

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE 'A' BENCHES :: PUNE

BEFORE SHRI R.S. SYAL, HON. ACCOUNTANT MEMBER &  
SHRI PARTHA SARATHI CHAUDHURY, HON. JUDICIAL MEMBER

ITA No.965/PUN/2023  
(A.Y. 2011-12)

Kirit Ramanlal Shah, C/o Acropolis, 3 <sup>rd</sup> Floor, 1076/20, Gokhale Road, Shivajinagar, Model Colony, Pune, Maharashtra.  PAN: ADWPS 9391 P	vs	ACIT, Circle-3, Pune.
Appellant		Respondent

Assessee by	:	Shri Suhas P Bora, CA
Revenue by	:	Shri Ramnath P. Murkunde, DR
Date of hearing	:	21/09/2023
Date of pronouncement	:	22/09/2023

O R D E R

Per PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of National Faceless Appeal Centre [NFAC], Delhi, dated 31.07.2023 for A.Y.2011-12 as per the grounds of appeal on record.

2. At the outset, Id.AR for the assessee submitted that NFAC has not adjudicated ground Nos. 2 & 3 in the appeal and that the assessee is aggrieved for such non-adjudication of these grounds since they deal with merits of the issues.

3. We observe at page 7 of the NFAC's order where the grounds are mentioned and therein ground Nos. 2 & 3 to 5 have been reproduced

as follows:-

*"2. The assessment order passed U/sec.143(3) r.w.s 147 is bad in law and void ab-initio, since it is passed:*

- a) Without following the principles of natural justice.*
- b) Without giving the reasons recorded for reopening the assessment*
- c) Without providing with the copy of documents relied upon*
- d) Without verifying the submissions and evidences submitted by appellant.*
- e) Without establishing any live link between appellant and the alleged entry providers statement.*
- f) Without giving the opportunity of cross examination of third parties whose statements have been relied upon by the A.O.*
- g) Without following the principles laid down by Apex Court in case of GKN Driveshafts India Ltd Vs. ITO for reopening of assessment proceedings*

*3. The learned AO has erred in law on reopening the assessment based on information received from Investigation Wing of Department which constitutes an opinion and not tangible material which is necessary for reopening. The learned AO on the facts and the circumstances of the case and in law has erred in treating the speculation loss as non-genuine without any concrete evidence. The learned AO considered the speculation loss of Rs.2,01,45,307/- from the commodity transaction on the basis that the broker was expelled from the commodity exchange which cannot be the criteria to hold the transaction as bogus without the name of the assessee being involved in it.*

*4. Ground No.6: On the facts and in the circumstances of the case and in law the learned A.O. erred in making an addition of Rs.2,01,45,307/- as non-genuine losses by rejecting appellant contention and documentary evidences such bank account statements and the contract notes in support of the transaction brought on record therefore entire addition needs to be deleted.*

*5. Ground No.7: The learned A.O. erred in rejecting the claim of the assessee on just the basis of applying the modus operandi of NMCE Scam, FMC Order dated 23.07.2011 on financial irregularities in NMCE, Information from the Investigation wing of the Department, Ahmedabad and theory of preponderance of human probabilities/ tax planning by generalizing it to the case of assessee without bringing on record any corroborative evidence against the appellant."*

Thereafter, NFAC observed at para 5, that the assessee has raised 09 grounds of appeal. Ground Nos. 2, 3 & 9 are general in nature and no specific adjudication is called for. Hence, the same are dismissed. Therefore, the contention of the Id.AR is correct that ground Nos. 2 & 3 raised in the appeal before the NFAC have not been adjudicated. These grounds are not general in nature and, therefore, in our considered view, these grounds should be adjudicated on merits by NFAC and in view thereof, we set aside the said order of NFAC and remand the matter to the file of NFAC for adjudication as per law complying with the principles of natural justice. The NFAC shall not only adjudicate ground nos. 2 & 3, but since for the sake of completeness and consistency, all other grounds are also remanded to their file, so all the issues have to be decided again as per law by NFAC. The grounds of appeal are allowed for statistical purposes.

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

Order pronounced in open Court on 22<sup>nd</sup> September, 2023.

Sd/-  
(R.S. SYAL)  
VICE-PRESIDENT

Sd/-  
(PARTHA SARATHI CHAUDHURY)  
JUDICIAL MEMBER

Dated : 22<sup>nd</sup> September, 2023

vr/-

*ITA No.965/PUN/2023  
Kirit Ramanlal Shah*

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
4. The DR, ITAT, "A" Bench Pune.
5. Guard File.

By Order

// TRUE COPY //

Senior Private Secretary  
ITAT, Pune.