

**IN THE INCOME TAX APPELLATE TRIBUNAL  
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER &  
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**ITA No. 247/VIZ/2018  
(Asst. Year : 2010-11)**

Gunnam Satish,  
D.No. 1-84, Alamuru  
Mandalm, Gummileru,  
East Godavari District.

vs. ITO, Ward-1,  
Kakinada.

PAN No. AMWPG 4578 M  
(Appellant)

(Respondent)

Assessee by : Shri G.V.N. Hari – Advocate.  
Department By : Smt. Suman Malik – Sr.DR

Date of hearing : 06/02/2019.  
Date of pronouncement : 23/04/2019.

**ORDER**

**PER V. DURGA RAO, JUDICIAL MEMBER**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-1, Guntur, dated 02/04/2018 for the Assessment Year 2010-11.

**2.** Facts of the case, in brief, are that assessee is an individual, filed his return of income admitting total income of Rs. 1,87,900/- besides agricultural income of Rs. 1,80,000/-. The assessee received income from interest receipts. The case of the assessee

is selected for scrutiny and assessment was completed by making an addition of Rs. 17,84,920/- to the income returned under the head 'income from business and profession'. During the course of assessment proceedings, the Assessing Officer has noticed that the assessee had admitted interest receipt of Rs. 1,87,902/-, by which he filed statement of interest account, personal account, profit & loss account and balance sheet. It was noticed by the Assessing Officer that the assessee did the business of commodity share broking through Aditya Birla Commodities, as per the CIB data. The Assessing Officer found that the assessee has not reflected the business transaction of share trading in the returns so filed. The assessee in response to the notices issued under section 143(2) and 142(1) of the Act, furnished books of accounts which reflected interest receipts only. However, on a query, the assessee filed ledger account for commodity share broking, copy of bank account with Axis Bank, statement of account with Aditya Birla Commodities Broking Ltd., profit & loss account, personal account and balance sheet reflecting trade results of commodity share broking. The assessee has submitted before the Assessing Officer that net result in share broking business was loss and the same was not claimed in the return as the return was filed beyond the due date. Considering these and also non-recording of

transactions in the books of accounts, which were the basis for filing the return, the Assessing Officer worked out the peak credit of Rs. 17,84,920/- and added the same to the total income of the assessee.

**3.** On appeal before the Id. CIT(A), the assessee has submitted as under:-

*"I have returned an income of Rs.1,87,900/- from Interest receipts and Commodities share broking besides agricultural income of Ps. 1,80,000/- while filing the return I have not considered the loss from Share broking amounting to Rs.23,67,580/- as the return was filed after due date. The Assessment was completed by taking the peak credit of Ps.17,84,920/- in Bank Deposits which was added to the income without deducting the loss of Rs.23,67,580/-. I submit that I have sustained huge loss in the business and sold my agricultural lands also to clear the debts I have made. My wife has given me an amount of Ps.16,00,000/- to clear the dues which was given to her by her mother considering the financial difficulty of my family. I am filling herewith an affidavit from her mother Smt. Chllikuri Subba Lakshmi confirming the amount given to my wife. I submit that even if the loss is not considered the amount available which was taken from my wife amounting to Rs.16,00,000/- should be given credit before considering the peak credit of Rs.17,84,920/-. I humbly submit before your honour that while considering the peak credit, the Assessing Officer may kindly be directed to allow the loss of Rs.23,67,580/- besides cash given to me by my wife amounting to Rs.16,00,000/-"*

The Id. CIT(A) by considering the same, confirmed the order of the Assessing Officer.

**4.** On being aggrieved, assessee carried the matter in appeal before this Tribunal.

5. Ld. counsel for the assessee has submitted that the Assessing Officer has only taken a peak credit and ignored the loss suffered by the assessee and therefore, same may be considered.
6. On the other hand, Id. Departmental Representative has relied on the orders of the authorities below.
7. We have heard both the sides, perused the material available on record and orders of the authorities below.
8. The assessee has filed a return of income by admitting total income of Rs. 1,87,900/-. The Assessing Officer after following due process, assessment was completed and worked out peak credit of Rs. 17,84,920/-. During the course of assessment proceedings, the Assessing Officer has noted that the assessee did business of commodity share broking through Adity Birla Commodities. This transaction was not recorded in the books of account and also not reflected in the return filed. Therefore, the Assessing Officer has considered the bank account with the Axis Bank, profit & loss account, personal account and balance sheet and taken a peak credit. Accordingly, the addition of Rs.17,84,920/- was made. The case of the assessee before the Assessing Officer was that in respect of commodity share broking, he has suffered loss therefore, same is not claimed in the return of income. Before the Id. CIT(A) it was submitted that his wife has

given cash, amounting to Rs. 16.00 lakhs, which was received from her mother and submitted that same may be considered. We find that in the first instance, his case before the Assessing Officer is that due to loss, transaction is not reflected in the return of income. At appellate stage, he changed his version completely and submitted that his wife has received gift from her mother and the same is given to the assessee. Inconsistent plea taken by the assessee cannot be accepted. The Id. CIT(A) has examined the alternative plea of Rs. 16.00 lakhs received from his wife and observed that the assessee failed to prove the creditworthiness and genuineness of the transaction. Therefore, confirmed the order of the Assessing Officer. That apart, return filed by the assessee was beyond due date of filing of return, therefore, the assessee cannot claim business loss after due date. The Id.CIT(A) by examining all the facts and details submitted, confirmed the order of the Assessing Officer. For the sake of convenience, the relevant portion of the order is extracted as under:-

*"I have carefully considered the assessment order, statement of facts, grounds of appeal, written submissions of the appellant, remand report of the Assessing Officer and counter comments of the appellant.*

*Ground Nos.1 to 5:*

*The appellant raised the grounds stating that the Assessing Officer not justified in making addition at Rs.17,84,920/- without giving any valid reasons. The appellant also*

*contended that the Assessing Officer should have given the calculation of peak credit. Further, the appellant also stated that the Assessing Officer should have considered all the bank transactions which were reflected in the books of accounts but without considering the same, assessing the peak is incorrect. Not considering the loss against the peak is also a grievance of the appellant.*

*The appellant vide submissions dated 18-01-2018, stated that he has incurred loss of Rs.23,67,580/- in the share broking business and not claimed in the return as the same was filed belatedly. The loss sustained was covered by sale of agriculture land and money received from his wife at Rs.16,00,000/- claimed to have been given by her mother. An affidavit dated 18-08-2017 of Chilukuri Subba Lakshmi was filed by the appellant. In view of this, the appellant requested to give credit to the amount available against the peak worked out by the Assessing Officer. The appellant also requested that once the peak credit is taken as income, loss of share business should be allowed.*

*The appellant vide the additional submissions dated 10-02-2018, stated that the share broking loss has to be allowed against the peak credit. The appellant also filed copy of bank account, copy of brokers account, profit & loss account, balance sheet etc. The appellant also further contended that the Assessing Officer was wrongly concluded that business transactions of share broking were not recorded in the books of accounts, as against the fact that the Assessing Officer mentioned in para 3 of page 2 of the assessment order regarding furnishing of books of accounts.*

*In view of the above arguments, the copies of the letters, submissions and copy of the affidavit was forwarded to the Assessing Officer for his comments. The Assessing Officer was specifically asked to give a detailed report and also to state whether the appellant filed an affidavit before the Assessing Officer as contended at the appellate stage. It was also asked to clarify whether the appellant taken any plea regarding cash receipts from his wife as a source for bank deposits. The Assessing Officer submitted the report along with the copy of the order sheet wherein it was stated that the books of accounts produced in support of the return filed does not contain the transactions of share broking. The Assessing Officer stated that the assessee at the time of assessment explained the source of deposits in the bank account as the amounts realized from the sundry debtors and*

*used for share trading business without giving any further details of the debtors.*

*The Assessing Officer vide his report categorically stated that the assessee has neither filed any affidavit nor stated that he has received Rs.16,00,000/- from his wife. The Assessing Officer considering all these things stated that the claim of cash receipt from wife and filing of affidavit is an afterthought and contrary to facts available on record.*

*The appellant was made available the copy of the report of the Assessing Officer along with enclosure for his counter comments. The same were submitted vide letter dated 21-03-2018 as mentioned supra. The appellant contends that the conclusion and the report of the Assessing Officer are not based on the facts. The appellant concedes that he has incurred loss of Rs.23,67,580/- but not claimed the same. The appellant contends that without considering the material facts, the Assessing Officer added the peak credit and requested to delete the same.*

*I have considered the material facts including the report and counter comments as above. The appellant filed an affidavit for the first time before the appellate authority but there is no request or prayer and also no Provision/Rule was mentioned to file such a document. Additional evidence can be filed under Rule 46A of the IT Rules. Admission of the same depends upon the criteria whether the appellant was prevented from reasonable cause for not filing the same before the Assessing Officer. In the light of the facts of the case, it is clear that the Assessing Officer has not called for such documents at the time of scrutiny proceedings as no such plea (money receipt from wife for share trading business) was raised before the Assessing Officer. Further, this document is not required to dispose the appeal. Hence, the document submitted by the appellant is not admitted as evidence.*

*The appellant fervently argued that the Assessing Officer was wrong in stating that the share transactions was not recorded in the books of account referring to para 3 of page 2 of the assessment order. In this connection, the assessment order has been perused and found that the Assessing Officer clearly mentions that the books of accounts produced in support of the return filed does not contain share trading transactions. However, the assessee filed ledger account copies, profit & loss accounts, and balance sheets of the share trading business, in response to the query raised by the Assessing*

*Officer on share business.*

*The Assessing Officer has considered the return and the books of accounts connected to the income reflected. The appellant categorically stated that he has incurred loss but not claimed the same in the return. The appellant has also stated that separate books were maintained. The argument of the appellant is that the loss from the share trading account which could not be claimed as the return was filed belatedly should be allowed as peak credit was taken as income. If the argument of the appellant is accepted, then it works against the statutory provision of Sec.139(3) of the Act which mandates the filing of return i.e. loss return within the time allowed. The appellant wishes to avail the carry forward of loss against the provision of the law. The Assessing Officer rightly not considered the request of the appellant.*

*The appellant filed the return of income offering interest receipts. However, the share trading business was not incorporated in the said books of accounts maintained for the purpose of filing return. The claim of the appellant that he has maintained separate books for share trading but not incorporated the results in the return is against the accounting principles also. In view of this, the contentions of the appellant are not accepted. The action of the Assessing Officer is required to be upheld. Hence, these grounds of appeal are dismissed.*

*Though the grounds raised by the appellant are dismissed as above, the plea put forth by the appellant about having source of Rs.16,00,000/is discussed as under without prejudice to the above decision.*

*The appellant contended that Rs.16,00,000/- was received from his wife and the same need to be taken as source against the peak worked out by the Assessing Officer. In this connection, it is to be noticed that the affidavit which has been filed by the appellant is not admitted. However, without prejudice, assuming for a while that the document was admitted even then it will not help the appellant's case. The document was only an assertion made by third party and no confirmation from the wife of the appellant filed in support of the appellant's contention. There is no documentary evidence or bank account filed by the appellant to substantiate that money has been received from his wife so as to take the same as source against the peak worked out by the Assessing Officer, In view of these, the arguments of the appellant are rejected."*

**9.** We have gone through the orders of the Assessing Officer as well as Id. CIT(A). We find no reason to interfere with the order passed by the Id. CIT(A). Thus, this appeal filed by the assessee is dismissed.

**10.** In the result, appeal filed by the assessee is dismissed.

Order Pronounced in open Court on this 23<sup>rd</sup> day of April, 2019.

Sd/-  
**(D.S. SUNDER SINGH)**  
**Accountant Member**

sd/-  
**(V. DURGA RAO)**  
**Judicial Member**

**Dated: 23<sup>rd</sup> April, 2019.**

**vr/-**

*Copy to:*

1. *The Assessee - Gunnam Satish, D.No. 1-84, Alamuru Mandalm, Gummileru, East Godavari District.*
2. *The Revenue - ITO, Ward-1, Kakinada.*
3. *The Pr.CIT-II, Visakhapatnam.*
4. *The CIT(A)-1, Guntur.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

(VUKKEM RAMBABU)  
Sr. Private Secretary,  
ITAT, Visakhapatnam.