

**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC, "C" BENCH : BANGALORE**

BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER

ITA No.2346/Bang/2018
Assessment year : 2009-10

Smt. Sandhya T.N, Legal Heir of late K.R Mallikarjunaswamy, Prop : M/s Basaveshwara Jewellers & Bankers, Hulyar, C.N Halli, Tiptur-572 201. PAN – ADJPM 3668 G	Vs.	The Income-tax Officer, Ward-1, Tiptur.
APPELLANT		RESPONDENT

Appellant by	:	Smt. Soumya K, Advocate
Respondent by	:	Shri Ganesh R Ghale, Advocate Standing Counsel to Dept.

Date of hearing	:	28.11.2019
Date of Pronouncement	:	03.12.2019

ORDER

Per B.R Baskaran, Accountant Member

The assessee has filed this appeal challenging the order dated 04-06-2018 passed by Ld CIT(A)-7, Bengaluru and it relates to the assessment year 2009-10. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the addition made by the AO and further enhancing the same.

2. I heard the parties and perused the record. The assessee is engaged in the business of trading in jewellery and pawn broking business. The assessee has also carried on derivative trading in

gold and silver commodities. During the year under consideration, the assessee's turnover in derivative transactions was Rs.196.49 crores. The AO noticed that the assessee has started derivative trading by investing a sum of Rs.19,07,500/- as margin money. He further noticed that the assessee has to pay margin money @ 7% of the value of transactions as per trading rules. Accordingly the AO worked out peak credit of trading activity at Rs.6,89,37,371/-. The margin money @ 7% on the above said peak amount was worked out at Rs.48,25,616/-. The AO worked out the shortage in the margin money as under:-

7% margin money on peak credit	-	48,25,616
Less:- Initial investment in trading activity	-	19,03,520

Balance		29,22,096
Less:- Sources available....		20,34,850

Balance		8,87,246
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The AO considered the above said amount of Rs.8,87,246/- as margin money for which sources were not available with the assessee. Accordingly he added the same to the total income of the assessee.

3. The Ld CIT(A) confirmed the same. He further noticed that the AO has deducted the initial investment of Rs.19,03,520/- made by the assessee against the margin money deposit worked out by him. The Ld CIT(A) took the view that the same actually represented initial purchase made by the assessee. The initial purchase amount as per details of purchases was Rs.19,03,141/-. Accordingly, the Ld CIT(A) took the view that the AO was not correct

in allowing deduction of Rs.19,03,141/- against the margin money deposit computed on peak credit. Accordingly he directed the AO to enhance the addition by Rs.19,03,141/-. The assessee is aggrieved by the order so passed by Ld CIT(A).

4. The Ld A.R submitted that the books of accounts of the assessee have been audited. Further the assessee has not paid any margin money as presumed by the AO, as the assessee was living in a small town and was dealing with a known broker. Accordingly she submitted that the AO was not justified in making addition towards margin money on estimated basis. She further submitted that the Ld CIT(A) has enhanced the addition without giving any enhancement notice and without providing opportunity to the assessee. Accordingly she submitted that the action of the Ld CIT(A) is in violation of provisions of sec. 251(2) of the Act.

5. On the contrary, the Ld D.R submitted that the assessee has not supported his claim that he did not pay any margin money. He submitted that the brokers are governed by the rules governing the business of trading in derivatives, which stipulate that 7% of the amount shall be collected as margin money. This fact was brought out by the AO in the remand report submitted to Ld CIT(A). He further submitted that the authorized representative of the assessee has appeared before Ld CIT(A) and hence it is not correct to say that the assessee was not given opportunity before enhancing the income.

6. I heard rival contentions and perused the record. I notice that the Ld CIT(A) has called for a remand report from the AO during the course of appellate proceedings and the AO has reported that there is requirement of depositing margin money @ 7% as per Rules governing the trade. The Ld CIT(A) has also made following observations:-

“.....At the other hand, the appellate has submitted that he was not required to deposit any margin money due to his credit worthiness and track record with the broker. However, nothing, such as any correspondence with the trading agent as regards waiver of margin money, has been brought on record to substantiate this claim of the appellant. Thus, the appellant has admitted that the requirement of depositing margin money does exist but he was exempted from that requirement. In view of above facts, it is observed that in absence of any supporting evidence, it is not possible to accept the claim of the appellant that he was not required to deposit any margin money for his business of trading in derivatives.”

7. Before me also, the assessee did not produce any document/evidence to show that he did not make any margin money deposit as computed by the AO. The assessee has furnished Ledger account copy in the name of the assessee as available in the books of M/s Prasiddhi Multi Commodities. A perusal of the same would show that the above said broker is located at No.300/44, 10th Main, 4th block, Rajaji Nagar – 560 002, which means that the broker of the assessee was located in Bangalore and not in a small

town as claimed by the assessee. Hence, I am unable to comprehend as to why the assessee could not procure a certificate from the broker with regard to the query raised by the AO. At the same time, I notice that the AO has arrived at the margin money deposit on estimated basis. The assessing officer also did not attempt to collect the details of margin money deposit, if any, paid by the assessee by issuing notices/summons to M/s Prasiddhi Multi Commodities, referred above.

8. I also notice that the Ld CIT(A) has enhanced the addition by Rs.19,03,141/-. While the deposit claimed to have been paid by the assessee initially, which was set off by the AO against his own workings, was Rs.19,03,520/-, the Ld CIT(A) has presumed that the same represents first purchase made by the assessee, even though the figures of deposit and first purchase did not tally, i.e., the amount of first purchase was Rs.19,03,141/-, while the deposit amount was Rs.19,03,520/-. As noticed earlier, the Ld CIT(A) has enhanced the addition by Rs.19,03,141/-, being the value of first purchase. The assessee has also contended that the Ld CIT(A) has not given opportunity before enhancing the addition.

9. Accordingly I am of the view that the enhancement made by Ld CIT(A) is not justified, as the reasoning/basis of enhancement was only presumption entertained by the ld CIT(A). Accordingly I delete the enhancement made by Ld CIT(A). However, since the assessee has failed to furnish any material/evidence to controvert the addition made by the AO in the assessment order, I am of the view that the Ld CIT(A) was justified in confirming the said addition.

10. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on **3rd December, 2019.**

**Sd/-
(B.R Baskaran)
Accountant Member**

Bangalore,
Dated, the 3rd December, 2019.

/Vms/

Copy to:

1. Appellant (s) / Cross Objector(s)
2. Respondent(s)
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore

1. Date of Dictation
2. Date on which the typed draft is placed before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
4. Date on which the fair order is placed before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so
8. Date on which the file goes to the Bench Clerk
9. Dictation note enclosed
10. Date on which order goes for Xerox & endorsement.....
11. Date on which the file goes to the Head Clerk
12. The date on which the file goes to the Assistant Registrar for signature on the order
13. The date on which the file goes to dispatch section for dispatch of the Tribunal Order
14. Date of Despatch of Order.
14. Dictation note enclosed