

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

**BEFORE SHRI PAVAN KUMAR GADALE, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 154/MUM/2023 (A.Y. 2014-15)

Meenu Ajay Pathak 4, Shree Bhalchandra Kripa Bldg Daulat Nagar, Road No. 3 Borivali (E), Mumbai - 400066 PAN: AGOPP6363P	v.	Income Tax Officer – Ward – 32(2)(3) C-11, Room No. 305, 3 rd Floor Pratyakshkar Bhavan Bandra Kurla Complex Bandra (E), Mumbai – 400051
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Jitendra Singh
Department Represented by	:	Ms. Kavita Kaushik
Date of Conclusion of Hearing	:	14.06.2023
Date of Pronouncement	:	21.06.2023

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld.CIT(A)"] dated 01.12.2022 for the A.Y.2014-15.

2. Assessee has raised following grounds in its appeal: -

"1. The Ld. National Faceless Appeal Centre (NFAC) Delhi [hereinafter referred to as the "Ld. CIT(A)"] erred in passing the order dated 01.12.2022 upholding the action of the Ld. Income Tax Officer - 32(2)(3), Mumbai (hereinafter referred to as 'Ld. A.O.')] in determining the total income of the Appellant at Rs.49,54,970/- as against returned income of Rs.8,35,530/- without appreciating the facts and circumstances of the case. Thus, the order dated 01.12.2022 passed by Ld. CIT(A) is bad in law and the same may be quashed.

2. Appellate Order passed without providing the Appellant an appropriate opportunity of being heard is bad in law

3. The Ld. CIT(A) erred in passing the impugned order dated 01.12.2022 under section 250 of the Act without providing the Appellant an appropriate opportunity of being heard through physical / video conferencing inspite of specific request made by the Appellant during the course of appellate proceedings. Thus, the impugned appellate order is passed in gross violation of principles of natural justice and the same may be quashed and set aside.

3. Addition by treating the term capital gain as unexplained investment under section 68 of the Act unjustified - Rs.41.19.435/-

i. The Ld. CIT(A) erred in upholding the action of Ld. A.O. in making addition of Rs.41,19,435/- treating the long-term capital gain as unexplained cash credit under section 68 of the Act without appreciating the fact and circumstances of the case in proper perspective. Hence, the addition of Rs.41,19,435/- under section 68 of the Act is unjustified and the same may be deleted.

ii. The Ld. CIT(A) failed to appreciate that the Appellant has furnished all relevant documentary evidences to prove the genuineness of long term capital gains earned during the relevant year under consideration. Hence, the Appellant has discharged the primary onus cast upon her under the provisions of section 68 of the Act. Thus, the addition of Rs.41,19,435/- under section 68 of the Act is against the provisions of law and the same may be deleted.

iii. The Ld. CIT(A) further erred in treating the long term capital gains as unexplained cash credit relying on the statement of some persons with whom the Appellant has no transaction at all and the Ld. A.O. has not even provided an opportunity to cross examine them to rebut the allegations levelled against her. Thus, the impugned addition is made against the principles of natural justice and the same may be deleted.

4. The Appellant denies any liability to pay interest under section 234A, 234B and 234C of the Act. Hence, the same are not leviable.

5. The Appellant craves leave to add, alter, amend, delete, rescind or withdraw any of the grounds of appeal mentioned hereinabove."

3. At the outset, Ld. Counsel for the assessee submitted that Ld.CIT(A) passed exparte order without providing adequate opportunity of being heard to the assessee, therefore, considering additions/disallowance made by the Assessing Officer, Ld. Counsel for the assessee requested that the matter may be restored to the file of the Ld.CIT(A). On merits, Ld. AR of the assessee relied on the decision of the ITAT Ahmadabad Bench in the case of ITO *v.* M/s. Ice Worth Reality LLP in ITA.No. 565 & 566/AHD/2020 dated 13.03.2023.

4. Ld. DR has no serious objection in remitting the matter back to the file of the Ld.CIT(A).

5. Considered the rival submissions and material placed on record, on a perusal of the Ld.CIT(A) order, we observe that Ld.CIT(A) has dealt with the issue elaborately merely relying on written submissions made by the assessee, however, he has not provided proper opportunity of being heard to the assessee even though assessee made a formal request for the same. This may be required to establish the link with the actual transaction or not. Ld.CIT(A) merely relied on the decision of various

courts and upheld the findings of the Assessing Officer without establishing a direct link of assessee being one of the operator or having direct link in the tainted transactions. Considering the totality of facts and submissions of the Ld. AR and keeping in view the additions/disallowance made by the Assessing Officer, we are of the opinion that assessee should be given one more opportunity of being heard. Thus, this appeal is restored to the file of the Ld.CIT(A) for denovo adjudication in accordance with law. Assessee shall cooperate with the proceedings before the Ld.CIT(A) without taking unnecessary adjournments. Needless to say that the Ld.CIT(A) shall give adequate opportunity of being heard to the assessee. Thus, this appeal is restored to the file of the Ld.CIT(A) accordingly.

6. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 21st June, 2023.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai / Dated 21.06.2023
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum