

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "F", MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.2750/M/2022
Assessment Year: 2012-13**

Shri Vishal Somani, 5, 1 st Floor, Bhartiya Bhavan 72, N.S. Road, Marine Drive – 400 020 PAN: AAIPS5621B	Vs.	National Faceless Appeal Centre, Delhi
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Vimal Punamiya, A.R.
Revenue by : Shri Vranda U. Matkari, D.R.

Date of Hearing : 22 . 12 . 2022
Date of Pronouncement : 23 . 12 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, Shri Vishal Somani (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 07.10.2022 passed by Commissioner of Income Tax (Appeals), Mumbai [hereinafter referred to as the CIT(A)] qua the assessment year 2012-13 on the grounds inter-alia that :-

"1. On facts and circumstances of the case as well as in law the learned CIT (A) erred in confirming disallowances of STCL on banas finance Limited at Rs.15,23,500/- and also addition of sale value of banas finance limited at Rs.16,85,000/- under section 68, hence disallowed twice, the provisions of income tax law do not provide such double

disallowance. reasons assigned by him for doing the same are wrong and insufficient, he has failed to appreciate that STCL claimed by the assessee is genuine and incurred in regular course of investment.

2 The order passed by the Ld. CIT(A) is devoid of any merit, arbitrary, uncalled for and bad in law, the appellant be given such relief or reliefs as prayed for.

3. The Appellant craves leave to add, alter, amend or delete the above ground/s of appeal.”

2. Briefly stated facts necessary for adjudication of the issues at hand are: the assessee originally filed the return of income declaring total income of Rs.8,40,01,687/- which was subjected to scrutiny and thereafter assessment was framed under section 143(3) of the Income Tax Act,1961 (for short ‘the Act’) vide order dated 23.03.2015. Subsequently, on the basis of information assessee’s case was reopened by initiating the proceedings under section 147/148 of the Act and in response to the notice issued, the assessee filed return declaring total income of Rs.8,43,36,410/-. After issuance of the notices under section 143(2) and 142(1) of the Act seeking necessary details the Assessing Officer (AO) noticed that the assessee has purchased 1,00,000/- shares of Banas Finance Ltd. for a consideration of Rs.32,04,500/- and sold the same quantity for a consideration of Rs.16,85,000/- resulting in loss in the books of account. Declining the contentions raised by the assessee the AO proceeded to hold that the loss booked by the assessee in the garb of Short Term Capital Loss (STCL) is not allowable to the extent of share of loss on shares of Banas Finance Ltd. to the tune of Rs.15,23,500/- and accordingly computed the income of the assessee at Rs.8,75,44,906/- and thereby framed the assessment under section 143(3) read with section 147 of the Act.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has dismissed the appeal ex-parte. On failure of the assessee to put in appearance despite notices issued to him.

4. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing present appeal.

5. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

6. At the outset, the Ld. A.R. for the assessee contended that this is a case of providing no opportunity of being heard by the AO as well as the Ld. CIT(A) and referred to para 6 of the assessment order. In para 6 the AO has categorically mentioned that “in response to the said show cause notice the assessee did not file any explanation to this effect” but proceeded to decide the issue against the assessee on the basis material otherwise available on record.

7. Even at the stage of first appellate proceedings before the Ld. CIT(A) the assessee has not been provided with adequate opportunity of being heard. No doubt in para 5.1 the Ld. CIT(A) mentioned that notices/communication through ITBA portal were sent to the assessee on 31.12.2022, 30.08.2022, 13.09.2022 but no fact has been brought on record if the said information were actually served upon the assessee. Moreover, since the National Faceless Scheme is just at initial stage and the litigants have not got

attuned to it, adequate opportunity is required to be issued to the assessee.

8. To impart the justice and to stop the multiplicity of the proceedings the Ld. A.R.s for the parties to the appeal have come on the same page that since entire evidence has not been put-forth before the AO the case should be remitted back to the AO to decide afresh. In view of the matter, we hereby remand this case back to the AO after setting aside the assessment order as well as impugned order passed by the Ld. CIT(A), to decide afresh after providing opportunity of being heard to the assessee.

9. Resultantly, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 23.12.2022.

**Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER**

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

Mumbai, Dated: 23.12.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.