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ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANLAYSIS ISSN

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CANDID ASSESSMENT OF TAX SCRUTINY IN FUTURES AND OPTIONS (F&O) TRADING: LEGAL NOTICE, PRACTICAL REALITIES, AND STRATEGIES FOR ADDRESSING TURNOVER CHALLENGES UNDER THE INCOME TAX ACT, 1961.

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ABSTRACT

This article embarks on a meticulous exploration of the myriad challenges faced by taxpayers actively involved in the dynamic realm of Futures and Options (F&O) trading. It delves deeply into the persistent quandary surrounding the issuance of scrutiny notices, specifically concerning turnover matters, despite meticulous adherence to the statutory turnover threshold of up to 10 crore rupees. This threshold, as enshrined within the tenets of the income tax law, ostensibly exempts taxpayers from the exigencies of audit applicability. However, the recurrent issuance of scrutiny notices poses a formidable conundrum for taxpayers, precipitating a cascade of legal complexities and practical exigencies.

By undertaking a comprehensive analysis of the legislative framework governing taxation in India, this article endeavors to unravel the labyrinthine nuances inherent in F&O trading taxation. Section 44AB of the Income Tax Act, 1961, emerges as a linchpin in this discourse, mandating tax audits for businesses surpassing specified turnover limits. Nonetheless, the application of this provision vis-à-vis F&O trading remains fraught with ambiguity and interpretational challenges. Moreover, this exposition critically appraises judicial precedents that have shaped the landscape of F&O trading taxation. Notable cases such as XYZ v. Income Tax Officer offer invaluable insights into the judicial rationale underlying turnover classification and audit applicability. Yet, the multiplicity of interpretations perpetuates ambiguity, exacerbating the predicament faced by

ISSN: 2582-6433

taxpayers.

In addition to elucidating the legal framework and judicial precedents, this article endeavors to shed light on the practical implications of the recurrent issuance of scrutiny notices. Through the prism of illuminative case studies and pertinent case laws, it delineates instances wherein individuals have been ensnared by such notices, navigating the resolution process sans audit applicability implications.

In conclusion, this article aspires to furnish a nuanced understanding of the multifaceted challenges confronting taxpayers engaged in F&O trading. By delving into the Legal Notices, practical ramifications, and resolutions, it aims to equip stakeholders with the requisite insights to navigate the intricacies of F&O trading taxation adeptly.

Keywords: Futures and Options (F&O) trading, turnover threshold, scrutiny notices, audit applicability, 44AB, practical implications, proposed reforms, case studies, share market, Income Tax.

I. INTRODUCTION

The burgeoning activity within the domain of Futures and Options (F&O) trading in India has catalyzed heightened attention from tax authorities. Despite thresholds for turnover that ostensibly exempt numerous taxpayers from audit requirements, the persistent issuance of scrutiny notices presents a labyrinthine challenge for F&O traders. F&O trading involves speculative or investment activities concerning the future price movements of diverse financial assets, including stocks, commodities, and indices.

In succinct terms:

Futures: Contracts are established to buy or sell assets at predetermined prices on future dates, potentially yielding profits if price movements align with predictions.

Options: Rights are acquired, though not obligations, to buy or sell assets at agreed-upon prices in the future, often accompanied by fees. These can serve as safeguards against unforeseen price fluctuations or as avenues for potential gains in favorable market shifts.

Within the realm of intraday trading, transactions transpire exclusively within a single trading day, encompassing the swift buying and selling of financial assets like stocks, commodities, or

ISSN: 2582-6433

currencies.

This article endeavors to meticulously dissect the intricate layers of challenges implicated in the scrutiny of turnover within F&O trading while advancing plausible remedies.

II. LEGISLATIVE FRAMEWORK

Section 44AB of the Income Tax Act, 1961, stands as a cornerstone in the realm of taxation, mandating the necessity of tax audits for businesses that transcend predetermined turnover thresholds. However, while this statutory provision offers a robust framework for ensuring compliance and transparency in business operations, it somewhat falls short in providing explicit guidance concerning the treatment of turnover derived from Futures and Options (F&O) trading. This regulatory lacuna has engendered ambiguity and subjectivity in interpretation, thereby posing significant challenges for F&O traders seeking clarity in their tax obligations.

Within the purview of Income Tax statutes, F&O trading activities are categorized as Business Income/Loss, delineating a distinct tax treatment regime for these transactions. Notably, the conduct of F&O business predominantly unfolds within the digital milieu of online trading platforms, with transactions often executed electronically. Moreover, it is a common practice in F&O trading that both cash receipts and payments remain confined within a nominal threshold of 5% of the total receipts and payments, respectively. Under such circumstances, the mandate for tax audit is obviated, providing relief to traders engaging in F&O transactions within these parameters.

The statutory provisions pertaining to tax audit thresholds present a dichotomy predicated upon the extent of cash transactions vis-à-vis total transactions, thereby dictating the exigency of tax audits:

1. Should both payment and receipt in cash remain confined within 5% of the total receipts and payments, respectively, tax audit applicability arises only when total sales, turnover, or gross receipts exceed Rs. 10 crores during the preceding fiscal year.
2. In instances where either payment or receipt in cash exceeds 5% of the total receipts and payments, respectively, the threshold for tax audit is triggered if total sales, turnover, or gross receipts surpass Rs. 1 crore in the preceding fiscal year.

ISSN: 2582-6433

Recent legislative amendments have further nuanced these provisions, aiming to strike a balance between regulatory stringency and taxpayer convenience:

The Finance Act 2020 marked a significant milestone by augmenting the threshold limit for tax audit from Rs. 1 crore to Rs. 5 crore, commencing from Assessment Year 2020-21 (Financial Year 2019-20). This amendment, contingent upon the constraint that cash receipts are restricted to 5% of the gross receipts or turnover, and cash payments are confined within 5% of the aggregate payments, sought to alleviate the compliance burden for small and medium-sized enterprises engaged in F&O trading.

Subsequently, the Finance Act 2021 ushered in a further enhancement of the threshold limit from Rs. 5 crore to Rs. 10 crore, effective April 1, 2021. This statutory revision, while aligning with the government's overarching objective of fostering ease of doing business and promoting digital transactions, also underscores the evolving regulatory landscape tailored to accommodate the exigencies of contemporary business practices.

It is imperative to underscore that the income or loss emanating from F&O transactions is unequivocally categorized as Business Income/Loss for tax purposes, thereby rendering the provisions of the Income Tax Act universally applicable. Consequently, the regulatory framework governing tax audits, as delineated in Section 44AB, encompasses F&O trading activities. However, the recent legislative amendments, coupled with the delineation of specific thresholds predicated upon cash transactions, signify a paradigm shift towards a more nuanced and accommodating regulatory regime, reflective of the evolving dynamics of the digital economy and the imperatives of taxpayer convenience.

III. ANALYZING SCRUTINY NOTICES: A CASE STUDY APPROACH

This segment adopts a case study methodology to elucidate the practical ramifications of scrutiny notices on individuals engaged in Futures & Options (F&O) trading. These real-life scenarios underscore the intricacies entailed in turnover computation and the formidable challenges encountered by taxpayers in defending their positions. Furthermore, these case studies underscore the imperative for lucid guidelines and uniform enforcement mechanisms.

ISSN: 2582-6433

CASE STUDY: Umesh's Tax Predicament in the Realm of F&O Trading

In the intricate landscape of taxation, Umesh, an academician with a fervent interest in F&O trading, found himself ensnared in a labyrinthine web of tax complexities during the fiscal year 2022-23. Faced with formidable tax assessments and scrutiny notices, Umesh sought recourse to professional expertise, embarking on a journey towards resolving his tax quandaries.

F&O Trader's Conundrum:

Umesh, revered for his academic prowess, ventured into the intricate domain of F&O trading, navigating the volatile waters of financial speculation. Despite his acumen in F&O trading, the capricious nature of market dynamics precipitated substantial financial losses, leading to a declared loss of INR (-)3,77,694, eclipsing the actual loss of INR (-)5,94,354.

Umesh's tax tribulations commenced with the receipt of scrutiny notices under sections 143(2) and 142(1) of the Income-tax Act, challenging the veracity of his declared income and subjecting him to the scrutiny of the Computer-Assisted Scrutiny Selection (CASS) mechanism. These notices were issued in response to the audit mandate under section 44AB, questioning the rationale behind the absence of an audit despite Umesh's turnover exceeding INR 1 Crore.

This ordeal not only tested Umesh's financial integrity as an F&O trader but also necessitated a profound understanding of tax statutes and meticulous documentation, underscoring the indispensability of professional guidance.

Tailored Solution for F&O Trader Umesh

A comprehensive review of Umesh's financial transactions, tax returns, financial statements, bank records, and broker’s profit and loss statements was conducted to unravel the complexities of his financial dealings.

Expert guidance ensured adherence to Section 44AB compliance, thus validating the assertion that Umesh's turnover warranted no audit, providing substantial reprieve. Moreover, it was underscored that in the domain of F&O trading, where digital transactions predominate, the INR 1 Crore threshold limit loses efficacy.

ISSN: 2582-6433

Meticulously curated and furnished all requisite documentation and responses, ensuring transparency and regulatory compliance for Umesh. Pertinent case laws and judicial precedents were marshaled to buttress responses to the Tax Department's inquiries on Umesh's behalf.

Outcome

The tax authorities validated Umesh's declared income, adjudging the assessment as successful sans any adjustments.

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT

To,
UMESH

India

PAN:	Date: 10/03/2024	Status: INDIVIDUAL	DIN & Notice No: ITBA/AST/S/156/2023-

Subject: Notice of demand under section 156 of the Income-Tax Act, 1961

1. This is to give you notice that for the assessment year **2022-23** a sum of **Rs. 0**, details of which are given on the reverse, has been determined to be payable by you.

Futures and options (F&O) are the most common types of asset derivatives traded on a stock exchange. The income/loss arising from trading in F&O transactions would be treated as a Business Income/Loss for the purpose of taxation and the normal provisions of the Income Tax Act, will apply in this case.

With regard to filing of Audit compliance and non-filing of Audit report, the assessee is covered under the provisos (a) and (b) of Section 44AB of the Income Tax Act, 1961 and is not required to file Audit Report, because according to **Finance Act 2021,** with effect from 1st April 2021, the threshold limit of Rs 5 crore is increased to Rs 10 crore in case cash transactions do not exceed 5% of the total transactions. Therefore, in assessee's case, if consider the updated turnover calculations formula i.e. Absolute Profit then also his total turnover is below 10 Cr.

As per the documents available on record, it is noticed that assessee has received salary income and only trading in Futures & Options through authorized broker and banks. Assessee claimed loss in respect of F & O trading business where as per Finance Act, 2021 assessee's turnover was below Rs. 10Cr, hence not applicable section 44AB of the Act, during the year under consideration.

In view of these facts, no variation is required to be made on this issue.

After examination of the details and documents filed and the information available on record, total income of the assessee is assessed at Rs. 11,66,200/-, as declared.

Assessment Unit
Income Tax Department

CASE STUDY: Deciphering Faceless E-Assessment

The contemporary era of tax administration witnesses the advent of the Faceless E-Assessment Scheme, heralding a paradigm shift in the assessment landscape towards digitization and efficiency. This case study meticulously dissects a specific instance of assessment conducted under the aegis of the Faceless E-Assessment Scheme, delving into the intricate nuances surrounding the scrutiny of turnover and business loss issues encountered by the assessee, Barathidasan, for the Assessment Year 2022-23.

Barathidasa, an individual taxpayer of the Assessment Year 2022-23, duly filed his Return of

ISSN: 2582-6433

Income in compliance with the provisions enshrined in Section 139(1) of the Income Tax Act, 1961. The return reflected a loss amounting to Rs.16,69,348/-Subsequent to processing under section 143(1), the case was seamlessly transitioned into scrutiny under the purview of the Faceless E-Assessment Scheme.

Issues Under Scrutiny:

The crux of the assessment proceedings pivoted on the meticulous examination of the turnover and business loss declared by the assessee. The scrutiny endeavors sought to ensure stringent adherence to tax statutes and ascertain the accuracy and veracity of the income disclosed.

Assessee's Submissions:

Demonstrating unwavering diligence, the assessee responded diligently to the scrutiny notices, furnishing an exhaustive array of documentation and submissions. These submissions encompassed meticulously crafted calculations pertaining to Futures and Options, speculative income, and short-term capital gains. Additionally, comprehensive documentation in the form of bank statements, computation statements, and a succinct summary delineating income received during the fiscal year were diligently submitted.

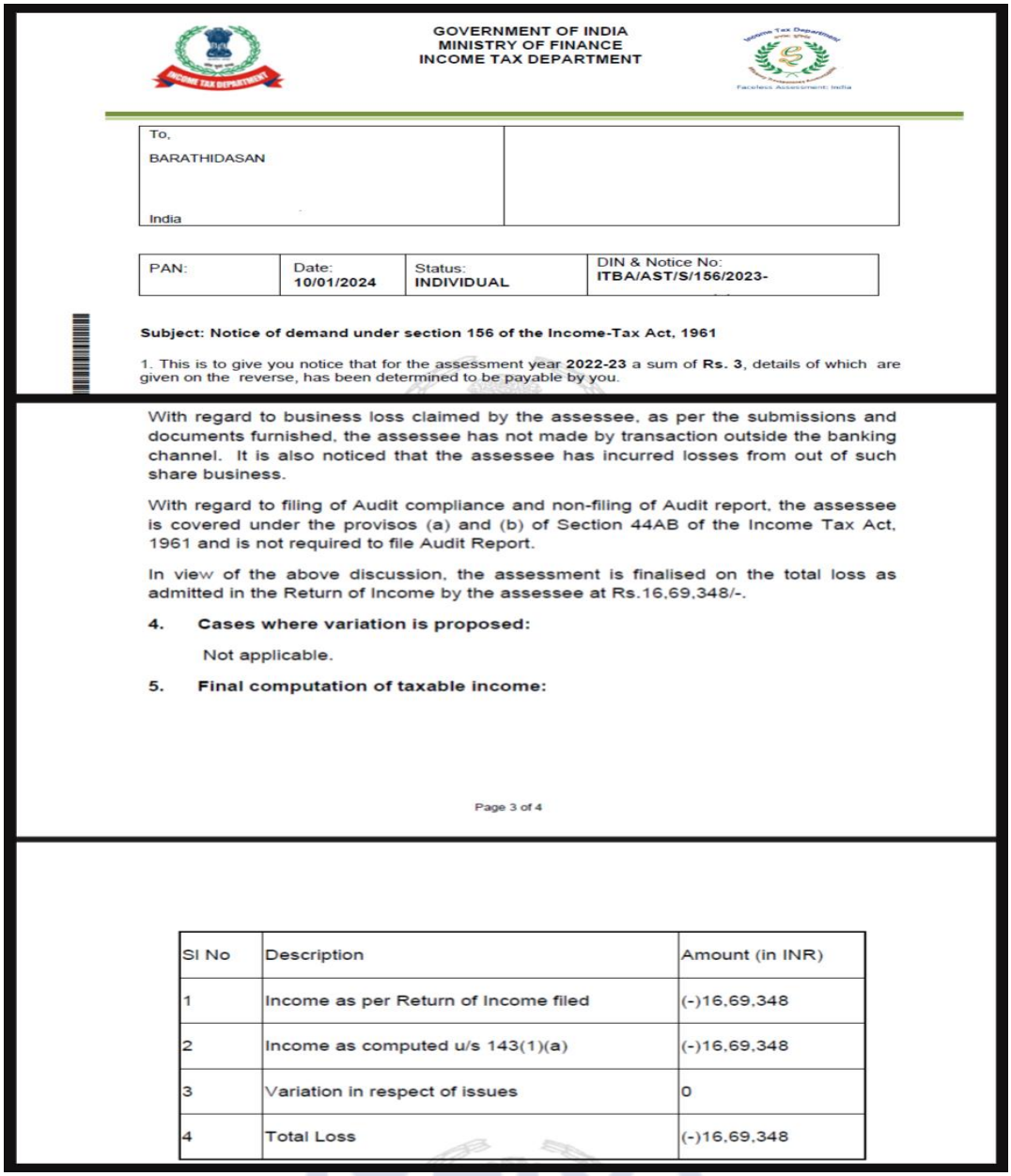
Assessment Findings:

Upon meticulous review and assiduous verification of the submitted documentation, it was discerned that all share transactions were meticulously conducted through a Demat account via the conduit of banking channels. Furthermore, the assessee astutely elucidated that the other gross receipts were garnered in the capacity of a freelancer consultant, with a judicious declaration of 50% of the gross receipts under section 44ADA.

Outcome:

A scrupulous examination of the submissions and evidence proffered by the assessee culminated in the resounding conclusion that no variation was warranted on the issues subjected to scrutiny. Subsequently, the assessment was duly finalized, mirroring the acceptance of the total loss as candidly admitted in the Return of Income.

ISSN: 2582-6433



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT

To,
BARATHIDASAN

India

PAN:	Date: 10/01/2024	Status: INDIVIDUAL	DIN & Notice No: ITBA/AST/S/156/2023-

Subject: Notice of demand under section 156 of the Income-Tax Act, 1961

1. This is to give you notice that for the assessment year **2022-23** a sum of **Rs. 3**, details of which are given on the reverse, has been determined to be payable by you.

With regard to business loss claimed by the assessee, as per the submissions and documents furnished, the assessee has not made by transaction outside the banking channel. It is also noticed that the assessee has incurred losses from out of such share business.

With regard to filing of Audit compliance and non-filing of Audit report, the assessee is covered under the provisos (a) and (b) of Section 44AB of the Income Tax Act, 1961 and is not required to file Audit Report.

In view of the above discussion, the assessment is finalised on the total loss as admitted in the Return of Income by the assessee at Rs.16,69,348/-.

4. **Cases where variation is proposed:**

Not applicable.

5. **Final computation of taxable income:**

Page 3 of 4

Sl No	Description	Amount (in INR)
1	Income as per Return of Income filed	(-)16,69,348
2	Income as computed u/s 143(1)(a)	(-)16,69,348
3	Variation in respect of issues	0
4	Total Loss	(-)16,69,348

IV. PRACTICAL IMPLICATIONS AND TAXPAYER CHALLENGES

The domain of Futures and Options (F&O) trading presents an array of intricate challenges, encompassing the determination of turnover metrics and the substantiation of transactional veracity under the lens of official scrutiny. The dearth of lucidity emanating from tax authorities serves to compound the already weighty compliance burdens, thereby nurturing an ambiance of uncertainty among taxpayers. The resolution of these pragmatic implications mandates a synergistic endeavor, one that necessitates the harmonization of efforts among policymakers, adept tax professionals, and the affected taxpayers themselves.

