

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 982/Mum/2022
(A.Y: 2016-17)

Vivek Raghu Shetty 1/1, Shrinagar Bldg Chandavarker Road, Borivali (W), Mumbai-400092.	Vs.	ACIT, Circle – 32(3) MK Road, New Marine Lines, Churchgate, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAEPS2750D		
Appellant	..	Respondent

Appellant by :	Shri Anuj Kisnadwala.AR
Respondent by :	Smt. Jayashree Thakur.DR

Date of Hearing	19.01.2023
Date of Pronouncement	19.01.2023

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the National Faceless Appeal Centre (NFAC), Delhi / CIT(A), passed u/s 143(3) and 250 of the Act. The assessee has raised the following grounds of appeal:

- 1. The learned CIT (A) has erred in law and on facts by not deleting the disallowance of the claim of speculation loss of Rs. 68,92,101/- by the Appellant during the referred year.*

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2. The appellant craves leave to add to, amend, alter or delete all or any of the foregoing grounds of appeal.

2. The brief facts of the case are that the assessee is an individual and derives income from house property, income from speculation business, and interest income. The assessee has filed the return of income for the A.Y 2016-17 on 17.10.2016 disclosing a total income of Rs.2,69,500/- and the return of income was processed u/s 143(1) of the Act. Subsequently the case was selected for scrutiny under CASS and notice u/s 143(2) and 142(1) of the Act along with the questionnaire was issued. Since there was no compliance to the notice, the AO has issued show cause notice, in compliance to the show cause notice the Ld. AR of the assessee appeared from time to time and furnished the details. The A.O. find that as per the revised computation the assessee has incurred loss from speculative business but as per the AIR information that the assessee has transacted in shares and hence the speculation loss claimed by the assessee cannot be allowed and assessed the total income of Rs. 2,69,570/- and passed the order u/s 143(3) of the Act dated 20.12.2018.

3. Aggrieved by the order the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, statement of facts and findings of the AO and has issued notices of hearing and since there was no compliance by the assessee to notices. Therefore the CIT(A) considering the information on record has confirmed the action of the A.O and dismissed the appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in confirming the action of the Assessing officer. The assessee has a good case on merits and shall substantiate with the material evidence and prayed for an opportunity to explain before the lower authorities. Contra, the Ld. DR supported the order of the CIT(A).

5. Heard the rival submissions and perused the material on record. Prima-facie the CIT(A) has passed the order considering the fact that there is no

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appearance in spite of providing adequate opportunity of hearing and the notices were issued. Therefore, the CIT(A) was of the opinion that the assessee is not interested in prosecuting the appeal and dismissed the appeal ex-parte confirming the action of the assessing officer. The Ld.CIT(A) has issued the notices of hearing referred at Page 2&3 of the order, but there was no response and thus the Ld.CIT(A) came to a conclusion that the assessee is not interested and decided the appeal based on the information available on record. Whereas the assessee has raised grounds of appeal challenging the action of the A.O and there could be various reasons for non appearance which cannot be overruled. Therefore, considering the principles of natural justice shall provide one more opportunity of hearing to the assessee to substantiate the case along with evidences and information. Accordingly, set aside the order of the CIT(A) and remit the entire disputed issues to the file of the CIT(A) to adjudicate afresh and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information and allow

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the grounds of appeal of the assessee for statistical purposes.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 19.01.2023.

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 19.01.2023

KRK, PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai