

**IN THE INCOME TAX APPELLATE TRIBUNAL GAUHATI BENCH
VIRTUAL HEARING AT KOLKATA**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.428/GTY/2019
Assessment Year: 2016-17**

Assistant Commissioner of Income-tax, Circle-3, Guwahati.	Vs.	Pannalal Bhansali H.P. Institute of Insurance, G. S. Road, Shreenagar, Dispur, Guwahati-781005, Assam. (PAN: AGHPB7667H)
(Appellant)		(Respondent)

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**C.O. No. 12/Gau/2019
In ITA No.428/GTY/2019
Assessment Year: 2016-17**

Pannalal Bhansali H.P. Institute of Insurance, G. S. Road, Shreenagar, Dispur, Guwahati-781005, Assam.	Vs.	Assistant Commissioner of Income-tax, Circle-3, Guwahati.
(Cross Objector)		(Respondent)

Present for:

Revenue by : Shri P. S. Thuingaleng, ACIT
Assessee/Cross Objector by : Shri Mayank Patwari, AR

Date of Hearing : 08.06.2023
Date of Pronouncement : 31.08.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

Appeal filed by the revenue and the Cross Objection filed by the assessee are against the order of Ld. CIT(A), Guwahati-2, Guwahati dated 31.07.2019 against the assessment order of ACIT, Circle-3, Guwahati

u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 31.12.2018 for AY 2016-17.

2. Brief facts as culled out from records are that assessee is a proprietor of H. P. Institute of Insurance, engaged in business of imparting vocational training. Assessee filed his return on 17.16.2016, reporting total income at Rs.20,17,360/- . Case of the assessee was selected for limited scrutiny for the following three reasons:

(a) Substantial increase in capital (Reason Code BL01.02),

(b) Large value sale of futures (derivatives) in recognized stock exchange reported in Securities Transaction Tax Return STT code 06 (Reason Code TX08.02),

(c) Low capital gains with respect to sales consideration, i.e. whether capital gain or loss is genuine and has been correctly shown in the return of income (Reason Code CG01.05).

2.1. Ld. AO issued statutory notices u/s. 143(2) and 142(1) of the Act, which were served on the assessee. Ld. AO observed that there has been persistent, continuous, systematic and calculated non-compliance or belated compliance by which assessee had dragged the proceedings to the fag-end of the assessment year, such that requisite enquiry/investigation into the affairs of the assessee on the above three noted issues would be either delayed or scuttled. Ld. AO had made additions to the tune of Rs.16,21,89,184/- on account of the following:

a)	Addition on account of transfer entries in the personal capital account for unsubstantiated increase in capital as unexplained cash credit u/s. 68 of the Act	-	Rs.13,42,97,642/-
b)	Addition on account of Long Term Capital Gain (LTCG) claimed as exemption u/s. 10(38) and Short Term Capital Gain (STCG)	-	Rs.2,58,69,249/-
c)	Disallowance of loss from trading in commodity and F&O derivatives	-	Rs.20,22,293/-

2.2. In the addition and disallowance at (a) and (b) above, revenue is in appeal before the Tribunal and assessee by way of Cross Objection for addition at item (c) above. We first take up the appeal of the revenue and deal with items at (a) and (b) above seriatim.

3. On the first issue relating to unsubstantiated increase in the capital of the assessee, Ld. AO noted the sharp rise amounting to Rs.23,26,96,302/- out of which assessee has shown an amount of Rs.13,42,97,642/- as capital brought in. In this respect, assessee has furnished a list of assets in the form of debtors/deposit/advance. Ld. AO called for proof regarding the advancement of such funds, source thereof and whether the funds so invested/advanced/deposited have been offered to tax in any of the earlier years or not. From the submissions made by the assessee, ld. AO noted that assessee had furnished the Balance Sheet entries in his return form for AY 2016-17 and 2015-16. No entries are made in part A Balance sheet of return form for AY 2014-15. He further noted that entries in the return form for AY 2015-16 are incorrect amounting to false return.

3.1. Assessee had submitted that on 01.04.2015, books of account in his proprietary concern i.e. H. P. Institute of Insurance showed a negative opening capital balance of Rs.9,36,40,325/-. With a view to convert this negative capital balance into positive capital balance for banking purposes, assessee had transferred the entries from the books of H. P. Institute of Insurance (i.e. his proprietary concern) to his personal statement of affairs. Assessee thus, claimed that he has not introduced any new capital in the books of H. P. Institute of Insurance which are merely transfer entries. In this respect, ld. AO has repeatedly and very categorically asked the assessee to furnish evidence in support of source for the capital brought in, in his Balance sheet and to substantiate that such sum of money has been offered to tax in earlier years or the current years.

3.2. From the submissions made by the assessee, Ld. AO noted that response of the assessee did not consist of any conclusive proof as regards the time of acquisition of various items of transfer entries claimed to be introduced as capital from individual Balance Sheet into proprietorship Balance Sheet and the source of funds used for the same. Ld. AO thus held that since assessee has not been able to explain the credit in his books of accounts as regards this increase in capital brought in, added it to the total income as it remained unsubstantiated.

4. On the second issue of addition in respect of LTCG and STCG totalling to Rs.2,58,69,249/-, Ld. AO noted that assessee has claimed an amount of Rs.2,45,80,798/- as per schedule EI

of his return as exempt income u/s. 10(38) of the Act towards LTCG. To examine the genuineness of claim of LTCG, Ld. AO called for details of shares of RSWM Ltd. on which this LTCG was claimed as exempt. From the DMAT account furnished by the assessee, Ld. AO noted certain discrepancies in respect of the opening balance of shareholding and thus concluded that the claim of exemption is untenable in law. Similar view was taken in respect of STCG of Rs.12,88,451/-.

5. In respect of the third issue relating to disallowance of loss on account of trading of commodities (F&O) amounting to Rs.20,22,293/-, for which the assessee is before the Tribunal by filing Cross Objection, Ld. AO noted from the perusal of P&L Account of the assessee that assessee has incurred loss in trading of commodities (F&O) which remained unsubstantiated. In this respect, assessee did not furnish relevant contract notes and other details of the commodities in which it had transacted. Since the loss of this derivative transaction remained unverified, Ld. AO concluded to disallow the same.

6. From the initial submission of the assessee made for the first time before the Ld. CIT(A) and considering the material on record along with observations contained in the assessment order, Ld. CIT(A) exercised his powers u/s. 250(4) and directed the assessee to furnish details and documents in respect of addition/disallowance made in the assessment.

6.1. On the first issue relating to addition in respect of introduction of capital, assessee reiterated the submission as already stated above. Assessee had transferred the following

entries in the capital account of H. P. Institute of Insurance, totalling to Rs.13,42,97,642/-, tabulated as under:

S. No.	Particulars of Capital Introduced	Amount (in Rs.)
1	<i>EtibarTricom Pvt. Ltd.</i>	1,30,48,000/-
2	<i>Mezzo Trading Pvt. Ltd.</i>	1,59,70,000/-
3	<i>Bonaza Commodity Brokers Pvt. Ltd</i>	1,51,354/-
4	<i>Pradeep More</i>	15,00,000/-
5	<i>Share of image insurance Pvt. Ltd.</i>	16,72,455/-
6	<i>GautamBhansali</i>	7,00,000/-
7	<i>Global School (Prop. concern)</i>	1,43,09,409/-
8	<i>Liza Bhansali (Daughter of the appellant)</i>	1,73,44,727/-
9	<i>PannalalBhansali& Sons (HUF)</i>	1,96,49,000/-
10	<i>Santosh Bhansali (Wife of the appellant)</i>	2,19,255/-
11	<i>Dividend</i>	1,03,830/-
12	<i>PLB Finance & Services P Ltd/ Bonanza Portfolio</i>	4,95,93,500/-

6.2. Assessee furnished entry-wise explanation for each of the items tabulated above. The summary of details in respect of additions made in the capital account of the assessee, as furnished by the assessee, is extracted below:

Sl. No.	Name, Address and PAN of the Person	Relationship with Appellant	Amount involved (in Rs.)	FY during which transactions took place	Date of passing book/journal entry during FY 2015-16
1.	<i>EtibarTricom Pvt. Ltd. 416,Dreamland Building 1/18B, Asaf ali Road, New Delhi-2 PAN: AAECM3698K</i>	<i>Appellant is a director of the company</i>	1,30,48,000/	2013-14	31/03/2016
2.	<i>Mezzo Trading Pvt. Ltd. 416,Dreamland Building 1/18B, Asaf ali Road, New Delhi-2 PAN: AAACE7690K</i>	<i>Appellant is a director of the company</i>	1,59,70,000/	2013-14	31/03/2016

3.	Bonaza Commodity Brokers Pvt. Ltd/Bonanza Portfolio Ltd 4353-4C Madan Mohan Street Ansari Road, Daryaganj New Delhi-110002 PAN:AACCB1987C/ AAACB0764B	None, Stock broker of the appellant	1,51,354/	2014-15	31/03/2016
4.	Pradeep More Old Srimanta Shankar Road, Haibargaon, Nagaon-782002 PAN: NOT AVAILABLE	None	15,00,000/	2007-08	31/03/2016
5.	Share of image insurance Pvt. Ltd. 13 Community Center, East of Kailash, New Delhi- 65	None	16,72,455/	2015-16	31/03/2016
6.	Gautam Bhansali C/o H M Traders, Tura Bazar, TURA-794001 PAN: AFUPB8995A	Nephew of the Appellant	7,00,000/	2012-13 (18/10/2012)	31/03/2016
7.	Global School 416,Dreamland Building 1/18B, Asaf ali Road, New Delhi-2	Prop. Concern of the appellant	1,43,09,409/	Prior to 2015-16 (Opening Balance2430 9409.24)	31/03/2016
8.	Liza Bhansali Srinagar Path, G S Road, Guwahati-781005 PAN: AJDPB4264B	Daughter of the Appellant	1,73,44,727/	Prior to 2015-16 (Opening Balance1694 4727.12)	31/03/2016
9.	Pannalal Bhansali & Sons (HUF), Srinagar, G S Road, Guwahati-781005 PAN: AAHHP2822G	Appellant is the Karta of HUF	1,96,49,000/	o.b.3159000 /- (transactions during FY 2015-16 1,64,90,000/ -)	31/03/2016
10.	Santosh Bhansali Srinagar Path, G S Road, Guwahati-781005 PAN: AIFPB5283M	WIFE of the Appellant	2,19,255/	2015-16	31/12/2015
11.	Dividend of RSWM Ltd (Through Bonanza PortfolioLtd. PAN:AAACB0764B)	None	1,03,830/	2015-16	08/10/2015
12.	PLB Finance & Services P Ltd/ (Bonanza Portfolio)	Appellant is a director of	4,95,93,500/	Prior to 2015-16	31/03/2016

416,Dreamland Building 1/18B, Asaf ali Road, New Delhi-2 PAN:AAACP3886E	the company		(Opening Balance Rs 5,47,90,000)	
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6.3. While submitting explanation for each of the items above, assessee repeatedly stated the following : –

“a) The appellant is running a proprietorship firm in the name of H P Institute of Insurance. As the assessee being an individual was not maintaining any personal state of affairs.... ;

b) during the year under assessment the appellant in order to turn his Negative Opening Capital balance standing in the balance sheet of H P Institute of Insurance to Positive Capital Balance for banking purpose, has transferred it to his personal statement of affairs....;

c) Due to the fact that the HP Institute of Insurance is the proprietorship concern of the appellant, it makes no difference whether the amount is shown as liability in books of the proprietorship firm or the statement of affairs of the appellant. The whole transaction is just an arrangement in the books of the individual so that the negative capital balance can be converted into positive balance. It is not even A.O's case that there was any monetary transaction in bank account of the appellant(individual) and it is self-evident that A.O acted on arbitrary basis in disregard to section 68 of the Income Tax Act, 1961.”

6.4. Ld. CIT(A) granted relief by observing that the transactions tabulated above in respect of increase in capital were substantially entered into by the assessee with the respective parties, prior to the first date of the relevant previous year. Since there is no fresh credit during the year in the books of account of the assessee, provisions of sec. 68 of the Act cannot be applied. He thus, deleted the addition so made. On this issue, Ld. Counsel for the assessee has reiterated the submissions made before the Ld. CIT(A) which are not repeated for the sake of brevity, as already noted above.

7. Ld. CIT DR has placed on record a detailed written submission for each of the grounds. Ld. CIT DR submitted that while deleting the addition, Ld. CIT(A) has made a remark

that in case, any of the documentary evidence filed by the assessee during the course of appellate proceedings are found to be incorrect or false or fabricated then, assessee would be liable for requisite action under law for wrong verification and also for wilful attempt to evade taxes. According to him, this remark is important in the backdrop of the observation made by Ld. CIT(A) that the addition was made by the AO since assessee could not satisfactorily explain/substantiate to build-up his capital. All this had been explained only during the course of appellate proceeding, by filing documentary evidence. Ld. CIT DR stated that assessee had submitted additional evidence before the Ld. CIT(A) which were never submitted in the course of assessment proceeding before the Ld. AO. By whatever submitted before the Ld. AO, substantial increase in the capital of the assessee could not be explained which resulted into the addition. In the first appellate proceeding, no remand report was called for by the Ld. CIT(A) on the evidence submitted by the assessee. According to him, the addition made by Ld. AO is ought to be sustained.

8. We have heard the rival contentions and perused the material available on record. It is important to note certain facts which are undisputed. Assessee is a proprietor of vocational training institute in the name of H. P. Institute of Insurance. In the explanation for passing the transfer entries to substantiate the increase in capital, assessee has repeatedly submitted that books of account of H. P. Institute of Insurance showed a negative opening capital balance and to convert this negative capital balance into positive, for banking purposes,

he has passed these entries from the books of proprietary concern to his personal statement of affairs.

8.1. From the table and summary extracted above, it is noted that assessee is a director of Etibar Tricom Pvt. Ltd. and Mezzo Trading Pvt. Ltd. from whom he has claimed to receive personal loan in his personal bank account. Assessee being a director of these companies and receiving personal loan from them in the preceding years i.e. AY 2014-15 and now passing journal entries through his capital account does not lead to any conclusion as to how it would affect his net-worth in the individual capacity. It is also important to note that in the concerned year AY 2014-15 in which assessee is claiming that he has obtained the personal loan from these two companies in which he is a director, nothing has been brought on record to establish whether this transaction was subjected to scrutiny/taxation. Also, whether any issue of treating it as deemed dividend u/s. 2(22)(e) of the Act arose in this respect?

8.2. Ld. CIT(A) has not conducted any enquiry himself or caused to conduct an enquiry for examination of these transactions which have been claimed to be executed in the preceding years so as to ascertain whether these have been adequately subjected to taxation under the relevant provisions of the Act. Ld. CIT(A) despite claiming that he has exercised his powers u/s. 250(4) of the Act, there is nothing on record which enables us to discern that he has made enquiries or directed the AO to make further enquiry for the purpose of disposing of the appeal. He has simply taken on record, the material furnished by the assessee and after citing various

judicial pronouncements, deleted the addition so made by the Ld. AO.

8.3. When we further delved into other items of capital in the table extracted above, we find that there are transactions by the assessee with his daughter Smt. Liza Bhansali, there are transactions with spouse of the assessee, Smt. Santosh Bhansali, also with his another proprietary concern named as Global School. Further, there is a transaction with nephew of the assessee, Shri Gautam Bhansali and there are another transactions with PLB Finance & Services Pvt. Ltd. wherein again, assessee is the director. The nature of these transactions with the aforesaid related parties in most of the cases, have been explained to be gifts, without substantiating the source of the same.

8.4. One of the items relates to dividend from RSWM amounting to Rs.1,03,830/- which forms part of increase in the capital. Assessee has claimed that the transaction of shares of RSWM Ltd. is correctly reflected in the account of his HUF i.e. Pannalal Bhansali & Sons (HUF) of which assessee is the Karta. In one hand, assessee is claiming that the transaction of shares of RSWM Ltd. is on account of HUF and on the other hand, it is claiming the amount of dividend from the same shares, for passing entries into his capital account.

8.5. There are contradictions in respect of transaction with daughter Liza Bhansali for which assessee submits that he had gifted certain shares to his daughter. These shares were sold by his daughter and the sale consideration received by the daughter was transferred to the assessee by way of part

payments. The point which arises on this explanation by the assessee is if it is claimed to be a gift, why would there be a need of part payment by the daughter from the sale consideration received by her on sale of shares which have been gifted to her by the father i.e. the assessee. Further, there is nothing on record to substantiate whether this sale transaction was subjected to capital gain tax with proper disclosure in the concerned return of income for the year in which this transaction is claimed to have taken place.

8.6. We thus find that there are discrepancies and contradictions in the submission made by the assessee which, more importantly, has been for the first time furnished before the Ld. CIT(A). Findings arrived at by Ld. CIT(A) on these submissions made by the assessee, in no way demonstrate, conduct of any enquiry either by himself or through the Ld. AO while disposing of the appeal, granting relief to the assessee.

8.7. We also note that when the assessee is claiming that he has undertaken this exercise of making transaction entries for the banking purposes, to our mind, it would hardly make any difference since assessee would be always approaching the banks in an individual capacity where he would have to submit details of his capital whether it is forming part of the proprietary concern or his personal statement of affairs.

8.8. Considering the facts and circumstances of this case, and the discussion made above, we find it proper to set aside the impugned order of the Ld. CIT(A) on this issue and remit the matter back to his file for de novo adjudication after taking into account the aforesaid observations and by conducting

necessary enquiries either himself or by the Ld. AO. He may call for a report from the Ld. AO on the enquiries conducted so as to arrive at appropriate conclusion. Needless to say that assessee be given reasonable opportunity of being heard. Accordingly, ground taken by the revenue in this respect is allowed for statistical purposes.

9. On the second issue relating to addition towards LTCG and STCG on share transaction, Ld. AO had called for all the relevant documentary evidence and explanation which were partially complied with. Ld. CIT(A) had given the relief in respect of this addition by holding that addition was made relying on wrong DMAT account i.e. of the HUF of the assessee and not of the assessee himself. While granting relief by holding so, Ld. CIT(A) made a remark that in case, if this documentary evidence filed by the assessee during the course of appellate proceeding is found to be incorrect or false or fabricated, then the assessee would be liable for requisite action under law for wrong verification and also for wilful attempt to evade taxes. This remark by the Ld. CIT(A) itself demonstrates a doubt and a double mind while granting the relief.

9.1. It is important to note that the details and documents were furnished by the assessee for the first time before the Ld. CIT(A) who has claimed to call for these documents by exercising his powers u/s. 250(4) of the Act. From perusal of the documentary evidence placed on record in the paper book, it is not discernible if the account is of the HUF or the individual and, therefore, it is difficult to appreciate how Ld.

CIT(A) arrived at this conclusion to grant relief, when section 250(4) mentions about the conduct of enquiry or cause to make an enquiry by the AO, before disposing the appeal.

9.2. Considering the facts and circumstances and the discussions made above, we find it proper to set aside the order of Ld. CIT(A) on this issue and remit the matter back to his file for de novo adjudication after taking into account the aforesaid observations and by conducting necessary enquiries either himself or by the Ld. AO. He may call for a report from the Ld. AO on the enquiries conducted so as to arrive at appropriate conclusion. Needless to say that assessee be given reasonable opportunity of being heard. Accordingly, ground taken by the revenue in this respect is allowed for statistical purposes.

10. On the third issue relating to disallowance on account of loss on trading of commodity derivatives and F&O, it has been challenged by the assessee through Cross Objection. Ld. CIT(A) in his order has stated that assessee has not substantiated the claim of loss. Further, he has noted that no reasons have been ascribed as to why these details which were sought by the AO were not furnished before him. In absence of the requisite evidence, ld. AO had doubted the genuineness of this loss and was, therefore, disallowed. On this issue, ld. CIT(A) while upholding the disallowance stated that assessee has chosen to remain casual and adopted a slipshod attitude by filing only sample copies of the purported contract notes. No details have been furnished with respect to Futures & Options trading, the booking price, settlement price thereof, the relevant

computation as well as corresponding prices of the respective Future & Option or the underlying commodities on the date of booking the Future & Option or on the date of its squaring up of settlement, respective commodity transaction tax paid. In the course of first appellate proceedings, assessee has submitted only the following documents:

- (i) Copy of P&L Account for AY 2016-17.
- (ii) Copy of Profit and Loss summary received from Bonnza Commodity Brokers Pvt. Ltd. for AY 2016-17 and
- (iii) sample copies of contract notes.

Ld. CIT(A) has found these documents insufficient to substantiate the claim made by the assessee.

10.1. Considering the facts and circumstances and the discussions made above, we find it proper to set aside the order of Ld. CIT(A) on this issue and remit the matter back to his file for de novo adjudication after taking into account the aforesaid observations and by conducting necessary enquiries either himself or by the Ld. AO. He may call for a report from the Ld. AO on the enquiries conducted so as to arrive at appropriate conclusion. Needless to say that assessee be given reasonable opportunity of being heard. Accordingly, ground of Cross Objection raised by the assessee in this respect is allowed for statistical purposes.

11. In the result, appeal of the revenue as well as the Cross Objection of the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 31st August, 2023.

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 31st August, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent
 3. CIT(A), Guwahati-2, Guwahati
 4. CIT
 5. DR, ITAT, Guwahati Bench, Guwahati
 6. Guard file
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata