

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri Shamim Yahya, Accountant Member

I.T.A. No. 475/Mum/2020 (Assessment Year 2015-16)

Hinesh B.Lodaya (HUF) 1202, Neelkanth Heights B.P. Cros Road, Mulund (W) Mumbai-400 080 PAN : AABHH3838Q (Appellant)	Vs.	ITO-29(1)-4 Kautilya Bhawan, BKC Mumbai-400 051 (Respondent)
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Assessee by	None
Department by	Ms. Smita Verma
Date of Hearing	11.10.2021
Date of Pronouncement	20.10.2021

O R D E R

Per Shamim Yahya (AM) :-

This appeal by the Assessee is directed against the order of learned CIT(A)-40 dated 22.11.2019 and pertains to Assessment Year 2015-16.

2. The grounds of appeal read as under :

1. On the facts, and in circumstances of the case, and in law, learned Commissioner of Income-tax (Appeal) erred in dismissing the appeal ex-parte just in a span of seven days from the issue of first notice alleging non attendance without ensuring service of notice in paper form as opted while filing the appeal petition, and without considering merits of the case which were glaringly covered by statement of facts.
2. On the facts, and in circumstances of the case, and in law, learned Commissioner of Income-tax (Appeal) erred in upholding action of the Assessing Officer in disallowing the setoff of brought forward business loss claimed of RS. 91,253 against current year's speculative profits without appreciating that section 72 of the Income-tax Act 1961 allowed set off of brought forward business loss against income from any business (including speculative business); and the embargo created is for not allowing brought forward speculation loss and not for ordinary business loss.
3. On the facts, and in circumstances of the case, and in law, learned Commissioner of Income-tax (Appeal) erred in upholding action of the Assessing Officer in making

the addition of Rs. 413,724 alleging difference in business income without appreciating the reconciliation filed by the Assessee.

3. Brief facts of the case are that the AO in this case noted that assessee is having business income from share transaction business. He made following disallowances with under noted observation:-

Carry forward of losses.

From the computation it is noticed that assessee has taken set off of Rs 17,41,216/- but actually he can take the set off of Rs. 16,49,963/- as speculation loss can not be set off against business income. Hence the difference in the amount is added to the total income of the assessee. Hence total business income becomes Rs. 1,59,667/- When it was brought to the notice of the assessee's AR he has accepted the mistake and offered the difference amount for taxations,

Actual income from shares and securities.

From the computation it is noticed that assessee has shown in the P&L account the profit from the share transactions Rs. 18,44,383/- but when notice u/s 142(1) was issued to the assessee . The assessee's AR has submitted the details of securities buy and sell and net amount of Cash segment Rs. 20,72,540/-and F&O segment Rs. 1,85,567/- When assessee was asked why there is difference in the profit received during the year assessee's AR vide letter dated 20/11/2017 has stated that from this the STT paid has not been deducted and assessee will get this benefit. Further enquired about the Derivative segment he replied that this is net amount STT has already reduced from it but cash segment is not net amount . This contention of the assessee is not correct as the amount shown is totally net income and assessee has not clearly analyze its income . If this is the business expenditure why the assessee has not claimed in the P&L account , the reason for not mention it in the P&L account is the assessee has taken net value of the profit of share transaction and the net amount of share transactions is Rs. 22,58,107/- and not Rs. 18,44,383/- Accordingly the show cause was issued to the assessee why the amount of difference should not be added total income of the assessee. In reply assessee's AR has reconciled its P&L Account and claimed STT as expenditure. But this assessee's contention can not be accepted for there is difference in the amount of net income which is now added to the total income of the assessee.

4. Upon assessee's appeal Ld.CIT(A) in a laconic and non speaking order dismissed the appeal holding as under:-

The case was posted for hearing on 15.11.2019 for which no response nor filed any adjournment letter. Hence the appeal filed by the appellant is disposed based on the material available on record, The A.O. disallowed the set off brought forward business loss claimed at Rs.91,253/- against the current years speculative profits. Similarly the A.O. made addition of Rs.4,13,724/- being the difference in business income. The A.O. considered the b/f business loss which can be set off against, the current business profit not being speculative business profits. Thus-the A.O assessed total business income at Rs.1,59,667/-after disallowing the b/f business loss at Rs.91,553/- . The contention of the appellant that section 72 of the I.T. Act which a/lows set off of b/f business loss against income from any business including speculative business is not acceptable in the absence of any details. Hence the *addition* made by the A.O. is hereby confirmed.

Similarly, the addition made of Rs.4,13,724/- being the difference in business income arrived by the A.O. is also confirmed as the appellant could not file any details and the reconciliation warranting the A.O. to make the above said addition which arose on account of net share transactions at Rs.22,58,104/- and the share transaction reflected in the *P&L* a/c, by the appellant at Rs.18,44,383/-, Hence the addition made by the A.O. is hereby confirmed dismissing all the grounds of appeal filed by the appellant

5. Against the above order, assessee is in appeal before us.

6. I have heard the Ld. DR and perused the record. As regards, the disallowance of set off claimed by the assessee, I note that AO has not given any cogent reason or referred to the necessary provision of law as to why the claim by the assessee is not allowable.

The Ld.CIT(A) again has copied the order of AO not spelling out as to why and what violation of section 72 of the Act, the claim is being dismissed. As regards, the addition of Rs. 4,13,724/-, again Ld.CIT(A) has passed a non speaking order. The Ld.CIT(A) mention that assessee could not file any documents and the reconciliation warranting, the AO to make the addition. But this is totally wrong appreciation as AO has mentioned that the reconciliation has been given by the assessee, but it is not acceptable.

7. Thus, Ld.CIT(A) has passed the order without application of mind. It is settled law that even administrative orders have to be construct with rule of natural justice. The order by Ld.CIT(A) is on the cusp of abandonment of statutory duty cast upon him as the first appellant authority. This is more palpable by a reading of ground No.1 of the assesee as above. Accordingly, I remit the issue to the file of Ld.CIT(A) to pass a proper speaking order after giving the assesee proper opportunity of being heard.

8. In the result, this appeal stands allowed for statistical purpose.

Pronounced in the open court on 20.10.2021.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 20 /10/2021
Thirumalesh, Sr.PS

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,
(Assistant Registrar)
ITAT, Mumbai