

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.441/Del/2019
Assessment Year: 2015-16

Nikunj Jajodia,
108, Ansal Bhawan,
16, KG Marg,
New Delhi.

Vs. ITO,
Ward-52(5),
New Delhi.

PAN: AHLPJ7716J

(Appellant)

(Respondent)

Assessee by	:	Shri V.K. Jain, Advocate & Shri Ashwani Seth, CA
Revenue by	:	Shri S.L. Anuragi, Sr.DR
Date of Hearing	:	02.07.2019
Date of Pronouncement	:	08.07.2019

ORDER

This appeal filed by the assessee is directed against the order dated 22.11.2018 of the CIT(A)-18, New Delhi, relating to Assessment Year 2015-16.

2. Facts of the case, in brief, are that the assessee is an individual and filed his return of income on 31st August, 2015 declaring total income of Rs.9,58,800/-. The case was selected for limited scrutiny. Accordingly, statutory notices u/s 143(2) of the Act and 142(1) of the Act were issued to the assessee. The Assessing Officer, during the course of assessment proceedings, noted that the assessee has earned income from

investment in India and abroad. He noted that the income arising from investment in India has been claimed as exempt while foreign income has been declared as 'Income from other sources' and offered for taxation. He noted that during the F.Y. 2013-14 i.e., on 4th March, 2014, a sum of Rs.47,19,951/- (USD 75000 @ 62.91) was sent from India to ANZ Bank, Singapore. During the F.Y. 2014-15 i.e., 27th May, 2014, the assessee repatriated the remittance sent in March, 2014 back to India and received back USD 75000 which is equivalent to Rs.43,95,525/-. Thus, the assessee suffered a loss of Rs.3,22,725/- which was claimed by the assessee in the Profit & Loss Account. The Assessing Officer, therefore, confronted the same to the assessee. Rejecting the various explanations given by the assessee and observing that the assessee is not doing business in share trading and the total income arises from investment and securities in India and abroad, therefore, the loss claimed u/s 37(1) is not an allowable expenditure. He accordingly made addition of Rs.3,22,725/- to the total income of the assessee.

3. In appeal, the Id. CIT(A) upheld the action of the Assessing Officer.
4. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

“1). The order passed by the Ld. CIT(A) is bad in law, wrong on facts and against the principles of natural justice.

2). That the CIT-(A) has erred in confirming foreign exchange difference (Loss of Rs 3,22,725/-) under Limited Scrutiny in spite of the fact that there was no such issue in “LIMITED SCRUTINY” and wrongly held that loss arising from foreign transactions has direct nexus with the issues on which the case was selected for Limited Scrutiny and therefore no prior approval was required.

3 a). That the CIT-(A) has erred in law and on facts of the case in confirming loss on foreign exchange rate difference, amounting to Rs 3,22,725/-

claimed by the appellant u/s 37(1) of the Income Tax Act, 1961 holding that there is no business income / activity and the appellant could not establish that amount has been actually used for investments.

b). That the CIT-(A) has erred in law and on facts of the case in concluding that the said loss is not allowable, as the appellant has failed to establish the nexus between the loss and the source of any income, when in fact the foreign exchange rate difference loss is allowable, as it relates to the investment activity of the appellant and is otherwise allowable u/s 57(1) of the Income Tax Act, 1961, as the income is taxable under head Income from Other Sources duly accepted by the Ld. A.O. in the assessment order.

The appellant craves leave to add, alter, amend, modify or forego any of the grounds of appeal before or at the time of hearing.”

5. I have considered the rival arguments made by both the sides and perused the orders of the authorities below. I have also considered the various decisions cited before us. A perusal of the computation of income filed by the assessee as placed at pages 1-2 of the paper book shows that the assessee has shown dividend income from foreign investments at Rs.10,00,060/-. It is the submission of the ld. counsel for the assessee that when the dividend income from foreign investment has been shown as income in the Profit & Loss Account, the corresponding loss of rate difference which is debited in the Profit & Loss Account should not have been disallowed. I find merit in the above argument of the ld. counsel for the assessee. Admittedly, the assessee derives income from the investment in India and abroad. The income that has accrued to the assessee from investment abroad has been offered to tax and there is no dispute in the same. Therefore, when there is loss on foreign exchange fluctuation which is related to the financial/investment activity carried on by the assessee, the same, in my opinion, is an allowable expenditure. I, therefore, set aside the order of the CIT(A)

and direct the Assessing Officer to delete the addition. The various decisions relied on by the Id.CIT(A) are not applicable to the facts of the present case and are distinguishable . The grounds raised by the assessee are accordingly allowed.

6. In the result, the appeal filed by the assessee is allowed.

The decision was pronounced in the open court on 08.07.2019.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMFBER

Dated: 08th July, 2019

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi