

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

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

आयकर अपील सं./ITA No. 1018 & 1019/JP/2017  
निर्धारण वर्ष/Assessment Years : 2009-10 & 10-11.

The ACIT, Circle-1, Alwar.	बनाम Vs.	Shri Akhil Modi, 10-11, Ghanta Ghar, Sabji Mandi, Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN No. ABVPM 3602 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Smt. Seema Meena (JCIT)

निर्धारिती की ओर से / Assessee by : Shri H.M. Singhvi (CA)

सुनवाई की तारीख / Date of Hearing : 28.06.2018.

घोषणा की तारीख / Date of Pronouncement : 02/07/2018.

आदेश / ORDER

PER VIJAY PAL RAO, J.M.

These two appeals by the revenue are directed against two separate orders of Id. CIT (A) dated 24.10.2017 for the assessment years 2009-10 & 2010-11. The ground raised by the revenue is common for both the assessment years except quantum of disallowance. The ground raised by the revenue for the assessment year 2009-10 is as under :-

“ On the facts and circumstances of the case and in law Id. CIT (A) erred in reducing the disallowance of Rs. 11,23,241/- to Rs. 2,24,853/- made by AO On account of share loss computed in respect of a speculation business carried on by the assessee, without appreciating the material fact of the case.”

2. The AO noted that the assessee has claimed loss on trading of shares amounting to Rs. 11,23,241/-. The AO proposed to disallow the said claim of loss on the ground that it is speculation loss which cannot be allowed against the other income of the assessee. Accordingly, the AO made the disallowance of the said amount of Rs. 11,23,241/- by considering the said speculative loss as per the provisions of section 43(5) of the IT Act. The assessee challenged the action of the AO before the Id. CIT (A). The Id. CIT (A) restricted the disallowance to Rs.2,24,853/- and allowed the claim of the assessee of balance amount of Rs. 8,98,388/- by holding that the same is not speculative loss being incurred on F & O transaction.

3. We have heard the Id. D/R as well as the Id. A/R of the assessee and considered the relevant material on record. At the outset, we note that the AO has made the disallowance of loss of Rs. 11,23,241/- by treating the same as speculative loss under section 43(5) of the Act and by invoking the provisions of section 73 of the Act. The AO has not examined the issue in the light of clause (d) and (c) of proviso to section 43(5) of the Act whereby the trading and derivatives carried out in a recognized stock exchange shall not be deemed to be a speculative transaction. The Id. CIT (A) has considered this issue in para 6.3 and 6.3.2 as under :-

" 6.3. I have considered the order passed by the A.O. and submissions filed by the appellant. Following facts have emerged;

1. That the appellant is in the business of share transaction also apart from deriving income from profession.
2. That during the year under consideration, the appellant has accumulated loss in share transaction to the tune of Rs. 11,23,241/-.

3. That the AO has treated the entire loss of Rs. 11,23,241/- as speculative loss and therefore cannot be set off against business/profession head u/s 73 of the Act.
4. That the appellant has claimed that out of Rs. 11,23,241/- only the loss of Rs. 2,24,853/- comes under speculative transaction as the same was incurred during intra-day transaction and filed the copy of ledger in support of the claim.
5. That with regard to balance loss of Rs. 8,98,388/-, it was incurred during F & O transaction.
6. That the appellant has further cited the provision (c) of section 43(5) of the Act applicable from 01/04/2006 that such transaction shall not be deemed to be speculative transaction.

6.3.2. I have considered the above mentioned facts of the case. I find force in the argument of the AR that the share loss amounting to Rs. 8,98,388/- shall not be treated as speculative transaction as per the proviso to section 43(5) of the Act. Accordingly, the A.O. is directed to allow set off of Rs. 8,98,388/- against the business/profession head as per section 71 of the Act. However amount of Rs. 2,24,853/- shall be treated as speculative transaction as per section 43(5) and subjected to section 73 of the Act. Appellant's ground of appeal, accordingly is partly allowed."

Thus the Id. CIT (A) has given the finding that out of total loss of Rs. 11,23,241/-, only the amount of Rs. 2,24,853/- comes under the speculative transaction and cannot be set off against the business/professional income as per section 73 of the Act. The revenue has not contradicted the factual finding given by the Id. CIT (A) bifurcating the amount of loss arising from speculative transaction and F & O transaction. Hence, in view of the facts and circumstances as discussed above, we do not find any error or illegality in the order of the Id. CIT (A).

4. Though the Id. A/R of the assessee has raised an objection against the maintainability of the appeals of the revenue due to low tax effect, however, we find that as per the report of the AO, there was an audit objection on this issue. Accordingly as per para 3 of the CBDT Circular No. 5/2017 dated 23<sup>rd</sup> January, 2017

the issue involved in the revenue's appeal is required to be adjudicated on merits and not on the ground of tax effect which is less than the monetary limit provided in the circular. Since we have upheld the impugned order of the Id. CIT (A), therefore, the objection raised by the Id. A/R is otherwise becomes infructuous.

4. In the result, appeals of the revenue are dismissed.

Order pronounced in the open court on 02/07/2018.

Sd/-

( भागचन्द )  
( BHAGCHAND )

लेखा सदस्य / Accountant Member  
जयपुर / Jaipur

दिनांक / Dated:- 02/07/2018.

das/

Sd/-

( विजय पाल राव )  
( VIJAY PAL RAO )

न्यायिक सदस्य / Judicial Member

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

1. अपीलार्थी / The Appellant-The ACIT, circle-1, Alwar.
2. प्रत्यर्थी / The Respondent-Shri Akhil Modi, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File {ITA No.1018 & 1019 /JP/2017}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar