

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

BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

**ITA No. 1017/Mum/2023
(Assessment Year: 2010-11)**

Aditya Sharad Shah, 6 Madhu Parag, 69 Swastik Society, Vileparle (W), Mumbai-400056.	<u>बनाम/</u> Vs.	CIT(A) / NFAC Mumbai-400002.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AMYPS1987N		
(अपीलार्थी /Appellant)		(प्रत्यर्थी / Respondent)

Assessee by :	None
Revenue by :	Mr. Abhisek Kumar Singh.DR

सुनवाई की तारीख / Date of Hearing	19/06/2023
घोषणा की तारीख /Date of Pronouncement	21/06/2023

आदेश / ORDER

PER PAVAN KUMAR GADALE - JM:

This appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC)/CIT(A), Delhi passed u/s 250 of the Act. The assessee has raised the following grounds of appeal:

1. *The order passed by the learned Commissioner of Income Tax (Appeals), NFAC, Delhi [hereinafter referred to as 'the learned CIT(A)'] is bad in law and on facts.*

2. *Re: Order of CIT(A) passed ex-parte is bad in law:*

2.1 *The order of learned CIT(A) is bad in law and against the principle of natural justice as Appellant was not provided sufficient opportunity of being heard.*

2.2 *The learned CIT(A) grossly erred in passing the order ex-parte on 13th February, 2023 without appreciating that adjournment request was filed by the appellant on 30th January, 2023 and additional time was granted till 14th February, 2023 for submission of details.*

3. *Re: Reassessment is bad in law and void ab initio:*

3.1 *The learned CIT(A) erred in upholding the Reassessment order passed by the Assessing Officer which is bad in law and void ab initio on account of following grounds:*

A There was no income which has escaped assessment and in absence of any income escaping assessment, reassessment proceedings cannot be initiated.

B. The reassessment proceedings initiated are merely on the ground of 'reason to suspect' and not 'reason to believe'

C. The Assessing Officer grossly erred in not providing the opportunity to cross examine the analysis carried out by the ADIT(Inv.) Unit 1(3) Ahmedabad and also failed to provide any details, documents, evidences, statement recorded / obtained from the ADIT office based on which the addition was made in the hands of Appellant. The Assessing Officer ought to have appreciated that the reason to believe at the time of issue of notice of reassessment must be converted in to conviction based on corroborated evidences and proofs and it cannot just remain reason to believe at the time of completion of the assessment.

4. *Re: Addition of income amounting to Rs. 11,42,533/- on account of alleged client code modification:*

4.1 *The learned CIT(A) grossly erred in upholding the addition of Rs. 11,42,533/- on account of alleged transactions of client code modification, in respect of shifting out profits amounting to Rs. 11,40,961/- and in respect of shifting in losses amounting to Rs. 1,572/- without appreciating and considering the submissions and documents furnished by the Appellant.*

The learned CIT(A) grossly erred in treating the alleged client code modifications as well planned and concerted arrangement

without providing any tangible evidence on records and without appreciating that the same were genuine transactions under the applicable SEBI law and was also acknowledged by the respective exchange registered brokers.

4.3 The learned CIT(A) grossly failed to appreciate that the Appellant had sufficient brought forward losses to set off against income earned during the year under consideration. By indulging in shifting of profits/ losses of the said amount would not result in any tax benefit to the Appellant

4.4 learned CIT(A) grossly erred in not providing the opportunity to cross examine the analysis ADIT(Inv.) Unit 1(3) Ahmedabad and also failed to provide any details, documents, evidences, statement recorded / obtained from the brokers based on which the addition was made in the hands of Appellant.

5. Re: Addition of income amounting to Rs. 11,425/- on account of unexplained expenditure

5.1 The learned CIT(A) has grossly erred in upholding the addition of Rs. 11,425/- made by the Assessing Officer as an adhoc 1% on the additions made on account of alleged client code modification, based on an assumption that Appellant must have paid the said percentage of commission to the brokers in cash without any cogent evidence to prove the same.

6 Re: Brought forward losses of earlier year's not correctly granted to be carried forward.

6.1 The learned CIT(A) grossly erred in upholding the actions of Assessing Officer to compute the carried forward loss at Rs 1,36,32,162/- as against Rs. 1,63,86,124/- without providing any reasons for the same.

7. Re: Initiation of penalty proceedings u/s 271(1)(c):

7.1 The learned CIT(A) grossly erred in upholding the actions of Assessing Officer to initiate penalty proceedings u/s. 271(1)(c) on various grounds without providing any reasons for the same.

8. The Appellant craves leave to add to, alter, amend or withdraw all or any of the foregoing grounds of appeal at or before the hearing of this appeal.

2. The brief facts of the case are that the assessee is engaged in the business and has filed the return of income for the A.Y 2010-11 on 18.09.2010 disclosing a total income of Rs.1,01,097/- and the assessee has filed the revised return of income on 26.03.2012 disclosing same total income and the return of income was processed u/s 143(1) of the Act. Subsequently the Assessing Officer (A.O) has received information from ADIT (Inv), Ahmadabad that the survey u/s 133A of the Act was conducted at the premises of 12 brokers. After analysis of data received from NSE and the contentions of the brokers, it was found that client code modification has been used as a tool for tax evasion and the assessee was one of the beneficiary of availing the loss.

3. The AO has reason to believe that the income has escaped assessment and issued notice u/s 148 of the Act. In response to the notice, the assessee has filed reply stating that the return of income filed earlier to be treated as compliance of notice u/s 148 of the Act. The assessee has filed objections to reopening of assessment and were disposed off. Further the A.O has issued notice u/s 143(2) and 142(1) of the Act . In compliance to the notices, the Ld. AR of the assessee appeared from time to time and submitted the details. The AO has dealt on the facts with respect to client code modification, nature of the business and the modus

operandi of the transactions and made addition of Rs.11,42,533/- and unexplained expenditure of Rs.11,425/- U/sec69C of the Act and after setoff of brought forward loss of earlier year, the total income was determined at Rs.1,12,520/- and passed the order u/s 143(3) r.w.s 147 of the Act dated 15.12.2017.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, statement of facts and findings of the AO and has issued notices of hearing and since there was no compliance by the assessee to notices. Therefore the CIT(A) considering the information on record has confirmed the action of the A.O and dismissed the appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing, none appeared on behalf of the assessee and the Ld.DR submitted that the assessee was not serious in perusing the appeal and the Ld.DR relied on the order of the CIT(A)

6. Heard the Ld.DR submissions and perused the material on record. Prima-facie the CIT(A) has passed the order considering the fact that there is no appearance in spite of providing adequate opportunity of hearing and the notices were issued. Therefore, the CIT(A) was of the opinion that the assessee is not interested in prosecuting the appeal and dismissed the appeal ex-parte confirming the action of the

assessing officer. The Ld. CIT(A) has issued the notices of hearing referred at Page 8 Para 3. to 4.1 of the order, but there was no response and thus the Ld.CIT(A) came to a conclusion that the assessee is not interested and decided the appeal based on the information available on record. Whereas the assessee has raised grounds of appeal challenging the additions of the A.O and there could be various reasons for non appearance which cannot be overruled. Therefore, considering the principles of natural justice shall provide one more opportunity of hearing to the assessee to substantiate the case with evidences and information. Accordingly, set aside the order of the CIT(A) and remit the entire disputed issues to the file of the CIT(A) to adjudicate afresh and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information for early disposal of the appeal. And the grounds of appeal of the assessee are allowed for statistical purposes.

7. In the result, the appeal filed by assessee is allowed for statistical purposes.

Order pronounced in the open court on 21.06.2023.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 21/06/2023

KRK, PS

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

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

सत्यापित प्रति //True Copy//

1.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई/ ITAT, Mumbai