

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1896/PUN/2018
निर्धारण वर्ष / Assessment Year: 2015-16

Polly Bhikaji Patel, 24, Guru Prasad Building No.2, Bund Garden Road, Bund Garden, Pune-411001. PAN : AARPP7661B	Vs.	ITO, Ward-7(4), Pune.
Appellant		Respondent

Assessee by : Shri Sarvesh Khandelwal
Revenue by : Shri S. P. Walimbe
Date of hearing : 23.08.2022
Date of pronouncement : 24.08.2022

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of Id. Commissioner of Income Tax (Appeals)- 5, Pune [‘the CIT(A)’] dated 14.09.2018 for the assessment year 2015-16.

2. The appellant raised the following grounds of appeal :-

- “1. On facts and circumstances and as per provisions of the Act it be held that the derivative loss of Rs.57,78,133/- incurred by the Assessee on National Spot Exchange Ltd. is allowable as business loss and the same is deductible from the total income as claimed.
2. The assessee prays to be allowed to raise, add, modify, rectify the grounds of appeal at the time of hearing.”

3. Briefly, the facts of the case are as under :

The appellant is an individual deriving income from the business. The return of income for the assessment year 2015-16 was filed on 25.08.2015 declaring total income of Rs.29,81,150/-. Against the said return of income, the assessment was completed by the Income Tax Officer, Ward-7(4), Pune ('the Assessing Officer') vide order dated 22.12.2017 passed u/s 143(3) of the Income Tax Act, 1961 ('the Act') at total income of Rs.87,59,280/-. While doing so, the Assessing Officer disallowed the loss on derivative transaction relating to the commodity on National Spot Exchange Ltd.. The factual background of the case is as under :

The appellant was engaged in trading and investing in shares of commodities on National Spot Exchange Ltd. through one broker, namely, Sujash Enterprises Private Limited. However, the payment due from the said exchange on account of difference between the purchase and sale price of Rs.61,76,980/-. Out of which a sum of Rs.3,76,035/- was received and according to the assessee, balance amount had become irrecoverable, was written off in the books of account and the same was claimed as business loss, which was disallowed by the Assessing Officer by holding that the same cannot be allowed as bad debt as the provisions of section 36(2)(vii) had not stood satisfied.

4. Being aggrieved by the order of assessment, an appeal was filed before the ld. CIT(A), who vide impugned order confirmed the action of the Assessing Officer in the absence of the assessee.

5. Being aggrieved, the appellant is in appeal before us.

6. Before us, the appellant submitted that he could not cause appearance before the ld. CIT(A) as the notice of hearing could not be served on the current address of the assessee. Since, we are satisfied that the appellant was prevented by sufficient reasonable cause from causing appearance before the ld. CIT(A), therefore, we are of the considered opinion that interests of justice would be met, if the matter is remanded to the ld. CIT(A) to decide the issue in appeal *de novo* after affording due opportunity of being heard to the appellant. Thus, the ground of appeal raised by the appellant stands partly allowed.

7. In the result, the appeal filed by the assessee stands partly allowed.

Order pronounced on this 24th day of August, 2022.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 24th August, 2022.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-5, Pune.
4. The Pr. CIT-4, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.