

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

BEFORE SHRI R. C. SHARMA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No. 337/Mum/2016

(निर्धारण वर्ष / Assessment Year: 2011-12)

M/s. Networth Commodities & Investments Ltd. Office No. 901/902, Atlanta Centre, Opp, Udyog Bhawan, Sonawala Road, Goregaon (E), Mumbai-400063.	बनाम/ Vs.	Dy. CIT (O.S.D) Circle 2(3), Mumbai Room No. 552, Aayakar Bhavan, Sonawala Road, Goregaon (W), Mumbai-400063.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCN9894K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri D. K. Gopal	
Revenue by:	Shri T. A. Khan (DR)	

सुनवाई की तारीख / Date of Hearing: 04.07.2018

घोषणा की तारीख /Date of Pronouncement: 06.07.2018

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 27.11.2015 passed by the Commissioner of Income Tax (Appeals)-6, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y. 2011-12.

2. The assessee has raised the following grounds: -

- "1. The Ld. Commissioner of Income Tax (Appeals)-6, Mumbai erred in passing the order dated 27.11.2015 upholding the assessment order dated 30.03.2014 passed under section 143(3) of the Act without providing the

- Appellant reasonable opportunity of being heard. Hence, the order dated 27.11.2015 passed by the Ld. CIT(A) is against the provision of natural justice and the same may be set aside,
2. The Ld- CIT(A) erred in confirming the action of the Ld. A.O. in making addition of Rs. 1,68,47,784/- under section 40A(2)(b) of the Act without appreciating the facts and circumstances of the case. Hence, the addition of Rs.1,68,47,784/- made under section 40A(2)(b) is unjustified and the same may be deleted,
 3. The Ld. CIT(A) failed to appreciate the fact that the Administrative expenses of Rs. 1,68,47,784/- have been incurred by the Appellant during the course of business activities and the same are supported with proper documentary evidences. Hence, the addition of Rs. 1,68,47,784/- made under section 40A(2)(b) is unjustified and the same may be deleted.
 4. The Appellant craves leave to add, alter or amend any of the above grounds of appeal.”

3. The brief facts of the case are that the assessee filed its return of income declaring total income to the tune of Rs. Nil with current year loss at Rs.61,37,913/- on 28.09.2011. The return was processed u/s 143(1) of the Act. Thereafter, the case was selected for scrutiny and notice u/s 143(2) of the I.T. Act, 1961 dated 07.09.2012 was issued and served upon the assessee. Notices u/s 142(1) of the Act dated 24.01.2013, 06.08.2013 & 29.11.2013 were also issued and served upon the assessee. The company was a member of MCX and NCDEX and providing broking service in online commodity business. Thereafter the income of the assessee was assessed after some disallowance to the tune of Rs.1,07,09,870/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who also confirmed the order passed by the Assessing Officer, therefore, the assessee has filed the present appeal before us.

4. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. At the very outset, the Ld. Representative of the assessee has argued that the CIT(A) has decided the appeal of the assessee ex parte without giving an opportunity of being heard to the assessee, therefore, the said circumstances, the order of the CIT(A) is not liable to be sustainable in the eyes of law. It is also argued that the assessee sought the adjournment on 10.11.2015 because the case was fixed on 12.11.2015 but on that letter the officer recorded the adjournment date on 10.12.2015 whereas the appeal had been decided on 27.11.2015 wrongly and illegally, therefore, the order passed by the CIT(A) is not justifiable. However, on the other hand, the Ld. Representative of the revenue has refuted the said contention. On appraisal of the order dated 27.11.2015, we noticed that the appeal of the assessee has been decided by the CIT(A)-6 Mumbai in absence of both the parties on 27.11.2015. The letter of request dated 10.11.2015 is on record in which it is specifically mentioned that the assessee was seeking adjournment on 12.11.2015 because his accountant was on leave. The office of the CIT(A) endorsed the adjournment dated as on 10.12.2015 at about 11.55 A.M whereas the appeal had already decided on 27.11.2015. It also came into notice that the endorsed has been recorded by office of the CIT(A)-5, Mumbai whereas the matter of controversy was adjudicated by the CIT(A)-6, Mumbai. The explanation rendered by assessee seems justifiable because under

these circumstances, there was no intention of the assessee to avoid the proceeding before the CIT(A). Since the CIT(A) has decided the matter of controversy in absence of the representative of the assessee, therefore, we are of the view that the order passed by the CIT(A) in question is not justifiable, therefore, we set aside the same and restored the issues before the CIT(A) to decide the matter of controversy afresh by giving an opportunity of being heard to the assessee in accordance with law.

5. In the result, the appeal filed by the assessee is hereby ordered to be allowed for statistical purpose.

Order pronounced in the open court on 06.07.2018.

Sd/-

Sd/-

(R. C. SHARMA)

(AMARJIT SINGH)

लेखा सदस्य / ACCOUNTANT MEMBER

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 06.07. 2018.

Vijay

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai