

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH MUMBAI
BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No. 748/MUM/2024
Assessment Year: 2016-17

Ravindra Padmakar Kedar 201, Kripa Nidhi, Plot No.27, Gulmohar Cross Road 4, JVPD Scheme, Mumbai - 400049 (PAN : AACPK1023D)	Vs.	Income Tax Officer, Ward - 24(3)(1), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Mr. Aditya Ramachandran, CA
Revenue : Smt. Mahita Nair, Sr. DR

Date of Hearing : 13.06.2024
Date of Pronouncement : 27.08.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2023-24/1060100568(1), dated 25.01.2024 passed against the assessment order by Income Tax Officer, Ward-24(3)(5), Mumbai, u/s. 143(3) of the Income-tax Act (hereinafter referred to as the "Act"), dated 31.12.2018 for Assessment Year 2016-17.

2. Grounds taken by the assessee are reproduced as under:

1. On the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in confirming the addition of business income of ₹ 2,83,79,084 made by the AO by estimating the profits @1% of the aggregate amount liable to STT as reported in the AIR.

2. On the facts and circumstances of the case and in law, the Ld. CIT (A) ought to have allowed the business loss of 60,43,598 as computed by the appellant

on the basis of the audited profit and loss account wherein the transactions under consideration were duly incorporated.

3. Brief facts of the case are that assessee among other things derives income from business of dealing in futures and options, i.e., derivatives segment of the stock market operations. Assessee filed his return of income on 15.10.2016 reporting total income at Nil. In the return filed, assessee had claimed carry forward of business loss of Rs.60,26,842/- which was incurred in trading of futures and options. Ld. Assessing Officer in the assessment proceedings noted that the trading transaction value of the assessee in futures and options is of Rs.2,83,79,08,455/-, for which explanations were called for and were furnished by the assessee, as part compliance. According to the ld. Assessing Officer, assessee could not produce complete details of the transactions, such as profit and loss account, demat statement, scrip wise details, global report. Ld. Assessing Officer, thus estimated the profit element in the said transactions, by adopting a net profit rate of 1% of the transaction value and treated Rs.2,83,79,084/- as undisclosed income. Further, ld. Assessing Officer disallowed the carry forward of loss reported by the assessee in his return since no details were produced for the same.

4. Aggrieved, assessee went in appeal before the ld. CIT(A), wherein it was claimed that all the necessary details and documents were placed on record. Assessee furnished the ledger copy from the broker IIFL Securities consisting of all the transactions for both futures and options segment undertaken by the assessee. Assessee also submitted that the actual loss incurred by him is Rs.60,12,674/- which was incorrectly claimed at Rs.60,65,209/-. Assessee thus submitted that loss to the extent of Rs.52,535/- only can be disallowed. In the first appellate proceedings, assessee furnished the documents which

included profit and loss statement, balance sheet, STT certificate in Form No.10DB issued by IIFL Securities, ledger from IIFL Securities (consolidated), futures and options ledger. After considering the submissions made by the assessee, ld. CIT(A) observed that assessee neither provided any statement about the transactions undertaken by him as reflected in Form No.10DB nor provided in documentary evidences in support of his argument. The appeal was thus, dismissed by sustaininf the addition made by ld. Assessing Officer.

5. Aggrieved, assessee is in appeal before the Tribunal.

6. Per contra, ld. Sr. DR submitted that assessee has failed to furnish proper documentary evidence before the ld. Assessing Officer nor provided any explanations and hence the addition has been rightfully sustained. Further, it was pointed out that broker's ledger for the futures and option transactions placed in the paper book at Sr. No.4 was not submitted before the ld. Assessing Officer but only before the ld. CIT(A). Also Form No.10DB was placed for the first time before the ld. CIT(A), where from it was noted that, code of transactions with numbers, "02", "03", "04", and "05", they all relate to sale transactions undertaken by the assessee. According to the ld. Sr. DR, these documents remained to be examined by the ld. Assessing Officer since no remand report was called for, at the first appellate stage.

7. Ld. Counsel for the assessee placed strong reliance on these documents to substantiate the transactions undertaken by him on which the net result was incurring of loss which is claimed to be carried forward and denied by the ld. Assessing Officer.

8. Since, the addition made is on an estimation by ld. Assessing Officer in absence of the documentary evidences and explanations furnished by the assessee, in the interest of justice and fair play, we find it appropriate to remit the matter back to the file of ld. CIT(A) for *denovo* meritorious adjudication after calling of remand report from the ld. Assessing Officer on these documents and giving reasonable opportunity of being heard to the assessee to make his any further submissions, as a rejoinder to the remand report and also any further evidences which he may furnish on record. We also direct the assessee to be diligent and cooperative in attending the hearings and make his submissions for expeditious and effective disposal of the appeal. He should not seek adjournments unless warranted by compelling reasons.

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

Order is pronounced in the open court on 27 August, 2024

Sd/-

(Narender Kumar Choudhry)
Judicial Member

Sd/-

(Girish Agrawal)
Accountant Member

Dated: 27 August, 2024

MP, Sr.P.S.

Copy to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai