

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD**

BEFORE SHRI P.M. JAGTAP, VICE-PRESIDENT

**ITA No. 2476/Ahd/2018
Assessment Year : 2010-11**

Pareshbhai Rameshbhai Panchal, 1017, Nariyawad Ni Pole, Lunsawad, Dariapur, Ahmedabad-380001 PAN : ATEPP 2563 Q	Vs	Income Tax Officer, Ward-1(2)(5), Ahmedabad
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Ketan Shah, AR & Shri Aman Shah, AR
Revenue by :		Shri Umesh Agarwal, Sr DR

सुनवाई की तारीख/Date of Hearing : 26/05/2022
घोषणा की तारीख /Date of Pronouncement: 08/06/2022

आदेश / O R D E R

This appeal filed by the assessee is directed against the order of learned Commissioner of Income-Tax (Appeals)-6, Ahmedabad ("CIT(A)" in short) dated 16.11.2018 whereby he confirmed the addition of Rs.8,65,200/- made by the Assessing Officer on account of Short Term Capital Gain earned by the assessee from the transactions in shares.

2. The assessee, in the present case, is an individual. As per the AIR information received by the Assessing Officer, the assessee had entered into share transactions of Rs.17,30,39,940/- during the year under consideration. Since no return of income was filed by the assessee for the year under consideration, the assessment was reopened by the Assessing Officer on the basis of the said information and a notice under Section 148 of the Income-tax Act, 1961 ("the Act" in short) was issued by him to the assessee after recording the reasons. There was, however, no compliance on the part of the assessee to the said notice issued by the Assessing Officer under Section 148 of the Act as well as the subsequent notices issued by him under Section

142(1) of the Act. The Assessing Officer, therefore, was left with no option but to complete the assessment *ex-parte* to the best of his judgment on the basis of material available on record. In the assessment so completed under Section 144 r.w.s. 147 of the Act vide an order dated 15.11.2017, addition of Rs.8,65,200/- was made by him to the total income of the assessee on account of estimated Short Term Capital Gain earned by the assessee being 0.5% of the total share transactions of Rs.17,30,39,940/- .

3. Against the order passed by the Assessing Officer under Section 144 r.w.s. 147 of the Act, an appeal was preferred by the assessee before the learned CIT(A) and the following submission was made on behalf of the assessee before the learned CIT(A) in writing in support of his case:-

“Against the above facts, we would like to submit that the assessee is living in Dariapur which is the Old Ahmedabad City area. He is residing with his mother and there is no other family member in his family. Both the assessee and his mother are working and during the working hours his resident remains close. The assessee is having issues with his next door neighbor. His next door neighbor received all the notices on behalf of the assessee but did not give to the assessee the mere reason was to harass the assessee and create problems for him. Because of these, on the records of department the notices were shown as duly served but in fact they were never given to the assessee. As a result the notices were not complied for no fault of the assessee. The final show cause notice sent to the assessee on 2nd November 2017 in which the 10th November, 2017 was given as final date was handed over by the neighbor's son on 2nd December 2017 but the AO has passed order u/s 144 on 15th November, 2017, So the ex-party assessment has been done for no fault of the assessee and because of circumstances beyond his control.

During the financial year 2009-10 the assessee has done intra-day trading in stock market and there is no investment because the position gets squared off on regular basis in the AIR information the gross bill value of the intraday transaction is taken as turnover. However, in fact there is a small debit or credit difference of the transactions which gets squared off was reflected in the ledger account of the assessee.

The assessee has received copy of his ledger account from the broker M/s Rajvi Stock Broking Ltd. for the financial year 2009-10, from winch it will be

cleared that during the entire financial year 2009-10 the sum total of the debit side entries is Rs. 16376897 (including opening balance) and the sum total of credit entries is Rs 150948.04. During the entire year there is no payment or no receipt of any amount. The opening debit balance of the ledger account is Rs. 2876 Dr and the closing balance is Rs. 12820 (Debit). The assessee has also received the Investors Report from Broker which shows the turnover of Rs 1894063445 and net loss of Rs. 27,523. We are enclosing the copy of the ledger account and investment report for your reference and perusal as Annexure A-I and A-2.

We have also gone through the bank account of the assessee with Central Bank of India in which there are no major transactions during the entire year. We are enclosing the copy of the bank statement along with this submission as Annexure A-3.

In a nutshell, considering the salary income, loss from intraday transactions in stock market and other income the total income of the assessee is below the taxable limit as against Rs 865200 assessed by the AO on presumptive basis u/s 144 of the Income tax Act, 1961.

Since the assessee could not' submit the above documents at the time of assessment which resulted into ex-party assessment and has created lot of hardship without his fault and circumstances beyond his control. We request you to admit the copy of the ledger account of the assessee from the books of Broker, Investor Report and the bank statement as additional evidence under rule 46A of the Income Tax Act, 1961 and to ask for remand report from the AO which will give justice to the assessee and remove undue hardship."

4. The learned CIT(A) did not find merit in the submission made by the assessee and rejecting the same, he confirmed the addition of Rs.8,65,200/- made by the Assessing Officer on account of profit allegedly earned by the assessee from share transactions for the following reasons given in his impugned order:-

"After considering submissions of the appellant and all facts and circumstances of the case, I am not inclined to agree with the contentions of the appellant. I hold that the appellant was not prevented by reasonable cause from appearing before the AO. Case of the appellant is not covered by any of the exceptions provided under Rule 46A of the Rules. Hence, additional evidence has not been admitted. Further, it is seen that the appellant has done share transactions worth Rs.17,30,39,940/- which as per the appellant are intra-day transactions. The applicant has not denied

having done these transactions. It is difficult to believe that in transactions of Rs.17,30,39,940/- the appellant did not make any profit. If he was not making any profit, why did he continue to undertake these transactions. As per the appellant himself, he is a man of small means. The submissions of the appellant are difficult to accept.

In view of above discussion, the AO was justified in making addition of Rs.8,65,200/-. Accordingly, addition of Rs.8,65,200/- is upheld. These grounds of appeal are rejected."

5. Aggrieved by the order of the learned CIT(A), the assessee has preferred this appeal before the Tribunal.

6. During the course of appellate proceedings before the Tribunal, the assessee has raised an additional ground challenging the addition of Rs.8,65,200/- made by the Assessing Officer and confirmed by the learned CIT(A) on account of profit allegedly earned by the assessee from the share transactions on the ground that the reopening of assessment was based on the investments allegedly made by the assessee in share transactions of Rs.17,30,39,940/- and since no addition was made by the Assessing Officer in the order passed under Section 144 read with Section 147 of the Act on the said issue, he could not have made addition on Short Term Capital Gain earned by the assessee on share transactions which was entirely a different issue. In support of this contention, he has relied on the decision of Hon'ble Gujarat High Court in the case of CIT vs. Mohmed Juned Dadani, reported in [2014] 355 ITR 172 (Guj.). I am unable to accept this contention raised by the learned Counsel for the assessee in support of the issue raised in additional ground. It is observed that the reopening of the assessment was based on the ground that the assessee had entered into share transactions of Rs.17,30,39,940/- in the year under consideration and there was no return of income filed by the assessee declaring the said transactions. In the absence of any explanation forthcoming from the assessee in this regard, the Assessing Officer estimated profit @ 0.5% on the

share transactions and accordingly addition of Rs.8,65,200/- was made by him on account of Short Term Capital Gain to the total income of the assessee. It, therefore, cannot be said that no addition was made by the Assessing Officer in the assessment completed under Section 144 r.w.s. 147 of the Act on the ground on which reopening of assessment was based. As a matter of fact, the only addition made by the Assessing Officer on account of Short Term Capital Gain was very much based on ground on which reopening of the assessment was based and this being so, I do not find any merit in the additional ground raised by the assessee. The case of Mohmed Juned Dadani (supra) relied upon by the learned Counsel for the assessee in support of assessee's case on this issue is distinguishable on facts inasmuch as no addition in that case was made by the Assessing Officer in the order of reassessment on the ground on which reopening of the assessment was based and the reliance of the learned Counsel for the assessee on the same is clearly misplaced. The additional ground raised by the assessee is accordingly dismissed.

7. Insofar as the addition of Rs.8,65,200/- made by the Assessing Officer and confirmed by the learned CIT(A) on account of Short Term Capital Gain is concerned, the contention raised on behalf of the assessee before the learned CIT(A) as well as before the Tribunal is that the share transactions of Rs.17,30,39,940/- entered into by the assessee in the year under consideration were intra-day transactions and the same had actually resulted into loss. The case of the assessee is that none of the notices issued by the Assessing Officer was received by the assessee and therefore the relevant details and documents to support and substantiate his case on the issue could not be furnished by the assessee. The learned Counsel for the assessee has submitted that these details and documents, however, were furnished by the assessee during the course of appellate proceedings before

the learned CIT(A) with an application to admit the same as additional evidence under Rule 46A of the Income-tax Rules, 1962. He has contended that the learned CIT(A), however, did not entertain the same for the reason not so relevant and urged that one more opportunity may be given to the assessee to produce the same for verification before the Assessing Officer. Although the learned DR has raised objection in this regard, I consider it fair and proper and in the interest of justice to give one more opportunity to the assessee keeping in view all the facts of the case including especially the fact that the additional evidence sought to be filed by the assessee before the learned CIT(A) is relevant to decide the issue relating to the exact quantum of profit earned by the assessee from the share transactions entered into during the year under consideration. I, therefore, set aside the impugned order passed by the learned CIT(A) on this issue and restore the matter to the file of the Assessing Officer to decide the same afresh on merit in accordance with law after giving one more opportunity to the assessee to produce the relevant details and documents to support and substantiate his case. As undertaken by the learned Counsel for the assessee, the assessee shall made due compliance before the Assessing Officer and shall extend all the possible cooperation in order to enable the Assessing Officer to complete the assessment afresh expeditiously.

8. In the result, the appeal of the assessee is treated as partly allowed.

Order pronounced in the open Court on 8th June, 2022 at Ahmedabad.

Sd/-

(P.M. JAGTAP)
VICE-PRESIDENT

Ahmedabad, Dated 08/06/2022

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधिआयकर अपीलीय अधिकरण ,/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

TRUE COPY

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad