

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES (SMC), JAIPUR

श्री रमेश सी शर्मा, लेखा सदस्य के समक्ष
BEFORE: SHRI RAMESH C SHARMA, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 1463/JP/2018
निर्धारण वर्ष / Assessment Year : 2009-10

Smt. Neera Mathur, 52/31, Shipra Nath, Near Metro Mas Hospital, Mansarovar, Jaipur (Raj).	बनाम Vs.	I.T.O., Ward 2(1), Ajmer.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: ADOPM 3653 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Bafna (Adv)
राजस्व की ओर से / Revenue by : Ms. Anuradha (JCIT)

सुनवाई की तारीख / Date of Hearing : 19/03/2019
उदघोषणा की तारीख / Date of Pronouncement : 27/03/2019

आदेश / ORDER

PER: R.C. SHARMA, A.M.

This is an appeal filed by the assessee against the order of Id.CIT(A), Ajmer dated 03/10/2018 for the A.Y. 2009-10 in the matter order passed U/s 143(3) of the Income Tax Act, 1961 (in short the Act).

2. In this appeal, the assessee is aggrieved for reopening of assessment and also for addition of Rs. 1,74,873/-.

3. Rival contentions have been heard and record perused. Facts in brief are that the assessee is engaged in trading of shares and income from other sources. The assessment was reopened on the basis of information that the assessee has reduced its profit by Rs. 1,74,873/- by way of Client Code Modification. From the record I found that during the period under consideration the assessee has carried out F&O transactions on approx 113 days in a year. There were 56 items of losses amounting to Rs. 1,07,23,049.64 and 57 items of profit amounted to Rs. 1,19,28,574.12. The total Turnover of profit and loss was Rs.2,26,51,623.00. Copy of ledger account stock broker was also filed before the lower authorities. The A.O. has doubted about only one transaction of loss of Rs. 1,74,873/-. The assessee client code modification was less than 0.77% of the total trades carried out by the broker during the year. Thus, the error is within the limit of the reasonable margin as per the NSE/SEBI circular and then such an error which is rectified by the brokers as per the facility of Client Code Modification cannot be held as misuse and bogus transactions. It is merely a rectification exercise which corrects the transaction which was wrongly punched in the hand of the client Furthermore, I found that nowhere, the Assessing Officer has given any finding that the assessee and the other parties from whose account, the transactions are treated

as transfer of loss are in collusion alongwith the broker. Once the parties are independent and have no relation then doing such transaction within such limited window period of ½ hour after trading hours is not possible. I also found that the client M/s Sandeep Stocks Pvt. Ltd. whose code was modified are not related to the assessee. Normally the question of shifting of loss would arise between the related parties only. Accordingly, I do not find any justification for the addition so made by the Assessing Officer. Hence, I direct the Assessing Officer to delete the same.

4. During the course of assessment, the Assessing Officer has also disallowed 50% of the expenses debited to P&L account which pertains to salary, conveyance, terminal charges, accounting charges and office expenses. By the impugned order, the Id. CIT(A) restricted the disallowance to the extent of 25%. I found that during the assessment proceedings, the Assessing Officer was found that most of the expenses were supported by self made vouchers. Keeping in view the allegation of the Assessing Officer and the Id. CIT(A), I modify the disallowance and direct the Assessing Officer to restrict the disallowance of expenses to the extent of 10%. I direct accordingly.

5. In so far as reopening of the assessment is concerned, I found that there was sufficient reason to believe that the income has escaped assessment, accordingly, reopening of assessment by the Assessing Officer was justified and I uphold the same.

6. In the result, appeal of the assessee is allowed in part in terms indicated hereinabove.

Order pronounced in the open court on 27th March, 2019

Sd/-
(रमेश सी शर्मा)
(RAMESH C SHARMA)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 27th March, 2019

*Ranjan

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

1. अपीलार्थी / The Appellants- Smt. Neera Mathur, Jaipur.
2. प्रत्यर्थी / The Respondent- The I.T.O., Ward 2(1), Ajmer.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 1463/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar