

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'SMC' Bench, Hyderabad

Before Shri Manjunatha, G. Accountant Member

आ.अपी.सं / **ITA No.676/Hyd/2024**
(निर्धारण वर्ष/Assessment Year: 2020-21)

Shri Satyanarayanareddy Modugu Hyderabad PAN:ADIPM9455E	Vs.	Dy. C. I. T. Circle 5(1) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by: Shri P Rajeswara Rao, CA		
राजस्व द्वारा/Revenue by: Shri S.P.G. Mudaliar, DR		
सुनवाई की तारीख/Date of hearing: 05/09/2024		
घोषणा की तारीख/Pronouncement: 05/09/2024		

आदेश/ORDER

This appeal filed by the assessee is directed against the order dated 15/05/2024 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2020-21.

2. The assessee raised the following grounds:

1. The Additional CIT/ JCIT (Appeals) has erroneously considered the Short Term Capital Loss amounting to Rs.2,28,741/- as gain and has erroneously added an amount of Rs.1,95,508/- to the Head Income from Business or Profession.

2. The Additional CIT/ JCIT (Appeals) erred in making additions of Rs. 10,59,918/- under the Head Income from Salaries without considering exemption under Section 10(10AA) for Public Sector Undertaking Employees. As per Section 10(10AA) Income(s) not included in total income includes any payment received by an employee of the Central Government or a State Government as the cash equivalent of the leave salary in respect of the period of earned leave at his credit at the time of his retirement whether on superannuation or otherwise. Since the appellant is a Salaried employee of a Public Sector Undertaking (Andhra Bank), the appellant is eligible for the entire exemption of Leave encashment on received on retirement.
3. The CPC / Additional CIT/ JCIT (Appeals) erred in adding the Late fees of Rs.10,000/- under Section 234F and Interest of Rs.32,076/- under 234A,234B and 234C.
4. Any other ground(s) that may be urged at the time of hearing.

3. The brief facts of the case are that the assessee, an individual, filed his return of income for the A.Y 2020-21 on 1/1/2021 declaring total income of Rs.23,23,980/-. The return of income has been subsequently revised by filing revised return of income on 24.3.2021 declaring total income of Rs.12,64,060/-. The return of income filed by the assessee has been processed u/s 143(1) of the I.T. Act, 1961 and intimation dated 8.12.2021 was issued determining the total income at Rs.25,19,490/- and while processing the return of income, the Assessing Officer has made addition of Rs.1,95,508/- towards speculative loss incurred by the assessee under the head "income from business and profession". The Assessing Officer had also levied penalty u/s 234F of the I.T. Act, 1961 for Rs.10,000/- for late filing of return of income. The Assessing Officer had also disallowed leave encashment claimed exempt u/s 10(10AA) of the I.T. Act, 1961 for Rs.10,59,918/-.

4. The assessee carried the matter in appeal before the first appellate authority and the learned CIT (A) for the reasons stated in their appellate order dated 15.05.2024 upheld the addition made by the Assessing Officer towards speculative loss and also confirmed the penalty levied u/s 234F of the I.T. Act, 1961. The learned CIT (A) had also sustained the addition made by the Assessing Officer towards disallowance of leave encashment claimed as exempted u/s 10(10AA)(ii) of the Act for Rs.10,59,918/-.

5. Aggrieved by the order of the learned CIT (A), the assessee is in appeal before the Tribunal.

6. The first issue that came up for my consideration from Ground No.1 of assessee's appeal is addition towards speculative loss of Rs.1,95,508/-. The assessee before the learned CIT (A) submitted that the assessee has incurred speculative loss from purchase and sale of shares and the same has been carried forward to the subsequent year but the Assessing Officer although computed the loss of Rs.1,95,508/- but while computing the total income instead of reducing it from the other income made additions. Therefore, he submitted that the additions made by the Assessing Officer should be deleted.

7. The learned DR, on the other hand, submitted that there may be error in filing return of income and the CPC while

processing the return of income would compute the income as per information furnished by the assessee. Therefore, the matter may be remitted back to the file of the Assessing Officer for verification and allowing the relief as per law.

8. I have heard both the parties, perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the appellant has incurred net loss of Rs.1,95,508/- from speculative activities and the same has been captured by the Assessing Officer in the intimation issued u/s 143(1) of the I.T. Act, 1961 and accepted the loss claimed by the assessee. However, while computing the total income in page 36 of intimation instead of reducing it from other income has made addition of Rs.1,95,508/- and determined the total income at Rs.2,40,509/- under the head "income from business and profession". In my considered view, there is no error in the total income computed by the Assessing Officer under the head "income from business" even though the appellant has incurred loss of Rs.1,95,508/- under the head speculative activities. Therefore, I am of the considered view, the matter needs to go back to the file of the Assessing Officer and thus, I set aside the order of the learned CIT (A) on this issue and restore back the matter to the file of the Assessing Officer for fresh consideration. The Assessing Officer is directed to verify the facts and allow the loss claimed by the assessee under speculative activity and also carry forward to subsequent A.Ys.

9. The next issue that came up for my consideration from Ground of appeal No.2 of assessee's appeal is addition of Rs.10,59,980/- towards leave encashment claimed exempt u/s 10(10AA)(ii) of the Act. The learned Counsel for the assessee at the time of hearing submitted that the assessee does not wish to press ground No.2 and thus Ground No.2 of assessee's appeal is dismissed as not pressed.

10. The next issue that came up for my consideration from Ground of appeal No.3 of assessee's appeal is confirming levy of late fee of Rs.10,000/- u/s 234F of the I.T. Act, 1961. Admittedly, the assessee has filed original return of income on 10.01.2021 and revised return of income on 24.3.2021 and both the returns are within the due date provided under the law for filing of return of income. Further, the due date of furnishing return of income for A.Y 2020-21 has been extended due to Covid and the same has been extended upto 10/01/2021. The appellant claims that the time limit for filing revised return was also available. Therefore, I am of the considered view the matter need verification from the Assessing Officer. Thus, I set aside the issue to the file of the Assessing Officer with a direction to verify the claim of the assessee in the light of due date for furnishing of return of income for A.Y 2020-21. In case the appellant filed its return of income on or before the due date prescribed under the law, then the Assessing Officer is directed to delete the late fee of Rs.10,000/- levied u/s 234F of the I.T. Act, 1961.

11. In the result, appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the Open Court on 5th September, 2024.

Sd/-

**(MANJUNATHA, G.)
ACCOUNTANT MEMBER**

Hyderabad, dated 5th September, 2024.

Vinodan/sps

Copy to:

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1	Shri Satyanarayanareddy Modugu, Flat No.313, Krishna Arcade, Eswar Villa Road, Nizampet, Telangana 500090
2	Dy.CIT Circle 5(1) IT Towers, Hyderabad 500004
3	Pr. CIT – Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order