

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "SMC": NEW DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.4433/Del./2018  
Assessment Year 2016-2017

Shri Rahul Kashyap, Dehradun. PAN ATCPK0225A C/o. M/s. RRA Tax India D- 28, South Extension, Part-I, New Delhi – 110 049.	vs.	The Income Tax Officer, Ward-1(2)2, Dehradun.
(Appellant)		(Respondent)

For Assessee :	Dr. Rakesh Gupta, Advocate
For Revenue :	Shri S.L. Anuragi, Sr. D.R.

Date of Hearing :	12.02.2019
Date of Pronouncement :	14.02.2019

**ORDER**

This appeal by assessee has been directed against the order of Ld. CIT(A), Dehradun, Dated 25<sup>th</sup> April 2018, for the A.Y. 2016-2017, challenging the orders of the authorities below in computing the turnover at Rs.77,82,571/- and making the addition of Rs.6,22,605/- by applying profit rate of 8% of deemed income under section 44AD of the Income Tax Act, 1961.

2. Briefly the facts of the case are that assessee filed return of income at Rs.7,04,304/- from salary. The assessee apart from earning salary, is also engaged in share trading. The same has not been declared by assessee in his return. During the year and reference, assessee entered into the transactions valued as detailed herein

<i>"Type &amp; Code of Transaction"</i>	<i>Transaction Valued</i>
<i>STT-01 : Purchase of equity share in a recognized stock exchange</i>	<i>Rs.70,90,097/-</i>
<i>STT-02 : Sale of Equity share (settled by actual delivery of transfer) in a recognized stock exchange</i>	<i>Rs.55,13,557/-</i>
<i>STT-03 : Sale of Equity share (settled by otherwise than by the actual delivery of transfer) in a recognized stock exchange</i>	<i>Rs.10,41,74,893/-</i>

*Thus transactions valued of Rs.11,67,78,547/- with STT paid of Rs.38,640/- has been made by the assessee as per Form issued under Rule 20AB/”*

2.1. It is, therefore, noted that the following issues are involved in this case.

- (i) The computation of turnover in respect of trading of shares/derivatives.

- (ii) Applicability of Section 44AD for deeming provisions of net profit and Audit liability under section 44AB of the Income Tax, 1961.

2.2. The A.O. asked the assessee to furnish details of shares and derivative transactions made in equity shares. The assessee furnished details of trading equity share and derivative transactions made. The assessee was further asked to explain why income from derivatives has not been shown in the return of income, to which, the assessee explained that since it was a case of loss, to which assessee did not intend to brought forward for set-off in the forthcoming years, therefore, loss was not declared in the return of income. The assessee furnished details of F & O transactions and transactions in equity shares which were done by him during the year. On perusal of the same, the A.O. noticed that the assessee had not got his accounts audited and neither he declared his business income at the rate of 8% of the gross receipts. The assessee claimed that Section 44AD would not apply and that assessee earned loss. The A.O. noted that in the case of share trading

guidance note on tax audit under Section 44AB of the Income Tax Act as has been published by ICAI, it is to be very clear that these note is not adopted or recognised by the department, thus, not having binding effect upon the department. However, the notice of the same is being taken and is applied to some extent. The A.O. noted that the term “gross receipts” for the purpose of turnover has not been defined in the Act. Normally, sales is an integral part of turnover. Sales in general mean purchase plus loss/profit. In the case of share trading, the assessee do the business just applying small amount against large scale purchases just applying margin money. In the present case, assessee made transactions of about Rs.11.67 crores, against which, assessee has invested fresh capital in purchase Rs.10 lacs plus absolute value of profit/loss of Rs.67,82,571/-. The A.O. then determined the turnover of assessee in the light of guidance note of ICAI and computed the total turnover of assessee at Rs.77,82,571/-. The A.O. referred to Section 44AD of the Income Tax Act and held that these provisions are applicable to the assessee. Therefore, profit was

computed by applying profit rate of 8% and income was computed at Rs.6,22,605/-.

3. The assessee challenge the addition before the Ld. CIT(A). The written submissions of the assessee is reproduced in the appellate order in which the assessee briefly explained that he is a salaried employee of BHEL and that the A.O. calculated turn over by his whims and fancies without following the guidance note issued by ICAI for calculation of turnover for the purpose of tax audit under Section 44AB of the Income Tax Act. It was submitted that margin money of Rs.10 lacs can never be included in the turnover. It was submitted that Section 44AD is not applicable to his case. The Ld. CIT(A), however, dismissed the appeal of assessee because Section 44AD is applicable in the present case as the assessee did not maintain the books of accounts and did not get the accounts audited, therefore, the Appeal of assessee was dismissed.

4. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and

submitted that assessee has complete details of the transactions which clearly proves that assessee has suffered loss in the transactions. Therefore, A.O. should not have applied Section 44AD of the Income Tax Act.

5. On the other hand, Ld. D.R. relied upon the orders of the authorities below.

6. We have considered the rival submissions. The assessee is a salaried employee. However, the assessee is also engaged in the share trading details of which are noted in the assessment order. The assessee explained that since assessee suffered loss in share trading and never intended to brought forward of set-off purpose, therefore, no loss was declared in the return of income. The assessee further maintained the details of share trading which have been examined by the authorities below and came to the conclusion about total turnover of assessee. The margin money deposited by the assessee with the broker of Rs.10 lacs was also added in the total turnover computed by A.O. at Rs.67,82,571/- and then, computed the total turnover at

Rs.77,82,571/-. However, Rs.10 lacs margin money could never be turnover of assessee. Therefore, addition to that extent is wholly unjustified. Further, it is not in dispute that though the assessee claimed loss in share trading, but assessee did not maintain books of account and did not get the same audited, therefore, provisions of Section 44AD will apply in the case of the assessee. The A.O. in the assessment order has referred to share trading guidance note on tax audit under Section 44AB of the Income Tax Act published by ICAI, but noted that these have not been recognised by the Department, therefore, same are not binding upon the Department. The A.O, however, taken note of the same and applied to some extent for the purpose of computing the turnover of the assessee. The A.O. cannot go in both ways. Either A.O. should do his own calculation based upon evidence and material on record to calculate the turnover of assessee for the purpose of making the addition or he should follow guidance note on tax audit published by the ICAI. No other basis have been shown by the A.O. for computing total turnover of the assessee. The A.O. has also

not given any finding based on material and evidence on record if assessee has suffered any loss in the share trading transactions. Therefore, to the extent of computing total turnover of assessee, the matter needs re-investigation at the level of the A.O. In view of the above, I set aside the orders of the authorities below and direct the A.O. to reduce Rs.10 lacs from the total turnover as computed in the assessment order. The A.O. shall re-calculate the turnover of assessee based on evidence and material on record. The A.O. shall give reasonable and sufficient opportunity of being heard to the assessee and shall give specific finding on the submissions made by assessee before him.

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

Order pronounced in the open Court.

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 14<sup>th</sup> February, 2019

VBP/-



Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi.