IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC': NEW DELHI

BEFORESHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

ITA No.2725/Del/2026
(ASSESSMENT YEAR: 2016-17)

Superior Projects LLP C/o Vaibhav Jain Advocate, 805 Pearls Best Heights-1, Netaji Subhash Place, Pitampura, Delhi-110034. ***PAN-ACDFS0611C***	v.	Income Tax Officer, Ward-29(1), E2 Block, Civic Centre New Delhi-110002.
(Appellant)		**(Respondent)**

Assessee by	Shri Vaibhav Jain, AR
Department by	Shri Manoj Kumar, Sr. DR
Date of Hearing	11.05.2026
Date of Pronouncement	14.07.2026

ORDER

This appeal in ITA No. 2725/Del/2026for Assessment Year: 2016-17 has arisen from the learned CIT(A)'s appellate order u/s 250 of the Income-tax Act, 1961(in Short "Act") dated 01.12.2025 in DIN & Order No: ITBA/NFAC/S/250/2025-26/1083190351(1), which in turn has arisen from the assessment order dated 24.05.2023 passed by the AO u/s 147 r.w.s. 144 r.w.s. 144B of the 1961 Act(DIN No. ITBA/AST/S / 147/2023-24/ 1053148241(1).

2. The assessee has raised the following grounds of appeal in Memo of Appeal filed with the Tribunal:

> *"1. The Ld. AO erred in law and on facts in framing the assessment order pursuant to approval obtained from PCIT u/s 151(i) in place of PCCIT u/s 151(ii) of the Act and Ld. CIT(A) erred in law and on facts in not quashing the assessment order, in the facts and circumstances of the case.*
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> *2. The Ld. AO erred in law and on facts in framing the assessment order beyond the time bar period and Ld. CIT(A) erred in law and on facts in not quashing the assessment order, in the facts and circumstances of the case.*

> *3. The Ld. AO erred in law and on facts in making the addition of Rs. 33,59,750 as business income without properly considering the evidence furnished by the assessee and the Ld. CIT(A) erred in law and facts in confirming the action of the Ld. AO.*
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> *4. The Ld. AO erred in law and on facts in making the addition of Rs. 33,59,750 as business income without following the principles of Natural Justice and the Ld. CIT(A) erred in law and facts in confirming the action of the Ld. AO.*
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> *5. The Ld. AO erred in law and on facts in charging interest of Rs. 8,92,766 u/s 234B of the Act without recording a proper satisfaction in the assessment order as stipulated by law.*
>
> *6. The Appellant craves leave to add, amend, alter, OR withdraw any grounds of appeal."*

3. At the outset, it is observed that this appeal is filed belatedly by the assessee by 16 days beyond the time provided u/s 253(3) of the 1961 Act. The assessee has filed an application for condonation of delay on the ground that it took time by the assessee to arrange for the tax consultant for compiling the appeal to be filed before the Tribunal. Thus, it was submitted that due to delay in getting the proper tax consultant , there is a delay of 16 days . It is further submitted that the assessee has good prima-facie case on merits, and irreparable loss and injustice will be caused to the assessee, if the delay in filing this appeal is not condoned. Thus, the assessee has prayed that the delay in filing this appeal be condoned, and the appeal be heard on merits.

3.2 Ld. Sr. DR objected to condonation of delay, but has fairly submitted that the Bench may take decision on this matter.

3.3 After hearing both the parties and after going through the contents of the condonation application and other materials on record, I condone the delay of 16 days in filing this appeal belatedly by the assessee beyond the time prescribed u/s 253(3) , and proceed to adjudicate this appeal on merits in accordance with law. When substantial justice is pitted against the technicalities, the Courts will lean towards advancement of substantial justice, unless malice is at writ large or there is negligence on the part of the litigant. I do not find any malice or negligence on the part of the assessee in filing this appeal belatedly. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of *Collector, Land Acquisition, Anantnag v. Mst. Katiji & Ors. 1987(2) SCC 107.*

4. Brief facts of the case are that the case of the assessee was reopened by Revenue u/s 147/148 of the 1961 Act. As per AO , Notice u/s 148 was issued by the AO to the assessee , on 15.07.2022 on the basis of information available in possession of the Assessing Officer after following the provisions of Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020(Hereinafter called " the TOLA") as per the CBDT Notification No.20 dated 31.03.2021 and subsequent notification No.38 dated 27.04.2021 according to which the time limit for issuance of notice u/s 148 was extended to 30.04.2021 and 30.06.2021 respectively. As per AO, the notice was issued after obtaining prior approval of the Competent Authority under section 151 of 1961 Act. Initially , notice u/s 148 was issued on 29.06.2021(DIN & Notice No. ITBA/AST/S/148/2021-22/1033849719(1). The assessee is LLP. The assessee filed return of income on 27.08.2016, declaring total income of Rs.9,27,620. The assessee also claimed loss in derivative trading and debited an amount of Rs.33,59,750/- against the same. As per AO, it was reported in Media and also specific information was received by the AO that there is a rampant tax evasion through coordinated and premeditated trading in illiquid stocks and on 'options' in the Bombay Stock Exchange. The AO received information that the assessee also been party to those transactions and had indulged in 'non-genuine profits/loss on illiquid derivatives' and thereby had generated fictitious loss in derivative trading to the tune of Rs.33,59,750/-. To this effect, Investigation Wing of Mumbai, Unit-6(3) (Inv.) conducted an investigation into the matter under the aegis of *'Project Falcon'* to establish the veracity of the claims of losses , and to unearth the

modus operandi of coordinated and premeditated trading in-illiquid stock options. In course of investigation, it was noticed that a specific/particular set of entities were consistently incurring trading loss by executing a 'reversal of trades' in options on individual stock within the Equity Derivative segment. Further, it had come to notice that along with reversal of trades, huge losses were being generated by various clients by letting the option expire instead of acting upon the options. During the course of investigation, statement under oath were recorded from various brokers involved in the above mentioned transactions. In the statement recorded, the brokers had admitted that various clients traded in illiquid stocks through derivative options with a sole motive of generating losses. This was done by letting the options expire rather than reversal of trade that a rational investors would do. The AO observed that the modus operandi was corroborated with a fact that 'transactions were either left to expire or reversed on the same day within few seconds to few hours. The AO observed that trades would expire on weekly options or reversed within a few seconds to match the trades with each other . The AO observed that such trades are irrational and not the normal behavior of a prudent investor looking to make profits out of a trading activity. Thus, the AO observed that such actions are premeditated and possible only through co-ordinated trading activity in targeted stocks. The AO has elaborately discussed the modus operandi in the reassessment order passed by him, and assessee was also one of the beneficiary of such trade through broker *M/s Destiny Securities Ltd.*, and has generated loss of Rs.33,59,615/-. The AO had passed an order u/s 148A(d) on 15.07.2022 and served on the assessee mentioning detailed reasons of reopening after giving opportunity of being heard as per provisions of section 148A(b) of the Act.Thus, there was a reasons to believe that income had escaped assessment , and the case was sought to be reopened by the AO consequent to approval of the competent authority, and notice u/s 148 was served by the AO to the assessee on 15th July, 2022 to furnish reply with compliance date being 30 days from the receipt of notice. The assessee did not file any return of income in pursuant to notice issued by the AO u/s 148. Thereafter, notices u/s 142(1) were issued by the AO to the assessee on 06.01.2023 and 01.02.2023 , but there was no reply filed by the assessee. Thereafter, letter dated 15.02.2023 and Show Cause Notice u/s 144 dated 20.03.2023 were issued by AO to the assessee , and in response to SCN u/s 144 , the assessee filed part reply on 08.04.2023 and 25.04.2023. Further SCN dated 10.05.2023 were issued by the AO to the assessee regarding proposing the addition. There was no response by the assessee to the aforesaid SCN. This led AO to pass reassessment order u/s 147 r.w.s. 144 r.w.s. 144B of the 1961 Act , wherein AO made disallowance of loss of Rs.33,59,750/- claimed by the assessee in derivative trading considering the same to be fictitious losses for the purpose of payment of taxes. The AO relied upon judgment and order of Hon'ble Supreme Court in the case of *SEBI v. Rakhi Trading Private Limited reported in (2018) 90 taxmann.com 147(SC),* wherein Hon'ble Supreme Court held that an intentional trading for loss perse , is not a genuine dealing in securities. Trading is always with an intention to make profits. .

5. Aggrieved, the assessee filed first appeal with the Ld. CIT(A). The assessee submitted before ld. CIT(A) that the transactions were genuine and were carried out on the platform of the Stock Exchange through SEBI registered stock brokers. The Ld. CIT(A) rejected the contentions of the assesse because a prudent investor does trading with a view of making a profit. Thus, when dealings are made in derivatives, there should be profit or loss. The ld. CIT(A) observed that in the assessee's case there has been only one incident when the assessee earned profits in derivative trading, while in all other trades , there were losses. Thus, this shows that the assessee has repeatedly indulged in such options and intentionally incurred losses. The Ld. CIT(A) observed that assessee has requested for cross examination of brokers . The Ld. CIT(A) rejected the contentions of the assessee at this stage. Firstly, as per ld. CIT(A) , the same should have been done before the AO during assessment proceedings, and secondly, because in taxation matters, the opportunity of cross-examination is not mandatory. The Ld. CIT(A) relied upon the

decision of Hon'be Supreme Court in the case of *C. Vasantlal and Co. v. CIT [1957] 45 ITR 206 (SC), SumatiDayal vs. CIT [1995] 214 ITR 801 (SC), CIT v. Mohankala (2007) 291 ITR 278(SC), Mc Dowell & Co. Ltd. v CTO[1985] 154 ITR 148 (SC) and Rakhi Trading Private Limited(supra)* , and ld. CIT(A) rejected the contention of the assesse and the addition were confirmed on merits. So far as the contention of the assesse to quash the assessment order, the Ld. CIT(A) observed that the reassessment order has been completed following due procedure, and hence the Ld. CIT(A) rejected the contention of the assessee to quash the reassessment order. Thus, the disallowance of losses on derivative trading by the AO to the tune of Rs. 33,59,750/- claimed to be incurred by the assessee was upheld by ld. CIT(A).

6. Still aggrieved , the assessee has filed second appeal with the Tribunal. The Ld. Counsel for the assessee opened argument before the Tribunal and submitted that the assessee has filed paper book containing 35 pages. It was submitted that the assessee has entered into derivative trading in options through Stock Exchange through SEBI registered brokers , and incurred losses of Rs.33,59,750/- in derivative trading in options during the year under consideration. It was submitted that the said loss was disallowed by the AO. The Ld. Counsel for the assessee submitted that approval has been taken by the AO before reopening of the assessment from Ld. PCIT u/s 151(i) of the 1961 Act, but the same was required to be taken from ld. PCCIT u/s 151(ii) after amendment by Finance Act, 2021 wef 01.04.2021. The approval is to be required from the Ld. PCCIT as more than three years have elapsed from the end of the relevant assessment year. It was also submitted that no evidence were provided by the AO to the assessee with respect to the investigation conducted by the Investigation Wing, Mumbai. It was also submitted that assessee has not been provided with copies of the statement of the Brokers recorded during the course of investigation , and no cross-examination was allowed. It was submitted that the assessee has duly filed the contract notes as well as the bank statements to prove that the transactions of derivative trading in options were entered

into through SEBI registered share broker though Stock Exchange. It was submitted that payment for these transactions were made through banking channel.

6.2. The Ld. Sr. DR on the other hand, relied upon the order of the authorities below

7. I have considered rival contentions and perused the material available on record. I have observed that the case of the assessee was reopened by the Revenue by invoking provisions of section 147/148 of the Act. The details as to facts and background of reopening of the assessment are incorporated in detail by the AO as well recorded in the preceding para's of this order, and are not repeated again. I have observed that the main allegation of the Revenue against the assessee is that the assessee has entered into manipulative and fabricated transactions of derivative trading in options which was part of the manipulated syndicate of organized transactions carried out in connivance of the brokers to book fictitious profit or loss in derivative trading, wherein the options were purchased but not exercised , to avail series of transaction to generate losses in these derivative trade . The Revenue has unearth the said alleged racket being carried out by syndicate of brokers under the Investigations carried under the aegis of *"Project Falcon"*. The brokers statements were recorded , and they admitted to being engaged in manipulated and fabricated transaction with pre-meditated mind to generate derivative losses for their clients. Detailed investigation were carried out by Revenue , which are recorded in the assessment order in brief. The derivatives trades where options expired were to the tune of Rs. 4254.29 crores, and the brokers covered u/s 133A were to the tune of Rs. 1276.08 crores. The assessee has undertaken allegedly fraudulent and manipulative transactions in options which expired through a Broker *Destiny Securities Limited*, wherein the assessee incurred losses to the tune of Rs. 33,59,750/- in derivative options which were allowed to expire . It was bought just prior to expiry date and then allowed to lapse instead of exercising the option, causing derivative loss. Except on one occasion, the assessee incurred derivative loss on options in every contract executed by it. The Brokers admitted to indulging in aforesaid manipulative trades. *Destiny Securities*

Limited with whom assessee dealt was also found to be involved in manipulating such transactions for the benefit of its members to the extent of Rs. 61.93 crores. The assessee claimed that the transactions in derivative trading in options were undertaken through a SEBI registered broker *Destiny Securities Limited* through Stock Exchange , and payments were made through banking channel. Merely stating that the transactions were carried out through stock exchange and through SEBI registered broker or that payments were made through banking channel is not sufficient. These are pre-meditated transactions wherein positions in derivative trading in option is taken just before expiry and the position is not reversed but allowed to lapse , and the loss is created in the hands of the beneficiary. These are syndicated organized manipulated trade in connivance of the brokers and beneficiaries. The brokers have admitted to have indulged in this syndicate of organizing premeditated transactions in order to create fictitious losses in favour of beneficiary so that tax advantage can be taken against by set off of these fictitious losses in derivative trading against other taxable income chargeable to tax. The assessee is one of the beneficiary of said trade. The brokers have admitted to have indulged in aforesaid manipulation and premeditated act of creating derivative losses to set off against other incomes. There is a meeting of mind with common intention in order to defraud Revenue. Detailed investigations were carried out by Revenue under the aegis of *'Project Falcon'*. The magnitude of such transactions wrt brokers covered under survey is Rs. 1276.08 crores. Thus, merely stating that contract notes are there , or payments were made through bank is not sufficient. The onus has shifted back to the assessee to prove that the said losses are genuine , in the midst of detailed investigation carried out by Revenue and statements of the Brokers admitting to such organized pre-meditated action to defraud Revenue . The assessee has not produced Directors of Destiny Securities Limited before the authorities nor any affidavit of the Directors are filed. The assessee has not filed any evidences / Court orders/out come of investigation before appellate authorities etc to rebut the finding of the investigations carried on by the Revenue. It is observed that except on one occasion , the assessee has incurred losses in all the derivative trade it has undertaken. The assessee failed to discharge its onus. Apparent is not real. The Revenue has rightly relied upon judgment of Hon'be Supreme Court in the case of *C. Vasantlal and Co. v. CIT [1957] 45 ITR 206 (SC), Sumati Dayal vs. CIT [1995] 214 ITR 801 (SC), CIT v. Mohankala (2007) 291 ITR 278(SC), Mc Dowell & Co. Ltd. v CTO[1985] 154 ITR 148 (SC) and Rakhi Trading Private Limited(supra).* Thus, I hold that the appeal filed by the assessee lacks merit, and stand dismissed and addition of Rs. 33,59,750/- stand confirmed on merits of the additions. Right of cross examination is not absolute.Thus, ground number 3 and 4 stand dismissed. I order accordingly.

7.2 So far as ground number 1 and 2 are concerned , It is observed that the assessee has raised these specific legal jurisdictional grounds for the first time before the ITAT, albeit General legal ground was raised before ld. CIT(A) . It is also observed that ld. CIT(A) disposed off the General legal ground raised by the assessee in a cryptic manner. These ground no. 1 and 2 also required verification of facts. In the interest of justice, I am admitting ground no. 1 and 2 raised by the assessee before the ITAT, and restoring the matter to the file of ld. CIT(A) to pass detailed order disposing off the legal jurisdictional ground raised by the assessee. I order accordingly.

7.3 So far as ground no. 5 is concerned , the same is consequential in nature and is accordingly disposed off.

7.4. So far as ground no. 6 is concerned, the same if general in nature and accordingly stand dismissed.

8 In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order is pronounced in the Open Court on 14.07.2026

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Dated14.07.2026
PK, Sr. Ps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI