

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 1847/Mum/2023 (A.Y.2015-16)

Sunil Capital and Securities

801/806, 8th floor, Elite Square,
274, Perin Nariman St. Bazar
Gate, Fort, Mumbai-400 001

PAN: AAACS6780Q

..... Appellant

Vs.

ACIT Circle-2(3)(2)

Room No. 552,
Aayakar Bhavan,
M. K. Road,
Mumbai-400020

..... Respondent

Appellant by : Shri Shri K. Gopal & Om Kandalkar
Respondent by : Shri Virabhandra Mahajan

Date of hearing : 19/10/2023
Date of pronouncement : 06/11/2023

ORDER

PER GAGAN GOYAL, A.M.:

This appeal by assessee is directed against the order of National Faceless Appeal Centre (for short "NFAC"), Delhi dated 24.04.2023 u/s. 250 of the Income

Tax Act, 1961 (in short 'the Act') for A.Y. 2015-16. The assessee has raised the following grounds of appeal:-

I. Legal Grounds:

A. the order dated 24.04.2023 passed by the National Faceless Appeal Centre, Delhi [hereinafter referred to as the 'NFAC' is in breach of the principles of natural justice.

1. The NFAC erred in passing the ex-parte order dated 24.04.2023 without providing sufficient opportunity of being heard to the Appellant and thereby confirming the additions/disallowances made by the Assistant Commissioner of Income Tax, Circle - 2(3)(2), Mumbai (hereinafter referred to as 'Ld. A.O.']. Thus, the said order has been passed in complete violation of the principles of natural justice and therefore, deserves to be quashed and set aside.

II. On merits:

2. The NFAC erred in passing the order dated 24.04.2023 upholding the assessment order passed under section 143(3) of the Act without appreciating the facts and circumstances of the case. The Appellant, therefore, prays that the order passed by the NFAC is against the provisions of law and hence, the same may be quashed and set aside.

A. Disallowance amounting to Rs.8,78,54,868/- made u/s. 69 of the Act as regards undisclosed stocks of equity shares

3. The NFAC has erred in upholding the addition amounting to Rs. 8,78,54,868/- as unexplained investments u/s 69 of the Act without considering the fact that the shares were received as trading security from the sister concerns for the purpose of providing or utilizing the same as trading margin to the broker i.e.. Edelweiss Securities Pvt. Ltd. for the purpose of gaining exposure on the F&O segment of the recognized stock exchange. Hence, the additions amounting to Rs.8, 78, 54,868/- is unjustified and the same may be deleted.

4. The NFAC has erred upholding addition amounting to Rs.8, 78, 54,868/- u/s 69 of the Act by treating the said shares as unexplained investments without considering the fact that the concerned sister concerns as well as the brokers have confirmed the fact that the said shares were held as margin for the purpose gaining trading exposure in the stock markets. Thus, the addition amounting to Rs. 8, 78, 54,868/- is unwarranted, without any basis and the same may be deleted.

5. *The NFAC erred in upholding additions amounting to Rs. 8, 78, 54,868/- u/s. 69 of the Act without considering the fact that Appellant has duly discharged the onus cast upon him as per the provisions of section 69 of the Act by disclosing the source and the purpose of the said shares received and held by the Appellant as trading security. Thus, the provisions of section 69 of the Act are not applicable to the facts of the present case and therefore, the same may be deleted.*

B. Disallowance of loss amounting to Rs. 17.21, 598/- arising from penny stocks by treating the same as non-genuine loss

6. *The NFAC is not justified in upholding disallowance of loss amounting to Rs. 17,21,598/- on penny stocks without considering the fact that the same have been properly traded on recognized stock exchanges through registered stock brokers under a valid contract note and hence, the same cannot be considered as non-genuine loss. Thus, the disallowance made is not justified and the same may be deleted.*

7. *The NFAC has erred in upholding disallowance of loss amounting to Rs. 17,21,598/- on penny stocks by claiming the same to be colourable device to avoid tax without furnishing any document or evidence to substantiate any intention on the part of the Appellant to avoid taxes. Thus, the disallowance made merely on the basis of conjecture and surmises is not justified and the same may be deleted.*

C. Disallowance amounting to Rs. 9.85.778/- under section 14A of the Act

8. *The NFAC is not justified in upholding the disallowance of interest on borrowing pertaining to stock in trade amounting to Rs. 9,85,778/-u/s. 14A r.w.r. 8D of the Income tax Rules, 1962 without considering the fact that the Appellant has neither incurred any expenditure for earning the dividend income nor has claimed any such expenditure as deduction. Thus, the disallowance made is not justified and therefore, the same may be deleted.*

9. *The NFAC erred in upholding the disallowance amounting to Rs. 9, 85,778/- u/s. 14A of the Act without considering the fact that the Appellant is engaged in the business of dealing in shares and securities and the dividend income has been earned from the shares held as stock in trade and the same incidental to the business of the Appellant. Thus, the disallowance made by applying Rule 8D by treating the stock in trade as investments is arbitrary, unlawful and the same may be deleted.*

D. Addition of interest on capital in Partnership firm amounting to Rs. 5, 73,444/-

10. *The NFAC is not justified in upholding the addition amounting to Rs. 5, 73,444/- on account alleged interest accrued to the Appellant from the LLPs without considering the fact that neither the said LLPs have shown interest expenditure as accrued or to the credit of the Appellant, nor the Appellant has received the said amount of interest during the year under consideration. Thus, the addition made on notional basis is not unlawful, illegal, unwarranted and thus, the same may be deleted.*

11. *the Appellant seeks leave to add, alter and amend the above grounds whenever required.*

2. The Brief facts of the case are that assessee company filed its return of income on 23.09.2015, declaring total loss at Rs. (-) 3, 96, 53,439/-. Case of the assessee was selected for scrutiny under CASS and statutory notices were issued to the assessee. Case of the assessee was assessed at Rs. 8, 78, 54,868/- u/s. 69, chargeable to tax u/s. 115BBE of the Act. Assessee being aggrieved with this order of AO preferred an appeal before the Ld. CIT (A), who decided the appeal *Ex-Parte* and dismissed the same. Assessee being further aggrieved preferred this appeal before us.

3. We have gone through the order of AO, order of Ld. CIT (A) and submissions of the assessee along with grounds raised by the assessee. It is observed that assessee duly participated in the proceedings before AO, but there was no participation of assessee in the proceedings before the Ld. CIT (A). Vide Para 4 of the Appeal Order, Ld. CIT (A) produced the log of hearing as under:

Sr. No.	Date of Notice	Date of Hearing	Remarks
1	16/03/2020	19/03/2020	No Reply
2	24/07/2020	07/08/2020	No Reply

3	07/08/2020	11/08/2020	No Reply
4	23/12/2020	29/12/2020	No Reply
5	12/04/2022	22/04/2022	No Reply
6	08/08/2022	16/08/2022	No Reply
7	10/10/2022	18/10/2022	No Reply

4. In view of above, this fact is on record that there was no examination of matter under consideration before the Ld. CIT (A), which is an essential part of whole procedure. In view of this matter is restored back to the file of Ld. CIT (A) for fresh adjudication after giving a proper opportunity to the assessee.

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

Order pronounced in the open court on 6th day of November, 2023.

Sd/-

(PAVAN KUMAR GADALE)

JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 06/11/2023

Sr. PS (Dhananjay)

Sd/-

(GAGAN GOYAL)

ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai