No.4H in assessee's appeal):-

28. During the course of search operations, the shares available with the assessee were inventorised and the assessee was asked for explanations about the sources of acquisition. The assessee furnished the details regarding the same, i.e., the assessee segregated the shares as belonging to his business concern, individual status, HUF, clients etc. The AO refused to accept the said explanation in the absence of books of accounts and accordingly assessed a sum of Rs.1,59,79,715/- as income of the assessee. The Ld CIT(A) also confirmed the same.

29. We heard the parties on this issue and perused the record. We notice that the assessee has identified the ownership status of each of the shares and accordingly furnished the explanations. However, the same was not acceptable to the tax authorities, since the relevant books of accounts and IT/WT returns were not available at that point of time. We have noticed that all the books of accounts are available with the department and hence the explanations furnished by the assessee could have been verified by examining the books of accounts. If the purchase of securities has been entered in the records, then there is no question of treating the same as unexplained investments. Accordingly, we are of the view that the tax authorities have made this addition without properly examining the books of accounts.

Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to examine this issue afresh by duly considering the explanations of the assessee by examining the books of accounts. The assessee should also be provided with all the materials in order to enable him to offer explanations to the satisfaction of the AO.

I) ADDITION ON ACCOUNT OF JEWELLERY AND OTHER ASSETS (Ground No.4I in assessee's appeal)

30. During the course of search conducted on 16.10.92, the revenue seized cash of Rs.50,000/-, Jewellery valued at Rs.7,65,409/- and Silver utensils valued at Rs.1,30,000/-. Total cash found at the time of search was Rs.1,21,430/-. The assessee submitted he had withdrawn a sum of Rs.5.18 lakhs from the bank accounts and the un-utilized amount was kept in hand. However, the AO gave credit for Rs.71430/- only and added the difference amount of Rs.50,000/-. Regarding silver utensils and jewellery, the assessee submitted they belong to all the family members. However, the AO assessed the value of silver utensils and jewellery as income of the assessee, since the assessee did not furnish item wise tally of the inventory. The Ld CIT (A) also confirmed the same.

31. We heard the parties on this issue and perused the record. With regard to the cash balance, we notice that the AO did not accept the explanations of the assessee, since there was time gap of about 3 months from the date of withdrawals made from the bank. Otherwise, there is no dispute that the assessee withdrew a sum of Rs.5.18 lakhs from the banks and the AO has accepted the cash availability to the tune of Rs.71,430/-. When the AO is accepting to that extent, we do not find any reason for not accepting additional sum of Rs.50,000/-, particularly when the AO has not brought any material on record to show that the assessee has spent away the money withdrawn by him from banks. Accordingly we set aside the order passed by

Ld CIT(A) on this issue and direct the AO to delete the addition of cash balance of Rs.50,000/-.

32. With regard to the silver utensils and jewellery, the Ld A.R submitted that the assessee has filed wealth tax return in the past and the silver/jewellery declared therein should be given credit. We notice that the AO did not consider the said contentions only for the reason that the assessee has not filed return of wealth for AY 1993-94 and further details were not given. In our view, there is merit in the contentions of the assessee that the quantity of silver and jewellery declared in the wealth tax return filed for past assessment years should be given credit. Further the claim of the assessee that part of silver/jewellery belongs to family members also requires consideration. Accordingly we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO with the direction to give credit for the quantity of silver articles/jewellery declared in the past wealth tax returns and also exclude the items belonging to family members. The order passed by Ld CIT(A) on this issue stands set aside.

J) ADDITION ON ACCOUNT OF ESTIMATION OF BROKERAGE IN RESPECT OF SHARE TRANSACTIONS (Ground No.4J in assessee's appeal):-

33. As in the immediately preceding year, the AO estimated the turnover and brokerage income. In AY 1992-93, this issue was set aside to the file of the AO with the following observations:-

"We heard the parties and perused the record. We have earlier noticed that the books of accounts of the assessee were incomplete and accordingly restored the matter of preparing the Profit and Loss account to the file of the AO. Hence this issue also requires set aside. At the same time, we are of the view that there is no scope for making any estimate without bringing any corroborative material. The presumptions and surmises do not have its place in the income tax proceedings. Accordingly, in the set aside proceedings, the AO may make any addition only on the basis of materials, if any, and not upon

presumption. With these observations, we set aside the order passed by Ld CIT(A) on this issue and restore this issue to the file of the AO for fresh examination.”

The facts prevailing in the instant year are also identical in nature. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO with identical directions.

K) ADDITION ON ACCOUNT OF CASH DEPOSITS (Ground No.4K in assessee's appeal):-

34. From the bank account of the assessee maintained with Bank of Karad, the AO noticed that a sum of Rs.4,95,000/- was found deposited on 18.05.1992. The assessee explained that the same was deposited out of cash balance available in the books of accounts. Since books of accounts were not available during the year under consideration, the said explanation was not acceptable to the AO and accordingly added the same as undisclosed income of the assessee. The Ld CIT(A) also confirmed the same.

35. We heard the parties on this issue. We notice that the AO has made this addition on the basis of bank statement. We also notice that the assessee has requested the AO to provide general ledger for the year ended 31.3.1992 and the same was not provided. We also notice that the AO has not ascertained the cash balance that was available with the assessee on that date as per the record available in the computer system. In the absence of the books of account, it would be difficult for the assessee to explain any item, which was chosen by the AO from the bank account. The addition would be called for only if the cash balance was not available in the books of account/record of the assessee. Accordingly we are of the view that this issue requires fresh examination. Accordingly we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO with the direction to examine the computer and other records to find out the cash

balance that was available with the assessee earlier to the deposit. After considering the explanations given by the assessee in this regard, the AO may take appropriate decision in accordance with the law.

L) ADDITION IN RESPECT OF UNEXPLAINED ENTRY UNDER THE HEAD BANK OF KARAD PARTY ACCOUNT (Ground No.4L in assessee's appeal):-

36. From the seized records, the assessing officer noticed that the assessee has received a sum of Rs.19.95 lakhs in his bank account and the same was credited to the account titled as "Bank of Karad Party a/c". In the original assessment proceedings, the details were not given and hence the assessee did not offer any explanation. The AO assessed the same as income of the assessee. In the remand proceedings, the details were given and the assessee submitted that they same represents security proceeds. He further submitted that the details were given to him after expiry of 14 years and if it had been provided earlier, he could have made enquiries with Bank of America. Since the assessee's reply was not clear, the Ld CIT(A) confirmed the addition.

37. We heard the parties on this issue. We notice that the assessee could not provide exact nature of credits during the course of remand proceedings. At the same time, there is merit in the contentions of the assessee that the details were provided to him after the expiry of about 14 years and hence there was difficulty in ascertaining the details from Bank of America. We notice that the credits were found in odd figures viz., Rs.2984.08; Rs.18,78,121.35 and Rs.1,14,000/-, meaning thereby, there may be merit in the contentions of the assessee that they may be related to security transactions. Under these set of facts, we are of the view that this issue may be put to rest by estimating an income from the above said deposits. Accordingly we set aside the order passed by Ld CIT(A) on this issue and

direct the AO to estimate income at 20% of the deposits amount and assess the same.

M) ADDITION IN RESPECT OF AMOUNT RECEIVED BY THE CUSTODIAN ON BEHALF OF THE ASSESSEE (Ground No.4M in assessee's appeal):-

38. The assessee was notified with effect from 02-07-1992 and thereafter the custodian was authorized to receive all income accruing to the assessee. The AO gathered information that the custodian has received interest, dividend and brokerage aggregating to Rs.4,88,680/- during the year under consideration. Before the AO, the assessee claimed that the receipts to the tune of Rs.4,15,000/- was repayment of proceeds on sale of securities and not interest income. Another sum of Rs.4,600/- was also claimed to be repayment proceeds. A part of sum of Rs.52,290/- was claimed to be belonging to assessee's client. In the absence of supporting evidences, the tax authorities did not accept the contentions of the assessee and accordingly assessed the above said sum of Rs.4,88,680/- as income of the assessee.

39. Before us, the assessee submitted that he has not been provided with the copy of intimation received from the Custodian and further books of accounts were not released. Hence the assessee could not furnish explanations. We find merit in the said submissions. Any person could explain the nature of transactions only if all the details relating to the same are provided to him. Hence we are of the view that the assessee should be provided with an opportunity to explain the nature of receipts. Accordingly we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO with the direction to provide the books of accounts and the copy of intimation received from the Custodian. After considering the explanations of the assessee, the AO may take appropriate decision in accordance with the law.

N) ADDITION ON ACCOUNT OF ESTIMATION OF BROKERAGE IN RESPECT OF SECURITY TRANSACTIONS (Ground No.4N in assessee's appeal):-

40. From the Securities position book, the AO noticed that the assessee has purchased securities worth Rs.4194.58 crores and sold securities worth 4193.59 crores. The AO took the view that the assessee would have earned brokerage @ 0.05% on the security transactions. Accordingly he estimated the brokerage income at 0.05% of Rs.4194.58 crores, which worked out to Rs.2,09,72,940/-. The Ld CIT(A) also confirmed the same.

41. We heard the parties on this issue. The Ld A.R submitted that the AO did not release the Securities position book or allow inspection of the same. He further submitted that the security transactions consist of sale and purchase of securities and also receipts and payments on account of DOR. Accordingly he submitted that the AO was not right in presuming that the assessee would have earned brokerage in all the transactions. He submitted that the assessee has offered profit from trading in security transactions and DOR as his income, which fact is known to the AO. Further, the difference between the purchase and sale figure of securities work out to about Rs.1.00 crore only. In any case, the AO is duty bound to make a fair estimate of income u/s 144 of the Act. On the contrary, the Ld D.R strongly supported the order passed by the tax authorities.

42. Having heard rival submissions, we are of the view that there is merit in the contentions of the assessee that the income from security transactions has to be ascertained on the basis of nature of business carried on by the assessee, i.e., the security transactions have to be segregated into (a) trading transactions, (b) DOR transactions and (c) brokerage transactions. Further, the effect for opening and closing stock of securities has to be given. Then only one can arrive at a fair figure of income from security transactions. The assessee has rightly pointed out that this is one of the components of income.

By including this as income of the assessee, one should prepare a Profit and Loss account in order to arrive at the Net Profit of the business by deducting the relevant expenses. This exercise shall alone give a fair estimate of income from business operations of the assessee. In the instant case, the estimate and assessment of brokerage income, if any, from security transactions separately would not be justifiable. We notice that the stand of the assessee, which was accepted by the tax authorities in the earlier years, is that he was dealing in securities as a trader only. Hence, in this year also, it is to be seen as to whether the estimation of brokerage income separately would warrant in the facts and circumstances of the case. If it is found that the assessee has purchased and sold the securities as dealer, then there is no requirement of estimating brokerage income. Accordingly we set aside the order passed by Ld CIT(A) on this issue and direct the AO to examine this issue afresh in the light of discussions made supra.

O) ADDITION ON THE BASIS OF DOCUMENTS SEIZED FROM J P GANDHI (Ground No.40 in assessee's appeal):-

43. During the course of search operations conducted at the premises of Shri J P Gandhi by the CBI on 23.6.92, certain documents were seized. Copies of those documents were obtained by the income tax department and Shri J P Gandhi was questioned thereon. He submitted that these documents pertain to the transactions of the assessee herein. When these facts were communicated to the assessee, he also admitted that some documents pertain to him. The AO estimated the income from those documents at Rs.5.80 crores and assessed the same as income of the assessee. The Ld CIT(A) also confirmed the same.

44. The main contention of the assessee is that the loose papers were not found in the premises of the assessee. They are not in the handwriting of the assessee. Further they are undated. They do not form part of books of

accounts of the assessee. In all the cases except one, the name of the assessee is not mentioned. The papers are in the nature of rough scribbling. The Ld A.R also submitted that the assessee was not given copy of statement recorded from J.P. Gandhi. He also submitted that the figures mentioned in the loose papers cannot be considered to be the income of the assessee.

45. We heard Ld D.R and perused the record. There is no dispute with regard to the fact that these loose papers were seized from the premises of Shri J.P. Gandhi. The assessee has only stated that some of the transactions pertain to him, whereas the AO has placed reliance on the statement given by Shri J.P. Gandhi to take the view that all these loose papers belong to the assessee. Hence, there is merit in the contentions of the assessee that the AO could not have reached such a conclusion. Hence, the first step should be to ascertain the documents pertaining to the assessee. For that purpose, it is necessary to confront each and every document with the assessee and to identify the documents not owned by the assessee. Then the AO should confront those documents which were not owned by the assessee with J.P. Gandhi and provide cross examination of J.P. Gandhi. Thereafter the AO should take a decision in this matter.

46. The assessee has furnished copies of loose papers at page 582 to 607 of paper book. A perusal of the same would show that most of the documents do not mention name of the assessee, some of the documents contain rough scribbling and calculations. In our view, the rough scribbling made, computations etc. would not give presumption that they depict income of the assessee. U/s 132(4A) of the Act, the documents found during the course of search may be presumed to belong to the person from whom they were seized. Hence the AO could not have treated those documents as belonging to the assessee merely on the basis of statement given by Shri J.P. Gandhi. Even if the documents are finally established as belonging to the

assessee by the AO, then they should be compared with the books of accounts in order to ascertain as to whether they have been recorded in the books of accounts. If the transactions have been recorded, then no addition is called for. If they have not been recorded, it has to be ascertained as to whether those transactions have been concluded or not? Only concluded transactions would give rise to income, which should be decided on the basis of facts and circumstances of the case.

47. From the foregoing discussions, we are of the view that this issue requires fresh examination in the light of discussions made supra. Accordingly we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO with the direction to examine the same afresh in the light of discussions made supra.

P) INTEREST CHARGED U/S 234A & 234B:- (Ground No. 4P in assessee's appeal)

48. Charging of interest is consequential in nature and hence this ground does not require adjudication.

49. In the result, the appeal of the assessee is treated as partly allowed for statistical purposes.

Order pronounced in the open court on 9th December, 2016.

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Mumbai; Dated : 9th December, 2016

SSL

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai