

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI

**BEFORE SHRI S. RIFAUH RAHMAN, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No. 232/Mum/2022
(Assessment Year: 2012-13)

Ratanlal Jaitlia HUF 602, Rajendra Ratna, Mahesh Nagar, SV Road, Goregaon (W), Mumbai-400 062	Vs.	National Faceless Assessment Centre, Ward 31(1)(6), Mumbai
PAN/GIR No. AAEHR 1272 B		
(Appellant)	:	(Respondent)
Appellant by	:	Shri Mukesh Maheshwari
Respondent by	:	Shri Vaibhav Jain
Date of Hearing	:	11.08.2022
Date of Pronouncement	:	07.11.2022

ORDER

Per Kavitha Rajagopal, J. M.:

This appeal has been filed by the assessee as against the order of the learned Commissioner of Income Tax (Appeals) ('ld.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2012-13.

2. The assessee has challenged the assessment order passed u/s.144 r.w.s. 147 of the Act on the following grounds:

1. *The learned CIT (A) has erred in law and on facts in dismissing the appeal against assessment order u/s. 144 r.w.s 147 of the Act.*
2. *The learned CIT (A) has erred in law and on facts in dismissing the appeal against the assessment of total income at Rs.5,07,180/ by the learned AO on the grounds it being general in nature and not warranting any specific adjudication.*

3. *The learned CIT (A) has erred in law and on facts that the AO has erroneously considered the Sale consideration at Rs.2,37,151/- instead of Rs. 416.12. The Appellant had in fact sold only 202 Shares @ Rs.2.06 per Share.*

4. *The learned CIT (A) has erred in law and on facts that the ld. AO 0 has not given the AIR report. It was brought to the kind attention of the honorable CIT (A) during the CIT appeal proceedings but no Such report was provided to the appellant.*

5. *On the facts and in the circumstances of the case and in law, the learned Assessing Officer erred in not giving the details of the parties based on whose statements the transactions in the shares of M/s Comfort Infotech Ltd. were treated as accommodation entries either during the course of assessment or in the show cause notice, thereby preventing the appellant from asking for the cross examination of them, thereby not following the ration laid down in the judgment of the Hon'ble Apex Court in the case of Kishanchand Chellaram Vs. CIT [125 itr173].*

6. *On the facts and in the circumstances of the case and in law, the learned CT (A) erred in appreciating the fact that the Assessing Officer treated transactions with M/s Comfort Intech Ltd. as not genuine based on the circumstantial evidences available on record. Without providing any details of circumstantial evidences or information thereby not giving an opportunity for cross examination of the persons on the basis of whose statements, treated the transactions in Shares of M/s Comfort Intech Ltd. as income.*

7.17. *On the facts and in the circumstances of the case, the learned CIT(A) erred in adding appreciating the fact that the AO has not provided any basis of computing the sale value of shares of Rs.2,37,151/-as unexplained income under section 69 of the Act.*

8. *On the facts and in the circumstances of the case, the learned CIT(A) erred in not appreciating the fact that the AO issued Final show cause notice on 25.12.2019 fixing the date of hearing date as 26.12.2019 thereby violating principles of natural justice in not giving enough time to the appellant to respond.*

9. *The appellant has filed a rectification application u/s.154 with the learned A.O. that there is a mistake apparent from record while erroneously taking the sale consideration at Rs.2,37,151/- instead of Rs.416.12 only.*

3. Brief facts are that the assessee is a Hindu Undivided Family (HUF) and has filed the original return of income on 28.08.2012, declaring total income of Rs.2,70,030/-. The assessee case was selected for limited scrutiny and assessment order u/s.144 r.w.s. 147 was passed dated 27.12.2019 and addition of Rs.2,37,151/- was made by the Assessing Officer ('A.O.' for short) u/s.69A of the Act, which amounts to sale value of 202 shares, which the assessee has sold for Rs.2.06 per share, aggregating to Rs.416.12 of M/s.

Comfort Intec Ltd., which is alleged to be bogus long term capital gain ('LTCG' for short)/ short term capital gain ('STCG' for short).

4. Aggrieved by this, the assessee preferred an appeal before the Id. CIT(A), who confirmed the addition made by the A.O.

5. The assessee is in appeal before us as against the order of the Id. CIT(A).

6. The Id. Authorized Representative ('Id. AR' for short) for the assessee submitted that the assessee being the karta of the HUF, expired on 05.09.2017, which is corroborated with the furnishing of death certificate to the lower authorities. The Id. AR further stated that the assessee has filed the rectification application u/s.154 pending before the A.O. as there was mistake apparent from the record where the sale consideration of the shares specified as Rs.2,37,151/- instead of Rs.416.12. The Id. AR contended that the assessee has failed to furnish the details before the A.O. to substantiate his claim and even before the Id. CIT(A), the additional evidences filed without accompanying petition as per Rule 46A(1) of the Income Tax Rules, 1962 and was rejected for the same. The Id. AR prayed for one more opportunity to present additional evidences before the A.O. to substantiate the claim that these were not penny stock. The Id. Departmental Representative (Id. DR for short) had nothing to controvert the same.

7. Having heard the rival submissions and perused the materials on record, we deem it fit and proper to remand this issue back to the file of the A.O. for *de novo* assessment on considering the evidence that are proposed to be filed by the assessee.

8. In the result, this appeal by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 07.11.2022

Sd/-

(S. Rifaur Rahman)
Accountant Member

Mumbai; Dated :
Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)
Judicial Member

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai