

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

**BEFORE SH. M. BALAGANESH, ACCOUNTANT MEMBER
AND
SH. SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.90/Del/2020
Assessment Year: 2009-10

Sanjeev Choudhary C/o Sudhindra Jain & Co. 113/7A, Indra Jit Jian Marg, Swaroop Nagar, Kanpur 208002 PAN No.AEYPC5911Q	Vs.	DCIT Central Circle Ghaziabad
(APPELLANT)		(RESPONDENT)

Appellant by	None
Respondent by	Sh. V.K. Dubey, Sr. DR

Date of hearing:	14/10/2024
Date of Pronouncement:	12/11/2024

ORDER

PER SUDHIR KUMAR, JM:

This appeal by the assessee is directed against the order of the Commissioner of Income Tax-IV, Kanpur [hereinafter referred to as "CIT(A)"] vide order dated 04.11.2019 pertaining to A.Y. 2009-10 pertaining to arises out of the assessment order dated 30.12.2016 under section 143(3)/147 of the Income Tax Act, 1961 [hereinafter referred as 'the Act'].

2. The assessee has raised following grounds of appeal :-

1. *That the Ld. Commissioner of Income Tax (Appeals)-IV, Kanpur, has erred in law and on facts in not appreciating that the Ld. A.O. has recorded vague reasons and these are based on surmises, conjectures, assumptions, therefore, there is no valid assumption of jurisdiction by the Ld. A.O. to initiate proceedings under section 147 of the Income Tax Act, 1961 and consequent impugned reassessment order is void-ab-initio and liable to be quashed.*

2. *That the Ld. Commissioner of Income Tax (Appeals)-IV, Kanpur, has erred in law and on facts in appreciating that the Ld. A.O. has recorded Reasons without conducting any independent enquiry and on the borrowed satisfaction of the Addl. D.I.T.(INV.)-I, Ahmedabad, therefore, there is no valid assumption of jurisdiction by the Ld. A.O. to initiate the proceedings under section 147 of the Income Tax Act, 1961 and hence the consequent impugned reassessment order is void ab-initio and liable to be quashed.*

3. That the Ld. Commissioner of Income Tax (Appeals)-IV, Kanpur, has erred in law and on facts in sustaining the order of the Ld. A.O. in which the Ld. A.O. arbitrarily treating the amount of Rs.2,20,35,074/- as alleged Bogus Transaction on account of set off of Short Term Capital Gain of Rs.2,20,35,074/- against the current year losses of Rs.2,20,35,074/-.

4. That the Ld. Commissioner of Income Tax 74,89,72 (Appeals)-IV, Kanpur, has erred in law and on facts in sustaining the impugned reassessment order passed without disposing off the objections of the appellant by passing speaking order, therefore, the impugned reassessment order is illegal and liable to be quashed.

5. That the Ld. Commissioner of Income Tax (Appeals)-IV, Kanpur, has erred in law and on facts in sustaining the order in which the Ld. A.O. did not provide the opportunity to cross examine, therefore, the disallowance of Rs.2,20,35,074/- made by the Ld. A.O. in the income of the appellant is unsustainable in law and liable to be deleted.

6. That the Ld. Commissioner of Income Tax (Appeals)-IV, Kanpur, has erred in law and on facts in sustaining the order in which the Ld. A.O. did not confront any material to the appellant so as to enable him to tender explanation and evidences in support of the genuineness of transaction, therefore, the disallowance made by the Ld. A.O. in the returned income of the appellant is unsustainable in law and liable to be deleted.

7. That the Ld. Commissioner of Income Tax (Appeals)-IV, Kanpur, has erred in law and on facts in sustaining the arbitrary disallowance of Rs.2,20,35,074/- made by the Ld. A.O. on account of alleged Bogus Transaction.

8. That the arbitrary disallowance made by the Ld. A.O. in the income of the appellant is much too high and excessive and deserves to be deleted.

9. That the Ld. Commissioner of Income Tax (Appeals)-1, Kanpur, has erred in law and on facts in sustaining the addition made by the Ld. A.O. in the

income of the appellant is contrary to the Principles of Natural Justice and Equity.

10. That the Ld. C.I.T.(A)-IV, Kanpur has erred in law and on facts in not appreciating that there is no valid approval as contemplated in section 151 of the Income Tax Act, 1961, therefore, the impugned reassessment order is illegal, void-ab-initio and liable to be quashed.

11. That the impugned reassessment order has been passed is grossly violation of section 153C of the Income Tax Act, 1961, therefore, the impugned reassessment order is illegal & void ab-initio and liable to be quashed.

12. That the Ld. C.I.T.(A)-IV, Kanpur has erred in law and on facts in rejecting the books of account without any cogent reason and without issuing notice under section 251 of the Income Tax Act, 1961.

13. That the Ld. CIT(A) – IV, Kanpur has failed to appreciate that the Dy. CIT Central Circle, Ghaziabad, has completed the assessment proceedings without considering by the ITO Ward-2 (4), Ghaziabad, therefore, the additions/ disallowance made by the Ld. AO are arbitrary and are on the basis of simply following the DDIT (INV) Report.

14. That the Order passed under section 127 of the Income Tax Act, 1961 transfer the case from ITO, Ward- 2(44), Ghaziabad to ACIT, Central Circle, Ghaziabad is illegal, therefore, the impugned reassessment order is illegal and insupportable in law.

3. None appeared on behalf of the assessee. Even on previous dates no one appeared on 24.04.2020 and 11.07.2024. We have heard the Ld. DR and perused the material available on record. On perusal of the material available on record we have decided to proceed with the matter.

4. The brief facts of the case are that the assessee has filed his return of income declaring income of Rs.6,21,160/- on 30-09-2009 for the A.Y. 2009-10. The information received the department that the assessee has fraudulently set off the capital gain of Rs 1,89,86,619/- against the capital loss of Rs 1,89,86,619/- through M/s A to Z stock traders Pvt. Ltd. during the assessment year 2009-10. A notice was issued to the assessee u/s 142(1) of the Act. The authorized representative of the assessee has attended the proceeding and the AO after considering the reply filed by the assessee completed the assessment u/s.143(3)/147 of the Act on 30.12.2016 by holding that short term capital loss set off by the assessee

amounting to Rs.2,20,35,074/- was bogus transaction and same was disallowed and added to the income of the assessee.

Aggrieved by the order of the AO the assessee has filed the appeal before the Ld CIT(A) who vide his order dated 04-11-2019 dismissed the appeal by observing as under :-

“7.3 The undersigned has carefully gone through the assessment order and verbal arguments of Id. A.R. It is seen that the A.O. has made disallowance of claimed loss of Rs. 2,20,35,074/-on account of Client Code Modification. The A.O. has examined the issue very meticulously and has provided sufficient opportunity to the assessee to explain said loss. It is seen from the assessment order that said claim of loss through Client Code Modification was bogus and untrue as evident from detailed report of Investigation Wing of Income Tax Department, Ahmedabad. Ld. A.R. of the appellant has raised only legal objection against reopening of assessment, but, could not find out any fault with the investigation carried out by department to conclude that loss claimed by the appellant was manipulated on account of client code modification, During this appeal proceedings, Ld. A.R. of the appellant could not bring any material or documentary evidence to suggest that A.O, has committed any mistake on placing reliance on the detailed investigation conducted by the department. Also,

arguments of the appellant that addition made by the AO is unjustified in absence of rejection of the books of accounts by the AO, would not rescue the case of the appellant, because, firstly, appellant is individual and does not maintained any books of accounts. Secondly, addition is not on account of business income, but, it is on account of short term capital loss from investment in shares through the brokerage firm M/s. A to Z Stock Traders Pvt. Ltd. and thirdly, without prejudice to the about,undersigned rejects the books of accounts u/s 145(3) of the Act, if any maintained by the appellant, as powers of undersigned are coterminous with the powers of the AO. Therefore, undersigned finds no reason to interfere with the finding given by the A.O.

7.4 Thus, in view of the above detailed discussions the factual matrix of the case, disallowance of Rs. 2,20,35,074/- made by A.O. is hereby confirmed and grounds of appeal of the appellant are dismissed.

8. Ground no. 8 is general in nature. Therefore, same is not being adjudicated and is dismissed.

9. Result: -

In the result, for statistical purposes, this appeal is dismissed.”

5. We have considered the arguments of ld. DR and perusal of the material available on record. On perusal of the order of the Ld. CIT(A) it reveals that the assessee has furnished the

inaccurate particulars of his income by claiming bogus loss to conceal his true income. The assessee has manipulated the loss on account of client code modification. The books of accounts were rejected by the Ld CIT(A) u/s 143 of the Act. The AO has recorded proper reasons to conclude that the income of the assessee has escaped income. The AO has obtained the necessary approval from the competent authority before issuing the notice u/s 148 of the Act. We do not find any illegality in the findings of the both the authorities below. The appeal of the assessee is liable to be dismissed exparte.

6 In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 12.11.2024.

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

NEHA, Sr. PS

Date:-.11.2024

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(Appeals)
- 5.DR: ITAT

Sd/-
(SUDHIR KUMAR)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI