

IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH "C-SMC" KOLKATA

Before Shri Sanjay Garg, Judicial Member

आयकर अपील सं.य/  
**ITA No. 1132/Kol/2019**  
Assessment Year:2014-15

M/s.Mastery Marketing Pvt. Ltd 117 Cotton Street, Ground Fl., Kolkata-700 007.. [PAN No. AAGCM5438B	बनाम/ V/s.	I.T.O, Ward 14(2), Kolkata, Aaykar Bhawan Poorva,10 <sup>th</sup> Fl., Room No. 3, 110 Shantipally, Kolkata- 700 107.
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

**Hearing through video Conferencing**

अपीलार्थी की ओर से/By Appellant	None appeared
प्रत्यर्थी की ओर से/By Respondent	Mr. Jayanta Khanra, JCIT, Sr.DR
सुनवाई की तारीख/Date of Hearing	09-02-2021
घोषणा की तारीख/Date of Pronouncement	09-02-2021

**आदेश /O R D E R**

The present appeal has been preferred by the assessee against the order dated 01/02/2019 of the Commissioner of Income-tax (Appeals), Kolkata [hereinafter referred to as 'CIT(A)'].

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

1. For that in the facts and circumstances of the case the appellate order passed was in violation of principles of natural justice hence is bad in law and be quashed.
2. For that in the facts and circumstance the Learned Commissioner of Income Tax Appeals erred in upholding the addition of Rs. 19,59,736/- on account of trading loss on penny shares. The addition is not called for and hence the same be deleted.
3. For that in the facts and circumstance of this case the material based on which the Ld. Assessment Officer passed the assessment order are

*collected behind the back of the assessee and which were not provided during the course of assessment proceeding, thus material should be excluded/ignore for the purpose of this case.*

*4. For that in the facts and circumstances of the case the statement of third parties on which the Ld. Assessment Officer relied during the course of assessment proceeding were not subjected to cross examination for the assessee, thus the third party statement relied upon should be excluded/ignored for the purpose of this case.*

*5. For that statement given in survey proceedings is not evidence under the provision of the Income Tax Act 1961 and hence the same be ignored.*

*6. For that the learned CIT(Appeals) erred in confirming the interest u/s. 234A/B/C the same was unjustified and hence the same be recalculated as per the applicable law.*

*7. The appellant craves leave to produce additional evidences in terms of Rule 29 of the Income Tax (Appellate Tribunal) Rules 1963.*

*8. The appellant craves leave to press new, additional grounds of appeal or modify, withdraw any of the above grounds at the time of hearing of the appeal.*

3. No one has put in appearance despite notice. Therefore, I proceed to decide the appeal on merits after considering the relevant record and after hearing the Ld. DR.

4. After hearing the Ld. DR and going through the record, I find that the impugned order of the Ld. CIT(A) is an *ex parte* order. I find that the assessee in the first ground of appeal pleaded that the appellate order of the Ld. CIT(A) is in violation of principles of natural justice. In the remaining grounds of appeal, the assessee's pleadings are that the impugned additions have been made by the Ld. Assessing Officer ( in short, the 'Ld. AO') on the basis of certain evidences, which were neither confronted to the assessee nor the assessee was given an opportunity to produce evidences to rebut the alleged evidences. That the alleged evidences were collected at the back of the assessee and the same were not provided to the assessee during the course of assessment proceedings. The Ld. AO has relied upon the statement of the third party whereas the assessee has not been given any opportunity for cross examination of third party, on the statement of whom the AO has relied upon. The Ld. DR has relied upon the findings of the lower authorities, but could not rebut the above contentions of the assessee. None of the issues involved in this appeal have been decided on merits by the Ld. CIT(A). Considering the principles of natural justice, the impugned order of the Ld. CIT(A) is set aside and the matter

involved in the present appeal is restored to the file of the Ld. AO for making the assessment afresh. Needless to say that the Ld.AO will provide proper and adequate opportunity to the assessee to present its case and will also consider the submissions including the request of assessee for cross examination of the third party on whose statement the Ld. AO has placed his reliance and thereafter, will decide the issue(s) afresh in accordance with law.

The appeal of the assessee is treated as allowed for statistical purpose.

Order pronounced in open court at the close of the hearing on  
Tuesday, 9<sup>th</sup> February, 2021.

Sd/-  
(Sanjay Garg)  
Judicial Member

Kolkata,  
\*\*PP/Sr.PS

दिनांक:- 09/02/2021 कोलकाता

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant-M/s. Mastery Marketing Pvt. Ltd 117 Cotton St., Gr. Fl., Kolkata-700 007.
2. प्रत्यर्थी/Respondent-I.T.O., 10(2), Aaykar Bhawan, P-7 Chowringhee Sq., Kolkata-700 069.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/ By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,कोलकाता ।