

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 520/JP/2024
निर्धारण वर्ष / Assessment Year : 2011-12

M/s.Seema Rajendra Harsh 105, Behind Sanager Railway Station Jaipur – 302 029	बनाम Vs.	The ITO Ward-7(2) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACKPH 4750L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से / Assessee by : Shri Anoop Bhatia, CA
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 26/06/2024
उदघोषणा की तारीख / Date of Pronouncement: 07 /08/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 05-02-2024, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2011-12 raising following grounds of appeal

“1. On facts and in circumstance of the matter Ld. CTT(A)-NFAC has grossly erred in confirming the action of ld. AO Jaipur in completing re-assessment proceedings, when the completion of re-assessment u/s 148 of the IT Act was initially issued by the assessing officer Nagpur Appellant prays that

such re-assessment completed by Id. AO Jaipur being beyond his jurisdiction the entire proceeding is void ab-initio, and the consequent order passed being bad in law deserves to be quashed.

2 That Ld. CIT(A)- NFAC has further erred in not passing a speaking order on the ground raised by appellant challenging the jurisdiction of Id. AO- Jaipur, when the notice u/s 148 was issued by the AO- Nagpur. Appellant prays that such order passed being in gross violation of principles of natural justice, the appellate order passed deserves to be quashed.

3. On facts and in circumstances Ld. CIT(A) -NFAC has grossly erred in confirming the addition of Rs. 19,81,834/- made on absolute baseless grounds, without considering the details and documentary evidences filed. Appellant prays that such action being unjustified and in absolute mockery of the Hon'ble judiciary principles, the addition confirmed deserves to be rolled back.

4. That Id. CIT(A)-NFAC has further grossly erred in confirming the action of Id. AO of computing profits from commodity trading on the basis of some sample contract notes filed during re-assessment proceedings. Appellant prays that such action being absolutely illegal and unjustified, the additions confirmed deserves to be deleted.

5 That Ld. CIT(A) has further erred in confirming the baseless addition made, without any manner considering the documentary evidences like, ledger of the broker and bank statement of the assessee. Appellant prays that such approach being totally unjustified the addition confirmed deserves to be deleted.’’

2.1 At the outset of the hearing, the Bench noted that there is delay of 15 days in filing the appeal by the assessee for which the assessee has filed an application for condonation of delay with the prayer that because of changing her counsel such

delay took place and the assessee has filed an affidavit deposing the same reason for such delay.

2.2 The ld. DR objected to such delay but submitted that the Court may decide the issue as deem fit and proper in the case.

2.3 After hearing both the parties and perusing the materials available on record, the Bench noted that the reason as explained by the assessee in her affidavit and application for condonation of delay, has merit and the delay is condoned.

2.3 During the course of hearing, the ld AR has not pressed the Ground No. 1 & 2. Hence, the same are dismissed being not pressed.

3.1 Apropos Ground No. 3 to 5, the Bench noted that the ld. CIT(A) has dismissed the appeal of the assessee by observing as under:-

V. DECISION:-

I have gone through assessment order passed by assessing officer (AO) and detail submission made by appellant.

The fact of the case is that appellant had not filed her regular Income Tax Return within the due date. AO had in possession of information that the appellant had entered into transaction amounting to Rs. 13,98,99,530/- in National/ Multi commodity exchanges during the F.Y. 2010-11. The AO had issued the notice u/s 148 on 29.03.2018, however appellant had chosen not to file the return within the time period specified in 148 notice, but filed the return only after NINE months of issue of 148 notice that was on 11.12.2018 where as time barring was on 31/12/2018. Therefore, appellant had deliberately prevented AO to enquire on the figures reported on ITR and arrive at right conclusion.

Further, appellant had argued that AO had not issued notice u/s 143(2) before completion of assessment. As appellant had chosen not to file the return within the time period specified in 148 notice, but filed the return only after NINE months of issue of 148 notice that was on 11.12.2018, AO had legally not considered it as a valid return. Therefore, question of issuance of notice U/s 143(2) does not arise. There is no infirmity in AO's action in this regard. Therefore, appellants' this ground is rejected.

Further, appellant challenged reopening under section 148. However it is seen that AO had complied to Hon'ble Supreme Court decision on in the case of: "CASE NO. Appeal (civil) 7731 of 2002 GKN DRIVESHAFTS (INDIA) LTD VS. INCOME TAX OFFICER AND ORS". Therefore, appellants' this ground is rejected.

Further, appellant had not submitted the computation of income, specifying the details of transaction she had entered. Further, appellant had enclosed only few copies of contract notes, from which it is not proved that appellant had return income of Rs.64,280/- only. Further, appellant had provided no evidence to arrive at conclusion that commodities transacted were a part of trade or business or held as capital assets.

Therefore, as appellant had failed to provide basic documents in this regard, arguments put forth by appellant are rejected.

In the result, appeal filed by appellant is dismissed.’’

3.2 During the course of hearing, the ld. AR of the assessee has filed a written submission mainly praying that the ld. CIT(A) has erred in confirming the addition of Rs.19,81,834/- in unreasonable manner as no profit or money withdrawal were made from the trading account at all and the bank statement of the assessee were

produced during the course of assessment proceedings which shows no benefit whatsoever has accrued to her due to this trading activity. Thus the same may be directed to delete.

3.3 On the other hand, the Id. DR refuted the arguments of the Id. AR and relied upon the order of the Id CIT(A).

3.4. The Bench has heard both the parties and perused the counsel of the parties. At the very outset of the case, the Bench found from the records that the assessee had invested Rs.2.00 lacs with a Broker M/s. Aditya Trading Solutions to enter into commodity transactions in the year under consideration but he incurred losses. However, the AO on the basis of data showing commodity transactions amounting to Rs.13,98,99,530/- reopened the assessment u/s 148 of the Act. To this effect, the assessee filed ITR showing losses before completion of assessment. The AO considered and calculated profits and made addition. Although, the Id AR pointed out that the assessee had provided sample contract notes to justify the nature of the commodity trading transactions but the Revenue authorities ignored these documents and relevant facts and computed profit of Rs.19,81,834/- whereas it was loss. In this regard, the Id. AR drew my attention to the ledger of broker and her bank statement wherein no gain or income is shown and the fact that initial investment amount of Rs.2.00 lacs was reduced to Rs.2763.96 at the end of the year under consideration because of trading losses . It was also pointed out from

the documents that no profit or withdrawal were made from the trading account in order to substantiate these contentions. My attention was also drawn to the following documents.

1. Certified Photocopy of Profit Calculation Sheet prepared by Jurisdiction ITO (Page 1-2)
2. Sheet showing the losses which might be determined if AO had rightly understood losses from commodity trading than profits (Page 3)
3. Ledger with Broker for FY 10-11. (Page 4-7)
4. Summary of losses incurred as per ledger statement (Page 8)
5. Certified Photocopy of Return of Income AY 11-12 submitted to ITO (Page 9-12)
6. Copy of Bank Statement (Page 13-20)
7. Copy Written Submission to CIT (A). (Page 21-27)
8. Copy of Application to Jurisdiction ITO for Document retrieval (Page 28)

The Id. AR of the assessee drew my attention to following details.

Duly Certified photocopy of the document by Jurisdiction ITO

Purchase (Rs.)	Sale (Rs.)	Profit/loss	For turnover purpose
2591570	2000949	590621	590621
2892896	1354223	1538673	1538673
3033673	4842575	2549380	2549380
681641	9629882	-281347	281347
1226113	3093353	-1867240	1867240
6224498	3278110	2945388	2945388
2683102	3275211	-592109	592109
243873	2760019	-2516146	2516146

1245122	1236382	8740	8740
4536267	5262917	-726650	726650
3004427	4533007	-1528580	1528580
3575887	2585456	990431	990431
1418459	3429282	5755308	5755308
2154177	4991413	-2837236	2837236
3914156	1080060	2834096	2834096
1067383	2877165	-1809782	1809782
7221362	5043127	2718235	2718235
2160630	2868724	-708094	708094
3068363	3353602	-285239	285239
2833836	3483695	-649859	649859
4202401	4801297	-601896	601896
3133066	2188445	944621	944621
2610636	1381339	1229297	1229297
		1981834	30790191
		Profit	Turnover

The above is a duly certified copy of the document received from the Jurisdictional ITO. At the very first glance, I can find that when the assessee had sold certain contracts below the purchase cost and incurred losses but on the contrary the AO erroneously calculated and considered the losses as profit which in my view is latent error on the part of the AO and this factual position also skipped from the attention of Id.CIT(A). Hence, from the perusal of the documents as placed on record in the paper book, one can easily calculate that the assessee had not earned profit of Rs.19,81,834/- and rather the amount invested by the assessee had also been reduced to Rs.2763.96 by the end of the year under consideration. As there is a patent error in the calculation made by the AO while considering and appreciating the calculation sheet reproduced above and where AO apparently

considered the loss as profit and made addition of Rs.19,81,834/- which on the face of it is illegal and wrong while considering and keeping in view the other corroborative document in the shape of -

1. Certified Photocopy of Profit Calculation Sheet prepared by Jurisdiction ITO (Page 1-2)
2. Sheet showing the losses which might be determined if AO had rightly understood losses from commodity trading than profits (Page 3)
3. Ledger with Broker for FY 10-11. (Page 4-7)
4. Summary of losses incurred as per ledger statement (Page 8)
5. Certified Photocopy of Return of Income AY 11-12 submitted to ITO (Page 9-12)
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8. Copy of Application to Jurisdiction ITO for Document retrieval (Page 28)

Therefore, in my view the above matter needs to be re-examined and restored back to the file of the AO for proper appreciation and analyzing the documents placed on record by the AO in the right perspective and pass afresh order of assessment after providing reasonable opportunity of being heard to the assessee. Thus the appeal of the assessee is allowed for statistical purposes.

3.5 Before parting, the Bench makes it clear that its decision to restore the matter back to the file of the AO shall in no way be construed as having any

reflection or expression on the merits of the dispute, which shall be adjudicated by

AO independently in accordance with law.

4.0 In the result, the appeal of the assessee is allowed for statistical purposes with no orders as to costs.

Order pronounced in the open court on 07 /08/2024.

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 07/08/2024

***Mishra**

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Seema Rajendra Harsh, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward 7(2), Jaipur
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 520/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar