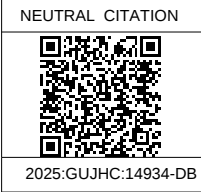


**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/TAX APPEAL NO. 819 of 2023****PRINCIPAL COMMISSIONER OF INCOME TAX SURAT 1****Versus****MANOJ GANESHLAL BHATIA****Appearance:****KARAN G SANGHANI(7945) for the Appellant(s) No. 1****MR R.K.PATEL, LD.SR.ADV WITH DARSHAN R PATEL(8486) for the
Opponent(s) No. 1****CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA****and****HONOURABLE MR.JUSTICE D.N.RAY****Date : 24/02/2025****ORAL ORDER****(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

1. Heard learned Senior Standing Counsel Mr.Karan G. Sanghani for the appellant and learned Senior Advocate Mr.R.K.Patel with learned advocate Mr.Darshan R. Patel for the respondent.

2. This appeal is preferred under Section 260A of the Income Tax Act, 1961 (for short 'the Act') proposing the following substantial questions of law arising out of the judgment



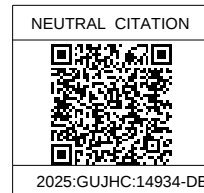
and order dated 16.06.2023 passed by the Income Tax Appellate Tribunal, Surat in ITA No.494/SRT/2019 for Assessment Year 2015-16:

"(i) Whether the Ld. Tribunal was right in upholding deletion of the addition of account profit of Rs.3,97,77,965/- on account of trading in Future & Option?"

(ii) Where the Ld. Tribunal was right in permitting deletion of addition made by AO on account of non-disclosure of the source of increase in Capital?"

(iii) Whether the Ld. Tribunal was right in permitting deleting of addition on account of non-disclosure of source of investment?"

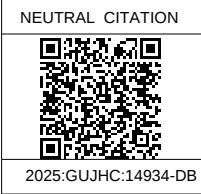
3.1. The respondent-assessee had filed its return of income for the Assessment Year 2015-16 declaring total income of Rs.1,27,27,980/- on 29.07.2016.



3.2. The Assessment Order under Section 143(3) of the Act was passed by the Assessing Officer after issuance of notice under Sections 143(2) and 142(1) of the Act and considering the reply of the assessee by making following additions on 16.10.2017:

Addition/Disallowance	Amount (Rs.)
Addition on a/c of difference of profit from future and options	3,97,77,965/-
Addition on a/c of increase in capital	5,60,54,528
Addition on a/c of source of investment In future and options	80,70,224

3.3. Being aggrieved, the respondent-assessee preferred an appeal before the CIT (Appeals). The CIT (Appeals) by order dated 28.08.2019 allowed the appeal filed by the assessee deleting all the three additions made by the Assessing Officer by observing as



under:

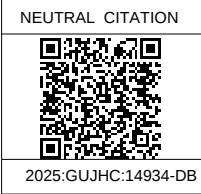
"Considering the above clear reconciliation, I find that the AO's working of net gain from the brokers gain/loss statement is misleading figure and not the actual profits. The AO was given opportunity to consider the reconciliation tables and submit remand on the same. However, In the remand report dtd. 29.12.2018, the AO has ignores the issue of reconciled statement and did not offer any comments. The main reason for discrepancies was analysed by the undersigned and it was noted that in the working profits from Motilal Oswal Sec. Ltd, all the transactional value of F & O rolled over was misread as profits by the AO. Once this column of rolled over F & O transaction are considered properly, the appellant's profit working was found to be correct. Similarly, In the case Jainam Share, the share trading and commodity trading transactions were added with F & O transactions leading to



Incorrect loss figure. In view of these facts and circumstances, I hold that the difference in profits worked out by the AO from F&O transactions are incorrect and not sustainable. Thus, the addition of Rs.3,97,77,965/-is hereby deleted and only addition of Rs.60,088/- pertaining to Incorrect loss computation by the appellant is hereby confirmed. Appellant gets partial relief.

Ground No. 1 (ii)

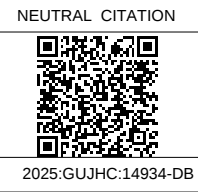
Vide this ground, the appellant challenged the addition on account of Increased capital by Rs.5,60,54,528/-. In the assessment order, the AO noted that the capital balance shown for current AY was Rs.3,60,54,528/- whereas in the ITR for AY 2014-15 capital balance shown was Nil. Thus, the AO show caused the appellant as to why the capital of Rs.5,60,54,528/- should not be considered as unexplained capital introduced. The AR had replied to the AO that the capital balance as per ITR of



AY 2011-12 was Rs.3,73,88,803/- as on 31.03.2011 and it was mere mistake in filling up the balance sheet figures in the ITR for AY 2014-15 which led to Nil opening capital in ITR of AY 2015-16. The AO did not accept the submission of the assessee and added the same to the total Income as unexplained capital Introduced.

On the other hand, the AR explained that the capital balance of Rs.5,60,88,803/- Include opening capital of Rs.4,11,58,447/- as well as profits of current AY from partnership firms, F&O profits, Interest income, STCG/LTCG, dividend etc. The AR has also furnished summary of capital balance starting from AY 2011-12 taking capital of Rs.3,73,88,803/- as on 31.03.2011 and duly explained capital accumulation of Rs.5,60,88,803/-till current AY.

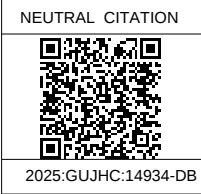
After considering the above submissions and explanations of the appellant, it Is apparent that the capital accumulation



of Rs.5,60,88,803/- is fully explained on the basis of capital in the ITR of AY 2011-12 and accumulated Incomes duly shown In the ROI for A.Y. 2012-13, 2013-14, 2014-15 and current A.Y. In the remand report on this issue, the AO has not given any adverse comments. Thus, the addition of Rs.5,60,88,803/ - in not sustainable and hereby deleted.

Ground No. 1(iii)

Vide this ground, the appellant has challenged the addition of Rs, 80,70,224/ - pertaining to undisclosed Investment in F&O and share transaction, In the assessment order, the AO noted that the Investment in shares/debentures/mutual fund as on 31.03.2015 was R8.8,62,858/- whereas the said Investment as on 31.03.2015 Increased to R8.1,58,28,737/-. Thus, the AO queried for source of funds for increased Investment of Rs.1,49,65,879/- (Rs. 1,58,28,737-Rs.8,62,858). The AR had explained before the AO that the

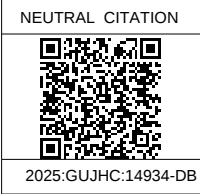


Investment in shares etc, was made from withdrawals from partnership firms M/s. Magic Fashion and M/s. NM Fashion through bank transaction.

However, the AO could only notice withdrawal from the said firms upto Rs.62,95,655/- and concluded that Rs.80,70,224/- was investment from unexplained sources. In the appellate proceedings, the AR has filed a reconciliation chart explaining the source of funds for investment of Rs. 1,49,65,879/-. As per this chart, the AR has corroborated that total bank payments to the share brokers amounted to Rs.57,20,655/- out of which Rs.10,86,275/- was fund received back from share brokers. Further, the profits from F&O transaction of current AY at Rs.77,47,945/ - STCG of Rs.18,23,343/- and LTCG of Rs.1,38,095/-added upto Rs.97,19,383/- towards investment in share/debentures/mutual fund. Another profit earned of Rs.6,42,351/- from transaction with JM Financial Profits



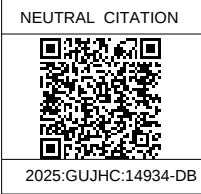
Ltd. further added the total investments of Rs.1,49,96,114/-. Thus, the AR explained that increased investment In shares/debentures were duly explained from his books of accounts. After considering the relevant documentary evidences and reconciliation chart, it is apparent that the AO did not consider the major profits from F&O / shares transaction while concluding unexplained Investment of Rs.80,70,224/-. In the remand report, the AO & observation is detached from what the appellant has explained on the sue of source of fund for Rs. 1,49,96,114/ - No concrete findings. of defects in appellants submission could be pointed out by the AO. he had accepted the withdrawals from firms and bank transfers upto Rs.62,95,655/- and adding the profits on F & O, STCG, LTCG and other profits duly adds upto Investments of R.1,49,96,114/. Thus, appellant's explanation of source of fund for Rs.1,49,65,879/- is found to be duly explained. Hence, there is no case for sustaining addition of



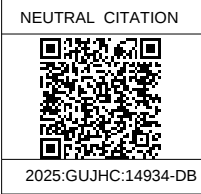
Rs.80,70,224/- as unexplained Investment and the same is hereby deleted."

3.4. The appellant-Revenue being aggrieved by the order passed by the CIT (Appeals), filed an appeal before the Tribunal. The Tribunal dismissed the appeal by order dated 16.06.2023 agreeing with the findings given by the CIT (Appeals) by observing as under :

"23. Considering the above reconciliation, the Id CIT(A) noted that Assessing Officer's working of net gain from the brokers gain/loss statement is misleading figure and not the actual profits. The Assessing Officer was given opportunity to consider the reconciliation tables and submit remand on the same. However, in the remand port dated. 29.12.2018, the Assessing Officer has ignored the issue reconciled statement and did not offer any comments. The main reason for discrepancies was analyzed by the ld



CIT(A) and it was noted by ld CIT(A) that in the working profits from Motilal Oswal Sec. Ltd., all the transactional value of F & O rolled over was misread as profits by the Assessing Officer. Once this column of rolled over F & O transaction are considered properly, the assessee's profit working was found to be correct. Similarly, in the case of Jainam Share, the share transactions leading to incorrect loss figure. In view of these facts and circumstances, the ld CIT(A) held that the difference in profits worked out by the Assessing Officer from Future & Option transactions are incorrect and not sustainable. Thus, the addition of Rs.3,97,77,965/- was deleted and only addition of Rs.60,088/- pertaining to incorrect loss computation by the assessee was confirmed by la CIT(A) We have gone through the above findings of Id CIT(A) and noted that there is no infirmity in the order passed by ld CIT(A). That being so, we decline to interfere with

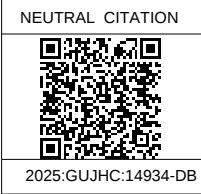


the order of Id. CIT(A) in deleting the aforesaid additions. His order on this addition is, therefore, upheld and the grounds of appeal of the Revenue are dismissed.

29. We have heard both the parties. We note that assessee challenged the addition on account of increased capital by Rs.5,60,54,528/-. In the assessment order, the Assessing Officer noted that the capital balance shown for current assessment year was Rs.3,60,54,528/- whereas in the Income Tax Return for assessment Year 2014-15, the capital balance shown was Nil. Thus, the Assessing Officer had issue show cause notice to the assessee, asking as to why the capital of Rs.5,60,54,528/- should not be considered as unexplained capital introduced. The assessee had replied to the Assessing officer that the capital balance as per Income Tax Return of assessment year 2011-12 was Rs.3,73,88,803/- as on 31.03.2011 and

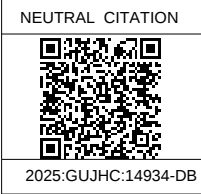


it was mere mistake in filing up the balance sheet figures in the Income Tax Return for A.Y. 2014-15 which led to Nil opening capital in Income Tax Return of A.Y. 2015-16. The Assessing Officer did not accept the submission of the assessee and added the same to the total income as unexplained capital introduced. During the appellate proceedings, the assessee explained that the capital balance of Rs.5,60,88,803/- include opening capital of Rs.4,11,58,447/- as well as profits of current assessment year from partnership firms, Future and Option profits, interest income, STCG/LTCG, dividend etc. The assessee has also furnished summary of capital balance starting from AY 2011-12 taking capital of Rs.3,73,88,803/- as on 31.03.2011 and duly explained capital accumulation of Rs.5,60,88,803/- till current assessment year. The Id CIT(A) after considering submissions and explanations of the assessee, observed that the capital accumulation of.



Rs.5,60,8,803/- was fully explained by the assessee on the basis of Capital in the income Tax Return of assessment year 2011-12 and accumulated incomes duly shown in the return of income for assessment years 2012-13, 2013-14, 2014-15 and current assessment year. In the remand report on this issue, the Assessing Officer has not given any adverse comments, therefore ld CIT(A) held that the addition of Rs.5,60,48,803/- is not sustainable in the eye of law and deleted the addition. We have gone through the above findings of ld CIT(A) and noted that conclusions arrived at by the CIT(A) are correct and admit no interference by us. We, approve and confirm the order of the CIT(A) and dismiss ground No.2 raised by the Revenue.

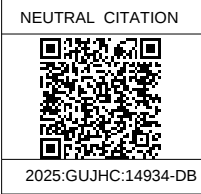
33. We have heard both the parties. We note that Revenue has challenged the addition of Rs.80,70,224/- pertaining to investment in Future & Option and



share transaction. In the assessment order the assessing officer observed that the investment in shares/debentures/mutual fund as on 31.03.2015 was Rs.8,62,858/- whereas the said investment, as on 31.03.2015 increased to Rs.1,58,28,737/-. Thus, the Assessing Officer queried for source of funds for increased investment of Rs. 1,49,65,879/- (Rs.1,58,28,737 - Rs.8,62,858). The assessee had explained before the assessing officer that the investment in shares etc., was made from withdrawals from partnership firms M/s Magic Fashion and M/s N.M. Fashion through bank transaction. However, the assessing officer could only notice withdrawal from the said firms up to Rs.62,95,655/- and concluded that Rs.80,70,224/- was investment from unexplained sources. During the appellate proceedings, the assessee has filed a 191 reconciliation chart explaining the source of funds for investment of Rs.1,49,65,8791. As per



this chart, the assessee has corroborated that total bank payments to the share brokers amounted to Rs.57,20,655/- out of which Rs. 10,86,275/- was found received back from share brokers. Further, the profits from F&O transaction of current assessment year at Rs.77,47,945/- - STC of Rs.18,23,343/-and LTCG of Rs. 1,38,095/- added upto Rs.97,19,383/- toward investment in share/debentures/mutual fund. Another profit earned of Rs.6,42,351/- from transaction with J.M. Financial Pvt Ltd, further added the total investments of Rs. 1,49,96,114/-. Thus, the assessee explained that increased investment in shares/debentures were duly explained from his books of accounts. The Id CIT(A) after considering the relevant documentary evidences and reconciliation chart, observed that the assessing officer did not consider the major profits from Future & Option / shares transaction while concluding unexplained income of



Rs.80,70,224/- . In the remand report, the Assessing Officer's observation is detached from what the assessee has explained on the issue of source of fund for Rs.1,49,96,114/- . No concrete findings of defects in assessee's submission could be pointed out by the assessing officer. The assessing officer had accepted the withdrawals from firms and bank transfers upto Rs.62,95,655/-and adding the profits on F80, STCG, LTCG and other profits duly adds upto investments of Rs, 1,49,96,114/- Thus, assessee's explanation of source of fund for Rs. 1,49,65,879/- was found to be duly explained. Hence, ld CIT(A), based on the above facts, held that there is no case for sustaining addition of R\$.80,70,224/-, as unexplained investment, therefore Id CIT(A) deleted the same. We have gone through the above findings of Id CIT(A) and noted that conclusion reached by id CIT(A) is correct therefore we agree with the findings of ld CIT(A) and dismiss



ground No.3 raised by the revenue."

4. We have perused the orders passed by the CIT (Appeals) and the Tribunal arriving at a concurrent finding of fact in respect of all the three additions made by the Assessing Officer. So far as the addition of Rs.3,97,77,965/- is concerned, both the CIT (Appeals) and the Tribunal have arrived at finding that the Assessing Officer has taken the transactional value of F & O rolled over instead of profit and loss workout arising out of such transaction and the CIT (Appeals) and the Tribunal have found the profit working of the assessee to be correct and accordingly, except addition of Rs.60,088/- which was a mistake accepted by the assessee, the addition was deleted.

5. Similarly, with regard to the addition



made on account of the increase in capital of Rs.5,60,54,528/-, both the CIT (Appeal) and Tribunal have arrived at finding of fact by reconciliation of balance in the capital account from Assessment Year 2011-12 and as such, the Assessing Officer was not justified in making addition only on the ground that the assessee had shown NIL in the Form of the Income Tax Return which was incorrect and contrary to what was shown in the audited balance sheet.

6. Similarly, the Addition of Rs.80,70,224/- made by the Assessing Officer was also not found to be sustainable as the assessee had already reconciled the source of fund for increased investment of Rs.1,49,65,879/- by showing that the Assessing Officer did not consider the profit arising out of the F & O transactions which was duly considered by the



CIT (Appeals) and the Tribunal by arriving at a concurrent finding of fact.

7. In view of the foregoing reasons, we are of the opinion that no question of law much less any substantial question of law arises from the impugned order of the Tribunal. The Appeal therefore, being devoid of any merit is accordingly dismissed.

(BHARGAV D. KARIA, J)

(D.N.RAY,J)

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