

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

BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER

**ITA No.658/M/2023
Assessment Year: 2013-14**

Mrs. Meera Saratchandran Nair, A-15, Clifton, Juhu Road, Juhu, Mumbai-400 049 PAN: AERPN8794D	Vs.	Income Tax Officer, Ward 34(3)(2), Kautilya Bhavan, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Bhupendra Shah, A.R.
Revenue by : Shri Joginder Singh, D.R.

Date of Hearing : 13 . 06 . 2023
Date of Pronouncement : 22 . 06 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, Mrs. Meera Saratchandran Nair (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 19.01.2023 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)) qua the assessment year 2013-14 on the grounds inter-alia that :-

"1) In the facts and circumstances of the case and in law the learned Assessing Officer erred in adding Rs 97,825-8% on Rs 12.22,00 which is nothing but LTCG in ground 2 below and hence amounts to double taxation.

2) In the facts and circumstances of the case and in law the learned Assessing Officer erred in adding Rs 20,48,190 by way of STCG

instead of LTCG on sale of shares & CITIA] erred in confirming the same by overlooking

a) Contract notes showing STT charged

b) Demat statement showing holding of shares wef 1-4-2001

3) In the facts and circumstances of the case and in law the learned Assessing Officer erred in initiating penalty proceedings u/s 271(I)(c) and also levying interest on the same u/s 234.

4) In the facts and circumstances of the case and in law the learned CTTA) erred passing order

a) Making enhancement of Rs 1,68,344/- in respect of bank interest and long term capital gain of Rs. 17,93,676-without issuing notice u/s 251

b) Long term capital gain of Rs. 17,93,676- was already consider in the point no. 1 and 2 of the grounds of appeal above and this enhancement is duplication of same transaction covered in point 1 and 2.

c) By disclosing Commissioner of Income Tax (Appeals) Unit -3, Coimbatore even though the same is not allowed under faceless scheme of appeal.

Relief Prayed:

The appellant therefore prays Your Honour

1) To delete the addition of Rs 97825/-wrongly made 8% on LTCG

2) To allow exemption u/s 10[38] in respect of LTCG of Rs.2048190/-

3) To delete the interest u/s 234 and penalty u/s 271(1)(c)

General:-

• The appellant reserves rights to add alter or delete any portion of this appeal before its conclusion.

• This appeal is filed in time and may please be allowed in full.

• A Detailed paper book along with case laws will be submitted at the time of hearing.”

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : from the “individual transaction statements-ITS” extracted from ITD system the Assessing Officer (AO) noticed that the assessee has financial transactions/trading of shares and securities during the year under assessment but has not filed the return of income for the year under

consideration thus reopened the assessment by initiating the proceedings under section 147/148 of the Income Tax Act, 1961 (for short 'the Act'). In response to the notice issued under section 142(1) the assessee filed copy of one sale agreement for sale of property for Rs.8,40,00,000/- out of which the assessee has received 1/4th share, but assured to file the Dmat account shortly. In these circumstances the AO proceeded to make best judgment assessment estimating the addition of Rs.97,824/- being 8% of the contract of Rs.12,22,800/- and also computed the short term capital gain (STCG) of Rs.20,48,190/- on sale of equity shares and thereby framed the assessment under section 144 read with section 157 of the Act.

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the addition made by the AO by dismissing the appeal. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing the present appeal.

4. 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.

5. Perusal of the impugned order passed by the Ld. CIT(A) goes to prove that both AO as well as Ld. CIT(A) have proceeded to make the addition of Rs.20,48,190/- on account of STCG, which the assessee has claimed to be long term capital gain (LTCG) exempt under section 10(38) of the Act, only because of the fact

that the assessee has failed to produce the copy of STT paid on the shares. Now the assessee has produced the complete detail of Dmat account of the assessee, contract notes and proof of payment for purchase of shares and brokerage respectively and contract notes justifying amounts of STT paid along with bank statement showing the amount received on sale of shares. All these documents need to be examined by the AO. Keeping in view the fact that the AO as well as the Ld. CIT(A) without examining the issue on merits proceeded to make the addition on estimation basis which is not permissible in the face of the documents brought on record by the assessee, however, all these documents need to be examined by the AO, who has earlier made best judgment assessment, by providing an opportunity of being heard to the assessee. So the addition of Rs.20,48,190/- challenged vide ground No.2 by the assessee is set aside to be decided afresh by the AO by providing an opportunity of being heard to the assessee.

6. So far as second addition of Rs.97,825/- pertaining to transaction in the commodities exchange is concerned, the Ld. CIT(A) passed a cryptic order without assigning any reason for upholding the addition. From the order itself nothing can be deduced as to how the addition is being confirmed on the basis of estimation @ 8% of transaction in commodities exchange amount of Rs.12,22,800/-. No doubt the assessee has not filed any return but computation statement was filed before the Ld. CIT(A) by explaining income from LTCG and interest on the savings account and dividend but none of these documents have been examined by the AO as well as the Ld. CIT(A) rather blindly upheld the addition made by the AO on estimation basis @ 8% of the transactions

being the net profit on the sale. When documents have been brought on record by the assessee the same are required to be examined by the AO and unless not rejected the addition on the basis of estimation cannot be made. So this issue is also required to be remitted back to the AO to decide afresh after providing opportunity of being heard to the assessee.

7. In view of what has been discussed above, the appeal filed by the assessee is allowed for statistical purposes to be decided afresh by the AO by providing opportunity of being heard to the assessee.

Order pronounced in the open court on 22.06.2023.

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

Mumbai, Dated: 22.06.2023.

* Kishore, Sr. P.S.

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

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.