

आयकर अपीलिय अधिकरण  
मुंबई पीठ "ई" मुंबई  
श्री विकास अवस्थी, न्यायिक सदस्य, एवं  
श्री एम बालगणेश, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "E" BENCH  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI M BALAGANESH, ACCOUNTANT MEMBER  
आ.आ.सं. १२६९/मुंबई/२०१९ (नि.व. २०१२-१३)  
ITA No.1269/MUM/2019 (A.Y.2012-13)  
आ.आ.सं. ७१२९/मुंबई/२०१८ (नि.व. २०१३-१४)  
ITA No.7129/MUM/2018 (A.Y.2013-14)

M/s EDC Securities Pvt. Ltd.  
11/12, Raghuvanshi Mill Compound,  
Senapati Bapat Marg,  
Lower Parel (W)  
Mumbai-400 013

PAN No. AAACE9165D

..... अपीलार्थी/Appellant

बनाम Vs.

Deputy Commissioner of Income Tax Circle 5 (3),  
Room No.1906, 19<sup>th</sup> Floor, Air India Building,  
Nariman Point,  
Mumbai-400 021

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा / Appellant by : None

प्रतिवादी द्वारा / Respondent by : Shri Krishna Kumar Mishra, CIT-DR

सुनवाई की तिथि / Date of hearing : 01/02/2023

घोषणा की तिथि / Date of pronouncement : 29/03/2023

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

In ITA No.1269/MUM/2019, the assessee has filed appeal assailing the order of Commissioner of Income Tax Appeals-53, Mumbai [hereinafter referred to as the "CIT(A)"] dated 06/12/2018 for assessment year 2012-13.



2. The said appeal was filed by the assessee on 06/03/2019. The appeal was listed for hearing for the first time on 22/04/2021. The notice of hearing of the appeal was served on the assessee through RPAD on the address mentioned in Form No. 36 on 22/04/2021. None appeared on behalf of the assessee. Hence, fresh notice was issued for the next date of hearing i.e. 02/06/2021. On the said date of hearing, one Shri Priyavart Gupta, Chartered Accountant appeared on behalf of the assessee and filed an application seeking adjournment. On the aforesaid request, appeal was adjourned to 08/07/2021. On the next date of hearing, Shri Priyavart Gupta appeared to represent assessee and sought adjournment vide letter dated 07/07/2021. Thereafter, repeated adjournments were sought by the representative of the assessee on one pretext or the other. Last opportunity to argue the matter was allowed by the Bench on 23/01/2023 and appeal was adjourned to 01/02/2023. None appeared on behalf of the assessee on 01/02/2023. It seems that the assessee is not keen to prosecute the appeal. Hence, the appeal is taken up for hearing with the assistance of Ld. Departmental Representative (DR) and material available on record.

3. The assessee in appeal has raised as many as eight (8) grounds. The same are reproduced as under:

*"1. That the assessment order u/s 143(3) of the Income Tax Act, 1961 (the Act") dated 28.12.2017 passed by the Assessing Officer (AO") and additions/disallowances made therein and further enhancements made by the Commissioner of Income Tax (Appeals) (CIT(A)) and are illegal, bad in law and without jurisdiction.*

*2. That, on the facts and circumstances of the case, the CIT(A) has erred in law and on facts in upholding disallowance of Rs.3,99,700 out of total administrative expenses of Rs.4,91,039 under Section 14A of the Act read with rule 8D of the Rules as disallowance is based purely on presumption and without any clear finding by AO of any expenditure incurred and hence AO has failed to discharge onus cast on him when not accepting Appellant's contention that it had not incurred any expenditure.*

*3. That on the facts and circumstances of the case, the CIT(A) has erred in upholding an arbitrary addition of Rs.87,91,00,000 to Income from Other Sources*



*under Section 68 of the Act on account of Share Premium received during the year failing to appreciate that credits coming in the books of accounts which are not satisfactorily explained can only be added by the AO and that the onus on the Company is only to prove identity of the subscriber and the Company has no further burden of proof in the matter with respect to capacity of the subscriber to invest.*

*4. a) That, on the facts and circumstances of the case, the enhancement of income by the CIT(A), by denying exemption u/s 10(38) to capital gains on sale of shares and disallowance of Business loss is illegal, bad in law, without jurisdiction and hence, is liable to be set aside.*

*b) That on the facts and circumstances of the case, the CIT (A) has erred on facts and in law in making addition on an issue which was not part of the order in appeal before him The CIT(A) has failed to appreciate that addition on a new issue of Long Term Capital Gain (hereinafter as "LTCG") amounting to Rs. 33.77,65,463/- and disallowance of Business Loss of Rs 35,86.70.682 could not be made in an appeal against Assessment Order passed by the Assessing Officer (hereinafter as "AO") u/s 143(3) of the Act, when the said issue was not even part of the Assessment Order.*

*5. That, in view of the facts and circumstances of the case, CIT (A) has erred on facts and in law in not affording a reasonable opportunity of hearing to the Appellant.*

*6. That the addition / disallowance made are illegal, unjust and bad in law and are based on mere surmises and conjunctures and the same cannot be justified by any material on record and the same are highly excessive.*

*7. That interest U/s 234A, 234B and 234C of the Income Tax Act, 1961 has been wrongly and illegally charged and has been wrongly worked out 8. All of the above grounds of appeal are without prejudice and are mutually exclusive to each other."*

4. Shri Krishna Kumar Mishra appearing on behalf of the Department vehemently defended the impugned order. The Ld. DR placed reliance on the findings of the CIT(A) and Assessing Officer (AO), and prayed for dismissing the appeal of the assessee.

5. We have heard the submissions made by Id. DR and have examined the orders of authorities below. The assessee had filed return of income for AY 2012-13 declaring loss of (Rs.2,09,05,219/-) on 25/09/2012. The AO in scrutiny assessment proceedings,

made following additions/disallowances and assessed the total income of the assessee at Rs.84,95,94,481/-:

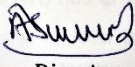
1) Disallowance u/s 14A r.w.r. 8D of the Income Tax Act, 1961 (hereinafter referred to as "the Act") – Rs.3,99,700/-.

2) Addition u/s 68 of the Act, on account of unproved share application money/share premium - Rs.87,91,00,000/- .

Aggrieved by the assessment order dated 25/03/2015, the assessee filed an appeal before the CIT(A). In First Appellate Proceedings, the CIT(A) confirmed the additions made by AO. Further, the CIT(A) made enhancement on account of fictitious business loss of Rs.35,86,70,682/- claimed by the assessee and disallowed exemption claimed u/s 10(38) of the Act, in respect of capital gains of Rs.33,77,65,463/-.

No material to controvert findings of the CIT(A) have been placed before us. Hence, in the absence of any contrary material, the impugned order is upheld and appeal of the assessee is dismissed.

6. Before parting with the order, we find that on behalf of the assessee company, Form No.36 has been signed by Shri Sachin B. Ambi, Director. The signatures of Shri Sachin B. Ambi on Form No.36 are as under:



EDC SECURITIES PVT. LTD.  
Director  
(Appellant)



The Letter of Authority filed by Shri Priyavart Gupta, Chartered Accountant on May 24, 2022 is purportedly signed by Shri Sachin B. Ambi, Director of the assessee company.

The signatures of Shri Sachin B. Ambi on the said letter of authority are as under:



There is a marked difference in the signatures of Shri Sachin B. Ambi on Form No.36 and the Letter of Authority available on record. The conspicuous difference in signature give reasons for suspicion on the genuineness of signatures either on Form No.36 or on the Letter of Authority. Though our observations on difference in signatures have nothing to do with findings on the merits of issue, however, they do reflect shady conduct of the persons managing the affairs of the assessee company.



7. In the result, appeal of the assessee is dismissed.
8. In ITA No.7129/MUM/2018, the assessee has assailed the order of CIT(A)-53, Mumbai dated 21/09/2018 for AY 2013-14 in proceedings arising u/s 154 of the Act.
9. This appeal was filed by the assessee on 11/12/2018. The appeal was first listed for hearing on 05/12/2019. Thereafter, on each date of hearing adjournment was sought on behalf of the assessee or none was present to represent the assessee. Notices were sent to the assessee on the address mentioned in Form No.36 through RPAD. Notices were duly served as is evident from the acknowledgements available on the record. Last opportunity was given to the assessee by the Bench on 23/01/2023 to argue the matter and the appeal was adjourned to 01/02/2023. None appeared to represent assessee on 01/02/2023. It appears that the assessee is not keen to prosecute the appeal. Therefore, this appeal is taken up for hearing with the assistance of Ld. DR and the material available on record.
10. The assessee in appeal has raised following grounds:
  - “1. That on the facts and circumstances of the case, the order passed by the Commissioner of Income Tax (Appeals) (hereinafter as "CIT (Appeals)") u/s 250(6) of the Income Tax Act, 1961 (hereinafter as "the Act") dated 21.09.2018 and the additions made therein by the CIT (Appeals) are illegal, bad in law and without jurisdiction.*
  - 2. That on the facts and circumstances of the case, the CIT (Appeals) has erred on facts and in law in making addition on an issue which was not part of the order in appeal before the him. The CIT (Appeals) has failed to appreciate that addition on a new issue of Long Term Capital Gain (hereinafter as "LTCG") amounting to Rs.43,21,38,796/- could not be made in an appeal against rectification order passed by the Assessing Officer (hereinafter as "AO") u/s 154 of the Act, when the said issue was not even part of the rectification order.*
  - 3. That on the facts and circumstances of the case, the CIT (Appeals) has failed to appreciate that the in an appeal against an order of rectification u/s 154 of the Act, the CIT (Appeals) had no jurisdiction to examine the issues which were not part of the rectification order.*



4. *That on the facts and circumstances of the case, the CIT (Appeals) has erred on facts and in law in making disallowance of claim u/s 10(38) of the Act without appreciating that such disallowance was beyond the jurisdiction of the AO while exercising rectification jurisdiction u/s 154 of the Act and therefore, the power of enhancement of the CIT (Appeals) cannot be exercised in respect of the said issue.*

5. *That on the facts and circumstances of the case, the CIT (Appeals) has failed to appreciate that the claim of LTCG u/s 10(38) was examined by the AO while passing the order u/s 143(3) and that the order appealed against, i.e., rectification order dated 15.11.2017 passed by the AO, was only on limited issue of computing book profit u/s 115JB of the Act.*

6. *That on the facts and circumstances of the case, the CIT (Appeals) has failed to appreciate that the jurisdiction of the AO while passing order of rectification u/s 154 of the Act was limited to mistake apparent from record and that the claim of 10(38) of the Act could not be subject matter of rectification.*

7. *That, without prejudice, on the facts and circumstances of the case, the CIT (Appeals) has erred on facts and in law in disallowing the claim of LTCG u/s 10(38) of the Act when details regarding the said claim were furnished by the Appellant and duly examined by the AO while passing the assessment order u/s 143(3) of the Act.*

8. *That, without prejudice, on the facts and circumstances of the case, the CIT (Appeals) has erred on facts and in law disallowing the claim of LTCG u/s 10(38) of the Act.*

9. *That, in view of the facts and circumstances of the case, CIT (Appeals) has erred on facts and in law in not affording a reasonable opportunity of hearing to the Appellant.*

10. *That the explanations given, evidence produced and material placed and made available on record have not been properly considered and judicially interpreted and the same do not justify the addition made.*

11. *That on the facts and circumstances of the case, the disallowance made by the CIT (Appeals) is based on mere surmises and conjunctures and the same cannot be justified by any material on record and against the principle of natural of justice.*

12. *The Appellant craves leave to add, amend, alter and/or delete any of the above grounds of appeal at or before the time of hearing."*

11. The Ld. DR reiterated the findings of CIT(A) and prayed for dismissing appeal of the assessee.



12. We have heard the submissions of DR and have examined the orders of authorities below. The AO passed order u/s 154 of the Act, dated 15/11/2017 assessing income of the assessee under MAT provisions. The assessee carried the issue in appeal before the CIT(A). The CIT(A) upheld the findings of the AO and as well enhance the assessment. No material to controvert the findings of the CIT(A) is available before us. Hence, the impugned order is upheld and appeal of the assessee is dismissed.

13. In the result, both appeals by the assessee are dismissed.

Order pronounced in the open court on Wednesday the 29<sup>th</sup> day of March 2023.

**Sd/-**

(M BALAGANESH)

**लेखाकार सदस्य/ACCOUNTANT MEMBER**

**Sd/-**

(VIKAS AWASTHY)

**न्यायिक सदस्य/JUDICIAL MEMBER**

मुंबई/Mumbai,

दिनांक/Dated: 29/03/2023

Mahesh R. Sonavane

**प्रतिलिपी अग्रेषित of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/The Respondent.
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधी, आय. अपी. अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाईल/Guard file.

BY ORDER,

//True Copy//



(Dy. /Asst. Registrar)/  
Sr. Private Secretary  
**ITAT, Mumbai**