

IN THE INCOME TAX APPELLATE TRIBUNAL, GAUHATI BENCH, GUWAHATI

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

AND

SHRI MANOMOMOHAN DAS, HON'BLE JUDICIAL MEMBER

Manoj Kumar Paharia & Sons Dhanuka Complex 121, S.J. Road, Athgaon, Guwahati – 781001 (Assam) PAN: AAGHM4369E	Vs.	Jurisdictional , AO ITO Ward 2 (2) Guwahati
(Appellant)		(Respondent)

ITA No. 15 / GTY / 2024

(Assessment Year : 2014-15)

Appellant By :	Shri B.L. Purohit, FCA
Respondent By:	Shri Kaushik Ray, JCIT
Date of Hearing :	23.07.2024
Date of Pronouncement :	28.08.2024

ORDER

Per Manomohan Das, JM

This appeal by the assessee is directed against the order of the learned Commissioner of Income Tax, National Faceless Appeal Centre (NFAC), Delhi (hereinafter '(CIT(A)') dated 29.11.2023 passed under section 250 of the Income Tax Act, 1961 [the 'Act'] and pertains to the Assessment Year [AY] 2014-15.

The grounds of appeal of the assessee are as under:

i) On the facts and in the circumstances of the Appellant's case, the learned CIT (Appeals) was not justified in confirming the addition of RS. 35,44,058/- made by the Assessing Officer (A.O.) in the Returned Income of the Appellant.

ii) Confirming the addition by the learned CIT(A) is bad under law because this Income of Rs. 35,44,058/- earned by the Appellant from their trading in 'Options' assessed as escaped

income by the A.O. was duly recorded in the Books of Account of the Appellant and had thus been already included in the Returned Income of the Appellant.

iii) The Appellant had submitted all the details and proofs in the assessment proceeding to show that this income had been duly accounted for by them in their books of account and thus the learned CIT(A) was wrong in saying in his order that the Appellant had not produced proof regarding this income in assessment proceeding. The copies of all the above details and proofs were duly submitted and explained before the learned CIT (Appeals) in Appeal proceeding also.

iv) As this income of Rs. 35,44,058/- was already included in Appellant's Returned Income, the addition made by the A.O. has resulted in taxing the same income twice. The Appellant therefore prays for deletion of this addition in full.

v) The Appellant further prays for leave to amend/alter the above grounds or/and take any other grounds of Appeal before or at the time of the hearing of the Appeal.

2. The assessee is aggrieved due to the confirmation of addition by the Id. CIT(A).

3. The facts of the case are that, notice under section 148 of the Act for AY 2014-15 was issued on 31.03.2021 to the assessee after taking due approval from competent authority. In response to the said notice, the assessee filed return on 22.04.2021 showing income of Rs. Nil. The assessee had filed original return of income for AY 2014-15 on 25.11.2014 showing income of Rs. Nil. Subsequently, information received in INSIGHT portal about profits earned by assessee through derivatives / options. The H K Singhania & Co was the broker of the assessee. The assessee did not offer the said profits. The informational value involved was Rs. 35,32,500/-. The reasons were framed and case of the assessee was reopened as under:

“The assessee filed its original return of income for the AY 2014-15 relevant to the F.Y. 2013-14 on 25.11.2014 showing a total income of Rs. Nil. The return was processed u/s 143(1). No scrutiny assessment under section 143(3) of the Income Tax Act, 1961 or any other section was undertaken in this case”.

3.1 Information has been received through “INSIGHT” portal regarding fictitious Profits in Equity / Derivative Trading. As per information, the assessee

has received fictitious Profits in Equity / Derivative Trading amounting to Rs. 35,32,500/- during F.Y. 2013-14 relevant to the AY 2014-15. The Ld. AO gone through the information and enclosed documents and verified with the return of income and thereafter noticed that, the assessee was the beneficiary of fictitious profits in Equity / Derivative Trading amounting to Rs. 35,32,500/-. The Id. AO observed that, the assessee did not show that profit of Rs. 35,32,500/-. Therefore, he has reasons to believe that the amount is escaped assessment in the hands of the assessee and is a fit case for reassessment u/s 147 of the Act. Notices u/s 143(2) and u/s 142(1) were issued to the assessee. The Id. AO asked the assessee to furnish the working of gains from transactions of commodities / securities carried out through H K Singhania & Co for AY 2014-15 in following format:

Name of Scrip / commodity	Purchase date	Sale date	Purchase value	Sale value	Gains / Loss
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3.2 The Id. AO also asked the assessee to furnish name, PAN and complete postal address of any other broker / intermediaries through whom assessee carried out shares / commodities transactions in AY 2014-15 along with ledger account of said broker / intermediaries maintained in the books of the assessee with complete narration for AY 2014-15 etc.

Name of Scrip / commodity	Qty as on 1.4.2013	Value as on 1.4.2013 (Rs.)	Qty as on 31.3.2014	Value as on 31.3.2014
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3.3 The Id. AO further insisted for complete demat accounts for AY 2014-15 from the assessee.

3.4 The assessee, in responds, furnished share trading & P&L A/c along with ledger account of H K Singhania & Co. maintained in his books of account with broker notes of H K Singhania & Co. The assessee furnished the details of transactions carried out through H K Singhania as follows:

Name of Scrip / Commodity	Purchase date	Sale Date	Purchase Value	Sale Value	Gain	Remarks

3.5 The assessee claimed that, dealing in shares and securities are their business and the profit earned from trading in options was duly accounted in their books of account. The assessee showed a loss of share and option of Rs. 281,811/-. However, the Id. AO was not satisfied with the replies of the assessee and asked the assessee to submit the details of transactions carried through H K Singhania & Co. The assessee, in compliance submitted the following bills of H K Singhania & Co.

Bill No	Trade Date	Purchase / sale	Name of Security	Amt.
000271/1314	20.2.2014	Sale by H K Singhania & CO.	NTPC	758,313/-
000283/1314	24.2.2014	Sale by H K Singhania & Co.	IRBI.	12,998/-
000304/1314	26.2.2014	Sale by H K Singhania & Co.	HXTL, IDEA ZEEL, UBIL	27,43,294/-
000291/1314	25.2.2014	Sale by H K Singhania & Co.	IRBL and SAIL	29,591/-
Total				35,44,196/-

3.6 The Id. AO considered the details as submitted by the assessee and observed that, the assessee is merely showing sales of OPSTK whereas the purchases supporting for the said OPSTK is not available and mere sales of stock OPSTK is made without there being corresponding purchases which itself is unexplainable. The Id. AO also observed that, assessee's profit and loss account as well as computation did not show the offering of the gains from options /

derivatives trading. Therefore, the Id. AO has made addition of Rs. 35,44,060/- to the total income of the assessee u/s 28 of the Act being business income.

4. Being aggrieved, the assessee preferred 1st appeal before the Id. CIT(A). The Id. CIT(A) vide order dated 29.11.2023 dismissed the appeal of the assessee.

5. The Id. CIT(A) observed that, during the assessment proceedings, the AO provided various opportunity to the assessee vide notice u/s 142(1) of the Act to file the details of transactions carried out through H K Singhania & Co. for AY 2014-15. The appellant during the assessment as well as appellate proceedings has relied on the contract note of sales, bank account statements and ledger account of F & O share trading account. Here the addition was made on lack of supporting evidences of transactions carried out through H K Singhania & Co for AY 2014-15. Any genuine transactions carried out by the broker must have been recorded through its contract note whether it is a sale or purchase. **The appellant was required to provide supporting evidence for its ledger account i.e. trading account statement, Demat Account statement, contract note for sale as well as purchase, narrated bank statement for purchases etc.** In its submission, the appellant failed to furnish entire supporting documents for F & O transactions.

6. Being aggrieved, the assessee filed the present appeal before the Tribunal.

7. Heard the representatives of both the parties and perused the material on record.

8. The Id. AR reiterated the submissions which were submitted before the Id. CIT(A). On the other hand, the Id. DR relies on the orders of the lower authorities.

9. We have carefully considered the submissions of the parties. We observe that, due to non-showing the purchases OPSTK by the assessee while furnishing the bills of H K Singhania & Co., the Id. AO has reject the claims of the assessee. On the other hand, the Id. CIT(A) has confirmed the findings of the Id. AO by observing that the assessee has failed to provide supporting evidence for its ledger account, Demat account statement, contract note for sale as well as purchase, narrated bank statement for purchase etc.

9.1 The Id. AO, after consideration of the entire case of the assessee did not deny that the assessee has earned profits of Rs. 35,44,058/- by trading through H K Singhanian & CO., but observed that assessee's profit and loss account as well as computation didn't show the offering of the said gains from options/derivatives trading. Id. AO also observed that the issue involved in the case was of profits from H K Singhanian & CO. The Id. CIT(A) observed that, the assessee did not furnish evidence for its ledger account, statement of Demat account, contract note for sale and purchase, narrated bank statement for purchase etc.

9.2 We observe that, the assessee claims about the submissions of all by furnishing a paper book during the hearing of the case. Again, the Id. AO didn't observe that the assessee did not furnish evidence for its ledger account, statement of Demat account, contract note etc.

9.3 In view of the aforesaid discussions on the case of the assessee, we feel that the assessee should get another opportunity to prove his case before the Id. AO. Accordingly, we remit the case to the file of the Id. AO with a direction to consider the case of the assessee afresh after giving the assessee an opportunity of being heard. At the same time, we set aside the order of the Id. CIT(A) dated 29.11.2023 so as to enable the assessee to substantiate his case before the Id. AO.

10. In the result, we allowed the appeal of the assessee for statistical purposes only.

11. Order pronounced in the open court on this 28th day of August, 2024.

Sd/-
(Dr. Manish Borad)
Accountant Member

Sd/-
(Manomohan Das)
Judicial Member

Dated: 28.08.2024

Copy forwarded to:

1. Appellant- Manoj Kumar Palaria and Sons, Dhanuka Complex, 121, S. J. Road, Athgaon, Guwahati, Assam. Pin code – 781 001
2. Respondent- ITO, Ward- (2)-2, Aayakar Bhawan, Christian Basti, G. S. Road, Guwahati, Assam Pin Code- 781 005
3. Pr.CIT / CIT
4. CIT(A)
5. DR, ITAT, Gauhati
6. Guard File