

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE "B" BENCH : PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

I.T.A.No.186/PUN./2024 [E-APPEAL]
Assessment Year 2010-2011

The Income Tax Officer, Ward-1, Income Tax Quarters, Block No.2, Flat No.E, Vrundavan Colony, Asara Nagar, ICHALKARANJI Maharashtra. PIN – 416 115	vs.	Sachin Sambhaji Thombare, A/P Hupari Shivaji Chowk, Taluka Hatkanangale. Dist. Kolhapur. PIN-416115 PAN ADSPT1317Q
(Appellant)		(Respondent)

For Revenue :	Shri Ajay Kumar Keshari
For Assessee :	Shri Pramod S Shingte

Date of Hearing :	06.08.2024
Date of Pronouncement :	28.08.2024

ORDER

PER SATBEER SINGH GODARA, J.M. :

This Revenue's appeal, for assessment year 2010-11, arises against the National Faceless Appeal Centre [in short the "NFAC"] Delhi's Din and Order No. ITBA/NFAC/S/250/2023-24/1059051241(1), dated 26.12.2023, involving proceedings u/s. 143(3) r.w.s.147 of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. This Revenue's appeal pleads the following substantive grounds :

1. *“On the facts and the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition of Rs.49,20,87,960/- on account of commodity/share transaction without appreciating the fact that the assessee has accepted that all transactions were done through his own bank account by cheques.*
2. *On the facts and the circumstances of the case and in law, the Ld.CIT(A) erred in appreciating the fact that the assessee himself has admitted that he has done the transactions by depositing the cash in savings bank account maintained by him and failed to prove the sources of investment in commodity/share transaction of Rs.49,20,87,960/-.*
3. *On the facts and the circumstances of the case and in law, the Ld.CIT(A) erred in appreciating the fact that where there is no requirement of maintaining the books of accounts, the bank account statement can be considered as the basis for making the addition u/s.68 of the I.T. Act.*
4. *On the facts and the circumstances of the case and in law, the Ld.CIT(A) erred in considering the fact that in Form no.35, the assessee has answered 'No' in the section 'Statement of facts, Grounds of Appeal and additional evidence' column no.12 i.e. 'Whether any documentary evidence other than evidence submitted during the course*

of proceedings before the Income Tax Authority has been filed in terms of Rule 46A.

5. *On the facts and the circumstances of the case and in law, the Ld.CIT(A) erred in not recording the reasons for admitting the additional evidence submitted by the assessee which is the preliminary requirement as per rule 46A(2) of the I.T. Act.*
6. *On the facts and the circumstances of the case and in law, the Ld.CIT(A) erred in not giving reasonable opportunity to the Assessing Officer as per Rule 46A of the Income Tax Act to examine the evidence or document produced by the assessee and completed the appellate proceedings.*
7. *On the facts and the circumstances of the case and in law, the Ld.CIT(A) erred in passing order on 26/12/2023 without waiting for the submission of remand report called from the AO by 29/12/2023.*
8. *The appellant craves leave to add, alter, amend, modify any of the grounds or raise any other grounds at the time of proceedings before the ITAT, which may be granted.”*

3. It emerges at the outset during the course of hearing that the learned CIT(A)-NFAC has reversed the Assessing Officer's action treating the assessee's transactions in commodity trading of Rs.49,20,87,960/- as "bogus" resulting in alleged huge loss(es); vide following lower appellate discussion :

“5. Appellant filed submissions on different dates and filed demat statement issued by broker J. K. Enterprise, Kolhapur, which shows loss of Rs. 23,63,995/- as claimed by assessee. This also shows other expenses claimed by appellant as under:

Ledger Balance B/F	1555582.61	Dr
Deposits, Withdrawals & Cash Adjustments	4000000.00	Cr
MIM Profit/Loss	2363995.00	Dr
Commission	266.13	Dr
Turnover Charges	204214.74	Dr
Stamp Duty	55629.49	Dr
ST on TOT	20421.50	Dr
Service Tax	26.61	Dr
Edu. Cess	407.94	Dr
H.E.Cess	203.41	Dr
Net Settlement Amount	2645164.81	Dr
Net Receivable From You	200747.42	Dr
Margin Deposit	793770.60	Cr
Margin Available	793770.60	Cr
Net Excess Available After Mgn. Adjustment	593023.18	Cr

6. Remand report was called for by CIT (Appeals) vide letter dated 11.9.2018 but no report is on record.

7. The above submissions of appellant means he admitted that he did some of the transactions and some others did remaining transactions. But he has not furnished details of such other persons. Consequently, his disowning some of the transactions and passing the same to others is not acceptable for want of evidence. But nevertheless, entire transactions cannot be income. What is chargeable to tax under the Act is stipulated in section 5 of the Act which says that it is the income received or arising or accruing is chargeable to tax. Now, it is common knowledge that in commodity or share trading or, for that matter, any trade, if total transaction is Rs.

49,20,87,960/-, itself cannot be the profit out of such transactions because, firstly, there will be purchase cost and, secondly, there will be other direct and indirect costs. Assessing Officer (AO) has not even deducted purchase cost. It would mean that assessee sold the commodities/shares without buying at the first place. This is an impossible proposition. Therefore, AO's action of addition of Rs.49.20,87,960/- cannot be sustained. Accordingly, the same is deleted.

8. Next issue is profit or income generated out of such transactions. From the statement of accounts issued by the broker, it is seen that there was actually loss. Therefore, nothing is there to be added on this account.

9. Thirdly, another issue comes to the fore, viz., whether the capital involved in these transactions is liable to be added? In a series of deposits in a bank account, capital or seed money is rolled over and over giving rise to total turnover. So, sum of all transactions is not the income involved and, hence, from this viewpoint also AO's making addition of whole amount cannot be sustained. On this issue, AO has not mentioned anything. The relevant bank statement is also not brought into records. Hence, it is not known what is the peak credit. It is also not known whether, for the purpose of section 68 of the Act, whether

any amount was recorded in books of accounts, what was the nature and source of such sums, whether such explanation was satisfactory or not. In absence of these, no addition can be made on this account also.

10. *In the result, the appeal is allowed.”*

4. It is, therefore, clear that the assessee had filed his detailed submissions in the course of the lower appellate proceedings only. Learned CIT(A)-NFAC had admittedly sought for a remand report on 11.09.2018 and thereafter, he has deleted the impugned addition *inter alia* on the ground that no such remand came from the field authorities. We put a specific question to the assessee during the course of hearing as to where is the CIT(A)-NFAC's detailed discussion in compliance to sec.250(6) of the Act requiring him to frame points of determination followed by a detailed adjudication thereupon. No satisfactory reply has come from the assessee's side through his learned counsel. We are of the considered view in this factual backdrop that merely because there is no remand report came from the Assessing Officer; learned CIT(A)-NFAC has erred in law and on facts in deleting the impugned addition made in assessee's hands during the course of assessment by above extracted "cryptic" findings. We accordingly deem it appropriate to restore the Revenue's instant sole substantive ground back to the Assessing Officer

for his afresh appropriate adjudication as per law, with a liberty to the assessee to plead and prove all the relevant facts within three effective opportunities of hearing at his own risk and responsibility only. Ordered accordingly.

5. This Revenue's appeal is allowed for statistical purposes in above terms.

Order pronounced in the open Court on 28.08.2024.

Sd/-
[DR. DIPAK P. RIPOTE]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 28th August, 2024

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The Pr. CIT, Pune concerned
4.	D.R. ITAT, "B" Bench, Pune.
5.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,
Pune.