

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
'C' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND  
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **2840/CHNY/2017**

निर्धारण वर्ष /Assessment Year: 2014-15

**Shri Mukesh Kumar Jain,**  
No.144, Abhilasha Arcade,  
Purasawalkam High Road,  
Kellys, Chennai – 600 010.

**The DCIT,**  
vs. Non-Corporate Circle 5,  
Chennai.

**PAN: AAJPM 5477E**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by  
प्रत्यर्थी की ओर से/Respondent by

: Shri H. Yeshwanth Kumar,C.A  
: Shri P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 06.09.2022

घोषणा की तारीख/Date of Pronouncement

: 06.09.2022

**आदेश /O R D E R**

**PER MAHAVIR SINGH, VICE PRESIDENT:**

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-5, Chennai in ITA No.206/CIT(A)-5/2016-17 dated 13.09.2017. The assessment was framed by the DCIT, Non-Corporate Circle 5, Chennai for the assessment year 2014-15 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 30.12.2016.

2. The first issue in this appeal of assessee is as regards to the assumption of jurisdiction u/s.148 r.w.s 147 of the Act and also issuance of notice u/s.143(2) of the Act without jurisdiction. The Id.AR for the assessee fairly conceded these two jurisdictional issues and stated that he is not interested in prosecuting these two issues and hence, the same are dismissed as not prosecuted.

3. The only issue surviving now on merits is as regards to the order of CIT(A) confirming the action of AO in making addition of Long Term Capital Gain claimed u/s.10(38) of the Act as exempt, added by the AO to entire sale value of Rs.1,52,48,000/- as 'income from other sources' being sale consideration of shares of NCL Research & Financial Services Ltd. For this, assessee has raised various grounds numbering from Ground No.5 to 9, which need not be reproduced.

4. Brief facts are that the assessee claimed to have purchased shares of NCL Research & Financial Services Ltd., on various dates which are given in assessment order at page 2 para 3 (which need not to be reproduced) and these were sold in 2013 -14 relevant to this assessment year 2014-15. The assessee claimed that he has sold these shares for a sum of Rs.1,52,48,000/- and after deducting

the cost of purchase of these shares earned Long Term Capital Gain at Rs.1,38,08,000/-. According to AO, the company NCL Research & Financial Services Ltd., is a penny stock company as noted from the finding reports of the Investigation Wing of the Income Tax Department, Kolkata. The AO after examining the facts treated the entire sale value of shares of NCL Research & Financial Services Ltd., of Rs.1,52,48,000/- as income of the assessee under the head 'income from other sources' and assessment was completed. The AO disallowed the claim of deduction u/s.10(38) of the Act. Aggrieved, assessee preferred appeal before CIT(A). The CIT(A) passed ex-parte order without providing reasonable opportunity of being heard to the assessee and confirmed the addition. Aggrieved, assessee came in appeal before the Tribunal.

5. Now, before us the Id.AR for the assessee raised the plea that the order of CIT(A) is ex-parte and no reasonable opportunity of being heard was provided. For this, he took us through the order of CIT(A), page 12, para 4 which reads as under:-

“4. During the course of the appeal proceedings the AR of the assessee appeared on 18/4/2017, discussed the issues raised in appeal and requested for on week time to file the written submission. The case was accordingly posted for hearing on 27/4/2017.

However the A.R neither filed written submission nor requested for more time to file the written submission.

The case was again posted for hearing on 1/6/2017, 5/6/2017 and 23/8/2017.

The AR did not appear on 1/6/2017 and 5/7/2017. The A.R appeared on 22/8/2017 and requested for one week time to file the written submission. The case was reposted on 30/8/2017.

However the A.R neither filed written submission nor requested for more time to file the written submission.

Hence the appeal is decided based on the material available on record as under:”

The Id. AR stated that he is ready on the issue of merits and will be able to prove by filing documentary evidence before CIT(A) that these sale of shares are not bogus transactions rather assessee has earned genuine capital gains. The Id.AR also stated that even the CIT(A) has not adjudicated the issue and simpliciter dismissed the appeal by observing in para 7.5 as under:-

7.5 In the present case also the shares were purchased through off market and not through Stock Exchange and selling rates were artificially hiked later on. Hence, respectfully following the above stated case-law, the action of the Assessing Officer to disallow the exemption claimed u/s 10(38) and to treat the sale receipts of shares of M/s. NCL Research & Financial Services Ltd (Rs.1,52,48,000/-) as income from other sources is upheld.”

6. When these facts were confronted to Id. Senior DR, he supported the order of the CIT(A) and stated that CIT(A) has allowed many opportunities but assessee did not avail.

7. We have heard rival contentions and gone through the facts and circumstances of the case. Admittedly, the CIT(A) has allowed many opportunities as is noted from the order of CIT(A) and the assessee was totally non-cooperative before CIT(A) but it is noticed that even CIT(A) has not passed a speaking order and has not discussed the facts although appeal was filed before him and facts were available in the order of AO in detail. Hence, we set aside the order of CIT(A) and remand the matter back to his file for passing a speaking order and allowing reasonable opportunity of being heard to the assessee.

8. In the result, the appeal filed by the assessee is party-allowed for statistical purposes.

Order pronounced in the open court on 6<sup>th</sup> September, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

**(MANOJ KUMAR AGGARWAL)**

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह )

**(MAHAVIR SINGH)**

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 6<sup>th</sup> September, 2022

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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