

आयकर अपीलिय अधिकरण
मुंबई पीठ “एच” मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य, एवं
श्री अमरजीत सिंह, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “H” BENCH
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
आ.आ.सं. ३१५/मुंबई/२०२३ (नि.वं. २०१२—१३)
ITA No.315/MUM/2023 (A.Y.2012-13)

Kirankumar Ramesh Varan
C-103, Sai Mauli Apartment,
Alakapuri Road, Nalasopara (E)
Mumbai-401 209

PAN No. AGKPV0781H

..... अपीलार्थी/Appellant

बनाम Vs.

Income Tax Officer, Ward-42 (1) (3),
DGIT (Vigilance) (W)

Mumbai

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा / Appellant by : Shri Ashok Mehta, CA

प्रतिवादी द्वारा / Respondent by : Smt. Anne Varghese, Sr. AR

सुनवाई की तिथि / Date of hearing : 19/04/2023

घोषणा की तिथि / Date of pronouncement : 19/04/2023

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as “the CIT(A)”) dated 06.12.2022, for the assessment year 2012-13.

2. The assessee in appeal has primarily assailed addition of Rs.7,04,548/- u/s 68 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”). The other



grounds raised in appeal are either consequential to or are in support of, primary ground. A perusal of the assessment order dated 16.12.2019 reveals that it is an ex-parte order. The Assessing Officer (AO) had issued notice u/s 148 of the Act, dated 28.03.2019. Subsequently, notice u/s 142(1) of the Act, was issued to the assessee. Despite service of the aforesaid notices, the assessee fails to respond/comply with the aforesaid notices. The AO was constrained to complete the assessment invoking the provisions of section 144 of the Act. The AO completed the assessment making addition of Rs.7,04,548/- u/s 68 of the Act. Against the said assessment order, the assessee filed appeal before the CIT(A). In First Appellate Proceedings, again no details were furnished by the assessee. The assessee only sought copies of the documents/statements on the basis of which addition in the hands of the assessee was made. The CIT(A) following the decision rendered by Hon'ble Calcutta High Court in the case of PCIT Vs. Swati Bajaj, 466 ITR 56 confirmed the addition. Hence, the present appeal by assessee.

3. We have heard the submissions made by rival sides and have examined the orders of authorities below. During the period relevant to assessment year under appeal, the assessee had sold shares of M/s Nimbus Industries Limited for a total consideration of Rs.7,04,548/-. The AO in an ex-parte proceedings held that the shares of M/s Nimbus Industries Limited are penny stocks as there has been a phenomenal increase/fluctuation in the price of shares of the said company. The AO formed its opinion on the basis of data available in public domain as no assistance was provided by the assessee during assessment proceedings. Thereafter, the CIT(A) upheld findings of the AO by placing reliance on the decision in the case of Swati Bajaj (supra), without appreciating facts of the case. After having examined the orders of authorities below, we find that neither the AO nor the CIT(A) have examined the facts of the case in right perspective. Therefore, we



deem it appropriate to restore this appeal back to the file of AO for *de novo* assessment. The AO after taking into consideration submissions of the assessee shall frame assessment, in accordance with law.

4. The assessee is directed to make submissions and file relevant documents upon receipt of notice from the AO, within the time specified in the notice. If the assessee fails to respond to the said notice, the AO is at liberty to take adverse view of the same and proceed, in accordance with law.

5. In the result, impugned order is set aside and appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on Wednesday the 19th day of April 2023.

Sd/-

(AMARJIT SINGH)

लेखाकार सदस्य/ACCOUNTANT MEMBER

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/Mumbai,

दिनांक/Dated: 19/04/2023

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