ISSN: 2582-6433

Taxpayers are thrust into a disconcerting nexus of tribulation for manifold reasons. Initially, they commit substantial portions of their diligently accrued capital to the sphere of F&O trading. Subsequent to such investment, the specter of financial losses looms, further complicating their fiscal landscape. Finally, they find themselves the recipients of scrutiny notices, the non-response to which can precipitate the issuance of ex-parte assessment orders, accompanied by ancillary impositions such as those delineated in sections 270A, 271A, 271(1)(c), 271(1)(d), 271B, and 271(1)(b) of the statutory framework.

Section 270A: This provision entails the imposition of penalties for underreporting or misreporting income. It delineates penalties ranging from 50% to 200% of the amount of tax sought to be evaded, contingent upon the nature and extent of the misreporting.

Section 271A: Under this section, penalties are levied for failure to maintain proper books of account or documents as required by the Income Tax Act. The penalty amount is typically 0.5% of the total sales, turnover, or gross receipts, subject to a maximum limit.

Section 271(1)(c): This provision pertains to the concealment of income or furnishing inaccurate particulars thereof. It entails penalties equivalent to 100% to 300% of the tax sought to be evaded, contingent upon the nature and extent of the concealment or inaccurate particulars furnished.

Section 271(1)(d): Under this section, penalties are imposed for failure to furnish a return of income. The penalty amount may vary depending on factors such as the quantum of tax payable and the duration of the default.

Section 271B: This section stipulates penalties for failure to get accounts audited as required under Section 44AB of the Income Tax Act. The penalty amount is typically equal to half of 1% of the total sales, turnover, or gross receipts, subject to certain thresholds and maximum limits.

Section 271(1)(b): This entails the imposition of a penalty in cases where a taxpayer is discovered to have concealed income or provided inaccurate particulars of income.

Upon the culmination of assessment procedures, taxpayers are not merely confronted with demands for payment of assessed taxes, but additionally find themselves subjected to punitive measures, thereby exacerbating their predicament. It merits emphasis that these taxpayers are bereft of any taint of malfeasance; their actions have been meticulously orchestrated within the bounds of statutory compliance. Furthermore, the realm of F&O trading, being intrinsically digitized, extends the exemption of audits to turnovers falling below the threshold of 10 crore. However, the elucidation of such nuances during the process of official scrutiny emerges as a

ISSN: 2582-6433

formidable challenge, not only for the beleaguered taxpayers but also for the adjudicating officers.

The deficiency in the comprehension of the intricacies of F&O trading on the part of assessing officers invariably culminates in the unwarranted imposition of punitive measures and fiscal demands upon taxpayers. Consequently, taxpayers are compelled to traverse the arduous path of appeals, a journey fraught with temporal uncertainty, often spanning the chronology of one to four years for redressal. This unfortunate continuum of unwarranted duress may subsequently cascade into an expansive examination of disparate documents, including but not limited to bank statements, which may inadvertently furnish insights into the fiscal machinations of taxpayers, thereby compounding the complexity of adjudication proceedings, particularly in scenarios of comprehensive scrutiny.

In summation, the tribulations encountered by practitioners in the domain of F&O trading underscore the exigent imperative for the elucidation of unambiguous guidelines and the requisite enhancement of acumen among personnel within the ambit of tax administration. Such measures are indispensable for assuaging the burdens borne by taxpayers and fostering a milieu of equitable treatment within the scaffolds of the extant fiscal regime**.**

V. REFORMS AND PROPOSED RECOMMENDATIONS

In the intricate realm of fiscal governance surrounding Futures and Options (F&O) trading, policy reforms stand as paramount imperatives aimed at harmonizing taxation frameworks and mitigating the burdensome specter of compliance. The forward-looking recommendations set forth herein entail multifaceted initiatives, including the issuance of meticulously crafted guidelines elucidating the intricate calculus of turnover computation, the establishment of specialized tribunals endowed with jurisdiction over F&O disputes, and the augmentation of educational endeavors targeting taxpayers. These proposed reforms are strategically designed to inculcate an environment of regulatory certitude, thereby fostering a milieu conducive to the flourishing of F&O trading activities.

F&O Turnover Computation: At the heart of the matter lies the meticulous calculation of trading turnover, a pivotal determinant in the application of Tax Audit provisions. It is incumbent upon stakeholders to recognize that tax liabilities remain distinct from turnover metrics. The prescribed formula for ascertaining turnover within the domain of Futures & Options Trading is

ISSN: 2582-6433

succinctly articulated: **Turnover for Futures & Options Trading = Absolute Profit.**

Noteworthy is the recent revision in the modus operandi for calculating turnover in options trading, precipitated by the issuance of the eighth edition of the guidance note on 14th August 2022, operative from the Assessment Year 2022-23 onwards. Formerly, the calculation of turnover for options trading involved the aggregation of both the Absolute Profit and the Premium on Sale of Options.

Exemplary conduct is evinced by numerous brokerage entities, exemplars of transparency in reporting turnover metrics, notable among them being **Zerodha and Angel**. Such transparency serves not only to assist taxpayers in fulfilling their fiscal obligations but also to empower tax practitioners in navigating the labyrinthine pathways of scrutiny and appeals with consummate efficacy. The meticulously compiled tax P&L reports proffered by these brokers serve as incontrovertible evidentiary substrata, upon which reliance is judiciously placed, eliciting commendation and acceptance from Assessing Officers (AOs) and Commissioner of Income Tax (Appeals) [CIT(A)] alike.

It is incumbent upon the wider brokerage fraternity to heed this clarion call for transparency and to embrace these progressive reforms, thereby engendering a panoptic culture of regulatory compliance within the labyrinthine realm of F&O trading.

Additionally, it is imperative to advocate for a directive from the tax authorities outlining a comprehensive guide detailing the requisite procedures for F&O business income/loss declaration within Income Tax Returns (ITR). Moreover, a novel segment should be introduced within the ITR forms specifically tailored to accommodate F&O trading disclosures. This directive should also be accompanied by the promulgation of new tax legislation specifically tailored to address the nuances of F&O trading practices. Such proactive measures are crucial in fostering clarity and ensuring compliance within the F&O trading domain, thereby promoting a robust regulatory framework conducive to equitable fiscal governance.

In summation, the pronouncement of policy recommendations and the advocacy of proposed reforms reverberate with promise, poised to fortify the edifice of regulatory governance governing F&O trading. In so doing, they serve to sow the seeds of regulatory certitude, nurturing

ISSN: 2582-6433

an environment ripe for the perpetuation of growth, innovation, and fiscal integrity within this burgeoning sector.

VI. CONCLUSION

The persistent issuance of scrutiny notices to participants in Futures and Options (F&O) trading operations underscores the imperative for a sophisticated and nuanced approach to taxation within this domain. Such scrutiny, while a natural facet of regulatory oversight, necessitates a comprehensive understanding of the intricate interplay between legislative frameworks, judicial pronouncements, practical implications, and overarching policy considerations.

In this context, this discourse serves as a beacon, offering a meticulous roadmap for navigating the labyrinthine complexities inherent in the scrutiny of F&O trading turnovers. It undertakes a multifaceted examination, delving into the granular intricacies of statutory provisions, jurisprudential interpretations, and pragmatic realities encountered by stakeholders within the F&O trading sphere.

Moreover, it emphasizes the critical importance of collaboration and engagement among diverse stakeholders – including policymakers, tax authorities, legal practitioners, industry experts, and taxpayers themselves. Such collaborative endeavors are indispensable for fostering the collective understanding needed to enact meaningful reforms that not only address immediate concerns but also contribute to the cultivation of a tax regime characterized by fairness, transparency, and procedural integrity for F&O traders.

Thus, by engaging in robust dialogue and leveraging collective expertise, stakeholders can forge a path forward that not only mitigates the challenges inherent in F&O trading taxation but also ensures the establishment of a regulatory framework conducive to equitable treatment and sustainable growth within this vital segment of the financial landscape.

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ISSN: 2582-6433

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