

आयकर अपीलीय अधिकरण, 'डी' न्याय पीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH, CHENNAI
श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE-PRESIDENT
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.No.2743/Chny/2019

(निर्धारणवर्ष / Assessment Year: 2011-12)

Mangilal Gautamchand Rakhecha (HUF) L.Nahata & Co., 120, Nyniappa Naicken Street, Park Town, Chennai-600 003. PAN:AAJHM 9144C (अपीलार्थी/Appellant)	V s	The Income Tax Officer, Non-Corporate Ward-9(2) Chennai-34. (प्रत्यर्थी/Respondent)
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अपीलार्थी की ओरसे/ Appellant by	:	None
प्रत्यर्थी की ओरसे/Respondent by	:	Mr. AR V.Sreenivasan,Addl.CIT

सुनवाई की तारीख/Date of hearing	:	26.10.2020
घोषणा की तारीख /Date of Pronouncement	:	26.10.2020

आदेश / ORDER

PER G.MANJUNATHA, ACCOUNTANT MEMBER:

This appeal is filed by the assessee is directed against the order of the learned Commissioner of Income Tax (Appeals)-10, Chennai dated 05.08.2019 and pertains to the assessment year 2011-12.

2. The assessee has raised the following grounds of appeal:-

“ 1. The order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case and is opposed to the principles of equity, natural justice and fair play.

2 Learned Commissioner of Income Tax [Appeals] ought to have **FIXED AN HEARING DATE**, after receiving the adjournment request on 31.05.2019, before passing an order on 05.08.2019. Thus appellant was denied natural justice.

3. *Learned Commissioner of Income-Tax [Appeals] ought to have given the speaking order for each ground raised in the appeal, instead of blanketly covering all the issues under "PENNY STOCK"*
 - A. *On the issue of jurisdiction, taken in ground no.2*
 - B. *CIT-A has took MARGIN MONEY as entire investment / purchase price, taken in ground no. 3*
 - C. *On the issue that this is not a Long Term Capital Gain and only trading profit, taken in ground no. 3 &4*
4. *Learned Commissioner of Income-Tax [Appeals] ought to have noticed that learned Assessing Officer has not formed an opinion independently. The information available and opinion formed by previous Income Tax Officer at Malegaon cannot give jurisdiction to current Assessing Officer.*
5. *Learned Commissioner of Income- Tax [Appeals] ought to have noticed that learned Assessing Officer has mistaken a transaction which was part of the business of appellant to be Long Term Capital Gain.*
6. *Learned Commissioner of Income- Tax [Appeals] ought to have noticed that learned Assessing Officer should have given precise reason for addition instead of printing some irrelevant information such as*
 - i) *share prices from Jan 10 to Oct 12,*
 - ii) *Balance Sheet data **FOR FIRST 5 YEARS** and Profit and Loss data **FOR NEXT 5 YEARS.***
7. *Interest u/s 234A, 234B, 234C is also disputed in this appeal."*

3. Brief facts of the case are that the assessee (HUF) filed its return of income for the assessment year 2010-11 on 29.07.2011 declaring income of ₹ 4,53,350/- and the same was processed u/s.143(1) of the Income Tax Act, 1961 (hereinafter referred to "the Act"). The case was reopened u/s.147 of the Act on the basis of information received from DDIT(inv) Unit-IV)1), Thane, that assessee has traded in the

shares of M/s. KCL Infra Projects Ltd., a penny stock company and accordingly notice under section 148 dated 28.03.2018 was issued and served on the assessee. In response, the assessee filed return of income on 27.04.2018 admitting total income of ₹ 4,53,950/-. The case was selected for scrutiny and assessment has been completed under section 143(3) read with 147 of the Act determining the total income at ₹ 14,88,210/- by making addition of ₹ 10,34,860/- towards the amount received from sale of shares of M/s. KCL Infra Projects Ltd. on the ground that the assessee has manipulated sale of shares within a short span of time in collusion with the brokers to bring the book exempt profit on sale of shares.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the CIT(A), assessee neither appeared nor filed any details, which is evident from the fact that the CIT(A) disposed of the appeal filed by the assessee ex-parte on the ground that despite various dates of hearing fixed for disposal of the appeal, but the assessee has not appeared and filed any details.

Aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

5. None appeared for the assessee. We have heard the learned D.R., perused the material available on record and gone through the orders of authorities below. We find that the learned CIT(A) has disposed off the appeal filed by the assessee ex-parte for non-prosecution on the ground that despite various dates of hearing were fixed on 29.01.2019, 20.05.2019 and 31.05.2019, but the assessee neither appeared nor filed any details to justify its case. No doubt, it is the obligation of the person who files appeal, go before the authorities, when the appeal is called for hearing to justify its case. In case, the assessee did not choose to appear before the authorities, then the appellate authority is left with no option but to dispose off the appeal on the basis of materials available on record, but the said appeal needs to be disposed off on merits on the basis of materials available on record. In this case, on perusal of the order of the learned CIT(A), we find that the learned CIT(A) has disposed off the appeal for non-appearance without discussing the issues involved in the appeal on merits. Therefore, we are of the considered opinion

that the issue needs to go back to the file of the learned CIT(A) to give one more opportunity to the assessee to file necessary evidence in support of its case. Hence, we set aside the impugned order of CIT(A) and remit the matter back to the file of learned CIT(A) and direct him to reconsider the issues after providing adequate opportunity of hearing to the assessee. Needless to say, the assessee shall go before the CIT(A) without seeking any adjournment unless or otherwise warrants under extreme circumstances.

6. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 26th October, 2020

Sd/-
(महावीर सिंह)
(Mahavir Singh)
उपाध्यक्ष / Vice-President

Sd/-
(जी.मंजुनाथ)
(G. Manjunatha)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 26th October, 2020

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आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.