

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

BEFORE SHRI GEORGE GEORGE K., VICE PRESIDENT
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.1465/Bang/2024
Assessment year : 2016-17

Stephen Fernandes, Pragathi Nagar, Chanthar, Kunjai Road, Brahmavar – 576 213. PAN: AAHPF 1507E	Vs.	The Income Tax Officer, Ward 2, Udupi.
APPELLANT		RESPONDENT

Appellant by	:	Shri N. Ramesh, CA
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel.

Date of hearing	:	09.10.2024
Date of Pronouncement	:	23.10.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against the order dated 27.02.2024 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2016-17 on the following grounds:-

“1. The Assessment Order for the Assessment Year-2016-17 passed under Sec.143(3) of the Act, by the Learned Assessing Officer was arbitrary and is against law and contrary to facts of the case and hence Erroneous and untenable in Law.

2. The appellant states that the notice under CASS was issued for Limited Scrutiny U/s 143(2) dated 10.07.2017, ONLY with respect to Winnings from Lottery/ Crossword Puzzles/ Horse Races and Interest income , but has been converted into extensive scrutiny in contravention to CBDT instruction No. 07/2014 dtd 26th Sept 2014 . Therefore the entire addition of Rs.41,44,319 ought to be deleted as it has been made without abiding by the due course of procedures laid down in law and is therefore against the principles of Natural justice and learned Commissioner of income-Tax (Appeals) erred in completely ignoring the said aspect while dismissing the Appeal of the Appellant.

3. The Learned Assessing Officer , has grossly erred in making an erroneous , unjustified and arbitrary addition of Rs. 41,44,319/- without comprehending that , the Business of Trading in Commodity Derivatives - Futures and Options (F&O) that is conducted through the Multi Commodity Exchange of India (MCX) is a Pure Business Activity and has erroneously considered and brought out in the Assessment order that , trading through the trading house of Multi Commodity Exchange MCX is a Speculative activity of trading in Shares and securities and the Learned Commissioner of Income-Tax (Appeals) erred in treating it as Share Trading without considering submissions made by the Appellant.

4. The Learned Commissioner of Income-Tax(Appeals)-NFAC has erred by completely overlooking the clause (e) of the Proviso of Section 43(5) of the Income-Tax Act,1961 and Explanation 2 for the purposes of Clause (e) of the Proviso of Section 43(5) of the Act which is specifically applicable to the Appellant's case and failed to apply the same. The clause (e) reads as "an eligible transaction in respect of trading in commodity derivatives carried out in a recognized stock exchange, which is chargeable to commodities transaction tax under Chapter VII of the Finance Act,2013 (17 of 2013), shall not be deemed to be a speculative transaction.

5. The appellant prays that , this erroneous presumption of the Learned Assessing Officer , alone has resulted in the appellant not being granted the benefit of Set off of Losses of Rs.41,44,319/- and which alone has resulted in the erroneous and

arbitrary addition of the same sum , to the NIL income admitted by the appellant ,for the Assmt Yr of 2016-17. which the appellant hereby prays for deletion and thus rendering of justice.

6. The appellant states that due to a error in the Income Tax return utility . the entire business receipts of the appellant of Rs. 41,44,319/- has been written in the Income Tax return as Taxable income under the Presumptive Tax provisions of Section 44AD of the Act, which is not the actual factual position and hereby prays and to allow the re-computation of actual taxable income at the Rs. 331,545/- which is the taxable profits at 8% of the Gross business receipts as laid down in Section44AD of the Act under Scheme of Presumptive Taxation.

7. The Learned Assessing Officer has miserably failed to comprehend and appreciate the binding nature of the decisions of the various Hon'ble High Courts on the same issue on hand arid various associated aspects thereof.”

2. At the outset, there is a delay of 103 days in filing the appeal before the ITAT. Petition for condonation of delay is filed stating that the assessee was under treatment with Chronic Sinus associated Diabetes Melitus and related gastroentitis and abdominal ailments and under medical supervision and rest and could not assimilate the necessary documents to file an appeal which led to delay. A medical certificate dated 15.7.2024 advising rest from 20.4.2024 to 15.7.2024 is filed with the petition and affidavit. Accordingly condonation of delay is requested for.

3. After hearing both the parties, it is observed that there are sufficient reasons for the delay and following the judgment of the Hon'ble Apex Court in the case of Collector, Land Acquisition Vs.

MST. Katiji and Others (1987) 167 ITR 471, delay in filing the appeal before the Tribunal is condoned.

4. Briefly stated the facts of the case are that the assessee filed return of income on 17.10.2016 declaring NIL income after adjusting loss of Rs.41,44,319 against other sources business profit of Rs.41,44,319. During the course of assessment proceeding details regarding income from business, loss from other sources and interest earned from various financial institutions were called for. In response the assessee submitted computation of income and income & expenditure account. After verification, the AO noted that the assessee claimed to have earned profit of Rs.30,39,757 against mining business and after set off of loss of Rs.32,42,811 from share transaction and worked out net loss of Rs.2,07,011. The assessee various documents which are listed by the AO in page 3 of his order. The assessee also filed explanation and the AO referring to section 43(5) and 73(1) of the Act assessed total income at Rs.41,44,319. Aggrieved from the above order, the assessee filed appeal before the First Appellate Authority (FAA).

5. The Id. FAA after going through the assessment order and submission made by the assessee, confirmed the order of the AO and dismissed the appeal of the assessee. Aggrieved, the assessee is in appeal before the ITAT.

6. The Id. AR reiterated the submissions made before the lower authorities and submitted that the Id. FAA has not considered the documents submitted during the appellate proceedings on various dates and he has just confirmed the order of the AO without going into the documents. Therefore he requested that the matter may be sent back to the FAA for fresh consideration in light of the documents submitted.

7. The Id. DR relied on the order of the lower authorities and submitted that it is clear from the orders of both the authorities that the assessee was unable to substantiate the loss claimed and business income arising from mining activities and there is change in earlier return and revised return and objected to sending the matter back.

8. Considering the rival submissions and documents furnished before us, we note that the Id. FAA has given various opportunities to the assessee and assessee has also filed reply on various dates. During the course of hearing before us, the assessee has filed voluminous documents in Paperbooks and certified that no additional evidence is filed. Considering the facts and in the interest of justice, we remit the issue back to the Id. CIT(Appeals) for consideration of documents furnished by the assessee and fresh decision as per law. The assessee is directed to substantiate his case for proper adjudication by the revenue authorities. Needless to say that reasonable opportunity of being heard be given to the assessee. The assessee is directed to cooperate with the proceedings and in case of further default, the assessee shall not be entitled to any leniency.

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

Pronounced in the open court on this 23rd day of October, 2024.

Sd/-
(GEORGE GEORGE K.)
VICE PRESIDENT

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 23rd October, 2024.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.