

IN THE INCOME TAX APPELLATE TRIBUNAL, "SMC" BENCH, SURAT
BEFORE DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.687/SRT/2023

(निर्धारण वर्ष / Assessment Year: (2008-09)

(Hybrid Hearing)

Bhupendrakumar Balvantlal Gandhi 36 Jai Ambe Society, B/h Arjun Complex, Bhatar Road, Surat- 395001	Vs.	Income Tax Officer, Ward- 1(3)(1), Surat, Aaykar Bhavan, Majura Gatre, Surat-395001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AGAPG 3261 D		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Assessee by	Shri Mehul Shah, CA
निर्धारिती की ओर से /Respondent by	Shri Vinod Kumar, Sr. DR
सुनवाई की तारीख/Date of Hearing	11/12/2023
घोषणा की तारीख/Date of Pronouncement	13/12/2023

आदेश / ORDER

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2008-09, is directed against the order passed by the National Faceless Appeal Centre, Delhi [in short, "NFAC/Ld. CIT(A)"] dated 11.08.2023, which in turn arises out of an assessment order passed by the Income Tax Officer Ward-1(3)(1), Surat, under section 144 r.w.s 147 of the Income Tax Act, 1961 (in short 'the Act'), dated 18.03.2016.

2. Grounds of appeal raised by the assessee are as follows:

"1. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of assessing officer in reopening assessment u/s 147 of the Act by issuing notice u/s 148 of the IT Act 1961.

2. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of Assessing Officer by sustaining the addition of Rs.13,79,000/- u/s 68 of the Income Tax Act, 1961 on account of unexplained cash credit.

3. It is therefore prayed that addition made by assessing officer and confirmed by CIT(A) may please be deleted.

4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”

3. Brief facts *qua* the issue are that assessee is an individual and has not filed his original return of income for assessment year (A.Y.) 2008-09. On the basis of AIR information, the assessee`s case was reopened u/s 147 of the Act after recording reasons for reopening the case. Accordingly notice u/s 148 of the Act was issued on 12.03.2015 requesting assessee to file return of income for A.Y. 2008-09 within 30 days from the receipt of the said notice. However, assessee did not file his return of income.

4. The Assessing Officer noted that during the assessment year under consideration, the assessee has deposited cash of Rs.13,79,000/- in his savings bank account maintained with the Surat People`s Co-Op Bank Ltd. To verify the transactions in the bank account, a notice u/s 133(6) of the Act, was issued to the Branch Manager, Surat People`s Co-Op. Bank Ltd. In response to which, the bank statement of the assessee has been provided by it, vide their letter dated 13.01.2016. On verification of the bank statement, it is noticed that the assessee had made cash deposits of Rs.13,79,000/- on various dates. The onus to prove the genuineness of cash credit lies on the assessee. Therefore assessing officer issued a notice to the assessee to explain the transaction. However, no reply has been furnished by the assessee therefore, assessing officer held that the assessee could not prove the genuineness of the cash credit made in his bank account, therefore the cash credit by way of depositing in the bank account on various dates amounting to Rs.13,79,000/- was treated as income of the assessee from his undisclosed sources and brought to tax u/s 68 of the Act.

5. The Assessing Officer also observed that as per AIR information, the assessee has made share transaction of Rs.11,35,468/-. During assessment proceedings, the assessee was requested to explain and produce supporting evidences of above share transaction by giving ample opportunities. The assessee had not produced any books of account, bill /vouchers, statement of share transaction etc., therefore assessing officer made addition to the tune of Rs.11,35,468/-, as unexplained investment and brought to tax u/s 69 of the Act.

6. Aggrieved by these two additions made by the Assessing Officer, the assessee carried the matter in appeal before NFAC/Ld.CIT(A), who has partly confirmed the action of Assessing Officer observing as follows:

“.....4.18 However the above CBDT’s circular no.11/2019 clarifies that set off of loss has to be allowed in the cases where the losses are prior to A.Y 2017-18. Since the appellant’s case pertains to A.Y 2008-09, the appellant’s loss is eligible for set off against deemed income u/s 68 of the I.T Act.

4.19 In view of the above facts, the appellant’s submission and the CBDT’s circular no.11/2019, the AO is directed to allow the set off of the appellant’s net loss of Rs.10,63,953/- against the addition made u/s 68 amounting to Rs.13,79,000/-.

4.20 Further, it is observed that the appellant has not filed his return of income for A.Y 2008-09 within the due date u/s 139(1) of the I.T Act. Hence, the appellant is not eligible to carry forward any loss to the subsequent assessment years.

5. As a result, the appeal is PARTLY ALLOWED.”

7. Thus, ld NFAC/Ld.CIT(A) has allowed set off of the assessee’s net loss of Rs.10,63,953/ against the addition made u/s 68 amounting to Rs.13,79,000/- and after setting off the net loss of the assessee, the balance addition sustained by ld CIT(A) comes to Rs.3,15,047/- (Rs.13,79,000 – Rs.10,63,953/-). The assessee is in further appeal before this Tribunal for the balance addition sustained by ld CIT(A) at Rs.3,15,047/-.

8. I have heard the rival arguments made by both the sides and perused the material available on record. Learned Counsel argued before me that NFAC/Ld.CIT(A) has allowed set off of the assessee's net loss of Rs.10,63,953/ against the addition made u/s 68 amounting to Rs.13,79,000/- after setting off the net loss of the assessee, the balance amount comes to Rs.3,15,047/- (Rs.13,79,000 – Rs.10,63,953/-). The balance amount of Rs.3,15,047/- is a very small addition, which is covered by the exempted limit i.e., “maximum amount which is not chargeable to tax of Rs.2.50 lakh”, as the assessee did not file the return of income. Suppose the addition of Rs.3,15,047/- is confirmed by the Tribunal, then in order to compute the total income of the assessee, the Assessing Officer has to give exemption for “maximum amount which is not chargeable to tax” of Rs.2.50 lakh.

9. The Id Counsel further contended that to prove the genuineness of Rs. 3,15,047/- (balance addition), the assessee has submitted enough evidences such as:

- I. *Bank statement of Surat Peopole's Co-Op Bank*
- II. *Bank book of Surat People's Co-op Bank*
- III. *Balance sheet, profit and loss account and capital account*
- IV. *Cash book*
- V. *Futures and Options ledger account*
- VI. *Share investment ledger*
- VII. *Shares capital gain summary report*
- VIII. *Demat account*
- IX. *Confirmation from Jainam Share Consultants Pvt. Ltd. of BSE cash ledger for F.Y 2007-08*
- X. *Confirmation from Jainam Share Consultants Pvt. Ltd. – Futures and Options ledger*
- XI. *Ledger account of Jainam Share Consultants Pvt. Ltd. BSE in books of accounts*
- XII. *Ledger account of Jainam Share Consultants Pvt. Ltd – Futures and options in books of accounts.*
- XIII. *Assessment order of AY 2007-08*

10. On the other hand, Learned Sr.DR for the Revenue supported the order passed by the Assessing Officer and argued that NFAC/Ld.CIT(A) has given sufficient relief to assessee, therefor assessee does not deserve further relief and the addition sustained by NFAC/Ld.CIT(A) should be confirmed.

11. I have perused the materials available on record. I note that NFAC/Ld.CIT(A) has sustained the addition to the tune of Rs.3,15,047/- (Rs.13,79,000 – 10,63,953/-). I also further note that maximum amount which is not chargeable to tax is to the tune of Rs.2.50 lakh and after deducting this amount of Rs.2.50 lakh, there is hardly any addition remains. I also find that assessee has submitted sufficient evidences to prove the genuineness of the transaction. The whole exercise is to be based on facts and it is the duty of the assessing officer to marshal all the facts and come to a logical conclusion about the income of the assessee for the year under consideration. For this reliance is placed on the Judgment of Hon'ble Supreme Court in case of **Sreelekha Bannerjee** (491 ITR 122), wherein it was held that “ *before the department rejects such evidence, it must either show an inherent weakness in the explanation or rebut it by putting to the assessee some information or evidence, which it has in possession ...*” Therefore, considering the above facts and circumstances, I delete the balance addition of Rs.3,15,047/-.

11. In the result, the appeal of the assessee is allowed .

Order is pronounced in the open court on 13/12/2023.

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सूरत / Surat दिनांक/ Date: 13/12/2023
DKP (Sr. PS Outsourcing)

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// True Copy //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat