

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B(SMC)' BENCH, KOLKATA**

(Before Sri Sanjay Garg, Judicial Member)

**I.T.A. No. 1141/Kol/2019
Assessment Year: 2015-16**

Naresh Jain.....Appellant
[PAN: ADXPJ 1885 C]

Vs.

ITO, Ward-31(4), Kolkata.....Respondent

Appearances by:

Sh. Anil Kochar, Adv., appeared on behalf of the Assessee.

Sh. Jayanta Khanra, JCIT, Sr. D/R, appeared on behalf of the Revenue.

Date of concluding the hearing : September 1st, 2021

Date of pronouncing the order : September 1st, 2021

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 15.03.2019 of the Commissioner of Income Tax (Appeals)-09, Kolkata [hereinafter referred to as 'CIT(A)'].

2. The assessee in this appeal has taken the following grounds of appeal:

"1. For that the Ld. CIT (A) erred in dismissing the appeal of the appellant on the alleged grounds.

2. For that the appellant had derived income of Rs.2,09,400/- being commodity profit duly supported by documentary evidences and which formed part of the total income returned by the appellant and that the Ld. CIT(A) ought not to have accepted the observations made by the A.O. with regard to income on account of commodity dealings.

3. For that the Ld. CIT(A) ought to have accepted the contention of the appellant that the income of Rs.2,09,400/- being duly appearing in accounts and shown by the appellant in his return of income could not be treated as income assessable u/s 68 of the Act.

4. For that the submissions made by the appellant even though quoted by the Ld. CIT(A) in the appeal order have not been properly appreciated by the Ld. CIT(A) and there has been miscarriage of justice by wrong application of the provision of Section 68.

5. For that the A.O. made observations based on some information which have been utilized by him against the appellant without giving reasonable opportunity and that the Ld. CIT(A) ought not to have accepted the same.

6. For that further grounds of appeal may kindly be allowed to be taken at the time of hearing of the appeal."

3. The sole issue raised in this appeal of the assessee is regarding the verification of commodity profits of ₹2,09,400/- shown by the assessee in his return of income. The Assessing Officer (in short the 'AO') to verify the genuineness of the transaction, issued notice to the National Multi Commodity Exchange of India Ltd. (in short 'NMCE') as well as to the brokers M/s. Little Star Commodities Pvt. Ltd. and Dignity Logistic Services Pvt. Ltd. Though, the NMCE responded to the notice stating that the assessee was not registered as a client under any of their exchange, however, no reply was received from the brokers. The ld. AO added the aforesaid amount of ₹2,09,400/- treating the same as income from undisclosed sources observing that the assessee had failed to prove the genuineness of the aforesaid commodity profits shown by him. On appeal, the ld. CIT(A) confirmed the addition so made by the AO.

4. Before this Tribunal, the ld. Counsel for the assessee has submitted that, in fact, brokers are the client of the NMCE and therefore the information supplied by the NMCE was not relevant to decide about the genuineness of the transaction. Though the concerned brokers at that time did not respond to the notice of the AO, however, the assessee now has got confirmation of the transaction from said brokers. The ld. Counsel has further submitted that merely because the brokers did not give response to the notice issued by the AO, no fault can be attributed in this respect on the part of the assessee. That the assessee has already furnished the relevant evidences such as contract note and statement of accounts. The ld. Counsel has further submitted that the matter may be remanded to the AO for verification of the genuineness of the transaction. The ld. D/R had not objected to the same.

5. In view of this, the impugned order of the ld. CIT(A) is set aside and the matter is remanded to the AO for decision afresh on this issue. Needless to say, that the AO will give appropriate opportunity to the assessee to present his case.

6. The appeal of the assessee is treated as allowed for statistical purposes.

Order is pronounced in the open court on 01.09.2021.

Sd/-
[Sanjay Garg]
Judicial Member

Dated: 01.09.2021

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Naresh Jain, 47, Ezra Street, GPO, Room No. 106, Kolkata-700 001.**
- 2. ITO, Ward-31(4), Kolkata.**
3. CIT(A)-09, Kolkata. (sent through mail)
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata. (sent through mail)

True copy

By order

Assistant Registrar/DDO
ITAT, Kolkata Benches