

आयकरअपीलीयअधिकरण“ए”न्यायपीठपुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH,
PUNE

BEFORE SHRI SATBEER SINGH GODARA, JM
AND DR. DIPAK P. RIPOTE, AM

आयकरअपीलसं. / ITA No.516/PUN/2016
निर्धारणवर्ष / Assessment Year : 2005-06

Shri Rajesh Shriram Kasat, Pratham Bungalow, 37/7, Prabhat Road, Pune – 411 004. PAN: AEAPK 3449 M	Vs	The Additional Commissioner of Income Tax, Range-3, Pune.
Appellant/ Revenue		Respondent/ Assessee

Assessee by	Shri S.U.Pathak – AR
Revenue by	Shri S P Walimbe - DR
Date of hearing	25/04/2022
Date of pronouncement	27/04/2022

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the Assessee directed against the order of Id.Commissioner of Income Tax(Appeals)-1, Pune dated 04.02.2016 for the Assessment Year 2005-06. The Assessee raised the following grounds of appeal:

- “1] *The learned CIT(A) erred in holding that the business loss of Rs.29,44,160/- incurred by the appellant on purchase and sale of guargum is a speculation loss and it cannot be set off against the business profit of the appellant.*
- 2] *The learned CIT(A) failed to appreciate that –*
 - a.*The appellant had paid for the purchase of guargum through banking channel and therefore, transaction of purchase was a genuine transaction.*
 - b. *The appellant had taken delivery of the stock purchased as the appellant had shown the proof for payment of godown rent.*
 - c. *The purchases and sales were effected through the commission agent M/s.Anilkumar Manishkumar, Jodhpur.*

d. The purchases were supported by the bills of commission agent and the question of raising a broker's note did not arise.

- 3] The appellant prays for holding the loss of Rs.29,44,160/- as a business loss and for set off of the same against the business income of the appellant.*
- 4] The appellant requests for admission of additional evidences, if any required in support of the above grounds of appeal.*
- 5] The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”*

2. In this case, the Hon'ble ITAT in ITA No.516/PUN/2016 for A.Y. 2005-06 vide order dated 25.04.2018 had dismissed the assessee's appeal due to defects in the Form No.36, at that time, no one had appeared on behalf of the assessee. However, assessee subsequently filed the Miscellaneous Application vide M.A. No.82/PUN/2018. Vide order dated 08.02.2019, the impugned appeal was restored.

3. Brief facts of the case are that the appellant assessee is carrying on the business of trading in equity shares, commodities. The Assessing Officer(AO) noticed that the assessee has made a claim of purchase of 160 tonnes of “guargum” from one M/s.AnilkumarManishkumar and has also sold the same quantity of the same commodity to M/s.AnilkumarManishkumar. The assessee claimed that assessee has incurred a loss of Rs.29,44,160/- during the year. It has been mentioned by the AO in the assessment order that no individual purchase bills or sale bills have been submitted by the assessee to prove the genuineness. It is mentioned in para 4.6 of the assessment order that the assessee's representative had admitted that

the delivery of these goods have not been taken. The AO treated the sale transaction as non-genuine and added Rs.29,44,160/-. Aggrieved with the order of the AO, the assessee filed appeal before the Id.CIT(A).

3.1 The Id.CIT(A)-1, Pune vide order dated 04.02.2016 held that the transactions are genuine, but they are speculative in nature, therefore, loss of Rs.29,44,160/- was speculation loss.

4. Aggrieved by the order of the Id.CIT(A), the appellant filed appeal before this Tribunal.

4.1 The Id.Authorised Representative(Id.AR) of the assessee filed two(02) paper books which were containing certain purchase bills and sales bills issued by M/s.AnilkumarManishkumar. The Id.AR vehemently submitted that these documents were submitted before the AO. The Id.AR's attention was specifically invited to para 4.6 of the assessment order in which it has been stated by AO that assessee's representative had admitted that the transaction is speculative in nature. The Id.AR categorically stated before the Bench that assessee's representative has not admitted any such thing before the AO.

5 On the other hand, the Id.DR for the Revenue relied on the order of the Assessing Officer.

6. We have heard both the parties, perused the material available on record and gone through the orders of the lower authorities. It is mentioned in the assessment order that assessee had filed audit report in Form No.3CB and 3CD. However, the AO has not mentioned whether any quantitative details of the “guargum” were filed or not!. The assessee claims that assessee had purchased and sold 160 tonnes of “guargum”. The assessee has also filed copy of the godown receipt for the month of March 2005. The Id.AR of the assessee specifically stated that said receipts were filed before AO. However, it is mentioned in the assessment order that no details were filed. Therefore, in the interest of the justice, the issue is set-aside to the file of the Assessing Officer to verify all the bills, godown receipts afresh. The AO will also verify whether any stock statement was submitted alongwith Audit Report. The assessee is directed to submit all the details before the Assessing Officer. The Assessing Officer is directed to provide an opportunity of being heard to the assessee, accordingly, grounds raised by the assessee are allowed for statistical purpose.

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

Order pronounced in the open Court on 27th April, 2022.

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 27th April, 2022/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), Pune concerned.
4. The Pr. CIT, Pune concerned.
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, “ए” बेंच,
पुणे / DR, ITAT, “A” Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकरअपीलीयअधिकरण, पुणे/ITAT,Pune.