

**IN THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN CIRCUIT BENCH: DEHRADUN**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No. 34/DDN/2020 (A.Y 2016-17)
(THROUGH VIDEO CONFERENCING)**

Sh. Dharmveer Tyagi, R/o.C-15, Shakti Nagar Colony, Village Jagjeetpur, Uttarakhand-249408 (APPELLANT)	Vs	Income Tax Officer, Ward 1(3) (1), Income Tax Office, Yogi Bhavan, Industrial Area, Hardwar, Haridwar, Uttarakhand-224110 (RESPONDENT)
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Appellant by	Sh. Saurabh Gupta,
Respondent by	Sh. N. C. Upadhyaya, CIT DR

Date of Hearing	26.08.2021
Date of Pronouncement	10.09.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 18/09/2020 passed by CIT(A)-Dehradun for Assessment Year 2016-17.

2. The grounds of appeal are as under:-

“1. That on the facts and in the circumstances of the case and law, the learned Commissioner of Income Tax (Appeals) erred in rejecting the affidavit of the assessee's brother in respect of the sale deed of rural agriculture land jointly sold by the assessee and his brother, merely on the fact that the same was not being presented before the Assessing Officer.

2. *That on the facts and in the circumstances of the case and in law learned Commissioner of Income Tax(Appeals) had made gross error in taking the entire amount of deposit as the cash receipts of the assessee without giving relief of the amount of share of assessee's brother in the sale which has been deposited by the assessee in his account:*

3. The assessee e-filed his return of income for the relevant assessment year under consideration i.e. A.Y. 2016-17 declaring income of Rs.5,03,910/-. The case was selected for scrutiny through CASS. During the course of the assessment proceeding, the Assessing Officer observed that the assessee was engaged in share trading business and during the year under consideration, he had traded in Future & Options for Rs. 15,41,805/-and Rs. 34,157/-in respect of intra-day trading. Thus, the total turnover of share trading business worked out to Rs.15,75,963/-. The Assessing Officer further observed that the assessee had declared net loss of Rs.1,72,746/-on trading of shares. The assessment order was passed on 12/10/2018 by the Assessing Officer, thereby making an addition of Rs. 7,47,000/- on account of unexplained cash deposits and addition of Rs. 1,26,077/- on account of 8% profit on shares trading as business income.

4. Being aggrieved by the assessment order, the assessee filed before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. AR submitted that the CIT(A) erred in rejecting the affidavit of the assessee's brother in respect of sale deed of rural agricultural land which was jointly sold by the assessee and his brother, merely on the fact that the same was not presented before the Assessing Officer. The Ld. AR further submitted that the CIT(A) has wrongly taken the entire amount of deposits as cash receipts of the assessee without giving relief of the amount of shares of

assessee's brother in the sale which has been deposited by the assessee in his brother's account.

6. The Ld. DR relied upon the assessment order and the order of the CIT(A).

7. We have heard both the parties and perused the material available on record. It is pertinent to note that the CIT(A) has not taken cognizance of the assessee's plea that the affidavit of the assessee's brother be taken on record and the same should be considered while arriving at the proper conclusion as per provisions of law. Merely not presenting the said affidavit before the Assessing Officer cannot be the ground for confirming the addition of the Assessing Officer by the CIT(A). Therefore, we find it appropriate to remand back this issue contested before us to the file of the Assessing Officer and we direct the Assessing Officer to take cognizance of the affidavit of the assessee's brother in respect of the sale deed of rural agricultural land jointly sold by the assessee and his brother as well as the amount deposited should be considered in accordance of the jointly owned property/share of the assessee's brother and thereafter take appropriate decision as per law. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Thus, the appeal of the assessee is partly allowed for statistical purpose.

8. In result, the appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the Open Court on this 10th Day of September, 2021

**Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 10/09/2021
R. Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI