

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

**BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER
AND MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No. 414/Del/2013
AY: 2009-10**

Sh. Aman Mehtani
C/o Rakesh Raj & Associates, C.As
D 28, South Ex. Part I
New Delhi

vs. ACIT, C.C. 1
Faridabad

PAN: AFOPM 8589 F

(Appellant)

(Respondent)

Appellant by : Dr.Rakesh Gupta, Adv.,
Sh.Somil Agarwal, Adv. and
Sh. Abhishek Anand, Adv.

Respondent by : Sh. Ravi Jain, CIT, D.R.

ORDER

PER J.SUDHAKAR REDDY, ACCOUNTANT MEMBER

This is an appeal filed by the Assessee directed against the order of the Ld.Commissioner of Income Tax (Appeals) (Central), Gurgaon dated 6.11.2012 pertaining to the Assessment Year (A.Y.) 2009-10.

2. Facts in brief:- In this case, search and seizure was conducted at the business premises as well as the residence of the group cases of M/s Imperial Auto Industries Ltd. on 02.09.2009. The residence of the assessee was also subjected to the search operation. In response to notice u/s 153A

the Income Tax Act, 1961 (hereinafter referred to as 'the Act') the assessee filed the return of income on 02.02.2011 declaring an income of Rs.5,79,36,750/-. The assessee derived income from salary, income from house property, income from business and income from capital gains. Notices u/s 143(2) and 142(1) of the Act were issued which culminated into an assessment framed at a total income of Rs.6,79,41,340/- on 28.12.2011.

3. The sole issue that arises for our adjudication is whether the Assessing Officer (hereinafter referred to as the AO) as well as the First Appellate Authority were right in holding that the assessee had not filed any documentary evidence with regard to the investment made in futures and options plan, to prove his claim of loss incurred thereon.

4. After hearing rival contentions we find that the assessment proceedings for the A.Y. 2009-10 as well as for the A.Y. 2010-11 were being held simultaneously by the A.O. and that the assessee had submitted two letters dt. 9.12.2001, one each for the A.Y. 2009-10 and 2010-11. The evidences on loss on futures and options were wrongly attached to the letter dt. 9.12.2011 for the A.Y. 2010-11, though there was no such issue that arose in that year. In fact these evidences were to have been attached to the letter dt. 9.12.2011 for the A.Y. 2009-10. Thus a clerical mistake arose. This lead to both the A.O. as well as the Ld.CIT(A) coming to a conclusion that the assessee has not filed the necessary evidences as proof of the loss claimed on futures and options.

5. In view of the above discussion, in the interest of justice, we set aside the matter to the file of the A.O. for fresh adjudication in accordance with law, after considering the evidences in question.

6. In the result the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 10th June, 2016.

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-

(J.SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Dated: the 10th June , 2016

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Copy of the Order forwarded to:

1. Appellant;
2. Respondent;
3. CIT;
4. CIT(A);
5. DR;
6. Guard File

By Order

Asst. Registrar