

आयकर अपीलीय अधिकरण 'सी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' 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.129/Chny/2020
(निर्धारण वर्ष / Assessment Year: 2011-12)

Shri Natarajan Kumar, Old No.37, New No.25, 5 th Block, Kaviyarasu Kannadasan Nagar, Kodungaiyur, Chennai-600 118.	बनाम/ Vs.	ITO Non Corporate Ward-5(1), Chennai.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AXAPK-9159-R		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri B. Suresh (C.A) – Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri P. Sajit Kumar (JCIT) – Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	19-07-2022
घोषणा की तारीख / Date of Pronouncement	:	19-07-2022

आदेश / ORDER

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)-5, Chennai [CIT(A)] dated 21-11-2019 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) r.w.s. 147 of the Act on 27-12-2018. The grounds taken by the assessee read as under:

1. The order of Ld. CIT (A) which simply reproduced AO's order is in opposition to law, facts and circumstance of the case.

2. Jurisdiction for Re Opening.

2.1 Ld. CIT (A) failed take cognizance of the position of law that AO lacks jurisdiction to reopen the case.

2.2 AO lacks jurisdiction to reopen the case as he was dependent solely on the information received by the department from third party. AO did not make any enquiry with the broker concerned is certain the profit/loss of the assessee. AO obtained only "Reason to suspect" and not "Reason to believe". AO reopened the case mechanically.

3. Jurisdiction for making addition

3.1 The reason for reopening is trading through commodity exchange. This is loss and there is no escapement of income. The reasons for reopening fails and AO lacks jurisdiction to go further to make any other addition.

3.2 Ld. CIT (A) on his own motion and to maintain justice uniformly should have deleted the addition of Rs.8,90,800 and Rs.83 for the reason set out in 3.1 above which is the settled position of law.

4 Returned Income Correction

4.1 The Returned Non speculative business income of Rs.9,07,117/- is erroneous when the actual income is NIL. The assessee/appellant did not do any other business and the relevant records are available on file.

4.2 Ld. CIT(A) erred in not allowing the claim that Rs.9,07,117 was incorrectly entered as income which is to be deleted. Neither A.O nor CIT(A) brought out anything that is adverse to the assessee's claim.

4.3 The non adjudication and refusal of CIT(A) is against natural justice and in opposition to the spirit of CBDT Circular No. 14 dt.11-04-1955.

5. Unexplained Investment.

5.1 Ld. CIT(A) erred in dismissing the appeal when confirmation letter, identity, PAN and address of the loan creditors are furnished. The assessee is absolved of his onus and no addition can be made as unexplained.

5.2 Ld. CIT(A) erred in asking source for source especially when the amounts are 1 lakh only from each loan creditor.

5.3 Without prejudice to grounds no.1 to 5.2 above it is claimed that when the assessee declared an income of Rs.9,07,117 it is the source for credits in bank account and further addition only tantamounts to taxing it twice and deserves to be deleted.

The Ld. AR assailed reopening of assessment. The Ld. AR also placed on record financial statements to demonstrate that the assessee, in fact, suffered loss in commodity trading transactions. The Id. Sr. DR, on the other hand, submitted that a fresh claim of loss could be made only by way of revised return. The Ld. Sr. DR also submitted that the assessee should have approached CBDT u/s 119 to seek revision of return income. Having heard rival submissions, the appeal is disposed-off as under.

2.1 The material facts are that the assessee being resident individual was subjected to reassessment proceedings for the year under consideration and an assessment was framed u/s. 143(3) r.w.s. 147 of the Act on 27-12-2018. The reopening was triggered since as per information available, the assessee entered into commodities transactions but the assessee did not file any return of income. Accordingly, the case was reopened and a notice u/s. 148 of the Act was issued on 27-03-2018.

2.2 The assessee filed financials. Ledger extracts and daily activity statement etc. it transpired that the assessee paid margin money of Rs.9.66 Lacs, which was funded out of cash deposits made with HDFC Bank, Broadway-Parrys Corner branch, Chennai. The cash was deposited just before transfer of funds for margin money. The assessee submitted that capital contribution of Rs.4 Lacs was out of past personal savings whereas the amount of Rs.5 Lacs was taken as unsecured loans of Rs.1 Lacs each from 5 parties as enumerated in para-4 of the assessment order. However, upon verification, it was seen that no return of income was filed by the lenders. Finally, the deposits were held to be unexplained investments and added to assessee's income. The assessee did not file any return of income for AYs 2001-02 to 2018-19 and therefore, it was held by Ld. AO that the assessee could not substantiate the source of capital induction with any material evidence. Adding the amount of Rs.8.90 Lacs to the returned income of Rs.9.07 Lacs, the income was determined at Rs.17.98 Lacs. Though the assessee preferred appeal against the same, however, Ld. CIT(A) confirmed the stand of Ld. A.O. Aggrieved, the assessee is in further appeal before us.

3. So far as the validity of reassessment proceedings is concerned we find that the assessee is non-filer from AYs 2001-02 to 2018-19. The information received by Ld. AO indicated that the assessee entered into commodity transactions. The said information led to formation of belief that certain income escaped assessment. Nothing more, in our opinion, was required at this stage to reopen the case of the assessee. The legal grounds thus raised stand dismissed.

4. So far as the addition of Rs.8.90 Lacs is concerned, we find that the assessee made cash deposit in savings bank account to fund the margin money. For the same, the assessee obtained cash loan of Rs.1 Lacs each from 5 persons who were non filer. No material was placed on record to show that those persons had financial capacity to lend loan to the assessee. Similarly, the capital contribution is not supported by any material evidence. Therefore, this addition has rightly been made. The grounds raised in this regard stand dismissed.

5. So far as the business income of Rs.9.07 Lacs is concerned, we find that the assessee, in fact, has suffered loss in the commodity transactions. The assessee' financial statements as well as client commodity statement as placed on page nos. 34 to 72 of paper book support this conclusion. This is further supported by the fact that in Income Tax Return Form ITR-4, the assessee has reported negative income of Rs.9,07,117/- in Column-1 of Schedule-BP and the same loss has been reflected in the Balance Sheet as debit balance (Column 4a of Part-A BS). In PART-B-TI, column-15, the assessee claim carry forward of these losses. Therefore, instead of Speculation Profits, there is speculation loss to the assessee. This being so, Ld. AO is directed to consider these figures as speculation loss which would be allowed to

be carried forward. The Ld. Sr. DR has argued that the assessee should file a revise return of income and seek condonation of delay from appropriate authority to seek new claim. However, we find that firstly there is no new claim. The assessee has earned losses which have been reflected at appropriate places in the Income Tax Return Form. Even if it is assumed that it is a fresh claim, there is no bar on the appellate authorities to entertain the new claim at appellate stage. Therefore, the plea of Ld. Sr. DR could not be accepted. The Ld. AO is directed to re-compute the assessee's income.

5. The appeal stand partly allowed in terms of our above order.

Order pronounced on 19th July, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 19-07-2022
EDN/-

आदेश की प्रतिलिपि अग्रेषित/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