

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER
AND HON'BLE MANISH BORAD, ACCOUNTANT MEMBER

ITA No.739/Ind/2018

Assessment Year 2014-15

Shri Sanjay Agrawal, 404-C Block, Yash Elite, 8/5 Y.N. Road, Indore	Vs.	Income Tax Officer 5(1) Indore
(Appellant)		(Respondent)
PAN No.AECPA6831M		

Revenue by	Shri K.C. Selvamani, Sr.DR
Assessee by	Shri S.S. Deshpande, CA
Date of Hearing	20.03.2019
Date of Pronouncement	25.03.2019

ORDER

PER MANISH BORAD.

The above captioned appeal is filed at the instance of assessee pertaining to Assessment Year 2014-15 and is directed against the orders of Ld. Commissioner of Income Tax (Appeals)-II (in short 'Ld.CIT(A)'], Indore dated 15.06.2018 which is arising out of the order u/s 143(3) of the Income Tax Act 1961(In short the 'Act') dated 30.11.2016 framed by ITO 5(1), Indore.

2. The assessee has raised following grounds of appeal;

“1 That the Ld. CIT(A) has erred in dismissing the appeal

2. That the Ld. CIT(A) has erred in confirming the addition of Rs.19,93,449/- under the head disallowance of loss of trading in commodity exchange which is wrong and bad in law and is liable to be deleted.

3. That the Ld. CIT(A) has erred in confirming the addition of Rs.17,92,999/- under the head opening cash balance which is wrong and bad in law and is liable to be deleted.

That the appellant craves add, alter and/or any grounds of appeal setout above”

3. Briefly stated facts as culled out from the records are that the assessee is an individual and filed his return of income on 21.3.2016 declaring loss of Rs.13,86,223/-. Case selected for scrutiny through CASS followed by serving of notices u/s 143(2) and 142(1) of the Act. During the course of assessment proceedings Ld. A.O after going through the submission made by the assessee was not satisfied with set off of loss of Rs.19,93,449/- suffered by the assessee from commodity trading transactions against the income earned under other heads during the year. Ld. A.O was also not satisfied with the explanation given by the assessee about the source of opening cash balance of Rs.17,92,999/- . He accordingly computed the income of the

assessee in the following manner;

Loss shown in the return of income	Rs.(-) 138223/-
Less: Loss from commodity trading disallowed as discussed	Rs.(+) 1993450/-
Addition u/s 68 on a/c unexplained opening cash balance shown and cash deposited in bank accounts	Rs.(+) 1792999/-
Total income assessed	Rs. (+) 2400226/-

4. Aggrieved assessee preferred appeal before Ld. CIT(A) but failed to succeed.

5. Now the assessee is in appeal before the Tribunal.

6. Ground No.1 is general in nature which needs no adjudication.

7. Now we will take up Ground No.2 relating to addition of Rs.19,93,449/- being disallowance of set off of loss of trading of commodity exchange against other heads of income.

8. We have heard rival contentions and perused the records placed before us.

9. We observe that while computing the income assessee has set off of the loss from the commodity exchange from online trading at Rs.19,93,449/- shown by the assessee under the head income from

other sources and was set off against the profits and gains of business u/s 44AD of the Act at Rs.3,07,229/- and commission income of Rs.3,00,000/- shown under the head income from other source. The net loss of Rs.13,86,223/- was carry forward.

10. Ld. A.O disallowed the claim of set off of loss firstly observing that the assessee had filed belated return on 21.3.2016 and secondly he failed to get its account audited u/s 44AB of the Act as the turnover shown by the assessee from commodity trading was at Rs.22,82,80,930/- . When the assessee preferred appeal before Ld. CIT(A) he failed to succeed and Ld. CIT(A) took a view that the first observation of Ld. A.O was baseless that the assessee is not entitled to set off of loss from one head to another head for the same assessment year merely for belated filing of return of income. As regards the second observation of Ld. A.O about accounts being unaudited even when the turnover exceeded Rs. 1 crore, Ld. CIT(A)held that the assessee is not maintaining proper books of accounts which lead to non audit of the financial transactions and in absence of which it was not possible to verify the alleged loss of Rs. 90,93,450/- as to whether it is is coming under the category of

speculation loss or normal business loss.

11. Now the issue before us is that whether the claim of setting of loss from commodity trading should be allowed against income under other heads merely for not getting its accounts audited. Records shows that the assessee has filed the detailed statement of transactions carried out for commodity trading from KARVY Commodities Ltd placed at page 11 to 23 of the paper book. There is no finding by both the lower authorities challenging the genuineness of the commodity trading transactions entered during the year and the amount of loss suffered by the assessee. Default by the assessee for not maintaining proper books of accounts and not getting accounts audited even though achieving the turn over of Rs. 22828930/- attracts penalty under other provisions of the Act which were open to the Revenue authorities to initiate as and where required. However in the instant case no question has been raised for the genuineness of the trading loss. It is true that it has been disclosed under head income from other source but according to Section 71(1) of the Act assessee is entitled to set off this commodity trading from income under the head Business &

profession and income from other sources.

12. We therefore in the given facts and circumstances of the case are of the considered opinion that finding of Ld. CIT(A) of confirming the disallowance of commodity trading loss of Rs.19,93,449/- deserves to be set aside. We accordingly direct the revenue authorities to allow the assessee's claim of commodity trading loss by way of set off to the extent of income under other heads for the year under appeal. Certainly assessee will be allowed to carry forward the loss to the subsequent years. In the result Ground No.2 of the assessee's appeal is allowed.

13. Now we take up Ground No.3 relating to addition of Rs.17,92,999/-being the amount of opening cash balance not explained by the assessee. During the course of assessment proceedings Ld. A.O on the basis of AIR came to notice that cash of Rs.17,36,130/- have been deposited in Axis Bank and cash of Rs.75,91,800/-deposited in Vyaparik Audogik Sahakari Bank. Assessee was asked to explain the source of cash deposited in bank. Cash flow statement was filed in which opening cash balance of Rs.17,92,999/- was shown. Assessee was asked to furnish evidences in the form of balance sheet/statement of affairs

to explain the opening balance of Rs.17,92,999/- but the same remained unexplained before the Ld. A.O which resulted in the addition. When the assessee preferred appeal before Ld. CIT(A) assessee again failed to file any evidence which resulted in dismissal of the ground and the addition of Rs.17,92,999/- been confirmed by Ld. CIT(A) observing as follows;

“4.0 This ground of appeal is with regard to making addition of Rs.17,92,999/- u/s 68 of the IT Act, 1961. I have carefully gone through the assessment order as well as submission of the appellant in this regard.

4.1 During the course of assessment proceedings, as per AIR information, the appellant had deposited cash in his saving bank a/c at Rs.1736130/-. The appellant was asked by the AO to explain the source of cash deposited in the bank accounts. In reply to the said query, the appellant ad submitted profit & loss statement in the required format, cash flow statement before the AO. On perusal of the cash flow statement, it was observed by the AO that the appellant had shown opening balance of Rs.1792999 and the appellant not submitted any evidence for the said opening balance.

4.2 During the course of appellate proceedings, the appellant has submitted cash flow statement. I have gone through the said statement and find that the opening balance as on 01.04.2013 was at Rs.17,92,999. But the appellant had not produced any evidence regarding the said opening balance. Hence, the appellant had failed to prove his primary onus. Therefore, the AO has rightly made the said

addition and accordingly this ground of appeal is dismissed”

14. Even during the course of hearing before us the assessee has not pleaded on this ground nor has invited our attention to any of the documentary proof to explain the opening cash in hand of Rs.17,92,999/-. We have also perused the paper book in which income tax returns for Assessment Year 2010-11 to 2013-14 at page 27 to 30 but only acknowledgements have been filed. Assessee has not provided any details in the shape of balance sheet or statement of affairs for the immediate preceding Assessment Year 2013-14. In the given facts and circumstances of the case it seems that the assessee's claim of having opening cash balance of Rs.17,92,999/- is baseless and devoid of merit. Further Ld. Counsel for the assessee failed to make any submission which shows that assessee has no credible documentary evidences to support this ground. We therefore have no option left except to dismiss the assessee's Ground and confirm the finding of Ld. CIT(A) sustaining the addition of Rs.17,92,999/- as unexplained opening cash balance. Ground No.3 of the assessee is dismissed.

15. In the result appeal of the assessee is partly allowed.

The order pronounced in the open Court on 25.03.2019.

Sd/-

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 25th March, 2019

/Dev

Copy to: The Appellant/Respondent/CIT concerned/CIT(A)
concerned/ DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore