

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri Shamim Yahya, Accountant Member

I.T.A. Nos. 271 & 1834/Mum/2020
(Assessment Years 2013-14 & 2014-15)

Bharat Bagri(HUF) 1207A, PJTower, Dalal Street, Fort, Mumbai-400 001 PAN : AADHB8488A (Appellant)	Vs.	ITO-17(1)(2) Kautilya Bhavan Bandra(E) Mumbai-400 051 (Respondent)
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Assessee by	None
Department by	Anil Gupta
Date of Hearing	15.11.2021
Date of Pronouncement	10.01.2022

ORDER

Per Shri Shamim Yahya (AM) :-

These appeals by the assessee are directed against the order of learned Commissioner of Income Tax (Appeals)-28, dated 10.12.2019 pertain to the respective assessment years as above

2. Since the grounds and facts are identical and the appeals were heard together, these have been consolidated and disposed of by this common order.

3. We are referring to grounds of appeal from AY 2013-14:-

1. On the facts and in the circumstances of the case and in law the Hon'ble CIT(A) erred in upholding the reopening of completed assessment made by the Ld AO by issuing notice u/s. 148 of the IT Act 1961 and the reasons assigned for doing so are wrong and contrary to the provision of the Income Tax Act and rules made there under

2. On the facts and in the circumstances of the case and in law the Hon'ble CIT(A) erred in upholding the addition of Rs. 2,09,972/- made by the Ld AO on account of

sale proceeds received on sale of share listed on the floor of stock exchange as income from other sources without considering the corresponding cost of purchase of the said shares and the reason assigned for doing so are wrong and contrary to the provision of Income Tax Act and rules made there under

3. On the facts and in the circumstances of the case and in law the Hon'ble CIT(A) erred in upholding the penalty u/s. 271(1)(c) levied by the Ld AO and the reasons assigned for doing so are wrong and contrary to the provision of the Income Tax Act and rules made there under.

4. In this case pursuant to reopening on the information that assessee has indulged in bogus long term penny/transaction, assessment was framed by the AO of Rs. 2,07,972/- on sale of shares as income from other sources. Assessee challenged both the issues of reopening as well as merits before the Ld.CIT(A). Ld.CIT(A) in an ex-parte order held as under:-

“ Further as noted and discussed above, due to complete non-attendance on part of the appellant, no submissions were filed and hence, none are on record. Moreover, it is noted that the Statement of Facts (SOF), does not in any mode or manner further the case of the appellant against the addition made by the AO by holding that the transactions of the appellant in relation to the penny stock M/s. DMC International Ltd., are held to be bogus/non-genuine and assessed as income from other sources. Consequently, there is nothing on record which would render the additions made by the AO, liable to be interfered with. As such, the findings of the AO remain uncontroverted in the presented proceeding”

5. Against the above order, assessee is in appeal before the ITAT

6. I have heard the Ld. DR and perused the records. Upon careful consideration, I note that Ld.CIT(A) has passed ex-parte order, wherein, he has not decided all the grounds of appeal before him. He has not adjudicated the issue of reopening challenged before him. It is settled law that even administrative orders have to be consistent with rules of nature justice. I note that assessee has challenged before ITAT also that Ld.CIT(A) has not adjudicated the issue of reopening. Hence, I deem it appropriate to remit the issue of reopening to the file of Ld.CIT(A). Ld.CIT(A)

shall adjudicate the issue of reopening, which was duly raised before him and thereby complete the appellate order. After the order by the Ld.CIT(A) is so complete both the parties free to take up, necessary appeals as they deem fit.

7. The above adjudication applies mutatis mutandis to AY 2014-15 appeal also

8. In the result, these appeals by the assessee are allowed for statistical purpose.

Pronounced in the open court on 10 .01.2022

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 10 /01/2022

Thirumalesh, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai