

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE

BEFORE SHRI N V VASUDEVAN, VICE PRESIDENT
AND SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

ITA No.2452/Bang/2018
Assessment year: 2015-16

Shri Srinivasulu Rajesh, 1/2/601, Surya Bar & Restaurant, Bommanahalli Gehur Hobli, Bengaluru – 560 068. PAN: AGEPR 8387F	Vs.	The Income Tax Officer, Ward 4(3)(4), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Kiran Kumar K., Advocate
Respondent by	:	Shri Sankarganesh K., Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	20.01.2022
Date of Pronouncement	:	20.01.2022

ORDER

Per Chandra Poojari, Accountant Member

This appeal by the assessee is against the order dated 26.6.2018 of the CIT(Appeals)-4, Bangalore for the assessment year 2015-16 on the following grounds:-

“1. The CIT(A) erred in confirming the addition of income made by the ITO u/s.44AD at Rs.7,31,999, as against the net profit of Rs.(-)6,63,927 shown in the P and L statement issued by M/s.Zerotha.

2. The appellant is entitled u/ss.70(1) and 71(1), to have the net profit of Rs.(-) 6,63,927 set-off against the income.”

2. The assessee is an individual and proprietor of M/ s. Surya Bar and restaurant. The assessee filed return of income for the assessment year 2015-16 on 14.10.2015 declaring Income of Rs.6,07,960/- declaring Income from House Property of 1,76,400/-, Income from business of Rs.5,81,557/- and declared taxable income of Rs.6,07,960/- after claiming Chapter-VIA deductions of Rs.1,50,000/-. Further as per ITS details the assessee had carried out transactions in securities and futures & Options. The assessee had not shown any income or loss from share trading transactions in the return of income filed for previous year relevant to assessment year 2015-16. Subsequently, the case was selected for scrutiny under CASS, under 'Limited Scrutiny' scope to examine the "large value sale of futures (derivative) in a recognized stock exchange and Large value sale of options in securities in a recognized stock exchange.

3. A notice U/s.143(2) and 142(1) were issued calling for details and documents. During the course of assessment proceedings assessee was asked to explain as to why no business income or loss has been declared in the return of income filed for A.Y. 2015-16 from share trading in futures & options despite large value sale of futures (derivative) and sale of options in securities (derivatives) in a recognized stock exchange. Further, assessee was asked to furnish details of demat account, Brokers statement for computation of LTCG 86 STCG, sources of investment made in share transactions.

4. The assessee explained that the share trading resulted in huge losses, therefore the same was not declared in the return of income for AY 2015-16. The AO treated the business of future options & trading of the assessee as transaction without actual delivery under the head income from business and profession and included the turnover of this trading in the total turnover of the assessee by applying 8% of the total turnover u/s.

44AD of the Act and made an addition of Rs.7,31,999 to the declared income of the assessee. The CIT(Appeals) confirmed the order of the AO. Against this, the assessee is in appeal before us.

5. We have heard both the parties and perused the material on record. In this case, admittedly the assessee's total turnover exceeds the prescribed turnover limit in section 44AD of the Act in the year under consideration. The books of account were duly audited u/s. 44AB of the Act and filed with the authorities concerned. Being so, in our opinion, section 44AD of the Act cannot be applied to the assessee's case. Accordingly, we remit the entire issue in dispute to the file of the AO for fresh consideration to assess the income of the assessee on the basis of books of account and audit report submitted by the assessee and decide the issue in accordance with law. If any discrepancies in the books of account, the AO is at liberty to make necessary additions.

6. In the result, the appeal by the assessee is allowed for statistical purposes.

Pronounced in the open court on this 20th day of January, 2022.

Sd/-
(N V VASUDEVAN)
VICE PRESIDENT

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 20th January, 2022.

/Desai S Murthy/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.