

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “C” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**ITA No.72/Ahd/2021
Assessment Year: 2015-16**

Shail P. Shah – HUF, 4 th Floor, Hemkunj Apartment, New Sharda Mandir Road, Paldi, Ahmedabad – 380 007. [PAN – AAXHS 4227 G]		Vs.	The Principal Commissioner of Income Tax, Ahmedabad - 1.
(Appellant)			(Respondent)
Assessee by	Shri Hardik Vora, AR		
Revenue by	Shri Ajay Pratap Singh, CIT(DR)		
Date of Hearing		27.02.2024	
Date of Pronouncement		01.03.2024	

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER:

This appeal is filed by the assessee against order dated 24.03.2021 passed by the Principal Commissioner of Income Tax, Ahmedabad-1 for the Assessment Year 2015-16.

2. The assessee has raised the following grounds of appeal :-

- “1. The Id. Pr. CIT erred on facts and in law by Initiating revision proceedings u/s.263 without appreciating that a case of the appellant was selected under CASS for limited scrutiny i.e. to verify transactions undertaken in commodity and derivative (futures) segment
2. The Id. Pr. CIT erred on facts and in law set aside an order passed by the Assessing Officer under Section 143(3) of the Act by Invoking provision of Section 263 of the Act without Justifying, how is it prejudicial to the interest of the revenue which is a pre-requisite condition for invoking power under Section 263 of the Act.

3. *The Id. Pr. CIT erred on facts and in law in setting aside the order passed by Assessing Officer by invoking provisions of Section 263 of the Act by holding that the proper enquiry with respect to transactions in commodity and derivative (Future) segments were remained to be carried out even if all the requisite details are already available on record.*
4. *The Id. Pr. CIT erred on facts and in law by initiating revision proceedings under section 263 of the Act against the issues beyond the scope of limited scrutiny which legally not permissible.*
5. *The Id. Pr. CIT erred on facts and in law by ignoring the factual details already available on record as well as submitted during the course of revision proceedings under Section 263 of the Act. He set aside the order passed by the Assessing Officer and directed to pass a fresh assessment order by invoking provision of Section 263 of the Act.”*

3. The assessee filed his return of income for assessment year 2015-16 on 07.09.2015 declaring total income at Rs.9,36,220/-. The case was selected for limited scrutiny through CASS with the reasons being (a) large value sale of futures (derivative) in a recognised stock exchange and (b) large commodity exchange transactions. The assessment was completed under Section 143(3) of the Income Tax Act, 1961 vide order dated 22.09.2017 accepting the returned income as such. The PCIT observed that the assessee during the year under consideration had inter alia derived business income by carrying out derivative and commodity transactions with MCX, NSE cash and NSE (F&O). the PCIT further observed that for the purpose of taxation the assessee reported the total turnover on account of the said transactions at Rs.32,07,485/- and offered taxable income taking recourse of the provisions of Section 44AD of the Act. The profit at 8% of the turnover as per Section 44AD of the Act was worked out at Rs.2,56,599/-. However, the assessee disclosed profit of Rs.9,36,220/- in the return of income. After giving show cause notice and taking cognisance of the assessee's reply, the PCIT held that the order passed by the Assessing Officer under Section 143(3) of the Act was made merely relying on the general information submitted by the assessee without attempting to make any investigation in order to ascertain the correctness of the claim of the assessee and thus, directed the Assessing Officer to pass a fresh Assessment Order.

4. The Ld. AR submitted that the Assessing Officer during the regular assessment proceedings has specifically enquired related to the large value sale of futures (derivative) in a recognised stock exchange reported in security transaction tax return and large value commodity transaction and return filed in income tax return. The assessee has also submitted the reply dated 14.06.2017 thereby explaining the copy of Profit & Loss Account and Balance Sheet as per the provisions of Section 44AD of the Act and why the assessee has shown higher turnover which is permissible under the Income Tax statute. The Ld. AR further submitted that the assessee has also given the details related to the transactions of derivative and commodity transactions with MCX, NSE cash and NaSE (F&O) and income derived from the same in consonance with the return of income filed by the assessee. The assessee has given detailed bifurcation of the chart wise performance report (MCFH) as well as Investor Report Series-wise, Investor Report F&O series as well as Investor Report Scrip-wise Summary for the relevant period. The total turnover calculated comes to Rs.13,11,729.89. After calculating the summaries given by the assessee, these documents were before the Assessing Officer. The Ld. AR submitted that the PCIT at this juncture is giving his second opinion and scope of 263 is only that of revisionary in nature. The Ld. AR submitted that the assessee has given reply before the Assessing Officer along with relevant documents and merely disclosing profit over and above which is permissible under Income Tax Statute cannot be termed as not appropriate.

5. The Ld. DR relied upon the order of the PCIT passed under Section 263 of the Act.

6. We have heard both the parties and perused all the relevant material available on record. From the perusal of the show cause notice dated 26.02.2020 by the PCIT under Section 263 of the Act it can be seen that the PCIT is harping on the issue that the assessee declared Net Profit of Rs.9,36,220/- from business & profession which is more than 8% of the total turnover of the business as per Section 44AD of the Act. The PCIT further observed that the profit was earned from transactions of derivative and commodity transactions with MCX, NSE cash

and NSE (F&O). The PCIT, mainly based on his contention observed that the assessee has not disclosed its total turnover and has not claimed the profit as per the actual calculations but this is not correct observation of the PCIT. The assessee at the stage of assessment order has given all the details including total turnover which was summarised and put together and give the profit quantification of the total turnover as per Section 44AD of the Act and, therefore, invocation of Section 263 of the Act in the present case is not justifiable when the assessee has given all the details. The Assessment Order is not at all erroneous or prejudicial to the interest of Revenue and, therefore, the order passed under Section 263 of the Act is not justified.

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

Order pronounced in the open Court on this 1 st March, 2024.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 1st day of March, 2024
PBN/*

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad