

आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ **ITA No.3295/Chny/2019**
(निर्धारण वर्ष / **Assessment Year: 2011-12**)

Shri Ranvir R Shah, 15, Race Course Road, Guindy, Chennai-600 032.	बनाम/ Vs.	ACIT Non-Corporate Circle-14, Chennai.
स्थायी लेखा सं./जीआइ आर सं./ PAN/GIR No. AAMPS-5511-Q		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri S. Sridhar (Advocate)-Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri Varuvoouru Sreedhar-(Addl. CIT) –Ld. DR
सुनवाई की तारीख/ Date of Hearing	:	09-06-2022
घोषणा की तारीख / Date of Pronouncement	:	09-06-2022

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2011-12 arises out of the order of learned Commissioner of Income Tax (Appeals)-7, Chennai [CIT(A)] dated 27-09-2019 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 31-01-2014. The sole grievance of the assessee is disallowance of certain expenses while computing capital gains. The grounds taken by the assessee read as under: -

1. The order of the Commissioner of Income Tax (Appeals) - 7, Chennai dated 27/09/2019 (ITA.32(T)/CIT(A)-7/2013-14) for the above-mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.
2. The CIT (Appeals) erred in confirming and sustaining the addition of Rs.65,75,149/- as under:
PMS expenses/interest of Rs.48,02,175/- (Short term capital gains)
Securities Transaction tax paid of Rs.8,05,506/- (Short term capital gains)
PMS Expenses/interest of Rs.9,67,468/- (other sources)
ignoring the order of the Honourable ITAT, Chennai, in the appellant's own case for the assessment year 2009-10,
3. The CIT (Appeals) ought to have appreciated that as per the order of the Honourable ITAT, Chennai, for the assessment year 2009-10, (in the appellant's own case), the Honourable Members allowed the claim of expenses and only for verifying genuineness of documentary evidence, it was remitted back to the file of the assessing officer.
4. The CIT (Appeals) erred in considering that the securities transaction tax of Rs.8,05,506/-, which are directly related to the sale / purchase of shares, cannot be claimed by an investor if claiming profits under capital gains.
5. The appellant prays the Honourable ITAT to delete the additions confirmed by the CIT (Appeals).

2. The Ld. AR drew attention to the order of Tribunal for AY 2009-10 and placed on record a copy of the same. The Ld. Sr. DR supported the impugned order. Having heard rival submissions, our adjudication to the subject matter of appeal would be as under.

Assessment Proceedings

3. The assessee earned share of profits from partnership firms and used the income so earned in investing in stock market. The income so earned is assessed as Capital Gain / Loss. The assessee claimed deduction of Securities Transaction tax (STT) for Rs.8.05 Lacs which was denied by Ld. AO. The assessee earned such income by availing Portfolio Management Services (PMS) offered by various agencies. The assessee also took overdraft from Deutsche Bank and paid interest thereon. The assessee also availed loan from LIC and paid interest thereon. The aggregate of such expenditure comes to Rs.104.92 Lacs which was apportioned in the ratio of exempt income

in the nature of Long-Term Capital Gains and non-exempt income which was in the nature of interest on bank deposits, commissions and sitting fees (professional fees). These incomes would have no nexus with PMS expenses and interest expenses incurred by the assessee. The assessee did not maintain separate accounts for the expenditure incurred to earn non-exempt income. Therefore, the apportionment was not correct. Further, PMS expenses have already been included in the cost of securities and the income received is on net basis. Therefore, the assessee could not claim PMS expenses separately. The method of apportionment lacks basis and has no scientific approach. Therefore, proportionate expenses of Rs.48.02 Lacs as claimed under Short Term Capital Gains and expenses of Rs.9.67 Lacs as claimed under Income from Other sources was disallowed by Ld. AO and added to the respective heads.

Appellate Proceedings

4. Regarding PMS expenses, the assessee referred to the order of Tribunal for AY 2009-10 wherein the claim was allowed subject to verification of genuineness of the expenditure by AO. However, Ld. CIT(A) concurred with the findings of Ld. AO. The STT could also not be allowed under the head Capital Gains. Finally, the appeal was dismissed against which the assessee is in further appeal before us.

Our findings and Adjudication

5. At the outset, as rightly held by Ld. CIT(A), the deduction of STT could not be allowed under the head Capital Gain. No interference is required in the impugned order on this issue.

6. Regarding PMS expenses, it is the observation of Ld. AO in para-10 of the assessment order that the transactions of securities include

PMS expenses and the income received from the shares is on net basis. Further, there was no concrete material to corroborate that the expenditure was towards non-exempt income only.

7. Upon perusal of para 4.2 of Tribunal order ITA No.859/Mds/2013 & ors. dated 02.06.2015 for AY 2009-10, we find that the genuineness of the expenditure was in dispute in that year. For the said limited purpose, the issue of verification of genuineness of expenses was sent back by Tribunal to the file of Ld. AO. However, the findings of Ld. AO in this year are different as noted by us in paragraph-6.

8. Be that as the case may be, first of all the factual position needs to be ascertained i.e., whether PMS expenses were already considered while computing the net income or not. If so, the same could not be separately claimed. If not, then the issue of apportionment of the same would arise for which the assessee has to prove the nexus of the expenditure under various heads. Considering the facts of the case, the issue is restored back to the file of Ld. AO for denovo adjudication of this issue with a direction to the assessee to substantiate its claim. Needless to add that adequate opportunity of hearing shall be granted to the assessee. The corresponding ground stand allowed for statistical purposes.

9. The appeal stands partly allowed for statistical purposes in terms of our above order.

Order pronounced on 09th June, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखासदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 09-06-2022
EDN/-

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF