

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM
आयकर अपील सं./ITA Nos.67-69/RPR/2020
(Assessment Year: 2015-2016)

Manoj Kumar Agrawal Shop No.1 & 4, 2 nd Floor, Sahara India Life Insurance, Millenium Plaza,Raipur-4920014	Vs	ITO, Ward-4(4), Raipur
PAN No. :ACLPA 8619 C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Rakesh Kumar Chirania, CA
राजस्व की ओर से /Revenue by	:	Shri Choudhary N.C.Roy, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	05/07/2023
घोषणा की तारीख/ Date of Pronouncement	:	07/07/2023

आदेश / O R D E R

Per Arun Khodpia, AM:

These three appeals have been filed by the assessee against the order passed by the CIT(A)-II, Raipur, dated 29.01.2020 for the assessment year 2015-2016.

2. The Registry has pointed out the delay of 66 days in filing the all the three appeals by the assessee. In this regard, Id. AR of the assessee submitted that the entire delay was covered due to Covid period, wherein the limitation was extended by the Hon'ble Supreme Court in the Suo Motu Writ Petition (Civil) No(s).3/2020, dated 23.03.2020, therefore, the delay may be considered as no delay on the part of the assessee and the appeals may be admitted for hearing. Ld. DR also did not object to the contention raised by the assessee. Accordingly, we condone the delay of 66 days in filing the present appeals by the assessee and the appeals are heard finally.

3. ITA No.67/RPR/2020 is filed against the addition sustained by the CIT(A), whereas ITA No.68&69/RPR/2020 are filed against the penalty levied u/s.271A & 271B of the Act. First, we shall decide the appeal of the assessee in ITA No.67/RPR/2020, wherein the assessee has raised the following grounds :-

1. *Ld. CIT(A) erred in confirming the assessment order of the AO without appreciating the facts and the submission of the assessee.*
2. *That the order of the LD. AO is bad in Law as well as on facts.*
3. *In the facts and circumstances of the case, the Ld.AO has erred in treating gain/loss arising on transactions in shares as business income as against capital gain/loss claimed by the assessee.*
4. *Without prejudice to above, the Ld. AO has erred in determining turnover at Rs.1.91 crores and further erred in determining income @8% of said turnover contrary to the provisions of income tax act, 1961.*

4. Brief facts of the case are that the assessee, who is an individual, filed his return of income on 07.09.2015 for the assessment year 2015-2016 showing a total income of Rs.1,83,860/-. Subsequently, the case of the assessee was selected through CASS for limited scrutiny, statutory notices were issued to the assessee. In response, the counsel of the assessee attended the proceedings and the case was discussed in detail, all the relevant documents were produced during the course of assessment proceedings and were verified and duly placed on record. During the year under consideration, the assessee had done voluminous trade in share market in the form of intraday trading. The Id. AO observed that the assessee had claimed to have suffered net loss in such transactions at the end of the year and, thus, had not disclosed the same

in the Income Tax Return filed by him. During the course of assessment proceedings, the assessee was asked to explain as to why his intraday trading be not treated as speculative business and why his income should not be computed accordingly. In response to the said query, the counsel of the assessee filed a reply stating that there was no business activity during the period, hence, it should not be treated as business income. This contention of the assessee was not accepted by the Id. AO, who has noted that the assessee was involved in intraday trading wherein he had not taken actual delivery of the shares, and such transactions squarely fall within the ambit of speculative transaction as per the Guidance Note on Tax Audit u/s.44AB of the I.T.Act, 1961. The Guidance Note was also accepted by the AO, which reads as under :-

A speculative transaction means a transaction in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips. Thus, in a speculative transaction, the contract for sale or purchase which is entered into is not completed by giving or receiving delivery so as to result in the sale as per value of contract note. The contract is settled otherwise and squared up by paying out the difference which may be positive or negative. As such, in such transaction the difference- amount is 'turnover'. In the case of an Assessee undertaking speculative transactions there can be both positive and negative differences arising by settlement of various such contracts during the year. Each transaction resulting into whether a positive or negative difference is an independent transaction. Further, amount paid on account of negative difference paid is not related to the amount received on account of positive difference. In such transactions though the contract notes are issued for full value of the purchased or sold asset the entries in the books of account are made only for the differences. Accordingly, the aggregate of both positive and negative differences is to be considered as the turnover of such transactions for determining the liability to audit vide section 44AB,

5. Following the procedure of accounting of speculative transactions, as provided in Guidance Note, Id.AO has computed the turnover of

assessee at Rs.1,91,35,529/- taking the aggregate value of positive and negative difference of day trading the assessee had neither maintained books of account nor got his accounts audited though his turnover is well above the limit prescribed for getting the accounts audited. Therefore, the penalty proceedings u/s.271A of the Act for non-maintenance of books and penalty proceedings u/s.271B of the Act for failure to get his accounts audited are initiated.

6. While culminating the assessment order, the AO has estimated the profit of the assessee @8% of the total turnover as computed by the AO at Rs.1,91,35,529/-. Accordingly, the AO worked out the income from speculation transaction of the assessee at Rs.15,30,842/- and added the same to the total income of the assessee.

7. Aggrieved by the order of AO, the assessee filed appeal before the Id. CIT(A), however, the contention of the assessee was rejected by the Id. CIT(A) and order of the AO was sustained. Now, the assessee is in further appeal before the Tribunal with the grievance as raised in the grounds of appeal above.

8. At the outset, Id. AR of the assessee has challenged the method of calculation of turnover in the case of the assessee by the AO which was computed allegedly contrary to the provisions of I.T.Act, 1961 It is further submitted by the Id. AR that under similar circumstances in the case of the assessee himself an order giving direction/s.144A of the Act for A.Y.2016-2017 was issued by the JCIT, Range-4, Raipur stating therein that the AO has to follow the procedure for calculating the turnover which is submitted

by the assessee in his reply dated 25.10.2018 in the A.Y.2016-2017. Copy of the order of JCIT, Range-4, Raipur was also placed at page Nos.16 & 17 of the paper book and the same is reproduced hereunder :-



Government of India
Ministry of Finance: Department of Revenue
OFFICE OF THE JOINT COMMISSIONER OF INCOME TAX, RANGE - 4
Central Revenue Building, Civil Lines, Raipur - 492001

F.No.JCIT/R-4/RPR/144A/2018-19/

Date: 28.11.2018

To

The Income Tax Officer-4(4)
Raipur

Subject : Direction u/s 144A of the Act in the case of Shri Manoj Kumar Agrawal, Raipur (ACLP8619C), A.Y. 2016-17 - reg.

Please refer to this office letter dated 12.10.2018 on the above subject.

Para ① In this connection, the assessee has filed an application for giving direction to the A.O u/s 144A of the Act. The assessee has raised objections on your last year assessment order and therefore he has opted for direction u/s 144A of the Act for the A.Y. 2016-17.

② On going through the issue involved, it is found that the assessee was involved in intraday trading of share through BSE or NSE by broker during last several years. The assessee has always booked the income under the head capital gain/loss. The assessment order of A.Y. 2014-15 was passed by the then A.O i.e. Shri Manoj Pandey accepting the same income under the head capital gain/loss. You have passed the assessment order for the A.Y. 2015-16 on 15.12.2017 treating the intraday trading of shares as speculative business.

③ Now after receipt of the above application of the assessee, the case records of A.Y. 2014-15 to 2016-17 were called for by the undersigned and proper opportunity has been given to the assessee. The counsel of the assessee Shri R.K. Chitlania, CA, appeared on behalf of the assessee and submitted his explanation in this regard. The case was discussed with him.

④ The case records were examined and it is found that the intraday trading of shares is a business income u/s 43(5) of the Act and hence the income shown as

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capital gain by the assessee is not as per Act. The CBDT, New Delhi's Circular No. 6/2016 dated 29.02.2016 is enclosed.

⑤ The turnover of the speculative business is not clearly defined in Income Tax Act 1961, therefore, the guidance note of tax audit under section 44AB of the Act issued by the ICAI is followed by you in last assessment order, but the amount you have taken for turn over is not as per guidance note. Therefore, you are hereby directed to please follow the procedure for calculating the turnover which is enclosed by the assessee in his reply dated 25.10.2018 for the A.Y.2016-17.

⑥ Further, you are directed to call for information from broker of the assessee, where all such transaction has been done. The profit and loss amount may be drawn or accepted accordingly.

⑦ The assessee has also filed a separate application for giving the case to some other A.O and also expressed concern in front of the undersigned on inadequate opportunities given by you during the last year assessment proceedings. Therefore, you are hereby directed to provide proper opportunity to the assessee before passing order u/s 143(3) of the Act.

The case records of A.Y. 2015-16 and 2016-17 with reply of the assessee are enclosed herewith.

Encl: As above.

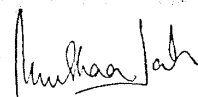
Copy to the assessee.

Yours faithfully,



(Anubhaa Tah Goel)

Joint Commissioner of Income Tax,
Range- 4, Raipur (C.G.)



Joint Commissioner of Income Tax,
Range- 4, Raipur (C.G.)

9. It was the submission of the Id. AR that the method of calculation of turnover for speculative business has not clearly been defined in the Income Tax Act. Therefore, the Guidance Note issued by the ICAI was to be followed but the calculation made by the Id. AO for the impugned assessment year 2015-2016 was not according to the said Guidance Note. Thus, the Id. JCIT, Range-4, Raipur has directed the AO to follow the procedure for calculating the turnover which is submitted by the assessee in his reply dated 25.10.2018 in the A.Y.2016-2017. It is, therefore, requested to restore the matter to the file of AO to adjudicate the matter afresh in terms of the direction issued by the JCIT, Range-4,

Raipur adopting the method of calculation which was followed in the assessee's own case for the A.Y.2016-2017.

10. On other hand, Id. Sr. DR, on this issue, has fairly agreed to the contention of the Id. AR and submitted that the matter may be restored to the file of AO for recalculation.

11. We have considered the rival submissions and perused the material available on record. Undisputedly, the assessee was involved in intraday trading of shares and had submitted all the details pertaining to such transactions before the Id. AO. There was no controversy with regard to treating of intraday trading of the assessee as speculative business. The scope of controversy is limited to calculation of turnover of such speculative business. Since the method of calculation has been adopted in the immediately succeeding year i.e. A.Y.2016-2017 by the department, which was acceptable to the assessee also, the same should have been adopted in the year under consideration too. Under such circumstances, we are of the considered opinion that the turnover of the speculative business of the assessee calculated by the AO for the relevant assessment year 2015-2016 was not according to the Guidance Note on Tax Audit u/s.44AB of the I.T.Act, 1961, which was explained by the assessee by submitting the procedure before the Id. JCIT, Range-4, Raipur and approval by her vide her order u/s.144A of the Act. Therefore, it would be justified to restore the matter to the file of AO for adjudication of this issue which is already settled for A.Y.2016-2017 in accordance with the direction given by the JCIT, Range-4, Raipur dated 28.11.2018

u/s.144A of the Act. Consequently, this appeal of the assessee is allowed for statistical purposes. Thus, ITA No.67/RPR/2020 is allowed for statistical purposes.

12. Since the matter has been restored to the file of AO, other grounds of the appeal of the assessee became academic, and no adjudication is required on the same.

13. With regard to ITA Nos.68&69/RPR/2020, which are pertaining to penalty imposed u/s.271A & 271B of the Act, since the quantum appeal of the assessee in ITA No.67/RPR/2020, has been restored to the file of AO for adjudication in accordance with the issue already decided for A.Y.2016-2017, both these appeals are also restored to the file of AO for deciding the same in terms of the outcome of the quantum appeal.

14. In the result, all the three appeals of the assessee are allowed for statistical purposes.

Order pronounced in the court on 07/07/2023.

Sd/-
(RAVISH SOOD)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ARUN KHODPIA)

लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 07/07/2023

Prakash Kumar Mishra, Sr.P.S(on tour)

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Assistant Registrar)

आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur