

**IN THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN BENCH, DEHRADUN**

Before Dr. B. R. R. Kumar, Accountant Member

Sh. Yogesh Kumar US, Judicial Member

ITA No. 06/DDN/2019 : Asstt. Year: 2015-16

Rajesh Mittal, C/o Mr. Sandeep Sapra, Adv., C-763, New Friends Colony, New Delhi-110025	Vs	Income Tax Officer, Ward-1(2)(2), Dehradun
(APPELLANT)		(RESPONDENT)
PAN No. ABNPM2585Q		

Assessee by : Sh. Sandeep Sapra, Adv.

Revenue by : Smt. Poonam Sharma, Sr. DR

Date of Hearing: 27.04.2022

Date of Pronouncement: 29.04.2022

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A), Dehradun dated 06.03.2019.

2. Following grounds have been raised by the assessee:

"1. That the AO erred on facts and in law in computing total turnover at Rs.2,56,64,511 and then computing net profit @8% amounting to Rs.20,53,160 on such turnover under section 44AD of I.T. Act as against short term capital gain declared on shares and F&O transactions by completely ignoring the tax audit report filed during the course of assessment proceedings.

2. That the AO erred on facts and in law in computing the net profit at Rs.20,53,160 under section 44AD on account of F&O transaction instead of assessing the net profit at Rs.2,41,131 on account of F&O transactions as declared/reflected in the audited P&L A/c read with tax audit report filed during the course of assessment proceedings.

3. That the AO erred on facts and in law in computing the net profit at Rs.20,53 ,160 under section 44AD on account of shares instead of assessing the same at Rs.56 ,147 under the head 'short term capital gain' as declared by the Appellant.

4. That the Ld. CIT(A) erred on facts and in law in passing an ex- parte appellate order as no notices off hearing were served on the communication address as mentioned in Form 35 thereby violating the principles of natural justice.

5. That the Ld. CIT(A) erred on facts and in law in passing an ex- parte appellate order as notices of hearing appear to have been sent by email despite the fact that in Form 35, it was duly mentioned that notices of hearing should not be sent through email.”

3. The only issue pertains to application of provisions u/s 44AD of the Income Tax Act, 1961. The assessee earned income from sale & purchase of derivatives which the AO held that the same should be treated as business income. The assessee has also incurred losses in the derivatives trading which have been duly filed before the AO. The AO held that the tax Audit Report has not been filed before the due date and ignored the Audit Report filed during the course of assessment proceedings. While different provisions govern the delay in filing of tax Audit Report, the action of the Assessing Officer not to consider the Audit Report while concluding the assessment and wrongly invoking the provisions of Section 44AD cannot be sustained.

4. Hence, the matter is remanded back to the file of the Assessing Officer to frame the assessment *de novo* considering the tax Audit Report. The assessee shall comply to the notices of the revenue authorities promptly without seeking any unnecessary adjournments.

5. In the result, the appeal of the assessee is allowed for statistical purpose.

Order Pronounced in the Open Court on 29/04/2022.

Sd/-

(Yogesh Kumar US)
Judicial Member

Dated: 29/04/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR