

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

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER &
SHRI G.D. PADMAHSHALI, ACCOUNTANT MEMBER

ITA No.1030/PUN/2023
(A.Y. 2012-13)

Kirit Ramanlal Shah, C/o Acropolis, 3 rd Floor, 1076/20, Gokhale Road, Shivajinagar, Model Colony, Pune-411016	vs	ITO, Ward-3(1), Pune.
PAN: ADWPS 9391 P		
Appellant		Respondent

Assessee by	:	Shri Suhas P. Bora, CA
Revenue by	:	Shri Keyur Patel, CIT-DR
Date of hearing	:	13/10/2023
Date of pronouncement	:	13/10/2023

ORDER

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.2012-13 as per the following grounds of appeal:-

- "1. The Id. CIT(A) has erred in confirming the addition made by the AO without considering detailed submissions made by the appellant in respect of Ground No.2 to 10 and deciding the case in summary manner without any speaking order on the legal issues raised which goes to root of the reassessment proceedings.*
- 2. The Id. CIT(A) has failed to appreciate that the assessment order passed u/sec. 143(3) r.w.s. 147 is bad in law as it is reopened on basis of issue which is thoroughly discussed in assessment completed u/sec. 143(3) of the Act and is review of earlier order without pinpointing any specific failure on part of the appellant to disclose true and correct particulars in the reasons recorded and without any new tangible material and hence the reopening of assessment is invalid and vitiated in law as it is mere change of opinion which is no legally justifiable.*

3. *On the facts and circumstances of the case and in law the Id. CIT(A) had erred in appreciating the fact that reopening proceedings u/sec. 147 has been initiated on the basis of satisfaction of escapement of inc recorded by other authorities such as DDIT (Inv.) and since independent satisfaction of AO is missing therefore entire proceedings are void-ab-initio and needs to be quashed.*
4. *The Id. CIT(A) has failed to appreciate that the assessment order passed u/sec. 143(3) r.w.s. 147 is void-ab-initio, since it is passed:*
 - a) *Without following the principles of natural justice.*
 - b) *Without providing with the copy of documents relied upon based upon which the interference is drawn.*
 - c) *Without verifying the submissions and evidences submitted by appellant.*
 - d) *Without establishing any live link between appellant and the alleged entry provider's statement.*
 - e) *Without giving the opportunity of cross examination of third parties whose statements have been relied upon by the AO.*
5. *The Id. CIT(A) has failed to appreciate that the Id. AO has erred in 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.*
6. *On the facts and circumstances of the case, the Id. CIT(A) has failed to appreciate that the Id. AO has erred in treating the speculation loss as non-genuine without any concrete evidence.*
7. *The Id. CIT(A) has failed to appreciate that the Id. AO has considered the speculation loss of Rs. 11,01,36,769/- 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.*
8. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in confirming the addition of Rs. 11,01,36,769/- on account of non-genuine loses made by the Id. AO by rejecting appellant's 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.*
9. *The Id. CIT(A) has erred in confirming the action of the Id. AO of rejecting the claim of the assessee just on the basis of applying the modus operandi of NMCE Scam, FMC Order dated 23/07/2021 on financial irregularities in NMCE, Information from the Investigation Wing of the Department, Ahmadabad 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.

10. *The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal."*

2. At the outset, Id.AR for the assessee submitted, even without going into the merits of the case, that NFAC had not adjudicated the ground Nos.2 to 5 which deals with deciding the validity of proceedings u/sec. 147/148 of the Act and other grounds i.e. ground Nos. 2 to 10 altogether and NFAC had only adjudicated on ground No.1 and therefore the said grounds remained un-adjudicated at the first appellate stage.

3. We observe from the order of NFAC that in their decision part it has been stated that assessee had raised 11 grounds of appeal. Thereafter, the NFAC gives finding that ground No.1 of appeal is dismissed and, therefore the addition of Rs.11,01,36,769/- made by the AO is sustained. It can also be seen that NFAC had simply stated that after considering the facts of the case, it is fully in agreement with the action of the AO for reopening of the assessment proceedings as there is sufficient reason to believe that the income had escaped for the year, and accordingly in the result, appeal was dismissed. Now, here 11 grounds have been raised, but in the finding part of NFAC, only ground No.1 of the appeal had been dismissed. There is no adjudication and findings in respect of the other grounds i.e. ground Nos. 2 to 10 by NFAC while dismissing the appeal of the assessee. The

NFAC has also not given any specific/independent finding regarding the validity of the reopening of assessment proceedings as challenged by the assessee. That, as a *quasi judicial* authority, the thought process which ultimately leads to the final conclusion should be evident and apparent in the order itself, however, in the case of the assessee, on the grounds challenging re-assessment proceedings and its validity and other specified grounds raised, there is no independent reasoning and application of mind in coming to the said conclusion by NFAC and that in effect the substantial question of law regarding the validity of such reopening of the assessment remained un-adjudicated and on these grounds, rights and liabilities of the parties are yet to be determined. We are of the considered view that NFAC should verify and examine the contentions raised regarding the reopening of assessment proceedings vis-à-vis the facts of the assessee's case and adjudicate the matter as per law. We order accordingly. In view thereof, we set aside the order of the NFAC and remand the matter back to its file for specific adjudication relating to the grounds on reopening of assessment proceedings and other grounds raised as per law and that for the sake of completeness and consistency, all other grounds also are remanded to its file, so that all the issues have to be adjudicated again as per law by NFAC. The entire demand is therefore kept alive and even without going into the merits of the addition, we are remanding the matter to the file of the NFAC for adjudication as per law following the principles of natural justice. Resultantly, the

grounds of appeal stands allowed for statistical purposes.

4. Before parting, we observe that in assessee's own case in ITA No.965/PUN/2023 for A.Y.2011-12 order dated 22/09/2023, this Tribunal on identical facts and circumstances, where again certain grounds raised by the assessee before the NFAC were not adjudicated by the NFAC, in such circumstances, the Tribunal had remanded the matter back to the file of NFAC for adjudication as per law.

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

Order pronounced in open Court on 13th October, 2023.

Sd/-
(G.D. PADMAHSHALI)
ACCOUNTANT MEMBER

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Dated : 13th October, 2023

vr/-

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.