

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI KULDIP SINGH (JUDICIAL MEMBER) AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 388/MUM/2022
Assessment Year: 2011-12**

Amol Omprakash Porwal,
1901, Richmond Tower, Cliff
Avenue, Near Hiranandani
Gardens Powai,
Mumbai-400076.

PAN No. ARUPP 0066 A

Appellant

ITO Ward 26(1)(1),
Kautilya Bhavan, Bandra Kurla
Complex,
Mumbai-400051.

Vs.

Respondent

Assessee by : Mr. Anand Mundra
Revenue by : Mr. Manoj Sinha, DR

Date of Hearing : 03/08/2022
Date of pronouncement : 26/08/2022

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 20.12.2021 passed by the National Faceless Appeal Centre, Delhi (in short 'the Ld. First Appellate Authority') for assessment year 2011-12 raising following grounds :



1. On the facts and circumstances of the case and in Law, Ld. CIT(A) did not pass speaking order on merits, hence his order is bad in law.

1a. On the facts and circumstances in case in Law, Ld. CIT (A) did not provide effective opportunity of hearing after covid-19 period and thus violated the principles of natural justice.

2. On the facts and circumstances in case in Law, Ld. CIT (A) erred in not adjudicating the following grounds. 2a. The reassessment proceedings u/s 148 is invalid and bad in law.

2b. The Learned Assessing Officer erred in invoking provisions of section 147 without having any material in possession to form reason to believe that income chargeable to tax had escaped Assessment.

2c. The Learned Assessing officer erred in adding the entire sale proceeds on sale of shares Splash Media and Infra Ltd. (Splash Media) of Rs. 74,53,604/- u/s 68 of the Act.

2d. The Learned Assessing officer erred in disallowing the exemption u/s 10(38) of the Act in respect of long term capital gain accruing on sale shares of Splash Media Infra Ltd.

2e. The Learned Assessing officer erred in taxing u/s 68 the consideration in respect of short term capital gain of Rs. 22365/- on sale 1300 shares of Splash Media. 2f. The amount of Rs. 74, 53, 604/- could not have been taxed u/s 68 of the Act as undisclosed income.



2g. *The Learned Assessing officer failed appreciate that the appellant had submitted evidence supporting the purchase and sale of shares of Splash Media and Infra Ltd resulting in capital gains of Rs. 71,56,222/-.*

2h. *The Learned Assessing officer failed to appreciate the fact that the appellants transactions of purchase and sale of shares of Splash Media had been executed on the Bombay stock Exchange, a recognized stock exchange, on which Security Transaction tax had been duly paid.*

2i. *The Learned Assessing officer erred in making the addition of sale proceeds on sale of shares Splash Media u/s 68 on the basis of mere suspicion and surmises, and not based on facts or evidence. He failed to bring any evidence on record supporting his conclusions or controverting the evidence submitted by the appellant.*

2j. *The Learned Assessing officer erred in relying on the purported findings of the search / survey in case of alleged operators, statements of Anuj Agarwal, Pravin Agarwal, Raj kumar Kedia and others, investigations purportedly conducted by the Directorate of Investigation, Kolkata, and some SEBI report but without bringing on record any evidence whatsoever in relation to transactions undertaken by the appellant for purchase and sale of shares of Splash Media.*

2k. *The Learned Assessing Officer erred in reaching findings and conclusions stated in para 13 of his assessment order without any evidence on record, either direct or otherwise. The conclusions are based on presumptions and surmises.*



2i. The Learned Assessing officer erred in disallowing the exemption u/s 10(38) of the Act without establishing that the appellant was part of the modus operandi stated by the Learned Assessing officer. Regarding denial of natural justice.

2m. The Learned Assessing officer has denied natural justice to the appellant by not giving opportunity to cross examine the persons on whose statements the Assessing Officer has relied.

2n. The Learned Assessing officer violated the principles of natural justice in relying on and using purported findings of the search /survey in case of alleged operators, investigation conducted by Directorate of Investigation, Kolkata, statements of Anuj Agarwal, Pravin Agarwal, Raj Kumar Kedia and others and SEBI report without providing the appellant a copy of such statements, reports and other documents relied upon by the Assessing Officer.

2. We have heard rival submissions of the parties on the issue-in-dispute and perused the relevant material on record. We find that the Ld. First Appellate Authority has adjudicated the appeal *ex-parte* qua the assessee due to default on the part of the assessee in complying various notices issued for hearing of appeal. The relevant finding of the Ld. First Appellate Authority is reproduced as under:



3. Grounds No. 1, 2, 4 to 14 of the appeal are general in nature and therefore require no separate adjudication. Ground No. 3 of the appeal relates to the addition of Rs. 74,53,604/- u/s 68 of the Act.

4. In order to give proper opportunity to the appellant to present its case and to defend the grounds of appeal taken by it, the case was posted for hearing on various dates, the details of which are as under:

Date of Notice	Date of furnished submission on or before	status
13.03.2020	24.03.2020	No compliance
13.08.2020	19.08.2020	No compliance
24.12.2020	28.12.2020	No compliance
10.02.2021	19.02.2021	No compliance
03.12.2021	20.12.2021	No compliance

5. As can be seen from the above details, the appellant has been provided reasonable number of opportunities but it has chosen not to avail any of these. No written submission has been made by the appellant in support of the grounds taken during the appeal. It appears that the appellant is not keen to pursue the appeal and no material/argument has been brought on record by the appellant against the order of the AO and in support of the grounds taken in appeal.

5.1 Reference is made to the decision of Hon'ble Supreme Court in the case of CIT vs. BN Bhattacharya (1997) 118 ITR 461 (SC), in which the Hon'ble Apex Court while dealing with the issue of persuasion of appeal has stated that "Preferring an appeal means more than formally filing it but effectively pursuing it".



5.2 The Delhi Tribunal in CIT vs. Multiplan India Pvt. Ltd. as reported in 38 ITD 320 (Delhi) when faced with a similar situation of non-persuasion of appeal, dismissed the appeal of revenue.

5.3 In view of these facts, I am of the opinion that no interference is called for in the AO's order and therefore, the grounds of appeal are dismissed.

2.1 We find that the Ld. CIT(A) has dismissed the appeal in view of default on the part of the assessee in complying various notices issued but the issue in dispute in the appeal has not been decided on merit. In our opinion under the provisions of Act i.e. section 250 and 251 of the Income Tax Act, 1961 (in short 'the Act'), the Ld. First Appellate Authority is required to dispose the appeal on merit even if the assessee has not complied to the notices issued. Therefore, we set aside the order of the Ld. First Appellate Authority and restore the matter back to him for deciding afresh in accordance with the law and pass a speaking order on merit of the additions challenged by the assessee. The grounds raised by the assessee are accordingly allowed for statistical purposes.



3. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court in 26/08/2022.

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 26/08/2022
Rahul Sharma, Sr. P.S.

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,

(Sr. Private Secretary)
ITAT, Mumbai