

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ ।
IN THE INCOME TAX APPELLATE TRIBUNAL,
" C " BENCH, AHMEDABAD
BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER

अपील सं./ITA No.1580/Ahd/2013
निर्धारण वर्ष/Asstt. Year: 2008-2009

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| Ghanshyam K. Kevadia E-1, Neha Apartment, Sunlight Complex, Adajan Road, Surat PAN :ACRPK1208P | Vs. | Income Tax Officer, Ward-3(2), Surat |
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| (Applicant) | (Responent) |
|---------------|---------------------------|
| Assessee by : | Shri Rasesh Shah, AR |
| Revenue by : | Shri Prasoon Kabra, Sr.DR |

सुनवाई की तारीख/Date of Hearing : 13/04/2017
घोषणा की तारीख /Date of Pronouncement: 18/04/2017

आदेश/O R D E R

PER Manish Borad, Accountant Member

This appeal by Assessee for A.Y.2008-09 is directed against the order of Learned Commissioner of Income Tax(Appeals)-IV, Surat (in short, Ld.CIT(A)) vide appeal no.CAS-IV/II/247/10-11 arising out of order u/s.143(3) of the Income Tax Act,1961 (herein after referred to as 'Act') framed on 29/12/2010 by Income Tax Officer, Ward-3(2), Surat.

2. The assessee has raised following grounds of appeal:

1. *On the facts and in circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of assessing officer in not allowing deduction/set off of business expenses & business loss aggregating to Rs.14.33 lacs against the addition of Rs.15,00,000/- made by him arising from the same bank account.*

2. *On the facts and in circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of assessing officer in treating the income from construction activity (Rs. 15,00,000) as deemed income u/s 69 instead of treating it as business income.*

3. *Without prejudice to the above, on the facts and in circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of assessing officer in treating the addition (Rs. 15,00,000) u/s 69 as headless income instead of considering it as income from other sources and allowing the set-off as per section 71.*

4. *It is therefore prayed that the above addition made by Assessing Officer and confirmed by Commissioner of Income-tax (Appeals) may please be deleted.*

3. Briefly stated facts as culled out from the records are that the assessee is an individual engaged in the business of Civil Construction. Return of income for A.Y. 2008-2009 was filed on 29/12/2008, declaring total income at Rs.1,52,490/-. Case was picked up for scrutiny assessment and notice u/s.143(2) of the Act followed by notice u/s.142(1) of the Act along with questionnaire was issued and duly served upon the assessee. Ld.Counsel for the assessee, attended and furnished details as called for from time to time. During the course of assessment proceedings Learned Assessing Officer (In short 'AO') observed that assessee has not disclosed bank account held with ICICI Bank bearing account number.19301509586. As per annual information return submitted by ICICI Bank, Anand Mahal Road, Surat, with reference to above stated bank account number, it was revealed that a total credit entries of Rs.27,03,304/- appeared in the alleged bank statement which, *interalia*, included cash deposit of Rs,12,93,500/- . During the assessment proceedings assessee accepted to have not disclosed the transactions appearing in the alleged bank statement in the regular books of accounts and submitted that apart from main business of construction, assessee was also involved in business of purchase/sale of equity shares and also entering transactions in Future & Option market derivatives and equity shares. Ld.AO before concluding the assessment

intended to add Rs.15 Lacs as unexplained income u/s.69 of the Act to which assessee requested for setting off loss of Rs.14.33 Lacs incurred in the business of purchase/sale of shares (F&O). However, Ld.AO did not accepted assessee's contentions and assessed income at Rs.16,52,490/-

4. Aggrieved assessee went in appeal before Ld.CIT(A) but could not succeed as Ld.CIT(A) confirmed the addition of Rs.15 Lacs u/s.69C of the Act and also upheld the action of Ld.AO of not allowing set off of business loss of Rs.14.33 Lacs.

5. Aggrieved assessee is now in appeal before Tribunal. Ld.Counsel for the assessee reiterated the submission made before lower authorities and further relied on the judgment of Hon'ble Jurisdictional High Court in the case of *CIT-II Vs. Shilpa Dyeing and Printing Mills (P.) Ltd (2013) 85 CCH 0494* pronounced on 04/04/2013 and submitted that if addition is made on the basis of alleged undisclosed bank statement than the assessee is also entitled to set off of losses incurred from transactions appearing in the alleged bank statement. He further added that assessee has incurred loss of Rs.14.33 Lacs while entering into transactions of purchase/sale of shares in Future & Option market through National Stock Exchange and which is verifiable from the final ledger from Angle Capital and Debt Market Ltd. and loss from transactions entered on Bombay Stock Exchange through Angel Broking Limited. Ld.Counsel however, added that Ld. AO has not disputed quantum of loss of Rs.14.33 Lacs and he has merely not allowed set off against the alleged undisclosed income u/s.71(1) of the Act.

6. On the other hand Learned Departmental Representatives (in short 'Ld.DR') vehemently argued order of lower authorities.

7. We have heard the rival contentions and perused the record placed before us. The Solitary grievance of the assessee in this appeal is against the order of Ld.CIT(A) upholding the action of Ld.AO of not allowing set off of business loss against undisclosed income u/s.69 of the Act. We observe that undisputedly, assessee has not disclosed the alleged bank account number 019301509586 held with ICICI Bank, Amar Mahal Surat, in his regular books of accounts. In this alleged bank statement total of credit side was Rs.27,03,304/- which also included cash deposit of Rs.12,93,500/-

7.1 Ld.AO made an estimated addition of Rs.15 Lacs u/s.69 of the Act as unexplained investment in the alleged bank statement. We further observe that in the alleged bank statement undisputedly, there were various entries relating to payments made to Angle Capital and Debt Market Ltd. and Angel Broking Limited towards losses incurred in Future & Option market entered on portal of National Stock Exchange and Bombay Stock Exchange.

7.2 We further notice that assessee has supplied all necessary details in support of loss of Rs.14.33 Lacs incurred in the business of equity shares (F&O) including Future & Option contract notes, complete ledger accounts depicting loss on sale of shares and other details before both the lower authorities. Ld. AO has not challenged the correctness of these details and has only denied the set off of loss from trading in Futures and Option, derivatives and shares against unexplained income u/s.69 of the Act and this action was upheld by Ld.CIT(A).

8. Now, moot question before us is whether business loss can be set off against the unexplained income u/s.69 of the Act. As far as loss of Rs.14.33

Lacs is concerned it has been incurred from entering into eligible transactions of trading in derivatives, Futures & Option and equity shares referred in Securities Contract Regulation Act, 1956 carried through recognize stock exchange which fall within the Proviso of section 43(5) of the Income Tax Act being non speculative in nature. However, unexplained income u/s.69 of the Act is taxable under the head income from other sources u/s.56(1) of the Act.

8.1 Now, we move on to the provisions of section 71(1) of the Act relating to set off of loss from one head against income from another head. Section 71(1) of the Act contemplates that *“where in respect of any assessment year the net result of computation under any head of income, other than “Capital Gains” is a loss and the assessee has no income under the head “Capital Gains”, he shall subject to the provisions of this chapter, be entitled to have the amount of such loss set off against his income, if any, assessable for that assessment under any other head.”* Applying the facts of the case on the above provision of section 71(1) of the Act we notice that assessee has a positive income of Rs.15 Lacs under the head income from other sources and business loss of Rs.14.35 Lacs other than the business income declared in the regular return of income which paves way for set off of business loss against income from other sources.

9. We are therefore of the view that assessee is entitled to set off of business loss of Rs.14.33 Lacs against unexplained income u/s.69 of the Act as per provisions u/s.71(1) of the Act and also as the alleged income and alleged loss both emanates from the same undisclosed alleged bank statement and therefore the net income from the transactions appearing in alleged bank statement should have been taxed. Our view find support from the judgment of Hon’ble Jurisdictional High Court in the case of *CIT-II Vs. Shilpa Dyeing & Printing*

Mills Pvt. Ltd (Supra) wherein Hon'ble Court has held that income declared in the course of survey can be set off from current losses and it is further held that section 71 of the Act permits the assessee to set off losses other than that of capital gains against income from other head.

10. Respectfully, following the judgment of Hon'ble Jurisdictional High Court in the case of *CIT-II Vs. Shilpa Dyeing & Printing Mills Pvt. Ltd (Supra)* and in view of the discussion made above, we are of the considered view that Ld.AO should have allowed set off of business loss of 14.33 Lacs against the addition of unexplained income u/s.69 of the Act at Rs.15Lacs.

11. In the result appeal of the assessee is allowed.

Order pronounced in the Court on 18th April, 2017 at Ahmedabad.

Sd/-

(S.S.GODARA)
JUDICIAL MEMBER

Sd/

(MANISH BORAD)
ACCOUNTANT MEMBER

True Copy

Ahmedabad; Dated 18/04/2017

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आदेश की प्रतिलिपि श्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण / DR, ITAT,
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad