

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'ए', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH: KOLKATA
श्री संजय गर्ग न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सटस्य के समक्ष
[Before Shri Sanjay Garg, Judicial Member & Shri Rajesh Kumar, Accountant Member]

I.T.A. No.535/Kol/2023
Assessment Year: 2015-16

Ravi Kumar Agarwal (PAN: AHLPA 3837 D)	Vs.	ACIT, CC-62, Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	12.04.2024
Date of Pronouncement / आदेश उद्घोषणा की तिथि	28.05.2024
For the Appellant / निर्धारिती की ओर से	Shri Vikram Dudhoria, A.R
For the Respondent / राजस्व की ओर से	Shri P. P. Barman, Addl. CIT Sr. D.R

ORDER/ आदेश

Per Rajesh Kumar, AM:

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as 'Ld. CIT(A)'] dated 24.04.2023 for the assessment year 2015-16.

2. The assessee has challenged the order passed by the Ld. CIT(A) on the ground that the Ld. CIT(A) has erred in facts and law in upholding the assessment order

wherein the AO has added the sale proceed of sale shares/securities instead of net gain or loss without considering the corresponding purchases in respect of shares/securities.

3. Facts in brief are that the assessee filed return of income on 31.08.2015 declaring total income of Rs. 16,48,300/- which were processed u/s 143(1) of the Act. Thereafter the case of the assessee was selected for limited scrutiny through CASS. A statutory notices were duly issued and served to the assessee. Thereafter the AO issued notice u/s 142(1) to the assessee along with questionnaire on 03.04.2017 but the same was not complied with by the assessee. The assessee was also granted several opportunities on various dates however there was no show up and finally the AO made the addition of Rs. 4,11,99,267/- of entire sales proceeds as per security transactions Return on account of speculative business income without allowing deduction in respect of purchases. Pertinent to state that the assessee is engaged in the business of sale and purchase of securities/derivatives on the recognized stock exchange.

4. In the appellate proceedings, the Ld. CIT(A) simply affirmed the order of AO with taking into account the evidences filed by the assessee in respect of sales and purchase of securities as well as evidences of trading in derivatives.

5. After hearing the rival contentions and perusing the material on record, we find that in this case, the AO has added gross consideration/sale proceeds of sale/derivatives/securities amounting to Rs. 4,11,99,267/- without taking into account the corresponding purchases of securities/shares/derivatives which is apparently wrong and cannot be sustained. In other words, the net income has to be assessed from the sale of these securities and not gross consideration received by the assessee. We have examined the documents filed by the assessee in the paper book which were also available before Ld. CIT(A). The Net summary of gain /loss as per these documents/evidences is as under :

Ravi Kumar Agarwal PAN: AHLPA3837D
FY 2014-15 AY 2015-16
Computation of Loss from Share Transactions

	Net Sale Value (INR)	Net Purchase Value (INR)	GAIN/(LOSS) (INR)	Remarks
SPECULATION INCOME (STT PAID)	40,915,000.59	40,982,011.86	-67,011.27	As Per ICICI Statement
SHORT TERM CAPITAL GAIN (STT PAID)	140,324.61	145,443.48	-5,118.87	As Per ICICI Statement
LONG TERM CAPITAL GAIN (STT PAID)	12,202.14	6,104.34	6,097.80	Exempt Income
TOTAL (A)	41,067,527.34	41,133,559.68	-66,032.34	Actual Loss as per BROKERS (ICICI DIRECT) REPORT. Not Considered while filing ITR (Ref: ICICI Securities)
Add: Brokerage and Other Charges = (B)	131,739.66			
Figures Considered by Assessing Officer = (C)	41,199,267.00	0.00	41,199,267.00	Entire receipts on account of shares/option/future tradings were considered as income by A.O. There was no consideration of corresponding purchase value

A perusal of the above statement along with supporting evidences prove that during the year the assessee has sustained long/short term loss from trading in derivatives/securities which comes to Rs. 66,032.34 which has not been shown in the return of income by the assessee and the assessee stands to loose to that extent. The appellate order ignoring all these facts and evidences is incorrect and therefore can not be sustained. In our opinion the assessee can be assessed only in respect of net income and not the gross sales proceeds. We note that all the evidences as are available from page 11 to 26 of the paper book were also available before the appellate authority. However the Id CIT(A) failed to take cognizance of the same. This is an open and shut case which would not serve any purpose even if we restore it to lower authorities. Thought he assessee did not furnished these evidences before the AO but these were duly filed before the Id CIT(A). Considering these facts and circumstances, we are inclined to set aside the appellate order and direct the AO to delete the addition. Accordingly, the appeal of the assessee is allowed.

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

Order is pronounced in the open court on 28th May, 2024

Sd/-

(Sanjay Garg /संजय गर्ग)

Judicial Member /न्यायिक सदस्य

Sd/-

(Rajesh Kumar / राजेश कुमार)

Accountant Member / लेखा सदस्य

Dated: 28th May, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Ravi Kumar Agarwal, Avani Oxford, Block-5, Lobby-2, Falt-1i, Laketown, North 24 Parganas-700055.
2. Respondent – ACIT, Circle-62, Kolkata
3. Ld. CIT(A)-NFAC, Delhi
4. Ld. PCIT- , Kolkata
5. DR, Kolkata Benches, Kolkata

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata