



IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

ITA no.5392/Mum./2018
(Assessment Year : 2014-15)

Shri Manoj Khetan
Office no.407, 4th Floor
155, N.D. Street, Mumbai 400 003
PAN – AAKPK4077D

..... Appellant

v/s

Income Tax Officer
Ward-17(2)(3), Mumbai

..... Respondent

Assessee by : None
Revenue by : Smt. Jyothi Lakshmi Nayak

Date of Hearing – 09.10.2019

Date of Order – 25.10.2019

ORDER

PER SAKTIJIT DEY. J.M.

Captioned appeal by the assessee is against order dated 7th May 2018, passed by the learned Commissioner of Income Tax (Appeals)-57, Mumbai, for the assessment year 2014-15.

2. Brief facts are, the assessee is an individual. For the assessment year under dispute, the assessee filed his return of income on 25th September 2014, declaring total income of ₹ 10,62,000. During the assessment proceedings, the Assessing Officer noticing that the

assessee has claimed exemption in respect of long term capital gain from sale of shares called upon the assessee to furnish necessary details. After verifying the details furnished by the assessee, the Assessing Officer made further enquires with regard to the share transaction and found that the investigation Wing of the Department at Kolkata had undertaken investigation into various penny stocks and found that Matra Kaushal Enterprises Ltd., the shares whereof were claimed to have been sold by the assessee and derived long term capital gain, is one of the penny stock company which provided bogus capital gain entries to various beneficiaries. Thus, on the basis of such information, the Assessing Officer concluded that assessee's claim of long term capital gain from sale of shares is bogus and treated such income as unexplained cash credit under section 68 of the Act and added back to the income of the assessee. In addition, the Assessing Officer estimated commission paid for availing accommodation entries for long term capital gain at ₹ 46,335, as unexplained expenditure under section 69C of the Act and added back to the income of the assessee. Being aggrieved with the aforesaid additions, assessee preferred appeal before the first appellate authority.

3. In ground no.1, the assessee has challenged the validity of the ex-parte order passed by the learned Commissioner (Appeals) without

affording reasonable opportunity of being heard. Whereas, grounds no.2, 3 and 4 are on the merits of the addition.

4. When the appeal was called for hearing, no one was present on behalf of the assessee to represent the case. Even, the assessee has not filed any application seeking adjournment. In view of the aforesaid, we proceed to dispose off the appeal ex-parte qua the assessee after hearing the learned Departmental Representative and on the basis of material available on record.

5. We have heard the learned Departmental Representative and perused the material on record. Undisputedly, the appeal filed by the assessee before the learned Commissioner (Appeals) was decided ex-parte. Though, learned Commissioner (Appeals) has observed that the notice of hearing was issued to the assessee twice, however, it is not clear whether such notices were actually served on the assessee. Further, though, learned Commissioner (Appeals) has observed that the appeal has been decided on merit, however, the impugned order of learned Commissioner (Appeals) is a cryptic and non-speaking order. To put it simply, learned Commissioner (Appeals) has decided the appeal in a summary manner. The learned Departmental Representative also fairly submitted that the impugned order of learned Commissioner (Appeals) is a non-speaking order. In view of

the aforesaid, we are inclined to set aside the impugned order of learned Commissioner (Appeals) and restore the issue to her file for de novo adjudication after providing a reasonable opportunity of being heard to the assessee. We must make it clear at this stage that we have not expressed any opinion with regard to the merits of the addition made by the Assessing Officer and the learned Commissioner (Appeals) is at liberty to decide them on merit after considering the submissions of the assessee as well as the materials available on record. At the same time, we also direct the assessee to respond to the hearing notice to be issued by learned Commissioner (Appeals) and appear before her to represent the case in a proper and effective manner. With the aforesaid observations, grounds are allowed for statistical purposes.

6. In the result, appeal is allowed for statistical purposes.

Order pronounced in the open Court on 25.10.2019

Sd/-
MANOJ KUMAR AGGARWAL
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 25.10.2019

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai