

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री भागचंद, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI BHAGCHAND, AM

आयकर अपील सं./ITA No. 909/JP/2016
निर्धारण वर्ष/Assessment Year : 2012-13.

Smt. Leela Devi Bumb, 117, Shital Mata Market, Kumhar Mohalla, Bijainagar	बनाम Vs.	Income Tax Officer Ward-1, Beawar
स्थायी लेखा सं./जीआईआर सं./PAN No. AIJPB 0894 L		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Subhash Porwal (CA)
राजस्व की ओर से/ Revenue by : Smt. Neena Jaif (JCIT)

सुनवाई की तारीख/ Date of Hearing : 06.12.2017.
घोषणा की तारीख/ Date of Pronouncement : 08/12/2017.

आदेश/ ORDER

PER SHRI BHAGCHAND, AM

This appeal by the assessee is directed against the order of Ld. CIT(A) Ajmer, dated 29.09.2016 pertaining to the Assessment Year 2012-13. The return of income filed on 25.12.2013 declared income at Rs. 1,82,390/-. The assessee had entered into commodity exchange transactions totaling to Rs. 7,38,08,37,087/- in name of assessee and Pankaj Traders Prop. of assessee (Leela Devi Bumb). Assessee had not disclosed these transactions in her return of income. Assessee had also deposited case of Rs. 56,30,000/- in here bank a/c held with SBBJ Bijainagar. AO made addition of Rs. 56,30,000/- and CIT(A) had confirmed the additions.

Now, the assessee has raised the following grounds of appeal that reads as under:-

“Under the facts & circumstances of case the Ld. CIT(A) has erred in:-

1. That the Ld. CIT(A) has erred in considering the business/ trading of M/s Pankaj Trader as of assessee though assessee is only SUB-BROKER in MCDX/ NCDX.
2. That the Ld. CIT(A) has erred in confirming the addition of Rs. 56,30,000/- u/s 69.
3. That further Ld. CIT(A) has erred in non granting the “SET – OFF of loss of Rs. 55,69,500.00 to addition u/s 69 of Rs. 56,30,000.00.
4. Any other matter with the prior permission of chair.”

2. We have heard both the sides. We have considered the relevant case laws relied upon and also the various facts available on the records.

3. It is claimed by Ld. AR that the assessee’s main source of income is commission and brokerage and interest income. It is also claimed that the assessee was sub-broker of MCDX/NCDX in the name of M/s Pankaj Traders as prop. It was also claimed that the main broker was M/s Sishodiya Future, Ajmer. She has also claimed that assessee was taking reasonable margins from its customers in cash and used to allow these clients to book the transaction for operation. In case of loss/profit on such operations, the loss/ profit were debited/credited to the account of said person against margins which are settled in cash. It is also claimed that the maximum parties have suffered loss and assessee was working only a sub-brokers. The relevant document has been torned off due to loss. It is pertinent to note that

there is no reliable evidence/documents which could establish that the assessee was working as sub-broker on behalf of the certain clients from whom she claimed to have received the cash to settle the margins. It is also pertinent to note that no books of account were produced before the Assessing Officer even in the remand proceedings. The Ld. A/R has relied on the submissions made before the lower authorities and reiterated that the assessee was a sub-broker and the margins were received in cash from clients which were deposited in the bank accounts.

The assessee has not opened any client's accounts, as per the direction/guidance of SEBI. The persons who were examined by the income tax authorities were also failed to produce any supporting evidence with regard to the transactions claimed to have been done through the assessee as sub-brokers. It is also a pertinent to note that all persons denied having any bank account, PAN No., except Shri Prakash Bumb who is husband of the assessee. It is also pertinent to note that no bills were issued to the clients for commodities transactions. In the statement recorded Smt. Leela Devi has categorically stated that she is not having any bills or any documentary evidence in support of claim that the transaction has been done on behalf of the clients. The receipts for cash claims to have been received from clients were also not produced. In her statement she had categorically denied regarding existence of any such receipts. It is also pertinent to note that no bills/documents from M/s Shishodiya Futures the main broker were produced. She has simply stated that she has torned off the documents due to loss. Thus, there is nothing on record

which could substantiate the claim of assessee that she was doing sub-brokers and the case deposited in bank pertain to the clients.

The Ld. CIT(A) has decided this issue by observing as under:-

"4.3 I have gone through the assessment order, statement of facts, grounds of appeal, written submission, remand report and rejoinder carefully. It is seen that either during the course of assessment proceedings or remand proceedings, the appellant has not been able to substantiate with documentary evidence, the nature and source of the cash deposits of Rs. 56,30,000/- made in the bank account of the appellant. Though the appellant claimed that the source of cash deposits was the persons on whose behalf she had carried out transactions at NCDX and MCX but the appellant failed to prove her contention with the help of any documentary evidence. Therefore, the action of the AO treating the entire cash deposits of Rs. 56,30,000/- as unexplained investment of the appellant is held to be fully justified and in accordance with the provisions of law.

The appellant has also argued that loss of Rs. 55,69,580/- incurred by the appellant on transactions carried out through NCDX and MCX should be allowed against the addition of Rs. 56,30,000/- made by the AO u/s 69. I have considered this argument of appellant carefully. It is an undisputed fact that loss of Rs. 55,69,580/- is a loss sustained in a speculation business. Therefore, I am of the considered view that the set-off of this loss cannot, be allowed against the income of Rs. 56,30,000/- taxed u/s 69 because section 73(1) clearly provides that "Any loss, computed in respect speculation business carried on by the assessee, shall not be set off except against profits and gains, if any, of another speculation business". As the, income of Rs. 56,30,000/- taxed by the AO u/s 69 is not a profit from speculation business carried on by the appellant, therefore, it is held that no set-off of the loss of Rs. 55,69,580/- incurred by the appellant on speculative commodity

transactions carried out through NCDX and MCX is admissible to the appellant against the income of Rs. 56,30,000/-.

Either during the course of assessment proceedings and appellate proceedings, the assessee has not been able to produce any documentary evidence to show that the transactions carried out in the ID and account of the appellant through NCDX and MCX were carried out by her on behalf of some other persons. From the statement of transaction provided by M/s Sisodiya Futures, Ajmer and the statement of Smt. Sushila Sisodia, partner of M/s Sisodiya Futures recorded u/s 131 by the AO on 13.03.2015, it is clear that all the transactions were carried out by the appellant herself. Therefore, the contention of the appellant that the transactions to the tune of Rs. 7,38,08,37,087/- were carried out by her on behalf of some other persons is not found to be acceptable. Hence, this contention of the appellant is also rejected.

This ground is dismissed.”

4. In view of these factual aspect and absence of any document in support of claimed of assessee that she was a sub-broker and cash deposited in bank belong to the clients, we find no fault in the order of Ld. CIT(A). In our considered view, the assessee has not able to file any documentary evidence with regard to the nature and source of the cash deposits in her bank account of Rs. 56,30,000/-. Therefore, the CIT(A) has rightly sustained the additions. As far as alternative plea of the assessee with regard to the set off of the loss to be allowed against the income of Rs. 56,30,000/- taxed u/s 69 is also against the legal provision of the Act. This loss was a 'speculation loss' and it could be set off only against 'speculation income'. Therefore, the CIT(A) has rightly denied the benefit of set off to the assessee. The

final plea of the Ld. A/R that the matter may be restored to the file of the AO also cannot be accepted for the reasons that the assessee has been provided sufficient opportunity before the authorities below to produce necessary documents in support of her claim. Any remand of the issue to the file of the AO as this stage shall be against the basic tenants of law.

5. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 08/12/2017.

Sd/-
(विजय पाल राव,
(Vijay Pal Rao)

Sd/-
(भागचंद,
(Bhagchand)

न्यायिक सदस्य/Judicial Member

लेखासदस्य/Accountant Member

Jaipur

Dated:- 08/12/2017.

Pooja/

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant-.Smt. Leela Devi Bumb, Bijainagar.
2. The Respondent- ITO, Ward-1, Beawar.
3. The CIT,
4. The CIT (A)
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 909/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar

