

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.796/PUN/2015
निर्धारण वर्ष / Assessment Year : 2010-11

Shri Shyam Nandkishore Mundada,
1759, Paradgaon Road,
Partur, Dist. Jalna
PAN : AWOPN8722H

.....अपीलार्थी/Appellant

Vs.

ITO, Ward-1(3),
Jalna

.....प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Parag Rathi
प्रत्यर्थी की ओर से / Respondent by : Shri Sanjeev Ghei

सुनवाई की तारीख / Date of Hearing : 29.01.2019	घोषणा की तारीख / Date of Pronouncement: 30.01.2019
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

This appeal is filed by the Assessee against the order of CIT(A)-1, Aurangabad, dated 30-03-2015 for the Assessment Year 2010-11.

2. Briefly stated, relevant facts include, that the assessee is an individual and filed return of income u/s.139(4) declaring total income of Rs.1,54,110/-. During the course of assessment, AO noticed that assessee indulged in speculation business and the quantum turnover was Rs.227 crore. Assessee is a client registered with Angle Broking Limited and the transactions are made through the said company. Assessee made payment Rs.71,36,508/- by cheque to the said company through his bank accounts maintained with Jalna Peoples Cooperative Bank Limited and State Bank of India, Partur. But just before issuing the cheque, the assessee made cash

deposits in the bank accounts. In the backdrop of these facts, AO called for the explanation of the assessee substantiating the deposits in the bank accounts. In the absence of convincing replies and evidence forthcoming from the assessee, the AO made addition of Rs.71.36.508/- as unexplained deposits u/s.69A of the Act.

3. Against the assessment order passed by the AO, the assessee filed an appeal before the CIT(A). The CIT(A) called for a remand report from the AO. The AO submitted his remand report vide letter dated 10-02-2015. The CIT(A) considered the remand report of the AO and counter comments of the assessee and the decisions relied on by the assessee. Eventually, out of the addition, the CIT(A) confirmed the addition of Rs.53,71,944/- only. Against the part relief given by the CIT(A), the assessee has now approached the Tribunal with the following grounds :

“1. The learned CIT(A) erred in confirming the addition of Rs. 53,71,944/- out of the total addition of Rs.71,36,508/- mad by the learned A.O u/s 69A on account of alleged unexplained cash deposits made in two bank accounts of the assessee.

2. The learned CIT(A) erred in holding that the assessee had failed to explain the sources of cash deposited in bank accounts by furnishing substantiating evidences and hence, the addition made by the learned A.O. u/s 69A was justified.

3. The learned CIT(A) failed to appreciate that-

a. The assessee had entered into commodity derivatives and share derivatives on behalf of various farmers and the above cash deposits were, sourced out of the amounts received from such farmers for making payment of margin money to the Main Broker in respect of the above derivative transactions and hence, there was no reason to make any addition u/s 69 A in the case of the assessee.

b. The assessee had submitted various details in respect of the farmers from whom the cash was received and deposited and considering the peculiar facts of the case, the addition made u/s 69A was not justified at all.

Without prejudice to the above grounds, it is submitted as under

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4. *The learned CIT(A) erred in holding that the loss of Rs.51,83,895/- incurred by the assessee on commodity derivative transactions was in the nature of speculation loss as per the provisions of section 43(5) and hence, the same could not be set off against the addition u/s 69A of Rs.53,71,944/- sustained in the case of the assessee.*

5. *The learned CIT(A) erred in not appreciating that the loss of Rs.51,83,895/- incurred by the assessee on commodity derivative transactions was in the nature of normal business loss and there was no reason to treat it as speculative transaction loss and therefore, the said loss should have been set off against the addition u/s 69A made in the case of the assessee.*

6. *Without prejudice to the above grounds, assuming without admitting that the cash deposits are to be treated as income of the assessee, the assessee submits that the net income of the assessee from the equity / commodity derivatives trading activity was only Rs.1,88,049/- after considering the losses and cash withdrawals and hence, only the said income may be taxed in the hands of the assessee.*

7. *The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”*

4. Before us, at the outset, Ld. Counsel for the assessee brought our attention to the additional evidences placed at pages 9 to 40 of the paper book and submitted that these evidences are gathered from the farmers subsequent to the assessment proceedings. Narrating the facts of the case, he requested for admission of the same and remanding the same to the file of AO. Relevant contents of the letter dated 19-11-2018 read as under :

“With reference to above appeal, we would like to humbly submit affidavit of various individuals who have deposited funds in the account of the assessee confirming the said facts.

The assessee have pleaded with them multiple times during assessment as well as appellate stage, however they were reluctant to provide the said confirmation due to the fear of the Income Tax Department as most of the individuals belong to farming activity and have no understanding about Income Tax being resident of rural area.

In this connection, we would like to humbly submit that, at the stage of assessment, we have provided detailed list of name and address of various parties who has deposited funds in the account of the

*assessee for trading in equity/commodity through the DEMAT account of the assessee. The affidavits confirming some of the parties along with the 7*12 have been included in the paper book as on page No.009 to 040.*

Thee being important evidence to decide the matter, we humbly request your Honor's to kindly admit the additional evidence in the interest of justice."

5. Ld. Counsel for the assessee submitted the following written submissions:

"Submission of assessee before ITAT :

3.1 Assessee filed details of name, address and source of income before assessing officer during the stage of assessment. Only non-compliance was not producing the clients for verification of AO.

3.2 During the course of assessment, assessee requested AO to issue summons to these parties and verify the genuineness of claim made by assessee. However, we are not aware of any such action by AO. In mofisil area where assessee is resident, income tax is applicable to very few and people are generally afraid of income tax authorities out of ignorance.

3.3 After repeated persuasions with these parties and highlighting the possibility of permanent damage to assessee' career in light of his weak financial background, assessee could source confirmations in the form of affidavit from some of the parties.

3.4 One of the party, Varsha Traders has made account transfer to the extent of Rs. 16,52,000 to the bank account of assessee, which was added as income in absence of the confirmation. We are hereby submitting the confirmation and affidavit of Varsha Traders as additional evidence.

3.5 It is humbly submitted that genuineness of assessee' claim should be verified in this case and appropriate relief may be granted. Assessee has already submitted list of the clients during assessment stage and CIT(A) stage, calling for verification and information from these parties should justify the submissions made by the assessee.

3.6 It is also prayed that almost 90% of the money deposited is lost in commodity trading and therefore if any addition required to be made under Section 69A should be limited to net cash amount remained with the assessee.

3.7 In this connection, we would like to submit that Provisions of Section 69A dealing with unexplained money etc.; comes into play only if the following two conditions are fulfilled: 1. The assessee is found to be the owner of the money and 2. Such money is not recorded in books of accounts maintained by the assessee.

3.8 In facts of present case, without prejudice to our aforesaid submission even if it is presumed that assessee is owner of the money, these amounts were already accounted in books of accounts submitted by assessee during assessment/appellate proceeding.

Prayer

We humbly pray before your lordships that this case needs to be evaluated by considering overall facts, background and position of the assessee. Mere technical evaluation by disallowing loss from commodity trading and taxing money which was never available with assessee will create life time damage to assessee, who committed mistake at tender age.”

6. On hearing both the sides on the limited issue of admitting additional evidences and the factual matrix of the case, we find the said affidavits go to the root of the assessee and the issue of genuineness on the ownership of the cash deposits in the bank account of the assessee needs thorough probe by the AO. Considering the totality of the facts of the case, we direct the AO to admit the additional evidences and adjudicate the issue afresh. Needless to mention, the AO shall give reasonable opportunity of hearing to the assessee in accordance with the law and the set principles of natural justice.

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

Order pronounced on this 30th day of January, 2019.

Sd/-

Sd/-

(विकास अवस्थी /VIKAS AWASTHY)
न्यायिक सदस्य/JUDICIAL MEMBER

(डी. करुणाकरा राव/D. KARUNAKARA RAO)
लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 30th January, 2019
Satish

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-1, Aurangabad
4. आयकर आयुक्त / The Pr.CIT-1, Aurangabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" / DR 'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.

		Date	
1.	Draft dictated on	29-01-2019	Sr.PS
2.	Draft placed before author	30-01-2019	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		