

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC"
(Virtual Court Hearing), BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member

I.T.A. No.104/Kol/2021
Assessment Year: 2015-16

Navin Puri.....Appellant
86, Canning Street,
Kolkata-700001.
[PAN: AFOPP5599N]

vs.

ITO, Ward-35(2), KolkataRespondent

Appearances by:

Shri Anil Kochar, Advocate, appeared on behalf of the appellant.

Shri Jayanta Khanra, JCIT, Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : July 12, 2021

Date of pronouncing the order : July 12, 2021

ORDER

The present appeal has been preferred by the assessee for the assessment year 2015-16 against the order dated 21.06.2019 of the Commissioner of Income Tax(Appeals)-10, Kolkata (hereinafter referred to as the 'CIT(A)').

2. The assessee in this appeal has taken the following grounds of appeal:

"1. For that the orders passed by the lower authorities are arbitrary, erroneous, without proper reasons, invalid and bad-in-law, to the extent to which they are prejudicial to the interests of the appellant.

2. For that the Ld. CIT (A) erred in confirming the addition of Rs.1,99,999/- made by the A.O. as income of the appellant u/s 68 of the Act on alleged grounds.

3. For that the Ld. CIT (A) erred in not properly appreciating the facts of the case with regard to the appellant's having income from commodity and treating the same as unexplained cash credit.

4. For that the Ld. CIT (A) erred in confirming the action of the A.O. for carry forward of the business loss of Rs.67,359/- instead of setting it off with the income of the appellant of the year under consideration.

5. For that there has been delay in submission of this appeal by the appellant for which the appellant prays that the delay may kindly be condoned and the appeal may kindly be admitted for hearing and adjudication of the issue involved.

6. For that the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds.”

3. Ground Nos.1,2&3 - From a perusal of the above grounds of appeal, it reveals that the only issue is relating to the treatment of income of Rs.1,99,999/- as to whether the same is a business income of the assessee from the commodity profit or the same is required to be assessed as income from undisclosed sources u/s 68 of the Income Tax Act.

4. The appeal is time barred by 571 days. An application for condonation of delay has been filed. Mr. Kochar, the ld. counsel for the assessee, has submitted that the order of the CIT(A) was received by the assessee in the month of July 2019 and that the assessee at that time faced family problems as his both parents expired during the period. Further, the assessee was also prevented with sufficient cause because of the problems/restrictions faced during Covid-19 pandemic. Considering the above submissions, the delay of filing of the present appeal is hereby condoned.

5. During the assessment proceedings, the Assessing Officer noticed that the assessee had shown the aforesaid income of Rs.1,99,999/- as income from commodity profit. On being explained to prove the genuineness of transaction, the assessee furnished the necessary details such as the brokers' details, the evidence of income received by the assessee through banking channel etc. The Assessing Officer, thereafter, made necessary enquiries and issued summons to the brokers. However, the concerned brokers did not turn up. The Assessing Officer further made enquiry from the National Multi Commodity Exchange of India (in short 'NMCE'). The NMCE vide letter dated 09.11.2017 informed that the assessee was not a registered customer with it. The Assessing Officer, therefore, observed that since the assessee was not a registered customer with the NMCE and the brokers had not turned up to confirm the transactions, he therefore concluded that the aforesaid income shown by the assessee as commodity profit, was unaccounted income of the assessee from undisclosed sources and added the same into the income of the assessee. The Assessing Officer further denied the benefit

of brought forward losses of Rs.62,359/- to the assessee against the aforesaid income declared by the assessee.

6. In appeal, the ld. CIT(A) confirmed the addition made by the Assessing Officer. Thus the assessee has come in appeal before this Tribunal.

7. I have considered the rival contentions of ld. representatives of the parties. The Assessing Officer has made the addition observing that the brokers did not come up to verify the transactions. The ld. counsel for the assessee has submitted that the Assessing Officer has wide powers to summon witnesses and call for confirmation of the transactions from concerned witnesses/parties. He has further submitted that the assessee had duly carried out commodity transactions and if the brokers had not turned up, the assessee should not be faulted with the same, rather, the Assessing Officer may be directed to properly verify the transactions by summoning/calling upon for confirmation from the concerned brokers.

8. The ld. DR, on the other hand, has relied upon the findings of the lower authorities.

9. After considering the rival submissions, I am of the view that the Assessing Officer was required to make proper enquiries before reaching to the conclusion that the transaction of commodity profit was bogus. In my view, the interest of justice will be well-served if the matter is restored to the file of the Assessing Officer with a direction to make further necessary enquires to arrive at a correct conclusion in this respect by using the powers of summoning and attending of witness etc. as per the provisions of Income Tax Act. In view of this, the impugned order of the CIT(A) is set aside and the matter is restored to the file of the Assessing Officer with the above stated directions.

10. Ground No.4 – The issue raised vide Ground No.4 is relating to the set off of brought forward losses of earlier year. In view of the above discussion, this issue is accordingly restored to the file of the Assessing Officer for adjudication afresh.

11. Ground No.5 – Vide Ground No.5, the assessee has prayed for condonation of delay. In view of the findings given above, the delay in filing the appeal is hereby condoned.

12. Ground No.6 – Ground No.6 is general in nature.

13. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order is pronounced in the open court on 12.07.2021.

Sd/-

[Sanjay Garg]
Judicial Member

Dated: 12.07.2020.

RS

Copy of the order forwarded to:

1. Navin Puri
2. ITO, Ward-35(2), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Sr.PS/D.D.O, Kolkata Benches