

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 9539/Del/2019 : Asstt. Year : 2008-09

Deepak Jain, B-11, Block-B, Swasthya Vihar, Delhi-110091	Vs	Income Tax Officer, Ward-25(4), New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. AEXPJ4536P		

Assessee by : Sh. R. S. Singhvi, CA

Revenue by : Sh. Ajay Kumar, Sr. DR

Date of Hearing: 03.08.2021

Date of Pronouncement: 09.08.2021

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-9, New Delhi dated 20.09.2019.

2. Following grounds have been raised by the assessee:

"1(i) That on the facts and circumstances of the case, CIT(A) was not justified in confirming addition of Rs. 72,57,368/- u/s. 69C of the IT Act, 1961 in respect of speculating loss without proper appreciation of facts or opportunity to the assessee.

(ii) That genuineness of loss is supported from details placed on record and in any case, the assessee having not claimed any such loss, there is no case for addition of Rs. 72,57,368/-.

(iii) That the provisions of sec. 69C have been applied on illegal and arbitrary basis.

2. That on the facts and circumstances of the case, the CIT(A) was not justified in not accepting statutory deduction u/s.80C in respect of claim of insurance premium to the extent of Rs. 15,760/- even though the genuineness and justification of claim is not in dispute.

3(i) That the CIT(A) has wrongly considered enhancement of Rs. 5 lakhs on alleged ground of cash deposit even without appreciating that these proceedings were of consequential nature based on direction of ITAT and issue of cash deposit being not subject matter of direction of ITAT, there is no case for any such addition.

(ii) That even otherwise, this issue was not part of grounds in dispute or considered by AO during original or consequential proceedings, there is no valid basis for any such addition.

(iii) That enhancement and consequential addition was illegal and without jurisdiction and same is in total disregard to provisions of sec. 250(4) of the IT. Act, 1961.

(ii) That in any case, there is no justification for any such addition even on merits."

3. We have gone through the Assessment Order, order of the Id. CIT (A) and arguments of both the parties.

4. The facts emanates are as under:

- The assessee made investment of Rs.31,000/- with the broker namely, Religare Securities Ltd. in Account Code No. DJ1502
- The assessee had share transactions of Rs.72,57,368/- which has been reported in the AIR.

- Out of the above said transactions, the assessee incurred loss of Rs.60,870/-.
- Owing to the non-compliance of the assessee, left with no choice, the AO made the addition to the tune of entire quantity of share transaction.
- The Id. CIT (A) confirmed the addition ignoring the fact that these share transactions were speculative in nature and the assessee indeed incurred loss to the tune of Rs.60,870/- and also ignored the confirmation from the broker to this extent.

5. Having gone through the entire record, we have no hesitation to hold that the assessee has given margin money of Rs.31,000/- with the broker with which the broker has entered into a speculative transaction of Rs.72,57,368/- on which the assessee incurred loss of Rs.60,870/-, hence, we hereby hold that, no addition on account of the quantum of share transactions grossed by the assessee is called for.

6. The other issue involve in the appeal relates to enhancement of the taxable amount by the Id. CIT (A) by Rs.5,00,000/- on account of deposits in the bank statement. At the outset, we would like to hold that the order passed by the revenue authorities in this appeal is in consequence to the directions given by the Tribunal vide order dated 17.07.2018. Since, the action of the Id. CIT (A) is beyond the mandate of the said order, the addition is hereby directed to be deleted.

7. Further, we have gone through the merits of the issue also, wherein we find that the assessee had cash in hand of Rs.9,17,700/- as on 21.03.2007 and the cash withdrawals from

the same bank account were to the tune of Rs.11,27,600/-. There is no dispute with regard to the cash in hand, cash deposits and withdrawals. Hence, the addition made of Rs.5,00,000/- on account of cash deposits cannot be held to be sustainable.

8. Regarding the claim of Rs.15,760/- under Section 80C. We have gone through the premium paid to LIC at page no. 44 of the paper book. The fact of the premium of payment has not been in dispute by the revenue at this juncture. Hence, we direct that the allowance for the claim be permitted.

9. In the result, the appeal of the assessee allowed.
Order Pronounced in the Open Court on 09/08/2021.

Sd/-

(Amit Shukla)
Judicial Member

Dated: 09/08/2021

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR