IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM

आयकर अपील सं/ I.T.A. No.2320/Mum/2022
(**निर्धारण वर्ष** / Assessment Years: 2011-12)

Jayesh Bhanji Shah B-24, APMC Market-2, Phase-2, Dana Bunder, Vashi Navi Mumbai- 400704.	**बनाम** / Vs.	ITO Ward-28(1)(1) IT-Office, Vashi Railway Station Building, Navi Mumbai-400705.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ANQPS9744N		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Assessee by:	Shri Vasant K. Kange
Revenue by:	Shri Mahender Ahuja

सुनवाई की तारीख / Date of Hearing: 24/11/2022
घोषणा की तारीख /Date of Pronouncement: 23/12/2022

आदेश / O R D E R

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee Jayesh Banji Shah against the order of the Ld.CIT(A)/NFAC, Delhi dated 21.04.2022 for AY 2011-12.

2. The main grievance of the assessee is that he has not been given proper opportunity by the Ld.CIT(A) before passing the impugned order. In order to support this submission, the Ld. AR drew my attention to the affidavit filed by the assessee wherein it has been brought to notice that he was not aware of the notices fixing the listing of the matters before the Ld. CIT(A) since there was no service of notice as stated in the impugned order at page 5 & 6. Since assessee was in the dark about the listing of appeal, he was unable to appear and, file the written submissions/relevant documents before the

Ld.CIT(A). The fact that assessee didn't file any written submission/documents before the Ld. CIT(A) is clear from the averment of Ld. CIT(A) etc. at para No.4.2 wherein he has stated that the assessee despite notices did not file any documents/details to substantiate his stand/contentions in support of the grounds raised by him in the appeal. Be that as it may, without going into the merits of the grounds raised by the assessee, I find that the Ld.CIT(A) has passed the impugned order without going into the merits of the appeal. It has to be borne in mind that if an assessee is aggrieved by the assessment order passed by the AO, he has statutory right to file an appeal before the Ld.CIT(A) and the Ld.CIT(A) is duty bound to adjudicate the grounds raised by the assessee and pass a speaking order on the grounds raised by the assessee in the appeal. In this case according to the Ld.CIT(A) the assessee has not discharged the burden to prove that its income is exempt (short term capital loss from transaction of M/s. Global Capital Pvt. Ltd.). On that basis, the Ld.CIT(A) has dismissed the appeal of the assessee without discussing the merits of the addition made by the AO vis-à-vis the contention of assessee about his transaction regarding the share in question. Therefore the impugned order is set aside back to the file of Ld.CIT(A) with the direction to adjudicate the appeal on merits afresh after giving proper opportunity to the assessee. The assessee is also directed to appear/participate in the hearing/appellate proceedings before the

Ld.CIT(A) diligently and file the relevant documents as well as written submission before him as per Rules; and Ld.CIT(A) to decide the appeal in accordance to law.

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

Order pronounced in the open court on this 23/12/2022.

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 23/12/2022.
Vijay Pal Singh, (Sr. PS)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**