

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 518/Kol/2023
Assessment Year: 2015-16

Vivek Kedia 604, Dosti Olive Dosti Acres Antop Hill Wadala East Mumbai - 400037 [PAN : ALRPK4508R]	Vs	ACIT, Circle-57, Kolkata
---	----	---------------------------------

अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
------------------------	--------------------------

Assessee by :	None
Revenue by :	Shri Braj Kishore Singh, JCIT, CIT D/R

सुनवाई की तारीख/Date of Hearing : 11/07/2023
घोषणा की तारीख /Date of Pronouncement: 24/07/2023

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The present appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter the "ld. CIT(A)") dated 03/02/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act"), for Assessment Year 2012-13.

2. None appeared on behalf of the assessee nor any application for adjournment been filed. Perusal of the assessment order and the order of the ld. CIT(A) reveals that both have been framed *ex-parte* and the assessee has not co-operated in the proceedings below and except filing the appeal has not made any efforts to pursue the same. We, therefore, deem it proper to adjudicate the appeal and decide it on merits *ex-parte, qua* the assessee, after hearing the ld. D/R.

3. The sole ground raised by the assessee is that the ld. CIT(A) erred in confirming the disallowance of loss of Rs.6,71,122/-. The ld.

D/R stated that the assessee has not find any details before the lower authorities but as per the grounds filed before ld. CIT(A), it is stated that loss incurred in derivative transactions has been funded through salary income however, there is no detail about the nature of income earned during the year and whether the assessee has claimed set off of loss against the said head of income. Further, he submitted that since the assessee has not filed any details, it means that the assessee has nothing to state about the said disallowance and thus the same should be confirmed.

4. We have heard the ld. D/R and perused the material placed before us. We notice that the assessee has declared income of Rs.22,31,630/-in the return filed on 30/09/2015. After the case being selected for scrutiny on account of large value sale of futures, derivative and securities transactions, various notices issued by the Assessing Officer were not complied even though they were sent through speed post and email. The assessee has declared Nil income under the head business and profession and loss of Rs.6,71,122/- has been set off against the column for "Losses from current year set off against the gross total income". There is no finding by the Assessing Officer that under which head, the assessee has declared the income from other than business of profession. However, the Assessing Officer made a disallowance of the said claim and assessed the income. Further we notice that in the appellate proceedings before the ld. CIT(A), it is observed that the assessee is a salaried employee. Now

in case the assessee has income from salary but has claimed the set off of losses from derivative business against the salary income, the same is not allowable in terms of the provisions of section 71(2A) of the Act, which provides that if the net result of the computation under the head "Profits and gains of business or profession" is a loss and the assessee has income assessable under the head "Salaries", the assessee shall not be entitled to have such loss set off against such income. Therefore, if any set off of derivative loss has been claimed against the salary income, the same is not allowable.

4.1. Also, we notice that in the grounds of appeal filed before the Id. CIT(A), assessee has stated that loss incurred in derivative has been funded through salary income. Though the specific details have not been filed but we presume that the assessee is contending that since the source of loss incurred on derivatives is from salary income, disallowance was uncalled for. If that be the case, the assessee is misconceived because source of incurring loss is one aspect and claiming of such loss from derivative transactions against salary income is another aspect. The Id. Assessing Officer has made disallowance of loss which means the assessee has claimed the set off of the loss from derivatives transactions against the salary income which we have already discussed above in terms of section 71(2A) of the Act. However, since the assessee has failed to appear for hearing before the Id. CIT(A) on multiple occasions and an *ex-parte* order was passed, we in the interest of justice and fair play, restore the issue to

the file of the Id. CIT(A) to decide the issue in accordance with the observations made by us hereinabove. Needless to mention that the assessee be provided sufficient opportunity of being heard, however, if the assessee fails to appear on more than two occasions without providing any reasonable cause, then the Id. CIT(A), can decide the appeal in accordance with law by way of passing a speaking order.

5. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Court on 24th July, 2023 at Kolkata.

Sd/-

(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 24/07/2023

**Sd/-*

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

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

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata