

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH
(VIRTUAL COURT)

श्री एन.के.सैनी, उपाध्यक्ष एवं श्री आर.एल. नेगी, न्यायिक सदस्य
BEFORE: SHRI. N.K.SAINI, VP & SHRI , R.L. NEGI, JM

आयकर अपील सं./ ITA NO. 1478/Chd/2019
निर्धारण वर्ष / Assessment Year : 2016-17

Shri Ranjan Chawla House No. 348 Sector 21-A, Chandigarh	बनाम	The Asstt. CIT Circle 3(1), Chandigarh
स्थायी लेखा सं./PAN NO: ABYPC4568Q		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : None
राजस्व की ओर से/ Revenue by : Shri Ashok Khanna, Addl. CIT
सुनवाई की तारीख/Date of Hearing : 29/06/2021
उद्घोषणा की तारीख/Date of Pronouncement : 29/06/2021

आदेश/Order

PER N.K. SAINI, VICE PRESIDENT

This is an appeal filed by the Assessee against the order dt. 26/09/2019 of Ld. CIT(A)-1 Chandigarh.

2. Assessee has raised the following grounds of appeal:

1. *That the order of the Lrd. Commissioner of Income Tax (Appeals)-1, Chandigarh is defective both in law and facts of the case.*
2. *That the Lrd. Commissioner of Income Tax (Appeals) has been unjustified in upholding disallowance of expenses amounting to Rs. 4,12,033/- incurred by the Assessee on account of Business Expenses and allowable under the provisions of Income Tax Act, 1961.*
3. *That any other ground which may be taken up at the time of hearing with the kind permission.*

3. During the course of hearing nobody was present on behalf of the assessee neither any adjournment application was sought. We therefore proceed ex-parte qua the assessee and the case has been decided ex-parte after hearing the Ld. DR on merit.

4. Facts of the case in brief are that the assessee filed return of income on 09/09/2016 declaring an income of Rs. 49,88,900/- which was processed under section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'Act'). Later on the case was selected for scrutiny. The A.O. during the course of assessment proceedings noticed that the assessee has shown net sale of shares and derivatives at Rs. 45,64,148.65 where as in the Profit & Loss Account the amount was Rs. 40,11,687.97. He asked the assessee to show cause as to why the difference should not be added back to the income and also asked to reconcile the difference of Rs. 552,460.68.

4.1 In response the assessee submitted as under:

"It is submitted that assessee has also done Daily Future in Commodity Trading. The assessee had a loss of Rs. 140427.35 from Commodity Trading (Monthly details of Commodity Trading and details Transactions in Commodity are enclosed). It is submitted that there are other expenses which are incidental to Profit from share and derivative trading. These expenses are deducted from above to arrive at net profit of Rs. 4011687.97 from Trading."

4.2 The A.O. however made the addition of Rs. 4,12,033.33/- by observing in para 4.4 and 5 of the assessment order dt. 01/12/2018 as under:

4.4 Assessee's response has been considered carefully. However, it is seen that assessee has given supporting documents in regard to loss of Rs. 140427.35/- but in regard to remaining difference of Rs. 4,12,033.33/-, assessee did not submit any details and nature of these expenses and no bills and vouchers of such expenses were submitted by the assessee justifying that the expenses were incidental to trading

(Addition of Rs. 412033/-)

5. Thus, the assessee has reduced its profit by Rs. 4,12,033.33 (45,64,148.65 - 140427.35-41,20,33.33) in ITR for A.Y 2016-17. Hence, Rs. 4,12,033/-(rounded off) is added back to the income of the assessee

5. Being aggrieved the assessee carried the matter to the Ld. CIT(A) and submitted as under:

"4. The assessee wishes to contest the addition on merits.

5. In the order passed by the Ld. AO (Point No. 4.3) quoting (partial) reply by the assessee dated 26.11.2018 as under:

It is submitted that assessee has also done Daily Future in Commodity Trading The assessee had a loss of Rs.140427.35 from Commodity Trading. (Monthly details of Commodity Trading enclosed as per Annexure 3) (Details Transactions in Commodity are enclosed as per Annexure 4). It is submitted that there are other expenses which are incidental to profit

from share & derivative trading. These expenses are deducted from above to arrive at net profit of Rs.4011687.97 from Trading.

Profit & Loss Account is attached as per Annexure 1 above which shows net profit of Rs.4011687.97 after deducting expenses.

6. The underlined bold portion which was part to the above reply was not considered by the Ld. AO and omitted in the order.

In share/ derivative trading there are expenses such as Security Transaction Tax (STT), Stamp Duty Tax, Audit Fee, Telephone Expenses, Bank Charges, Interest, Depreciation on mobile used in trading which were debited in the Audit Profit and Loss Account provided to the Ld. AO were not considered amounting to Rs. **412033.00**.

The details of these expenses were provided to the Ld. AO in shape of brokers statement, bank statement.

7. In view of the above facts it is therefore prayed that the addition made by way of considering only difference of Sale/ Purchase of Stocks/ Derivatives/ Commodities and not considering expenses relating to these transactions in recognized stock exchange is bad in law, may be deleted and assessee be allowed the complete deduction."

6. The Ld. CIT(A) did not find merit in the aforesaid submissions of the assessee and sustained the addition by observing in para 5.2 of the impugned order as under:

5.2 HELD: I have perused the order of the Assessing Officer, examined the reply of the assessee and assessment record. Appellant in the ITR for A.Y. 2016-17 has shown gross profit of Rs.40,11,688/- from trading in share and derivatives. In the monthly details of sales and purchases of shares and derivatives submitted by assessee, it is found by the AO that net of sales comes to be Rs.45,64,149/- i.e. (Rs.3,62,112/- from shares and Rs.42,02,036/- from derivatives). When confronted to 'reconcile the difference of Rs.5,52,461/-, appellant submitted that he has also done Daily Future in Commodity Trading from where he incurred a loss of Rs. 1,40,427/- from Commodity Trading. For this appellant submitted monthly details of Commodity Trading and details of transactions in Commodity. Further, there were other expenses which are incidental to profit from share and derivative trading. These expenses are deducted from above to arrive at gross profit of Rs.40,11,688/- from Trading. AO held that appellant has given supporting documents regarding loss of Rs. 140427.35/- but remaining difference of Rs.4,12,033/- has not been substantiated with any evidence like bills and vouchers in order to prove that these expenses were incidental to trading. I have perused the assessment record and profit and loss account. The main objection of the AO was that difference of Rs.4,12,033/- was not explained with any supporting evidence like bill & vouchers. No such bills and vouchers have been found submitted by the appellant during assessment proceedings or even in appellate proceedings. When AO vide notice u/s 142(1) dated 20.1.2018 has specifically asked to reconcile the difference, it was duty of the appellant to explain the same with cogent evidence. Appellant has miserably failed to prove his arguments made during assessment proceedings of difference of Rs.4,12,033/-. I do not find any reason to interfere with the order of the AO. The Ground of Appeal No. 2 & 3 are dismissed.

7. Now the assessee is in appeal.

7.1 Ld. Sr. DR strongly supported the impugned order passed by the Ld. CIT(A) and reiterated the observations made by the authorities below in their respective orders.

8. We have considered the submissions of the Ld. Sr. DR and perused the material available on the record. In the present case it is noticed that the assessee in the present case, claimed that he had furnished the details of the transactions in the commodity before the A.O. However, the A.O. made the impugned addition by observing that the details and nature of the expenses, bills and vouchers for such expenses were not submitted by the assessee. In the present case, it is not clear as to whether the A.O. asked the assessee to explain the discrepancy, if any, or to furnish any details. On the contrary, the assessee submitted in his reply dt. 26/11/2018 to the A.O. that monthly details of the commodity trading and the detailed transactions in commodity were enclosed. The Ld. CIT(A) also did not assign any cogent reason while sustaining the addition made by the A.O. We therefore considering the contradictory stand of the A.O. and the assessee and in the absence of complete details available on the record, deem it appropriate to set aside this issue back to the file of the A.O. to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

9. In the result, appeal of the assessee is allowed for statistical purposes.

(Order pronounced in the open Court on 29/06/2021)

Sd/-

आर.एल. नेगी
(R.L. NEGI)

न्यायिक सदस्य/ Judicial Member

AG

Date: 29/06/2021

Sd/-

एन.के.सैनी,
(N.K. SAINI)

उपाध्यक्ष / VICE PRESIDENT

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File