

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'SMC': NEW DELHI)**

**BEFORE SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No:- 3295/Del/2023
(Assessment Year- 2016-17)**

Rajesh Sahni, Delhi.	Vs.	ITO, Ward 60(5), Delhi.
PAN No: ACAPS6816J		
APPELLANT		RESPONDENT

Assessee by : Shri Samyak Jain, Adv.
Revenue by : Shri Om Parkash, Sr. DR

Date of Hearing : 14.05.2024
Date of Pronouncement : 31.05.2024

ORDER

PER SUDHIR PAREEK, JM

This appeal by Assessee is directed against the order of National Faceless Appeal Centre , Delhi [for short hereinafter referred to as the “(NFAC)”]/ CIT(A) dated 19.10.2023 for Assessment Year 2016-17 on the following grounds of appeal: -

“1. The order of Ld. A.O. is based on personal whims and fancies without ascertaining the facts and circumstances of the case. Hence liable to be quashed.

2. That the Ld. CIT(A), NFAC has erred on facts and in law in passing the ex-party order without proving opportunity to the appellant to explain the case and sustain the claim.

3. That the Ld. Assessing Officer erred in concluding that the assessee has invested in share transactions during the period. but not disclosed in his ITR, through correct, doesn't make any difference in the taxable income of the assessee since the assessee has suffered losses under the head Income from capital gains as well as under the head Income from business and profession (speculative income).

4. That the Ld. Assessing Officer is not justified in treating the amount of Short Term Capital Loss and speculative loss of share transactions as per broker statement, as the business income of the assessee and levying tax thereon and creating the demand. The conclusion is based on unlawful and illogical observations, applying incorrect principles of taxation and without calling for necessary and sufficient information.

5. That the Ld. Assessing Officer erred in concluding that the assessee was required to maintain books of accounts and has not maintained the same considering the fact that the assessee has declared the income from business and profession in terms of provisions of section 44AD of the Act. Accordingly, initiation of penalty proceedings u/s 271A is unjustified and unlawful.

6. That the Ld. Assessing Officer has acted in illegal manner in concluding that the assessee had turnover in shares more than the limits prescribed in section 44AD of the Income Tax Act, 1961 and thus, it was mandatory to get the books of accounts compulsory audited as the investment in shares cannot form part of turnover. Accordingly, initiation of penalty proceedings u/s 271B is unjustified and unlawful.

7. That the appellant craves leave to add, amend, modify, rescind, supplement or alter any of the grounds of appeal before the appeal is finally adjudicated upon.”

2. Brief facts of the case may be summarized as that the appellant filed his return of Income at Rs. 6,41,730/- on 30.03.2017. The case was selected for scrutiny through CASS. During the assessment proceedings, the AO observed that during the relevant assessment year, the appellant had invested in share transactions but not disclosed in his ITR. The assessment u/s 143(3) of the Act was made vide order dated 30.12.2018 at assessed income of Rs.31,74,504/- after making an addition of Rs.25,32,774/- on account of unexplained investment.

4. At the outset, the Ld. Counsel for the assessee stated that the appeal has been dismissed by Ld. CIT(A)/ NFAC in passing ex-parte order without providing opportunity to the appellant to explain the case and sustain the claim.

5. Heard rival submissions and carefully scanned the material available before us.

6. We have carefully considered the order of the CIT(A). We find that the appeal has been dismissed due to the non-compliance of the notices.

7. Per contra, Learned Departmental Representative (hereinafter referred to as 'Ld. DR') relied on the order passed by both lower authorities and stated that sufficient opportunity provided to assessee before passing impugned order.

8. By hearing both side and perusing material placed before us, we are of the humble opinion that justice should not only done but it appears to be done and in order to achieve the noble goal of justice and before reaching any conclusion it is expedient to consider, all the material/ documents in existence and produced and whatever it is, if one more opportunity provided to assessee /appellant, object of justice will be served to some extent. Thus, for

this purpose, we are inclined to remit back the matter to Ld. AO with the direction to decide afresh.

9. Consequently, matter is remitting back to the Ld. AO with the direction to decide the matter afresh after affording more effective, meaningful and sufficient opportunity of being heard to the assessee. At the same time, assessee / appellant shall co-operate in proceedings and will not seek unnecessary adjournments for ensuring expeditious disposal of the matter. Assessee / appellant is at liberty to file / submit any documents / evidence etc. in support of his claim.

10. In the result, this appeal is allowed as indicated above for statistical purpose.

Order pronounced in the Open Court on 31 .05.2024

Sd/-
(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(SUDHIR PAREEK)
JUDICIAL MEMBER

Dated: 31/05/2024.
Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	29.5.24
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	