IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E" MUMBAI

BEFORE SHRI SHAMIM YAHYA (ACCOUNTANT MEMBER) AND SHRI RAVISH SOOD (JUDICIAL MEMBER)

ITA No. 656/MUM/2016
(Assessment Year: 2008-09)

Deputy Commissioner of Income Tax-8(2)(1), Aayakar Bhavan, Room No. 624, M.K. Road, Mumbai – 400 020	Vs.	M/s Shradha Tradelinks Pvt. Ltd., 1108, Dalamal Tower, Free Press Journal Marg, Nariman Point, Mumbai – 400 021

PAN No. AAFCS1489R

(Assessee) **(Revenue)**

C.O No.323/MUM/2017
(Arising out of ITA No. 656/Mum/2016)
(Assessment Year: 2008-09)

M/s Shradha Tradelinks Pvt. Ltd. 1108, Dalamal Tower, Free Press Journal Marg, Nariman Point, Mumbai – 400 021	Vs.	Deputy Commissioner of Income Tax, Circle 7(2), Aayakar Bhavan, Mumbai – 400 020

PAN No. AAFCS1489R

(Assessee) **(Revenue)**

Assessee by : Shri Paresh Shaparia, A.R
Revenue by : Shri R. Manjunatha Swamy, CIT D.R

Date of Hearing : 13/01/2021
Date of pronouncement : 08/04/2021

ORDER

PER RAVISH SOOD, J.M:

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-14, Mumbai, dated 30.11.2015, which in turn arises from the assessment order passed by the A.O under Sec. 143(3) r.w.s. 147 of the Income Tax Act, 1961 (for short „Act"), dated 01.11.2013. The revenue has assailed the impugned order on following grounds of appeal before us:

"1. (i) The Learned CIT(A) has erred on facts and in law in deleting the addition of Rs.11,97,47,627/- on account of loss on future & option loss without properly appreciating the factual and legal matrix as clearly brought out by the Assessing Officer in the Assessment order.

(ii) The Learned CIT(A) has erred on facts and in law in not appreciating that if the test of looking into surrounding circumstances and applying the test of human probability as enunciated by the Hon'ble Supreme Court in the case of Sumati Dayal Vs CIT as reported in 214 ITR 801 is applied to assessee's factual matrix irresistible conclusion would be that the future and option loss requires to be disallowed.

(iii). The Learned CIT(A) has erred on facts and in law, in not appreciating that the Hon'ble ITAT has upheld the action of the A.O holding that no genuine business was carried out by M/s Alliance Intermediaries & Network Pvt. Ltd through whom the assessee has shown the transaction resulting in future & option loss.

2. The Ld. CIT(A)'s order is contrary to law and on facts and deserves to be set aside.

3. The appellant craves leave to amend or alter any ground or add a new ground that may be necessary.

4. The appellant prays that the order of CIT(A)"s on the above grounds to be set aside and that of the AO restored."

On the other hand the assessee is before us as a cross-objector raising the following objections:

"I. <u>Confirmation of Re-opening proceedings u/s 147 is bad in law</u>:

(i) The learned CIT(A) erred in confirming the reopening proceedings u/s.147 initiated by the A.O

(ii) The learned CIT(A) failed to appreciate the fact that:

(a) All the material facts were fully & truly disclosed before A.O at the time of original assessment proceedings based on which assessment was completed u/s 143(3) whereby there is no new material;

(b) There are no documents or statement depicting any escapement of income by the respondent.

The respondent craves leave to add, amend, alter or modify the ground or grounds before the hearing."

2. Briefly stated, the assessee company which is engaged in the business of trading in shares and derivatives had filed its return of income for A.Y. 2008-09 on 10.09.2008, declaring a total income of Rs.3,50,59,070/-. Original assessment was framed by the A.O vide his order passed under Sec. 143(3), dated 29.10.2010 at an income of Rs. 4,14,25,800/-. Appeal against the original assessment under Sec. 143(3), dated 29.10.2010 was partly allowed by the CIT(A), vide his order dated 05.01.2012, and the assessed income of the assessee was reduced to an amount of Rs. 3,69,05,065/-.

3. Information was thereafter received by the A.O from the DIT(I&CI), New Delhi, vide letter dated 19.03.2013, wherein it was intimated that search and seizure proceedings conducted on 25.11.2009 by the DDIT(Inv.), Unit-1(4), Mumbai under Sec. 132 of the Act in the case of Mahasagar Securities Pvt Ltd. had revealed that the said company and its group entities were engaged in providing bogus bills of transactions in shares and securities. Also, as per the information shared it was intimated that the directors of the aforesaid companies were found to be engaged in fraudulent billing activities and providing of accommodation entries of bogus speculation loss/profit and short term/long term capital gain/loss. As per the information the data retrieved from the computer seized in the course of the aforesaid search proceedings revealed the list of clients/beneficiaries who had taken accommodation entries from the aforementioned company, viz. M/s Mahasagar Securities Pvt. Ltd. and its other group entities. It was intimated by the DDIT(Inv.), Mumbai that the name of the assessee viz. M/s Shradha Tradelinks Pvt. Ltd. had figured as one of the beneficiaries that had invested in shares of different securities amounting to Rs.12,15,62,252/- through a broker, viz. M/s Alliance

Intermediaries & Network Pvt. Ltd. (an entity belonging to Mukesh Choksi group) during the financial year 2007-08.

4. In the backdrop of the aforesaid information the A.O reopened the case of the assessee under Sec. 147 of the Act. Notice under Sec. 148, dated 28.03.2013 was issued and served upon the assessee. In compliance, the assessee e-filed its return of income on 23.04.2013 declaring an income of Rs. 3,69,05,065/- [as was determined pursuant to the order of the CIT(A) w.r.t original assessment order passed under Sec. 143(3), dated 29.10.2010]. After filing the return of income the assessee requested for a copy of the "reasons to believe" on the basis of which its case was reopened under Sec. 147 of the Act. Copy of the „reasons to believe" were made available to the assessee by the A.O on 05.08.2013. Objecting to the reasons on the basis of which the A.O had assumed jurisdiction under Sec. 147 of the Act the assessee assailed the validity of the reassessment proceedings vide its letter dated 07.10.2013. However, not finding favour with the objections raised by the assessee the A.O rejected the same vide his order dated 14.10.2013.

5. During the course of the assessment proceedings it was observed by the A.O that the assessee had claimed Future & Option Loss (hereinafter referred to as "F&O loss") of Rs.11,97,47,626/- from certain transactions carried out through its broker i.e M/s Alliance Intermediaries & Network Pvt. Ltd. On being queried as to why the aforesaid F&O loss of Rs.11,97,47,626/- may not be disallowed by treating the same as an accommodation entry, it was submitted by the assessee that the transactions resulting to the said loss were looked into by the A.O in the course of original assessment proceedings and were only after exhaustive deliberations accepted by him. Assailing the validity of the reasons on the basis of which its case had been reopened, it was the claim of the assessee that the very allegation forming the basis for reopening of its case i.e the assessee had invested in shares of different scripts amounting to Rs.12,15,67,252/- through M/s Alliance Intermediaries & Network Pvt. Ltd. was factually incorrect. It was submitted by the assessee

that it had never invested in any shares but had transacted in F&O transactions for the period 01.04.2007 to 31.03.2008, wherein it had incurred a loss of Rs.11,97,47,626/-; and for the period 01.04.2008 to 31.03.2009, wherein it had earned a profit of Rs.2,25,37,840/-. In order to substantiate the genuineness and veracity of its claim of having carried out the F&O transactions during the year in question the assessee filed with the A.O copies of all F&O bills, brokers ledger account in its books of accounts, as well as the account of the assessee in the books of its broker, viz. M/s Alliance Intermediaries & Network Pvt. Ltd. Apart from that, it was stated by the assessee that all the payments for the loss suffered were made by it by account payee cheques only and the same were duly acknowledged by the broker viz. M/s Alliance Intermediaries & Network Pvt. Ltd. Rebutting the adverse inferences which were sought to be drawn by the A.O by relying on the statement of Shri Mukesh Choksi, Director: Mahasagar Securities Pvt. Ltd. recorded under Sec. 132(4) of the Act, dated 26.11.2009, it was submitted by the assessee that in the impugned statement that was spread over 17 pages though 61 specific queries were raised in relation to various persons, viz. Mr. Kailash Kabra, Mr. Arvind Goyal, Jugal, Ajay Kedia, Anandbhai, Mr. Rajesh, Sunchan Securities, Alpha, Pradip Jain, Sumer Gulecha, Deepak Vora, ICSA Ltd, Vipul Shah, Vijay Laxmi Corporation etc. however, there was no whisper insofar the transactions of the assessee company were concerned. On the basis of the aforesaid facts, it was submitted by the assessee that as there was no reason for treating its F&O transactions as bogus transactions thus, the disallowance of the resultant loss of Rs. 11,97,47,626/- was unwarranted. Alternatively, it was submitted by the assessee that if the F&O transactions done through the aforesaid broker, viz. M/s Alliance Intermediaries & Network Pvt. Ltd. were to be treated as non-genuine or stamped as accommodation entries then a uniform approach had to be adopted and the profit of Rs.2,25,37,840/- that was earned by it from the F&O transactions carried out through the same broker i.e M/s Alliance Intermediates & Network Pvt. Ltd. in the immediately succeeding year were also required to be rejected and

reduced from its income for A.Y 2009-10 and to facilitate the same a necessary rectification order under Sec. 154/155 be passed.

6. After deliberating on the aforesaid contentions of the assessee, the A.O, was however not persuaded to subscribe to the same. Referring to certain queries that were raised from Shri. Mukesh Choksi (supra) in the course of his statement recorded under Sec. 132(4), dated 25.11.2009, it was observed by the A.O that he had therein inter alia admitted that M/s Alliance Intermediaries & Network Pvt. Ltd. was one of the company through which he was carrying out its nefarious activities of providing accommodation entries. Accordingly, the A.O drawing support from the statement of Shri. Mukesh Choksi (supra) a/w the information received from the DDIT(Inv.), Unit-1(4), Mumbai that the name of the assessee, viz. M/s Shradha Trade Links Pvt. Ltd had figured as a beneficiary that had taken accommodation entries through its broker i.e M/s Alliance Intermediaries & Network Pvt. Ltd., therein treated the F&O transactions of the assessee for the year in question as bogus transactions and disallowed the assessee"s claim of loss of Rs.11,97,47,626/- arising therefrom. After disallowing the F&O loss of Rs.11,97,47,626/- the A.O reassessed the income of the assessee company vide his order passed under Sec. 143(3) r.w.s 147, dated 01.11.2013 at Rs.15,66,52,691/-.

7. Aggrieved, the assessee assailed the assessment framed by the A.O under Sec.143(3) r.w.s 147, dated 01.11.2013 in appeal before the CIT(A). Before the CIT(A) the assessee assailed the validity of the jurisdiction that was assumed by the A.O under Sec.147 of the Act, as well as the disallowance of its F&O loss of Rs.11,97,47,626/- on merits. Although, the CIT(A) did not find favour with the claim of the assessee that the A.O had wrongly assumed jurisdiction u/s 147 of the Act and rejected the same, but on merits he accepted the claim of the assessee that in the absence of any material proving to the contrary its claim of F&O loss of Rs.11,97,47,626/- could not have been rejected. Accordingly, the CIT(A) partly allowed the appeal and vacated the disallowance of F&O loss of Rs. 11,97,47,626/-.

8. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. Insofar the assessee is concerned, it has as a cross-objector assailed the order of the CIT(A) to the extent he had upheld the validity of the jurisdiction assumed by the A.O for framing the reassessment. The ld. Authorized Representative (for short „A.R") for the assessee at the very outset assailed the validity of the jurisdiction assumed by the A.O under Sec. 147 of the Act. It was submitted by the ld. A.R that original assessment under Sec. 143(3), dated 29.10.2010 was framed in the case of the assessee, wherein the A.O after making a disallowance under Sec.14A r.w Rule 8D of Rs.63,66,735/- had assessed the income of the assessee company at Rs.4,14,25,800/-. It was submitted by the ld. A.R that the A.O in the course of the original assessment proceedings after deliberating at length on the assessee"s claim of F&O loss and considering the supporting documentary evidence and the explanation of the assessee, had only after being satisfied with the genuineness and veracity of the transactions resulting to the aforesaid loss accepted the same. Adverting to the „reasons to believe" on the basis of which the case of the assessee was reopened, it was stated by the ld. A.R that the very reason for reopening the case of the assessee i.e the investment made by the assessee in shares of different scripts amounting to Rs.12,15,67,252/- through the broker viz. M/s Alliance Intermediaries & Network Pvt. Ltd. during the year in question was in itself factually incorrect and misconceived. It was stated by the ld. A.R that the assessee had not invested in any shares through the aforesaid broker viz. M/s Alliance Intermediaries & Network Pvt. Ltd. but had only carried out F&O transactions which had resulted to a loss of Rs.11,97,47,626/- during the year in question. On the basis of his aforesaid contentions, it was submitted by the ld. A.R that not only the impugned basis for reopening the case i.e the assessee had invested in shares through the aforesaid broker was factually incorrect rather, till date it had remained a mystery as to on what basis the figure of Rs.12,15,67,252/- was adopted by the A.O in his „reasons to believe". It was submitted by the ld. A.R that as the reopening of its case had been done on

the basis of absolutely incorrect facts, the same, thus, was liable to be vacated on the said count itself. Apart from that, it was submitted by the ld. A.R that the A.O while recording the „reasons to believe" had absolutely failed to apply his mind for arriving at a bonafide belief that the income of the assessee chargeable to tax had escaped assessment. It was stated by the ld. A.R that the A.O while reopening the assessee"s case had mechanically acted upon the information received from the DDIT(Inv.), Unit-1(4), Mumbai, and had not even cared to even consult the assessment records of the assessee company. In order to buttress his aforesaid claim, it was submitted by the ld. A.R that the A.O in the reasons had though stated that the return of income filed by the assessee was processed under Sec. 143(1) on 11.10.2009, but he had absolutely lost sight of the material fact that the same was thereafter subjected to a scrutiny assessment under Sec. 143(3), dated 19.10.2010 wherein its income was assessed at an amount of Rs.4,14,25,800/-. Not only that, it was submitted by the ld. A.R that the aforesaid assessment framed by the A.O under Sec.143(3), dated 29.10.2010 was assailed by the assessee before the CIT(A), wherein the latter had vide his order dated 05.01.2012 partly allowed the appeal and the assessed income for the year in question was finally determined at Rs.3,69,05,065/-. It was vehemently submitted by the ld. A.R that no reference of the aforesaid facts by the A.O in the „reasons to believe" further supported the fact that he had mechanically acted upon the information received from the DDIT(Inv.), Unit-1(4), Mumbai, and reopened the assessee"s case without even consulting its assessment records for the year in question. On the basis of his aforesaid contention, it was the claim of the ld. A.R that reopening of a case on the basis of a borrowed satisfaction was not permissible in law. In support of his aforesaid contentions the ld. A.R relied on the following judicial pronouncements:-

i. Principal CIT Vs. Shodiman Investments (P) Ltd.
[93 taxmann.com 153 (Bombay)]

ii. Harikrishan Sunderlal Virmani V. Dy. CIT
[88 taxmann.com 548 (Gujarat)]

iii. Principal CIT Vs. Meenakshi Overseas (P) Ltd.

[82 taxmann.com 300 (Delhi)]

iv. NuPower Renewables (P) Ltd. Vs. ACIT
[104 taxmann.com 307 (Bombay)]

v. South Yarra Holdings v. ITO
[104 taxmann.com 216 (Bombay)]

vi. CMI FPE ltd. Vs. Union of India
[104 taxmann.com 308 (Bombay)]

It was further submitted by the ld. A.R that the A.O while drawing adverse inferences as regards the F&O loss suffered by the assessee and dubbing the same as accommodation entry had lost sight of the fact that in the immediately succeeding year i.e A.Y. 2009-10 the assessee had transacted through the same broker and had earned F&O profits of Rs.2,25,87,840/-. It was further submitted by the ld. A.R that all the F&O transactions were duly supported by the requisite documents i.e bills in relation to F&O loss, contract notes, ledger account of the broker etc., and the genuineness and veracity of the same had not been dislodged much the less doubted by the lower authorities. Ld. A.R in order to fortify his said contention took us through the relevant pages of the assessee‟s paper book (for short "APB"). Rebutting the observation of the A.O that as the aforesaid broker i.e M/s Alliance Intermediaries & Network Pvt. Ltd. was barred by SEBI in 2008 thus, the said fact in itself substantiated that the bills issued by it were bogus, it was stated by the ld. A.R that the said observation of the A.O was based on incorrect facts. It was stated by the ld. A.R that as per information gathered from the public domain records and sites, namely BSE, NSE and SEBI, it stood revealed that the aforesaid broker viz. M/s Alliance Intermediaries & Network Pvt. Ltd. was debarred from trading only w.e.f 23.04.2009. In order to buttress his aforesaid claim the ld. A.R took us through the relevant pages of the assessee‟s paper book (for short „APB‟) i.e Page 191 to 214 wherein the BSE notices and NSE circular were placed. On the basis of the aforesaid facts, it was submitted by the ld. A.R that not only the A.O had wrongly assumed jurisdiction and reopened the case of the assessee under Sec. 147 of the Act, but had even otherwise in absence of any plausible reason most whimsically

held the F&O loss of Rs.11,97,47,626/- as bogus. In the backdrop of the aforesaid facts, it was submitted by the ld. A.R that no infirmity did emerge from the order of the CIT(A) who after duly appreciating the aforesaid facts had vacated the addition/disallowance made in the case of the assessee. At the same time, it was averred by the ld. A.R that the CIT(A) had erred in upholding the jurisdiction assumed by the A.O u/s 147 of the Act.

9. Per contra, the ld. Departmental Representative (for short „D.R") relied on the order of the A.O. It was submitted by the ld. D.R that as it was proved that the assessee had booked bogus F&O loss, the same, thus, was rightly disallowed by the A.O vide his order passed under Sec.147 r.w.s 143(3), dated 01.11.2013. Rebutting the claim of the assessee"s counsel as regards the invalid assumption of jurisdiction by the A.O for reopening the case of the assessee, it was submitted by the ld. D.R that as observed by the CIT(A) no infirmity did therein emerge.

10. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. As the ld. A.R has assailed the validity of the jurisdiction assumed by the A.O for framing the reassessment, therefore, we shall first deal with the said aspect.

11. Original assessment under Sec. 143(3), dated 29.10.2010 was framed in the case of the assessee, wherein after making a disallowance under Sec.14A r.w Rule 8D of Rs.63,66,735/- the A.O had assessed the income of the assessee company at Rs. 4,14,25,800/-. On appeal against the order passed by the A.O u/s 143(3), dated 29.10.2010, the CIT(A) had vide his order dated 05.01.2012 partly allowed the appeal and the assessed income of the assessee company was scaled down to an amount of Rs.3,69,05,065/-. Subsequently, on the basis of information received by the A.O from the DIT(I&CI), New Delhi, vide letter dated 19.03.2013, it was intimated that the data seized in the course of the search and seizure proceedings conducted on

25.11.2009 by the DDIT(Inv.), Unit-1(4), Mumbai under Sec. 132 of the Act in the case of Mahasagar Securities Pvt Ltd. had revealed that the assessee viz. M/s Shradha Tradelinks Pvt. Ltd. was one of the beneficiaries that had obtained accommodation entries of investment in shares of different securities amounting to Rs.12,15,62,252/-, the A.O reopened the concluded assessment of the assessee company u/s 147 of the Act by recording the following „reasons to believe" :

"M/s Shradha Tradelinks Pvt. Ltd.
(PAN : AAFCS1489R), A.Y 2008-09
Reasons for Reopening assessment u/ 147 of the Act.

The assessee filed the return of income for A.Y 2008-09 on 10.09.2008. The return was processed u/s 143(1) of the Act on 11.10.2009.

A search and seizure action u/s 132 of the I.T Act was carried out in the case of M/s Mahasagar Securities (P) Ltd (Now Alag Securities Pvt. Ltd.) by DDIT(Inv.) Unit1(4), Mumbai on 25.11.2009 based on the information that the company and its related companies including M/s Mahasagar Securities (P) Ltd. were engaged in procuring bogus bills of transactions in shares and securities. The directors of these companies were engaged in fraudulent billing activities and in the business of providing bogus share application money, bogus speculation money, bogus speculation profits/loss, short term/long term capital gain/loss for trading in shares and securities and in commodities and had been continuing this business for many years.

During the course of search, from the seized computer data, a list of clients/beneficiaries who have taken entries from the above companies was extracted. It was reported by the DDIT(Inv.), Unit 1(4), Mumbai that transactions entered into by the beneficiaries with the above companies were bogus and these represented the undisclosed income of the beneficiaries. The assessee, M/s Shradha Tradelink Pvt. Ltd. is reported to be one of the beneficiaries appearing in the list forwarded by DIT(Intelligence & Criminal Investigation), New Delhi vide SO DIT(I&CI) Delhi/Mahasagar Group/2012-13 letter dtd. 19/03/2013.

Based on the information, it is found that the assessee has invested in shares of different scripts amounting to Rs. 12,13,67,252/- through the broker concern, M/s Alliance Intermediaries & Network Pvt. Ltd. during the F.Y 2007-08 relevant to A.Y 2008-09.

In view of the above, I am satisfied that the assessee has escaped income to the extent of Rs. 12,15,67,252/- within the meaning of section 147 of the I.T Act, 1961.

Sd/-

(Rajni Rani Roy)
Dy. Commissioner of Income Tax
Circle 7(2), Mumbai."

12. On a perusal of the aforesaid „reasons to believe", we find, that though the A.O had referred to the material/information on the basis of which the case of the assessee was sought to be reopened under Sec. 147 of the Act i.e the information received from the DDIT(Inv.), Unit-1(4), Mumbai, but then, there is nothing discernible therefrom on the basis of which it could be gathered that there was any independent formation of a bonafide belief by the A.O that the income of the assessee chargeable to tax had escaped assessment. In the „reasons to believe" the A.O had observed that as per the information received from the DDIT(Inv.),Unit-1(4), Mumbai, the assessee viz. M/s Shradha Tradelinks Pvt. Ltd. was reported to be one of the beneficiaries of accommodation entries and its name was appearing in the list that was forwarded by the DIT(Intelligence & Criminal Investigation), New Delhi, vide its letter dated 19.03.2013. Based on the aforesaid information, it was stated by the A.O in his „reasons to believe" that the assessee had invested in shares of different scripts amounting to Rs.12,15,67,252/- through a broker concern, M/s Alliance Intermediaries & Network Pvt. Ltd. during the year under consideration. Abruptly thereafter, it is stated by the A.O that in view of the above he was satisfied that the income of the assessee to the extent of Rs. 12,15,67,252/- had escaped assessment within the meaning of Sec. 147 of the Act. On a careful perusal of the „reasons to believe", it can safely be gathered that the A.O had merely referred to the information that was received by him from the DDIT(Inv.), Mumbai, Unit 1(4), Mumbai, and had dispensed with the statutory obligation that was cast upon him as regards formation of an independent and a bonafide belief that the income of the assessee chargeable to tax had escaped assessment. Before adverting any further, we may herein observe that as can be gathered from the reassessment order passed by the A.O u/s 143(3) r.w.s 147, dated 01.11.2013, the DDIT(Inv.), Unit 1(4), Mumbai in his report had further informed the A.O that the assessee had invested in shares of different securities amounting to Rs. 12,15,67,252/- through the broker namely M/s Alliance Intermediate & Net Work Pvt. Ltd. (Mukesh Choksi Group company) during the F.Y 2007-08. In the backdrop of the aforesaid

facts, we find that the A.O in the „reasons to believe" had merely referred to the information that was received by him from the DDIT(Inv.), Unit 1(4), Mumbai a/w that received from DIT(Intelligence & Criminal Investigation), New Delhi, vide letter dated 19.03.2013, and therein dispensing with the statutory obligation that was cast upon him as regards formation of an independent and a bonafide belief that the income of the assessee chargeable to tax had escaped assessment, had reopened the concluded assessment of the assessee company. In sum and substance, a perusal of the aforesaid „reasons to believe" though reveals a reference of the material/information received by the A.O from the DDIT(Inv.)-Unit 1(4), Mumbai on the basis of which the case of the assessee was sought to be reopened, but at the same time it is witnessed by a blatant non-application of mind and failure on the part of the A.O to arrive at an independent and a bonafide belief that the income of the assessee chargeable to tax had escaped assessment. Although, we are not oblivious of the fact that an A.O at the stage of recording the reasons to believe is not required to conclusively establish that the income of the assessee chargeable to tax had escaped assessment, but then, in the case before us we find that the A.O had not even recorded a satisfaction that as per him a case was made out for issuing a notice under Sec. 148 of the Act. At this stage, we would not hesitate to observe that the A.O in the case before us had acted mechanically on the information supplied by the DDIT(Inv.), Unit 1(4), Mumbai that the assessee was a beneficiary of accommodation entries provided by certain companies, and dispensing with the innate obligation cast upon him of applying his own mind for arriving at a bonafide belief that the income of the assessee chargeable to tax had escaped assessment, had therein mechanically reopened the concluded assessment of the assessee company under Sec. 147 of the Act. Our conviction that the A.O had merely acted mechanically on the information received from the DDIT(Inv.), Unit 1(4), Mumbai and without applying his mind to the material/information available before him had reopened the concluded assessment of the assessee company is supported by certain glaring observations of the A.O in the

„reasons to believe". As is discernible from the „reasons to believe", though the A.O had therein stated that the return of income filed by the assessee was processed under Sec. 143(1) on 11.10.2009, but he had absolutely lost sight of the fact that the same was thereafter subjected to a scrutiny assessment under Sec. 143(3), dated 19.10.2010 wherein its income was assessed at an amount of Rs.4,14,25,800/-. Not only that, the material fact that the aforesaid assessment framed by the A.O under Sec.143(3), dated 29.10.2010 for the year in question i.e A.Y 2008-09 was assailed by the assessee before the CIT(A), who had vide his order dated 05.01.2012 partly allowed the appeal, as a result whereof the assessee"s income for the year in question was determined at Rs.3,69,05,065/- had also miserably been lost sight of by the A.O while arriving at the impugned belief that the income of the assessee chargeable to tax had escaped assessment. In the backdrop of the aforesaid material facts which had been lost sight of by the A.O while reopening the concluded assessment of the assessee for the year in question, it can safely be concluded that he had without applying his mind to the material/information received from the external source i.e the DDIT(Inv.), Unit-1(4), Mumbai in the backdrop of its assessment records, had in fact hushed through the matter and mechanically reopened the concluded assessment of the assessee. Apart from that, we find substantial force in the claim of the ld. A.R that the impugned reason for reopening the case of the assessee i.e the investment made by the assessee in shares of different scripts amounting to Rs.12,15,67,252/- through its broker viz. M/s Alliance Intermediaries & Network Pvt. Ltd. during the year in question was in itself factually incorrect and misconceived. Admittedly, it is a matter of fact borne from the record that the assessee had not invested in any shares through the aforesaid broker viz. M/s Alliance Intermediaries & Network Pvt. Ltd. but had carried out F&O transactions which had resulted to a loss of Rs.11,97,47,626/- during the year in question. In the backdrop of the aforesaid facts, we are of a strong conviction that a mere endorsement by the A.O of the information that was shared with him by the DDIT(Inv.)-Unit-1(4), Mumbai, that the assessee had

invested in shares of different scripts amounting to Rs.12,15,67,252/- through its broker viz. M/s Alliance Intermediaries & Network Pvt. Ltd., while for the fact that was clearly discernible from the records of the assessee which had earlier been subjected to scrutiny assessment u/s 143(3), dated 29.10.2010 clearly revealed that the assessee had only carried out F&O transactions through the aforesaid broker, viz. M/s Alliance Intermediaries & Network Pvt. Ltd., therein fortifies our conviction that the A.O had mechanically acted upon the information/material received from the external source i.e DDIT(Inv.),Unit-1(4), Mumbai and had not applied his mind in the backdrop of the assessment records of the assessee, which in our considered view is a sine qua non for formation of a bonafide belief that the income of the assessee chargeable to tax had escaped assessment within the meaning of Sec. 147 of the Act. Last but not the least, though the assessee pursuant to the F&O transactions carried out through its aforesaid broker, viz. M/s Alliance Intermediaries & Network Pvt. Ltd. had suffered a loss of Rs. 11,97,47,626/- however, its case was reopened for the reason that the assessee had invested in shares of different scripts amounting to Rs. 12,13,67,252/- through its broker concern, M/s Alliance Intermediaries & Network Pvt. Ltd., which is factually incorrect. In the backdrop of the aforesaid facts, we find that it can safely be concluded that the A.O on the basis of incorrect and misconceived facts had under Sec. 147 reopened the concluded assessment of the assessee by mechanically acting upon the information that was received by him from the DDIT(Inv.)-Unit-1(4), Mumbai, without applying his mind and consulting the assessment records of the assessee for the year in question, which in our considered view was indispensably required on his part for arriving at a bonafide belief that the income of the assessee chargeable to tax had escaped assessment.

13. In our considered view, if the A.O fails to apply his mind to the material on record for arriving at a bonafide belief that the income of the assessee chargeable to tax had escaped assessment within the meaning of Sec. 147 of the Act then, the reopening of the assessment cannot be held to be justified. Our aforesaid view is fortified by the judgment of the **Hon'ble High Court of**

Bombay in the case of **PCIT Vs. Shodiman Investments (P) Ltd. (2018) 93 taxmann.com 153 (Bom).** In the aforesaid case, it was observed by the Hon"ble High Court that as the „reasons to believe" on the basis of which the case of the assessee was reopened merely indicated information that was received by the A.O from the DDIT(Inv.) about a particular entity entering into suspicious transactions and, that the said material/information was not further linked to any reason by the A.O to arrive at a belief on his part that the income of the assessee chargeable to tax had escaped assessment, the reassessment, thus, not being on the basis of the satisfaction of the A.O but on the basis of a borrowed satisfaction of the DDIT(Inv.) could not be sustained. Also, support is drawn from the judgment of the **Hon'ble High Court of Delhi** in the case of **PCIT Vs. Meenakshi Overseas Pvt. Ltd. (2017) 395 ITR 677 (Delhi)**. In the aforesaid case, the Hon"ble High Court observed that the A.O had proceeded to send a notice u/s 147/148 of the Act solely on the basis of information received from the DIT(Inv.). It was noticed by the High Court that after writing about the nature of the impugned accommodation entry and without mentioning the nature of transaction which was effected for alleged accommodation entry as well as dispensing with the date of recording of the reasons, the A.O, without any further verification, examination or any other exercise had jumped to the conclusion that the assessee had received accommodation entries. The Hon"ble High Court in the backdrop of the facts involved in the case before them had observed that as the crucial link between the information made available by the DIT(Investigation) to the A.O and the formation of belief was absent thus, the reassessment proceeding initiated against the assessee was rightly quashed by the Tribunal. The High Court while concluding as hereinabove observed that while the report of the Investigation Wing might constitute the material on the basis of which the A.O forms the reasons to believe, but the process of arriving at such satisfaction/belief cannot be a mere repetition of the report of the Investigation wing. As observed by the Hon"ble High Court, the reasons to believe must demonstrate link between the tangible material and the formation

of the belief or the reason to believe that the income of the assessee chargeable to tax had escaped assessment. Also a similar view was earlier taken by the **Hon'ble High Court of Delhi** in the case of **PCIT Vs. G & G Pharma India Ltd. (2016) 384 ITR 147 (Del)**. In the case before the Hon"ble High Court, it was observed that the A.O in his reasons to believe after setting out four entries which were stated to have been received by the assessee on a single date i.e 10th February, 2003 from four entities which were termed as accommodation entries, which information was received from the Directorate of Investigation, had therein stated : "I have also perused various materials and report from Investigation Wing and on that basis it is evident that the assessee company has introduced its own unaccounted money in its bank account by way of above accommodation entries." In the backdrop of the aforesaid facts, it was observed by the Hon"ble High Court that it could not be gathered that as to whether the A.O had applied his mind to the material that he talks about since he did not describe what those material was. Observing, that without forming a prima facie opinion, on the basis of the aforesaid material, it was not possible for the A.O to have simply concluded that it was evident that the assessee company had introduced its own unaccounted money in its bank by way of accommodation entries. Accordingly, the High Court was of the view that as the basic requirement that the A.O must apply his mind to the material in order to have reasons to believe that the income of the assessee had escaped assessment was missing, the reopening of the assessment was not justified. Further, we find that the **Hon'ble High Court of Delhi** in the case of **PCIT Vs. RMG Polyvinyl (I) Ltd. (2017) 396 ITR 5 (Del)**, relying on its earlier order in the case of Meenakshi Overseas Pvt. Ltd. (supra) had observed, that as the A.O in the case before them had merely acted upon the information received from the Investigation Wing without undertaking any further enquiry on his part thus, the link between the tangible material and the formation of the reasons to believe that the income of the assessee had escaped assessment was not discernible therefrom and accordingly the reopening of the assessment u/s 147 was to be held as bad in law. Further, in

the case of **CIT Vs. SFIL Stock Broking Ltd. (2010) 325 ITR 285 (Del)** it was inter alia observed by the Hon"ble High Court that in the case before them the A.O had received information from the Dy. Director of IT (Inv.), Gurgaon that the assessee had raised a bogus claim of having earned long-term capital gains on account of sale/purchase of shares by obtaining entries. After deliberating on the facts, it was inter alia observed by the Hon"ble High Court that a mere reference to the information received from the Dy. Director of IT (Inv.) cannot constitute valid reasons for initiating reassessment proceedings in the absence of anything to show that the A.O had independently applied his mind to arrive at a belief that income has escaped assessment. Also in the case of **CIT Vs. Kamdhenu Steel & Alloys Ltd. & Ors. (2014) 361 ITR 220 (Del)**, it was observed by the High Court that where the A.O had acted mechanically on the information supplied by the Directorate of IT(Inv.) about the alleged bogus/accommodation entries provided by certain individuals/companies without applying his own mind, he was not justified in invoking his jurisdiction under Sec. 147 of the Act.

14. In the backdrop of our aforesaid deliberations, we find, that in the case of the assessee before us, the A.O in his „reasons to believe" had merely referred to the information that was received by him from the DDIT(Inv.), Mumbai that the assessee as a beneficiary had received accommodation entries, and therein dispensing with the innate statutory obligation cast upon him of carrying out necessary verification, examination or any other exercise after consulting the assessee"s assessment record for the year in question, had jumped to the conclusion that the income of the assessee in respect of the alleged accommodation transactions had escaped assessment. Accordingly, in the backdrop of the aforesaid factual matrix we hold a strong conviction that the A.O had mechanically acted upon the information received from the DDIT(Inv.), Unit 1(4), Mumbai, and without even doing the bare minimum i.e consulting the assessment records of the assessee for the year in question as was indispensably required on his part for arriving at a bonafide

belief that the income of the assessee chargeable to tax had escaped assessment therein reopened its concluded assessment.

15. On the basis of our aforesaid observations, we are of a strong conviction that as the A.O had failed to independently apply his mind to the „material" available on his record and mechanically acting on the information supplied by the Directorate of Income-tax (Inv.) had on the basis of incomplete and incorrect facts reopened the case of the asseessee u/s 147 of the Act. We, thus, not being able to persuade ourselves to subscribe to the view taken by the CIT(A) that the A.O had validly assumed jurisdiction u/s 147 of the Act therein „set aside" his order to the said extent. Accordingly, in the absence of valid assumption of jurisdiction by the A.O u/s 147 of the Act, the consequential assessment framed by him u/s 143(3) r.w.s 147, dated 29.03.2015 cannot be sustained and is quashed.

16. Although we have quashed the reassessment framed by the A.O u/s 143(3) r.w.s 147, dated 01.11.2013 for want of jurisdiction on his part however, for the sake of completeness we herein being guided by the judgment of the **Hon'ble High Court of Madras** in the case of **CIT Vs. Ramdas Pharmacy (1970) 77 IR 276 (Mad)** therein deal with the merits of the case. On merits, it was averred by the ld. A.R that as the assessee in the course of the assessment proceedings had on the basis of supporting documentary evidence proved to the hilt the authenticity of its claim of having suffered F&O loss of Rs.11,97,47,626/- during the year in question, the A.O, thus, was not justified in rejecting the same and treating the transactions in question as bogus and accommodation entries. As is discernible from the records, we find that it is a matter of fact borne from the record that the assessee on the basis of supporting documentary evidence i.e bills in relation to F&O loss; contract notes; ledger account of the broker in the books of account of the assessee; ledger account of the assessee in the books of account of its broker viz. M/s Alliance Intermediaries & Network Pvt. Ltd; bank statement etc. had duly substantiated the F&O transactions which had

resulted to a loss of Rs.11,97,47,626/- during the year in question. Also, as is discernible from the orders of the lower authorities, the genuineness and veracity of the aforesaid documentary evidences had not been doubted much the less dislodged by the lower authorities. Ld. A.R during the course of hearing of the appeal had taken us through the aforesaid documentary evidences forming part of the assessee"s „Paper Book" (for short „APB") which were filed before the lower authorities. On a perusal of the aforesaid details, we find that the assessee had placed on record the complete set of broker bills in relation to F&O loss of Rs. 11,97,47,626/-, Page 32-188 of APB. As is discernible from the broker bills the complete contract specifications, contract note nos. and dates, order nos., trade nos., trade time etc. duly signed and bearing the stamp of the broker are therein mentioned. On a perusal of the assessment order, we find that the A.O had at no stage pointed out any infirmity in the aforesaid broker bills that were filed in the course of the assessment proceedings before him. As is discernible from the assessment order, the A.O had challenged the validity of the brokers bills on the standalone basis that those were issued by the broker, viz. Alliance Intermediaries & Network Pvt. Ltd at a time when it was debarred from trading. Insofar the aforesaid observation of the A.O is concerned the sustaininability of the same shall separately be dealt with by us hereinafter. Also, no infirmity had been pointed out by the A.O as regards the other documentary evidences which were produced by the assessee in support of its aforesaid claim of F&O loss viz. contract notes; ledger account of the broker in the books of account of the assessee; ledger account of the assessee in the books of account of its broker viz. M/s Alliance Intermediaries & Network Pvt. Ltd.; bank statement etc. In fact, the primary reason that had weighed with the A.O for treating the F&O transactions carried out by the assessee though its broker, viz. M/s Alliance Intermediaries & Network Pvt. Ltd. as bogus accommodation transactions was the statement of Shri. Mukesh Choksi, director of Mahasagar Securities Pvt. Ltd. that was recorded u/s 132(4) in the course of search proceedings, wherein it was stated by him that he had issued bogus bills

through M/s Alliance Intermediaries & Network Pvt. Ltd and its other group entities. But then, we find that in no part of his statement recorded u/s 132(4) the aforesaid person, viz. Shri. Mukesh Choksi (supra) had ever stated that bills issued by M/s Alliance Intermediate & Network Pvt. Ltd. as regards the F&O transactions of the assessee before us i.e M/s Shradha Trade Link Pvt. Ltd. were bogus or accommodation bills. As a matter of fact borne from the records, nothing is discernible from the statement of Shri. Mukesh Choksi (supra) which would justify characterising of the F&O transactions carried out by the assessee through the aforesaid broker, viz. M/s Alliance Intermediaries & Network Pvt. Ltd. as a bogus or accommodation transactions. As can be gathered from the reassessment order, the A.O had merely acted upon the information shared by the DDIT(Inv.), Unit 1(4), Mumbai and on the said standalone basis had held the assessee as a beneficiary of the bogus or accommodation entries from M/s Alliance Intermediaries & Network Pvt. Ltd.

17. We are unable to persuade ourselves to subscribe to the view taken by the A.O, wherein adopting a predetermined approach he had discarded the documentary evidences that were furnished by the assessee in support of the authenticity of the F&O transactions, and had without giving any cogent reason held the same as bogus and accommodation transactions. As is discernible from the order of the CIT(A), we find that he had taken cognizance of the fact that the assessee in the course of the assessment proceedings had on the basis of supporting documentary evidences substantiated the authenticity of the F&O transactions, which however were not accepted by the A.O without any whisper of rebuttal or dislodging of the same. Also, the view taken by the A.O that the broker, viz. M/s Alliance Intermediaries & Network Pvt. Ltd. had issued bills to the assessee during the year in question despite having been debarred from trading was found by the CIT(A) to be factually incorrect and misconceived. Accordingly, the CIT(A) after deliberating at length had found favour with the claim of the assessee that it had carried out genuine F&O transactions and suffered the resultant loss during the year in question, observing as under:

"4. Now coming to ground no.11, the appellant was asked to substantiate his position on the disallowance made by the AO. In response, the appellant has made detailed submission as reproduced above. It is noted that in statement referred by the AO, there is no reference to the transaction in question or neither any specific reference to the appellant. Therefore, it appears that the Ld.AO reopened case on the basis of general statement. The facts mentioned by the AO for reopening case are also not specific to the transactions by assessee, as already discussed above such as the appellant is actually engaged in F&O and has not purchased any shares and securities and even amount mentioned therein are different. Looking into the entirety of the fact of the case, it is noted that the appellant has submitted various evidences during the course of assessment proceeding including copies of bills, ledger accounts in the clients book as well as in assessee's accounts in the books of Alliance Intermediaries and Network Pvt. Ltd. All payments are made by account payee cheques duly acknowledged by Alliance Intermediates Ltd. In the original assessment, the transactions are duly accepted under scrutiny assessment. The AO however, in the reassessment proceedings has not accepted the submission of the appellant without rebutting any of evidence submitted by the appellant during the reassessment proceedings. Books of accounts are also accepted by the AO. There is no evidence of any cash return by the broker to the appellant. Thus, evidences submitted by the appellant in support of his contention stand unrebutted by the AO.

4.1 The AO in the order has mentioned that M/s. Alliance Intermediaries Ltd. was barred from trading in 2008. In this connection the appellant duly pointed to the statement reproduced of Mr. Choksi in the assessment order that as per statement itself bills were issued as membership was in force. Further, the appellant submitted information available in public domain that M/s. Alliance Intermediaries is actually debarred from trading w.e.f. 23/04/2009 and not in this year. The appellant **has** also relied on various case laws in the submission made and during assessment proceeding which was deleted by Hon"ble ITAT/High Court, wherein the AO"s made addition on the basis of statement given by Shri Mukesh Choksi. Looking into the entirety of the facts of the case, I am of the opinion that, since the appellant has submitted complete evidences in support of the transactions which are not disputed/ rebutted by the AO and the addition has been made only on the basis of one general statement against specific proved transactions as per relevant documents and books of account. Therefore, the addition made by the AO cannot be sustained."

We have perused the order of the CIT(A) and concur with the view taken by him that though the assesseee had submitted various evidences to substantiate the authenticity of the F&O transactions, viz. copies of bills, ledger accounts in the clients book as well as the assessee"s account in the books of its broker, viz. M/s Alliance Intermediaries & Network Pvt. Ltd, and the fact that all the payments were made by the assessee to the aforesaid broker by account payee cheques and the same had duly been acknowledged by the latter, however, the A.O without rebutting the genuineness and veracity of the said documentary evidences had in the reassessment proceedings

without giving any reason held the F&O transactions in question as bogus and accommodation entries. Also, we are in agreement with the view taken by the CIT(A) that though the A.O in the course of the original assessment proceedings had vide his order passed u/s 143(3), dated 29.10.2010 accepted the F&O transactions, however, in the course of the reassessment proceedings he had without rebutting any of the evidence that was filed by the assessee in support of the authenticity of the transactions in question had declined to accept the same. We also concur with the view taken by the CIT(A) that in the course of the reassessment proceedings neither any material evidencing obtaining of bogus or accommodation entries by the assessee from its broker, viz. M/s Alliance Intermediaries and Network Pvt. Ltd. had surfaced nor there is any evidence of any cash returned by the broker to the assessee in lieu of the payments made by it through account payee cheques w.r.t the F&O loss to the said broker. As such, we are persuaded to subscribe to the view taken by the CIT(A) that the documentary evidences that were filed by the assessee in support of the genuineness and veracity of its F&O transactions and also the loss arising therefrom stands unrebutted by the A.O. In fact, we would not hesitate to observe that the A.O in the course of the reassessment proceedings had not even raised any doubt as regards the authenticity of the documents that were filed by the assessee in support of the F&O transactions in question. Accordingly, in the backdrop of our aforesaid observations, we are of the considered view that the CIT(A) had rightly concluded that as the assessee had submitted complete evidences in support of its F&O transactions which had not been disputed/rebutted by the A.O thus, the addition made on the basis of the general statement of Shri Mukesh Choksi (supra) as against the specific proved transactions cannot be sustained and had rightly been vacated by the CIT(A). Our aforesaid view that an admission of the aforementioned Shri. Mukesh Choksi, key person of Mahasagar Securities Pvt. Ltd. in his statement recorded under Sec. 132(4) of the Act that his group was engaged in providing accommodation entries would not on a standalone basis suffice for concluding that every transaction carried

out through the group entities of the aforesaid person were to be held as ingenuine transaction is supported by the order of the **Hon'ble High Court of Gujarat** in the case of **PCIT-3 Vs. Vineet Sureshchandra Agarwal [Tax Appeal No. 645 of 2017, dated 04.09.2017]**. In its aforesaid order, the Hon"ble High Court had observed that as the assessee had on the basis of supporting documentary evidence substantiated the genuineness of the transactions in shares carried out through the aforesaid group entities of Shri. Mukesh Choksi (supra) thus no infirmity did arise from the order of the Tribunal. Similarly in the case of **ITO, Ward 14(2), Hyderabad Vs. Shri K. Ramakrishna Reddy [ITA No. 1614/Hyd/2017; dated 29.05.2018]**, the Tribunal observed that as the assessee on the basis of documentary evidence had substantiated the authenticity of LTCG arising from share transactions carried out through M/s Alliance Intermediaries and Network Pvt. Ltd. ,therefore, the CIT(A) had rightly vacated the addition that was made by the A.O by treating the transaction in question as a bogus transaction on the standalone basis that information was received by him from the office of the Chief Commissioner of Income-tax, Mumbai that M/s Alliance Intermediaries & Network Pvt. Ltd., one of the group companies of Shri. Mukesh Choksi (supra) and its other group entities had provided accommodation entries to various persons including the assessee. Involving identical facts, we find that the ITAT, Mumbai „J" Bench in the case of **Kamla Devi S. Doshi & Ors. Vs. ITO, ITA No. 1957/Mum/2015; dated 22.05.2017** had observed that as the assessee on the basis of supporting documentary evidence had established the genuineness of the purchase and sale of shares that was carried out through M/s Alliance Intermediaries & Network Pvt. Ltd (an entity of Shri. Mukesh Choksi group) therefore, no adverse inferences as regards the genuineness of the said share transactions was liable to be drawn. Also, the ITAT, Mumbai in the case of viz. **(i). Ashok T Shah Vs. ITO-33(1)(1), Mumbai, ITA No. 4318/Mum/2016**; and **(ii). ITO 31(2)(2) Vs. Smt. Kalpana M. Ruia, ITA No. 4130-4131/Mum/2015; dated 16.11.2018**, had taken a similar view and observed that now when the assessee"s in the cases before

them had substantiated the genuineness and veracity of the share transactions then, no adverse inference could justifiably be drawn by merely relying on the statement of Shri. Mukesh Choksi (supra).

18. We shall now advert to the observation of the A.O that as M/s Alliance Intermediaries & Network Pvt. Ltd. was barred from trading and its registration was cancelled, it, thus, proved beyond doubt that all the transactions of M/s Alliance Intermediaries & Network Pvt. Ltd. in question were bogus and accommodation transactions. Before us, it was submitted by the ld. A.R that the A.O had arrived at the aforesaid observation on the basis of absolutely incorrect and misconceived facts. Taking us through the submissions made before the CIT(A), it was submitted by the ld. A.R that information gathered from various public domain records and sites namely BSE, NSE and SEBI revealed viz. (i). that as per BSE notice no. 20090423-20, dated 23.04.2009 (which referred to SEBI order dated 23.04.2009), M/s Alliance Intermediaries and Network Pvt. Ltd. was one of the entity that was debarred from trading w.e.f 23.04.2009; (ii). that as per BSE notice No. 20090424-2, dated 24.04.2009 (being a corrigendum to notice no. 20090423-20, dated 23.04.2009 M/s Alliance Intermediaries & Network Pvt. Ltd. was debarred from trading w.e.f 23.04.2009); and (iii). NSE Circular No. NSE/Inv/2009/341, dated 27.08.2009 in the matter of Pyramid Saimira Theatre Ltd. which referred to SEBI order no. WTM/KMA/60/04/2009, dated 23.4.2009, M/s Alliance Intermediaries and Network Pvt. Ltd. was debarred from trading w.e.f 23.04.2009. On the basis of the aforesaid facts, we find substantial force in the claim of the ld. A.R that as the broker in question, viz. M/s Alliance Intermediaries & Network Pvt. Ltd. was debarred from trading only w.e.f 23.04.2009 therefore, no adverse inferences as regards its transactions carried out during the year under consideration i.e the period relevant to A.Y 2008-09 were liable to be drawn. On a perusal of the order of the CIT(A), we find that it was observed by him that Shri. Mukesh Choksi (supra) in his statement recorded u/s 132(4) (as reproduced in the body of the assessment order) had himself admitted that the bills were issued by him as membership

was at the relevant point of time in force. In the backdrop of the aforesaid facts, we concur with the view taken by the CIT(A) that now when the broker, viz. M/s Alliance Intermediaries & Network Pvt. Ltd. was debarred from trading only w.e.f 23.04.2009 therefore, no adverse inferences as regards the bills issued by it during the year in question viz. A.Y 2008-09 were liable to be drawn.

19. We shall now deal with the alternative claim of the ld. A.R that in case the F&O transactions carried out by the assessee during the year in question i.e A.Y 2008-09 through its broker, viz M/s Alliance Intermediaries & Network Pvt. Ltd. were to held as bogus and the resultant F&O loss of Rs. Rs.11,97,47,626/- was to be disallowed then, adopting a uniform approach the F&O profits of Rs.2,25,87,840/- earned by the assessee in the immediately succeeding year i.e A.Y 2009-10 from transactions carried out through the same broker, viz. M/s Alliance Intermediaries & Network Pvt. Ltd. that was offered by it in its return of income for A.Y 2009-10 was also liable to be excluded from its total income for the said subsequent year. We have given a thoughtful consideration and are of a strong conviction that the fact that the assessee during the immediately succeeding year i.e A.Y 2009-10 had earned F&O profit of Rs. 2,25,87,840/- from transactions carried out through the same broker, viz. M/s Alliance Intermediaries & Network Pvt. Ltd., therein supplements the factum of genuineness of the F&O transaction carried out by the assessee during the year in question which had resulted to a loss of Rs. 11,97,47,626/- in its hands. Be that as it may, we are of the considered view that as the assessee had in the course of the reassessment proceedings by drawing support from clinching documentary evidences substantiated the authenticity of the F&O transactions carried out through the aforesaid broker, viz. M/s Alliance Intermediaries & Network Pvt. Ltd., which had not been dislodged or disproved by the revenue therefore, the CIT(A) had rightly observed that no adverse inference as regards the authenticity of such F&O transactions and the resultant loss of Rs. 11,97,47,626/- could have been drawn in the hands of the assessee. We, thus, concur with the view taken by

the CIT(A) insofar the merits of the case are concerned and uphold his order to the said extent.

20. The appeal i.e ITA No. 656/Mum/2016 of the revenue is dismissed, while for the Cross-objection i.e C.O No. 323/Mum/2017 of the assessee is allowed.

Order pronounced in the open court on 08/04/2021.

Sd/-	Sd/-
Shamim Yahya	Ravish Sood
(ACCOUNTANT MEMBER)	(JUDICIAL MEMBER)

Mumbai, Date: 08.04.2021
PS: Rohit

Copy of the Order forwarded to :
1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "E" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

Dy./Asst. Registrar
ITAT, Mumbai.