

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI**

BEFORE SHRI.NARENDER KUMAR CHOUDHRY (JUDICIAL MEMBER)
AND
MISS. PADMAVATHY S. (ACCOUNTANT MEMBER)

I.T.A. No.2851/Mum/2023
(Assessment year : 2011-12)

Albert Santan Dcosta, Thane 8, Ground Floor, Swati Sagar Service Industrial Estate, Majiwade, Opp Thane Acid Co. Maharashtra - 400 612 PAN : AADPD5722B	vs	ITO, Ward-1(1), Thane Room No.23, B Wing, 6 th Floor Ashar I.T.Park, Road No.26z, Wagle Indl.Estate, Thane-400 601
APPELLANT		RESPONDENT

Present for the Assessee	Ms. Mitali Parikh, Ld. ADV
Present for the Department	Shri. Shrinivas, Ld. DR

Date of hearing	09/01/2023
Date of pronouncement	25/01/2024

ORDER

Per N.K. Choudhry (JM):

This appeal has been preferred by the Assessee, against the order dated 23/06/2023 by the National Faceless Appeal Centre (NFAC), Delhi (in short, 'Ld. Commissioner') under section 250 of the Income-tax Act, 1961 (in short, 'the Act') for the A.Y. 2011-12.

2. The brief facts of the case are that Assessee being an individual filed his return of income for the A.Y. 2011-12 on 27/09/2011 declaring total income of Rs.14,47,740/- which was processed under section 143(1) of the Act. Subsequently, the case of the Assessee was selected for scrutiny under CASS and accordingly, assessment was finalized accepting return of income under section 143(3) of the IT Act, 1961.

3. Later on, the case of the Assessee was reopened u/s 147/148 of the Act on the following reasons:

” The Assessee as per P & L account, has shown net profit of Rs.19,68,110/- from construction activity and has also claimed set off of loss on account of ‘speculation business’ at Rs.7,81,473/- and has shown net income at Rs. 11,86,637/- as business income. The Assessee, in the statement of business income has also stated that the profit or loss from speculation business is included in the above net profit of Rs.19,68,110/-. However according to the P&L account does not show any income being credited under the head speculation. As per section 73 of the Act, speculation losses can be set off only against speculation income, if any derived by the Assessee. Accordingly the claim of speculation loss of Rs.7,81,473/- against business income made by the Assessee is incorrect; hence, due to the omission on the part of the Assessee to disclose all material facts truly and fully, income to the extent of Rs.7,81,473/- has escaped assessment, the case of the Assessee has been re-opened under section 147 of the IT Act, 1961, after taking necessary approval from the competent authority.”

4. Consequently a notice under section 148 was issued on 31/03/2018 which was duly served on the Assessee, however the Assessee did not respond to the said notice. Afterwards, notice dated 07/09/2018 under section 142(1) along with questionnaire was also issued and served but the Assessee also failed to comply

with the same as well. Therefore, vide letter dated 04/10/2018, a final show cause was issued and served through post as well as mail, the contents of the same reads as under:-

“ Vide the Questionnaire Dt. 07/09/2018 you were requested to submit proof of speculation loss and justification for set off of the same with business income.

In the P&L account you have shown net profit at Rs.19,68,110/- from construction business. But you have claimed set off of loss of Rs 7,81,473/- on account of speculation business and declared business income at Rs. 11,86,637/-. The P&L account does not show any income being credit under the head speculation income. As per section 73 of the I.T. Act 1961, Speculation loss can be set off only against speculation income. Hence, the claim of speculation loss of Rs. 7,81,473/- against business income made by you is incorrect and the same cannot be set off against business income.

From the above discussion it is clear that wrongly set off business loss is to be added back to your income. But before, making addition, the undersigned intends to provide you natural opportunity, So, please submit your reply within 7 days after receipt of this notice. For strict compliance notice u/s 142(1) is enclosed herewith. ”

5. The Assessee also failed to respond to the above show cause notice, therefore the Assessing Officer disallowed the speculation loss of Rs.7,81,473/-.

6. The Assessee being aggrieved and dissatisfied, carried the matter before the Ld. Commissioner, who though afforded 04 opportunities, however the Assessee failed to avail same,

therefore, the Ld. Commissioner adjudicated the appeal on the basis of documents available on records, and ultimately upheld the disallowance of Rs.7,81,473/- being speculation loss set off from the business income. With regard to the computation of interest under sections 234A, 234B & 234C, directed the AO to recompute the interest. Thus, the appeal was partly allowed by the Ld. Commissioner.

7. The Assessee being aggrieved is in appeal before us. The Assessee before us by filling duly sworn affidavit claimed that due to untimely death of his wife in January 2023, the Assessee was in shock and therefore was not attending the office regularly and even inspite of advice by his tax consultant, could not file any reply and evidences before the Id. Commissioner and even otherwise the Assessee did not receive any final notice as mentioned in impugned order. We, have considered the claim of the Assessee and observe that the Ld. Commissioner in the absence of any reply / documents, which the Assessee failed to file, decided the appeal ex parte; and reason for not filling the reply/evidence due to untimely death of Assessee's wife seems to be natural and reasonable and therefore we, for the proper adjudication and just decision of the case, are inclined to remand the instant case to the file of the Ld. Commissioner. The Assessee is also directed to appear if necessitates, and to file the relevant documents before the Ld. Commissioner which would be essential for proper adjudication of the case. The case is remanded to the file of the Ld. Commissioner accordingly.

8. In the result, appeal filed by the Assessee stands allowed for statistical purposes.

Order pronounced in the open court on 25/01/2024.

Sd/-

sd/-

(MISS. PADMAVATHY S.)	(NARENDER KUMAR CHOUHRY)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Pavanan

प्रतिलिपि अग्रेषित 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
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

Asstt. Registrar, **ITAT, Mumbai**