

IN THE INCOME-TAX APPELLATE TRIBUNAL "F" BENCH,  
MUMBAI

BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

&

SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA 1773/MUM/2024  
(A.Y. 2010-11)

Vijay Maneklal Bhansali, 61, Riddhi Apartments, 10 <sup>th</sup> Khetwadi Back Road, Behind HN Reliance Hospital, Khetwadi, Mumbai - 400 004,	v/s. बनाम	Income Tax Officer- 19(3)(5), Room No. 305, Piramal Chambers, Lalbaugh Mumbai 400 013, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AABPB1621M		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri K. Shivram / Shri Shashi Bekal, ARs
Respondent by :	Ms. Nidhi Agarwal (Sr. DR)

Date of Hearing	06.01.2025
Date of Pronouncement	13.01.2025

**आदेश / ORDER**

**PER PRABHASH SHANKAR [A.M.] :-**

The present appeal emanating from the appellate order dated 07.03.2024 is filed by the assessee against the order passed by the Learned Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre, Delhi [hereinafter referred to as "CIT(A)"] pertaining to assessment order u/s. 143(3) r.w.s. 147 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] dated 28.12.2017 as passed by the Assessing Officer(AO) for the Assessment Year [A.Y.] 2010-11.



2. The grounds of appeal are as under:

1. That, on the facts and circumstances of the case and in law the Ld. National Faceless Appeal Centre (NFAC) has erred in confirming an addition of Rs. 4,89,69,600/- under section 68 of the Income-tax Act, 1961 (Act) without following the ratio of the jurisdictional High Court wherein it was held that where the Ld. Assessing Officer (AO) has not made any additions based on the recorded reasons hence the reassessment is bad in law.
2. That, on the facts and circumstances of the case and in law the Ld. NFAC has erred in confirming an addition of Rs. 4,89,69,600/- under section 68 of the Act without obtaining the requisite sanction under section 151 of the Act.
3. That, on the facts and circumstances of the case and in law the Ld. NFAC has erred in confirming an addition of Rs. 4,89,69,600/- under section 68 of the Act where the Ld. AO has not disposed of the objections raised by the assessee through a specific separate order.
4. That, on the facts and circumstances of the case and in law the Ld. NFAC has erred in confirming an addition of Rs. 4,89,69,600/- under section 68 of the Act, where The Ld. AO has failed to appreciate that the provisions of sections 147 & 148 of the Act are not applicable when assessment is to be based on a search initiated on a third party. The same is governed by section 153C of the Act which contains a non-obstante clause, thereby overriding sections 139, 147, 148, 151 and 153 of the Act.

**Addition of Rs. 4,89,69,600/- under section 68 of the Act is bad in law**

5. That, on the facts and circumstances of the case and in law the Ld. NFAC has erred in confirming an addition of Rs. 4,89,69,600/- under section 68 of the Act, as the amount of Rs.4,89,69,600/- is neither credited in the books of accounts nor in the bank account of the appellant, hence section 68 of the Act is not applicable to the present facts of the case.
6. Without prejudice to the above, that on the facts and circumstances of the case and in law the Ld. NFAC has erred in confirming the addition of Rs. 4,89,69,600/- under section 68 of the Act by adding the sum of total purchase and sales transactions through book entries in respect of commodities futures speculative transactions.



7. That, on the facts and circumstances of the case and in law the Ld. NFAC has erred in confirming an addition of Rs. 4,89,69,600/- under section 68 of the Act, as only an amount of Rs.9,31,545.37/- is received by the appellant through authorised banking channels.
8. Without prejudice to the above, that on the facts and circumstances of the case and in law the Ld. NFAC has erred in confirming addition of Rs. 4,89,69,600/- under section 68 of the Act without appreciating that the transactions are not satisfactorily explained, the additions cannot be made of entire credit and debit as per the well-accepted legal principle and the transactions being in the nature of Commodities Futures are settled without delivery and only the Net Profit / Loss is debited/credited in the books/bank account of the assessee. The assessee received Rs. 9,32,545.37/ in his bank account being the profit earned in respect of Commodity Futures Contracts settled without delivery with Jet Air Agencies Private Limited.

#### Violation of Principles of Natural Justice

9. That, on the facts and circumstances of the case and in law the Ld. NFAC has erred in not providing an opportunity for a personal hearing through video conference despite a specific request made by the appellant hence the additions confirmed by the NFAC may be directed to be deleted.
10. The appellant craves leave to add, amend, alter or delete any of the above grounds of appeal.

3. It may be stated here at the outset that the ld.Authorised Representative of the assessee preferred not to press **ground no.2** and **ground no.9** relating to sanction u/s 151 of the Act and personal hearing through video conference respectively. Accordingly, these two grounds are **dismissed**.



4. In **ground nos.1, 3, and 4**, the assessee has agitated the action taken u/s 147/148 of the Act by claiming that the Ld. Assessing Officer has not made any additions based on the recorded reasons and also the objections raised to reasons were not disposed of by the AO. Hence the reassessment is bad in law.

5. It is submitted by the ld.AR that the AO issued recorded reasons alleging transactions with one Yashwi Commodities P. Ltd. However, the addition was made w.r.t. transactions with Jet Air Agencies P.Ltd. In response to the reasons the assessee had pointed out that no transactions were made with Yashwi Commodities Ltd. However, the AO without disposing of the objections issued letter to NMCE which provided information of the sub broker of the assessee and the transactions.

6. We find no merit in the contentions of the assessee in this regard. It is a fact on record that though initially reopening was proposed w.r.t. Yashwi Commodities P. Ltd, the sub-broker. However, considering the objection of the assessee, the ld. AO brought on record the fact that the impugned transactions was with Jet Air Agencies P. Ltd. The assessee has further admitted that the AO communicated name of the correct party to it vide letter dated 18.12.2017. It is stated that the assessee again objected to the new sub-broker transactions vide letter dated 22.12.2017. It is evident that the assessee has not denied the transactions with it, rather admitted giving



complete details. We do not find any prejudice caused to the assessee by the AO in bringing on record the correct name after gathering information from NMCE. In fact, it was admitted in no uncertain terms that the assessee had recorded certain transactions in its book account as well. The transactions were affirmed by him. There is absolutely no basis for agitating on legal ground which is completely baseless and devoid of any merit. Hence, both **grounds 1 and 3 are dismissed.**

7. In so far as the **ground no.4** is concerned, it is claimed that AO has failed to appreciate that the provisions of sections 147 and 148 of the Act are not applicable when assessment is to be based on a search initiated on a third party. The same is governed by section 153C of the Act which contains a non-obstante clause, thereby overriding sections 139, 147, 148, 151 and 153 of the Act.

8. It may be stated here that no submissions either in writing by way of Paper books dated 5.8.2024 or 12.08.2024 or oral were offered during hearing of this appeal in the above matter. However, it may be stated here that Hon'ble Delhi High Court in its very recent judgment delivered on 20.11.2024 in case of **PCIT-7, Delhi vs. Navccn Kumar Gupta, in ITA No.401/2022**, has after elaborate discussion decided exactly similar issue in favour of revenue. It was held that in a case where pursuant to search



conducted under Section 132 of the Act or requisition made under Section 132A of the Act in respect of another person (searched person), assets, documents or books of account, which either belong to the assessee or contain information pertaining to the said assessee, are found and the same are handed over to the AO of the assessee, he would subject to satisfaction of the other jurisdictional conditions stipulated under Section 153C of the Act, having the jurisdiction to make a reassessment/assessment of the income of the assessee under Section 153C of the Act. However, the same does not mean that he is bound to exercise the said jurisdiction. In the event, the AO does not assume it's jurisdiction to proceed with making an assessment/ reassessment under Section 153C of the Act, recourse to Section 147/148 is not ousted. In the above judgement, the Hon'ble Delhi High Court has referred to the decisions of Hon'ble Supreme Court in cases of PCIT vs. Abhisar Buildwell (P.) Ltd., 149 taxmann.com 399 (SC), Amar Jewellers vs. ACIT, 137 taxmann.com 249 (Guj.), CIT vs. Kabul Chawla, 380 ITR 573 (Delhi), PCIT vs. Saumya Construction Pvt. Ltd., 387 ITR 529 (Guj.), Shyamsundar Khandelwal vs. ACIT, 161 taxmann.com 255 (Raj.) etc. The Hon'ble Court held that it was unable to concur that provisions of sections 139, 147, 148, 149 and 153 are overridden merely on account of assets, books of account, documents and materials being seized or requisitioned which either belong to or contain information regarding a person other than the one searched. If the Assessing



Officer does not exercise the jurisdiction u/s 153C of the Act, recourse to normal assessment or reassessment are not foreclosed. The Hon'ble Court has specifically dealt with the decision of Hon'ble Rajasthan High Court in case of Shyamsundar Khandelwal (supra), and held that provisions of section 153C are enacted for the purpose of simplifying the procedure in search cases. The import of such provisions cannot be to oust the recourse to the normal provision, which in any event are available for assessment/reassessment of an income of an assessee.

8.1 There are a number of decisions by other High Courts in favour of revenue where the reopening has been upheld when it was based on information from the investigation wing of the department. The Hon'ble Gujarat High Court in case of **Anderson Biomet (P.) Ltd. vs. ACIT, 129 taxmann.com 135 (Guj.)** held that where search and seizure under section 132 of the Act was carried out in case of 'J' and it was found that 'J' was managing and controlling multiple companies which involved in providing accommodation entries and documents unearthed during search showed that the petitioner company had taken accommodation entries from one of such concerns, since prima facie there was live link between material coming to the notice of Assessing Officer and formation of his belief that there have been escapement of income due to assessee's failure to disclose fully and truly all materials facts, initiation of reassessment was justified. Recently, the Co-



**ordinate Bench of ITAT, Surat held similar case in favour of the Revenue in ITO Vs Anil Ghanshyam Kumawat ITA No. 346 to 348 & 349/SRT/2024 dated 25/11/2024.** In the light of cited decision and the law emerging from them, **the ground no. 4 is dismissed.**

9. **Ground nos. 5 to 7** are substantive grounds in which the assessee has contested the addition u/s 68 of the sum of Rs 4,89,69,600/-. Facts of the case are that based on Forward Market Commission (FMC) report that "clients/members of NMCE were found to be involved in creating artificial volume and suspected evasion of Income Tax by misuse of NMCE platform" survey action u/s 133A of the Act was conducted by Pr. Director of Income Tax (Investigation), Ahmedabad at the premises of National Multi Commodity Exchange and backup of the NMCE trade was taken. After analysis of this data, several entities was identified who had booked bogus losses and information was shared with concerned Director General of Income Tax (Inv.) The DIT(Inv.), Kolkata on the basis of investigation carried out, found that most of the entities who had booked bogus losses were dummy entities who had facilitated bogus loss or profit to other real beneficiaries. On the basis of this investigation, it was informed that the transactions entered into by Jet Air Agencies P.Ltd Limited during the period relevant to AY.2010-11 were bogus fictitious transaction to accommodate accumulate bogus loss/profit. It was also found that the assessee was also one of the beneficiaries of such



accommodation entry. Information received revealed that total transaction of the assessee with the said sub-broker was to the tune of Rs 4,89,69,600/- which was treated as non-genuine transaction and added as Income from Other Sources u/s 68 of the Act.

10. The ld.CIT(A) in further appeal before him observed that the appellant at first has denied of entering any transaction with the Sub broker M/s Jet Air agencies (P) Ltd. But afterwards accepted the said transaction claiming genuine. But even after retracting its first denial, the appellant was unable to establish the transaction with M/s Jet Air Agencies (P) Ltd. being genuine despite availing ample opportunity of hearing. Considering the entire conspectus of the case, he held that the appellant had no proper explanation with supporting evidence regarding the genuineness of transaction with M/s Jet Air Agencies (P) Ltd. when all the entry operators had accepted the sham companies were engaged in providing accommodation entry to the beneficiaries. Accordingly, he did not find any infirmity in the order of the AO and find the same was justified in as much as the addition being made in accordance with law. The addition made by the AO of Rs.4,89,69,600/- invoking provision of section 68 of the Act was confirmed.

11. Before us, the ld.DR of the department has relied on the orders of lower authorities and claimed that modus operandi of the transactions was already established, brokers had confirmed it. On the other hand, the



Id.Counsel of the assessee has vehemently agitated the addition.It is contented that he only received a sum of Rs 9,32,545/-being profit on the transaction entered into Commodities Futures which is duly recorded in the bank account. It is stated that the AO wrongly added the entire sale and purchases from the said party although the profit of Rs 9,31,545/- was already disclosed by the assessee in its return.In support copies of Balance sheet and Capital account are submitted as per page-146 to 147 of the Paper Book-III. It is stated that **Speculation loss of Rs 48,429/-** as reflected in the Capital account as on 31.3.2010 actually comprised of **Share speculation profit from Commodity Future (Jet Airway Agencies) Rs 9,31,545/-** which was set off against **Share Speculation loss of Currency Futures(Ventura Securities) Rs 9,79,974/-**.It is pleaded that transactions on NMCE are contracts of Commodities Futures and are settled on the same day without delivery of goods. Therefore, section 68 of the Act did not apply to the transactions.

12. We have carefully considered all the relevant facts of the case, rival arguments and materials on record. From the facts submitted and considered above, it is evident that the Id.AO has considered entire sales and purchases values of Commodities Futures Contract with Jet Air Agencies as liable to be treated as unexplained credit u/s 68 of the Act. As per day to day accounts appearing in the account statement of the sub broker ,it is noticed that total



purchase value of the contract was Rs 2,40,17,000/- while sale figures were Rs 2,49,52,600/- aggregating to Rs 4,89,69,600/-in respect of transactions carried out from 22.03.2010 to 26.03.2010. Gross speculation income was Rs 9,35,600/- and after excluding Rs 4,055/- being Brokerage, Service tax and other charges, net amount was Rs 9,31,545/-.

12.1 The Office of Pr. DIT(In v.) Kolkata on the basis of its investigation has concluded that certain brokers/sub-brokers involved in providing accommodation entries to various parties in the form of profit and or loss as desired by them and the transactions entered into by the assessee company with these entities during the period relevant to A.Y.2010-11 are not genuine business transactions and are merely accommodation entries which has been routed through NMCE by colluding with the Brokers/Members of NMCE to make them appear genuine. The assessee company has reportedly taken accommodation entries to the tune 4,89,69,600/-from one party mentioned above. The modus operandi involved as informed by the operators is:-

*"The income/profit and loss in the form of commodity are mainly generated through the trading at approved Commodity Exchanges. For this two membership are required in one membership losses are generated and the other membership profits are generated. This is done through trading in commodities like lead, zinc etc. The parties who require profit give us cash and we bring this cash through bank in the account of membership in which losses are to be generated and the same is given as margin to the exchange and when the trade is completed the next day exchange make payment in the account of profit taking membership and from there we give cheques or RTGS or NE FT to the parties who gave us the cash.*

*In the case of commodity loss the party given in the account of membership and we give them cash in return after deducting out commission which we receive from the parties who*



*taken commodity profit. When we get parties who want loss generated and profit generated simultaneously, cash from profit taking party is routed to loss taking party and here there is no involvement of cash deposit in the bank. The cash which is taken from parties are routed through various individual/proprietorship accounts through various sources the market.”*

12.2 On due consideration of all the relevant facts of the case, we find sufficient merits in the contention of the assessee that the addition made by the AO adding entire purchase and sale transactions as unexplained credit u/s 68 of the Act is not justified. Neither the AO nor the Id.CIT(A) appreciated that the impugned transaction even though considered as non-genuine involved purchase as well as sale, the assessee received only the profit thereon. The alleged accommodation entry at the best could be restricted to the profit only. It is equally true that the assessee at no point denied having made the transaction which the Investigation wing of the Department found sham and made only with the intention of money laundering. However, it is equally true that the assessee has duly disclosed the profit from said Speculation business in Commodities trading as income in the return and such a fact has not been denied by the authorities below. In the present case, the claim of so-called profit at the best could be considered to be treated as the cash routed through the sub-broker to give it a colour of legitimacy. This is the amount which returned back to the assessee through banking channels by an intricate process of placement, layering and integration as in a typical case of money laundering. Therefore, only the profit disclosed could be considered as



undisclosed in terms of section 68 of the Act and not the sale/purchase transactions. Accordingly, we hold that the addition of Rs 4,89,69,600/- as unexplained credit is not justified and is, therefore, deleted.

13. In the result, the appeal is **partly allowed**.

**Order pronounced in the open court on 13/01/2025.**

Sd/-

**SANDEEP GOSAIN**

(न्यायिकसदस्य / JUDICIAL MEMBER)

Sd/-

**PRABHASH SHANKAR**

(लेखाकारसदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 13.01.2025

Lubhna Shaikh / Steno

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
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आयकर अपीलीय अधिकरण/ ITAT, Bench,  
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