

IN THE INCOME TAX APPELLATE TRIBUNAL
“H” Bench, Mumbai
Before Shri B.R. Baskaran (AM) & Shri Amit Shukla (JM)

I.T.A. No. 1446/Mum/2015
(Assessment Year 2009-10)

Hazura Singh Saini J-15, Jal Vayu Vihar A.S. Marg Hiranandani Garden Powai Mumbai-400 076. (Appellant)	Vs.	ITO Ward 21(3)(1) Pratyashkar Bhavan Bandra Kurla Complex Bandra East Mumbai-400 051. (Respondent)
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PAN No.AAHPS3947H

Assessee by	Shri Hazura Singh Saini
Department by	Shri M.C. Omi Ningshen
Date of Hearing	7.12.2016
Date of Pronouncement	7.12.2016

O R D E R

Per B.R. Baskaran (AM) :-

The appeal filed by the assessee is directed against the order dated 16-01-2015 passed by Ld CIT(A)-38, Mumbai and it relates to the assessment year 2009-10. The assessee has raised grounds on the following issues:-

- (a) Confirmation of addition towards unexplained investment – Rs.8,92,437/-
- (b) Rejection of set off of loss – Rs.2,62,665/-

2. We heard the parties and perused the record. The assessee is an individual. He declared income from salary by way of pension from Indian Navy and salary received from Antony waste handling cell P Ltd. The assessee also declared loss from business/profession and set it off against salary income. The AO disallowed the claim of set off of loss by following the provisions of sec. 71(2A), which provide that the loss from business cannot be set off against

salary income. The AO also noticed from AIR information that the assessee has purchased two immovable properties for an aggregate amount of Rs.1,00,33,550/-. Since the assessee did not offer proper explanations with regard to the sources, the AO assessed the amount of Rs.1,00,33,550/- as income of the assessee.

3. The Ld CIT(A) upheld the disallowance of claim of loss from business against salary income. Before Ld CIT(A), the assessee offered explanations with regard to the sources available with him for purchasing the immovable properties. The Ld CIT(A) examined the explanations of the assessee and came to the conclusion that the sources to the extent of Rs.8,92,437/- (Rs.8,31,385/- and Rs.61,052/-) could not be explained by the assessee. Accordingly he confirmed the addition to the extent of Rs.8,92,437/-. Still aggrieved, the assessee has filed this appeal before us.

4. With regard to the first issue of disallowance of claim for set off of loss, the assessee submitted that he has provided consultancy services to a company named M/s Antony Waste Handling Cell P Ltd. He submitted that the above said company issued Form No.16 for some months and Form No.16A for some other months. He further submitted that the return of income was filed in accordance with the TDS certificates and hence there was confusion. He submitted that nature of receipt of payment from the above said company was identical throughout the year. Accordingly he submitted that the amount received from the above said company should be assessed in uniform manner.

5. The Ld D.R submitted that there is confusion with regard to the nature of receipt and accordingly suggested that this matter may be set aside to the file of the AO for carrying out necessary examination.

6. Having regard to rival submissions, we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO with the direction to examine the claim of the assessee and take appropriate decision in accordance with the law.

7. The next issue relates to the addition of Rs.8,92,437/- confirmed by Ld CIT(A). The assessee submitted that he has got following sources and they were inadvertently omitted to be furnished to the Ld CIT(A):-

- (a) Gratuity + CAP value received from Indian Navy on 10-06-2002- Rs.8,81,385/-.
- (b) Retirement dues received on 25.11.2004 - Rs.52,938/-
- (c) Monthly salary received on 31.01.2004 - Rs. 8,114/-

The assessee submitted that the addition confirmed by Ld CIT(A) shall be liable to be deleted, if the above said sources were considered.

8. The Ld D.R submitted that the details now furnished by the assessee require verification at the end of the AO.

9. Having heard rival submissions, we are of the view that this issue also requires examination at the end of AO. Accordingly, we set aside the addition confirmed by Ld CIT(A) and restore the same to the file of the AO with the direction to examine the same afresh by considering the information and explanations furnished by the assessee and take appropriate decision in accordance with the law.

10. Needless to mention, the assessee should be provided with adequate opportunity of being heard.

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

Order has been pronounced in the Court on 7.12.2016

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 7/12/2016

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai

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