

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC” BENCH, AHMEDABAD**

BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER

**ITA No.1109/Ahd/2019
Assessment Year: 2010-11**

Lilaben Bhagabhai Patel,
1, Devbhumi Society,
Opp. Tirupati Society,
Nr. GST Rly. Crossing,
New Ranip,
Ahmedabad – 382 480.
[PAN – AOGPP 7566 Q]
(Appellant)

vs. Income Tax Officer,
Ward – 1(1)(1), Ahmedabad.

(Respondent)

Assessee by : Shri A.C. Shah, AR &
Shri Bhadresh Gandhakwala, AR
Respondent by : Shri Vidhyut Trivedi, Sr. DR

Date of hearing : 09.11.2022
Date of pronouncement : 18.11.2022

ORDER

This appeal is filed by the Assessee against the order dated 12.04.2019 passed by the CIT(A)-1, Ahmedabad for the Assessment Year 2010-11.

2. The assessee has raised the following grounds of appeal :-

- “1. *Confirming Rs.8,41,993/- as unexplained income for loss for Rs.8,41,993/- as assessed by Assessing Officer from the information called for u/s.133(6) vide letter dated 01.11.2017 from the NSE, Bombay and in response to which the details of share transaction in CD format received. There are transactions showing purchases and sales of share during the year.*
2. *Assessing Officer has erred in assessing income as Loss Rs.8,41,993/- as difference between purchase cost and sale cost whereby made addition of Rs.8,41,993/- on account of unexplained income. There are certain shares which assessee may have sold from the stock of share held from earlier financial years also and there are certain shares which are purchased during the year might not be sold during the year by the*

appellant. AO has made proper care before making additions for difference of payment made to share brokers and payments received from the broker as shown in the Bank passbook of the appellant.

3. *Assessing Officer erred in passing order under section 143(3) r.w.s. 147 of IT Act, 1961”*

3. The Department had information that as per ITS data available it was observed that the assessee has made investment in share/mutual funds amounting to Rs.35,14,645/-. However, the assessee failed to file the return of income although the assessee's income was taxable. Notice under Section 148 of the Income Tax Act, 1961 was issued to the assessee thereby requesting to show cause as to why the investment in share of Rs.35,14,645/- should not be treated as unexplained investment in shares and tax accordingly. The Assessing Officer observed that the assessee carried out share transactions through National Stock Exchange (NSE) for an amount of Rs.35,14,645/-. Since the assessee failed to furnish any supporting documents/evidences, the Assessing Officer called information under Section 133(6) of the Act from National Stock Exchange, Bombay. In response, National Stock Exchange gave the details of share transaction in CD format from which the Assessing Officer observed that there was loss of Rs.8,41,993/- in share trading business which was paid by the assessee whereas the assessee failed to prove the source for making the payment. Thus, the addition of Rs.8,41,993/- was made as unexplained income.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that before the Assessing Officer the assessee has submitted summary report as well as bank statement but the Assessing Officer has not taken any cognisance of the details filed by the assessee. Further the Id. AR submitted that the share transaction statement of Angel Broking Limited on and from 01.04.2009 to 31.03.2010 was submitted from which it can be seen that the assessee suffered a loss of Rs.5,606.10 but the CD received from National Stock Exchange calculated a loss of Rs.8,41,993/- which does not pertain to A.Y. 2010-11. The

assessee suffered a loss of Rs.2,26,330/- and, therefore, the total loss suffered by the assessee is Rs.2,31,936.10. All share transactions are already speculative transactions and, therefore, there was no investment in various shares as presumed by the Assessing Officer. The Ld. AR further submitted that the information received from the Assessing Officer that of investment in various shares of Rs.35,14,645/- is wrong information and the same can be seen from the records. The Ld. AR, therefore, submitted that the Assessing Officer erred in assessing income as loss of Rs.8,41,993/- as difference between purchase cost and sale cost whereby made addition of Rs.8,41,993/- on account of unexplained income. There are certain shares which the assessee may have sold from the stock of share held from earlier financial years also and there are certain shares which were purchased during the year might not be sold during the year by the assessee. The Assessing Officer had not made proper enquiry before making the addition for difference of payment made to share brokers and payments received from the broker as shown in the bank passbook of the assessee. The Ld. AR further submitted that no taxable income derived by the assessee in the past and, therefore, the loss should be carried forwarded. The Ld. AR further submitted that the share transaction was conducted only in the A.Y. 2010-11.

6. The Ld. DR submitted that the assessee is claiming the figures that of Rs.2,31,936/- as loss suffered by the assessee but the fact remains that the assessee has not given the details during the assessment proceedings as well as before the CIT(A). The loss cannot be carried forward as the assessee has not filed income tax return in the previous year as well as during the A.Y. The Assessing Officer has rightly made addition as unexplained income as the assessee could not file the details related to income received and loss incurred during the assessment proceedings. The CIT(A) has rightly confirmed the addition.

7. Heard both the parties and perused all the relevant material available on record. The CIT(A) has categorically observed that the print out of share trading from the brokers related to share transaction statement was unsigned documents and the Assessing Officer has taken the loss on the basis of information provided by National Stock Exchange, Bombay. It is pertinent to note that the assessee was not confronted by the Assessing Officer related to the information received from National Stock

Exchange despite assessee's request to give sufficient time for responding the same. In fact, it appears that the loss suffered by the assessee is lesser and the contention of the assessee is loss of Rs.8,41,993/- does not pertain to A.Y. 2010-11 needs verification. Therefore, it will be appropriate to remand back this issue to the file of Assessing Officer for proper verification and adjudication and, thereafter, decide the issue as per the evidences provided by the assessee. Needless to say the assessee be given opportunity of hearing by following the principles of natural justice. Appeal of the assessee is partly allowed for statistical purpose.

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

Order pronounced in the open Court on this 18th day of November, 2022.

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 18th day of November, 2022

PBN/*

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad