

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA , JUDICIAL MEMBER
&
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No. 473/MUM/2024
(Assessment Year : 2015-16)**

| | | |
|---|-----|--|
| Krimesh Ramesh Divecha 503, Ashara, R.C. Patel Road, Near Pandya Hospital, Borivali(W), Mumbai 400092. | Vs. | Deputy Commissioner of Income-tax, 34(2) (Presently-Dy. Commissioner of Income-tax, 42(1)(1), Room no. 420, 4 th Floor, Kautilya Bhavan, Mumbai 400051. |
| PAN/GIR No. ACVPD8792R | | |
| (Appellant) | .. | (Respondent) |

| | |
|------------------------------|----------------------|
| Assessee by | Shri. Devang Divecha |
| Revenue by | Shri. P.D. Chougule |
| Date of Hearing | 22/05/2024 |
| Date of Pronouncement | 29/05/2024 |

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 07/12/2023 passed by NFAC, Delhi for the quantum of assessment passed u/s.143(3) for the A.Y.2015-16.

2. In the aforesaid case the assessee had declared income from transaction in derivatives (futures) transactions

declaring total turnover of Rs.42,61,003/- and offered income u/s.44AD @8% during the A.Y.2015-16. The ld. AO noted that there were some 15 page of the system information pertaining to the shares transaction under the assessee's PAN which works out to Rs.5,24,27,992/- and based on such information on the system, he has applied 8% and worked out the profit of Rs.41,94,239/-.

3. The ld. Counsel for the assessee submitted that at no point of time the department had shared these details for the alleged share transaction of Rs.5,24,27,992/-. However, Ld. AO without elaborating or confronting the details had made the addition in the following manner:-

3. *On perusal of the unsigned submission of the assessee dated 13.08.2016, placed on record, the assessee among various submissions has also stated that the assessee has chose to calculate the profit @ 8% of the turnover u/s.44AD of the I.T. Act, 1961 and hence no books of accounts were maintained. Summary of the futures transaction of profit @ 8% is as below for F.Y.2014-15.*

| <i>Broker</i> | <i>Turnover</i> | <i>Profit@8%</i> |
|--------------------------|---------------------|--------------------|
| <i>ICICI Direct.com</i> | <i>35,10,669.25</i> | <i>2,80,853.54</i> |
| <i>Sharekhan</i> | <i>2,29,585.75</i> | <i>18,366.86</i> |
| <i>South Asian stock</i> | <i>5,20,748.00</i> | <i>41,659.84</i> |
| Total | 42,61,003.00 | 3,40,880.24 |

4. *The assessee's individual transaction statement available on the system, contradicts the assessee's submission relevant to the current year. The 15 pages of the system information pertaining to the shares transaction as available on the system under the assessee's PAN works out to Rs.5,24,27,992/ and*

based on the assessee's submission to work out profit @ 8% u/s.44AD, the same comes to Rs.41,94,239/-. The assessee's working as reported in the order sheet notings dated 21.11.2017 and submission dated 13.08.2016 is Rs.42,61,003/ on which profit @ 8% is shown at Rs.3,40,880.24. The profit as per transaction recorded in the stock exchange works out to Rs.41,94,239/-. Thus, based on the facts and admission of the assessee/AR the difference of Rs.38,53,359/- is added to the total income of the assessee u/s. 68 of the I.T.Act and penalty proceedings u/s.271(1)(c) is initiated. The assessee's AR has neither filed any computation of income wherein the total income of the assessee is recomputed based on details/ material available on record:-

| | |
|--|----------------------------|
| Total income as per return filed on 07.09.2015 | Rs.26,52,806 |
| Add. Difference on account of 8% u/s.44AD | Rs. <u>38,53,359</u> |
| Total assessed income | Rs.65,06,165 |
| Rounded off u/s.288A to | <u>Rs.65,06,170</u> |

4. Even before the ld. CIT(A) also, these details of alleged transactions have not been verified and ld. CIT(A) has simply held that profit is estimated @50% on the total turnover declared by the assessee i.e.42,61,003/- without assigning any reasons. The relevant observation of the ld. CIT(A) reads as under:-

“5.5 I have carefully considered the facts of the case, assessment order and submission made by the appellant. The assessee derives income from Salaries. The assessee has shown loss under the head Income from House Property. The business income has been set off against the losses of previous year.

As per the information available on the system under the assessee's PAN, the share transactions works out to

Rs.5,24,27,992/- while the assessee has declared the profit @ 8% that comes out to Rs3,40,880/-

In the return of income, the business income is shown as under

| | | | | | |
|-----------------|----|--|-----------------------|-----|--------|
| No Account Case | 53 | <i>In a case where regular books of account of business or profession are not maintained, furnish the following information for previous year 2014-15 in respect of business or profession</i> | | | |
| | | 53a | <i>Gross receipts</i> | 53a | 0 |
| | | 53b | <i>Gross profit</i> | 53b | 340880 |
| | | 53c | <i>Expenses</i> | 53c | 0 |
| | | 53d | <i>Net profit</i> | 53d | 340880 |

It has been revealed that the gross receipts have been declared as NIL.

Moreover, the assessee couldn't reconcile the total transactions of Rs.5,24,27,992/- during the assessment proceedings as well as during the appellate proceedings. Considering the above discrepancies, it would be reasonable to estimate the profit @ 50% of the total turnover i.e. Rs.42,61,003/- and that comes out to Rs.21,30,501.5. So the addition of Rs. 17,89,621.26 is confirmed and the appellant get relief of Rs.20,63,738/-.

6. In the result, the appeal is partly allowed.”

5. After considering the aforesaid finding given in the impugned order, first of all, we find that ld. AO has made addition without sharing any information about the alleged transaction available on the system. The ld. CIT(A) on the other hand had accepted the total turnover of Rs.42,61,003/- as disclosed by the assessee, however, without assigning any reason he has estimated profit rate of 50%. If the turnover has been accepted by the ld. CIT(A), then there is no justification of applying such a huge profit rate of 50% and

since assessee has opted for presumptive taxation u/s.44AD, then 8% as provided in the statute is liable to be accepted.

6. In the result, appeal of the assessee is allowed.

Order pronounced on 29th May, 2024.

Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER

Mumbai; Dated 29/05/2024
Karuna, Sr. Ps.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai