

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

**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &  
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No. 2110/Mum/2022  
(Assessment Year: 2011-12)**

Ruia Pradeep Bajranglal HUF Ground Floor, Hari Nivas, Malviya Road, Vile Parle (E), Mumbai-400057.	<b>बनाम/ Vs.</b>	ITO, Ward-25(3)(3), Kautilya Bhavan, BKC, Bandra, Mumbai-400051.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAHR0481E</b>		
(अपीलार्थी /Appellant)		(प्रत्यर्थी / Respondent)

Assessee by :	Ms.Dinkle Hariya & Ms.Rashmi Vyas. AR
Revenue by :	Ms.Kavita Kaushik.DR

सुनवाई की तारीख / Date of Hearing	15/06/2023
घोषणा की तारीख /Date of Pronouncement	10/07/2023

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.

2. At the time of hearing, the Ld.AR of the assessee submitted that there is a delay in filing the appeal before the Hon'ble Tribunal and filed an affidavit for condonation of delay. Whereas, the facts mentioned in the affidavit are reasonable and the Ld.DR has no specific objections.

Accordingly, condone the delay and admit the appeal. The assessee has raised the following grounds of appeal:

### *1. NATURAL JUSTICE*

*1.1 In the facts the Learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre ["Ld. CIT (A)"] erred in not granting proper, sufficient and adequate opportunity of being heard to the Appellant while passing the appellate order. It is submitted that, in the facts and the circumstances of the case, and in law, the*

*1.2 appellate order so framed be held as bad and illegal, as:*

*(i) The same is framed in breach of the principles of natural justice; and*

*(ii) The same is passed without application of mind to the facts and the submissions brought on record by the Appellant.*

*(iii) The same is passed without providing an opportunity of personal hearing*

*1.3 It is submitted that in the facts and the circumstances of the case, and in law, no such action was called for.*

### *2. REASSESSMENT*

*2.1 The Ld. CIT (A) erred in confirming the action of the A.O. in initiating reassessment proceedings and framing the assessment of the Appellant by invoking the provisions of section 147 r.w.s. 148 of the Income tax Act, 1961 ["the Act"].*

*2.2 While doing so, the Ld. CIT (A) failed to appreciate that:*

*(i) The case of the appellant did not fall within the parameters laid down by section 147 r.w.s. 148 of the Act;*

*ii The necessary preconditions for initiating and completion thereof were not satisfied.*

*2.3 It is submitted that in the facts and the circumstances of the case, and in law, the reassessment framed is bad, illegal and void*

*WITHOUT FURTHER PREJUDICE TO THE ABOVE*

*3. ADDITION OF RS. 2,63,055/- ON ACCOUNT OF SALE OF SHARES HELD AS LONG-TERM CAPITAL ASSET AS UNEXPLAINED CASH CREDIT U/S 68 OF THE ACT*

*3.1 The Ld. CIT (A) erred in confirming the action of the A.O. in making addition of Rs 2,63,055/-, on the ground of being alleged unexplained investment in shares*

*3.2 It is submitted that in the facts and the circumstances of the case, and in law, no such addition was called for.*

*3.4 Without prejudice to the above, assuming but not admitting - that some addition was called for, it is submitted that the computation of the addition made by the A.O. is arbitrary, excessive and not in accordance with the law.*

*LIBERTY*

*The Appellant craves leave to add, alter, delete or modify all or any the above ground at the time of hearing.*

3. The brief facts of the case that the assessee has filed the return of income for the A.Y 2011-12 on 31.07.2011 disclosing a total income of Rs.7,83,837/- and the return of

income was processed u/s 143(1) of the Act. The Assessing Officer (A.O) has received information from DGIT (Inv) that that assessee has entered into share transactions and the beneficiary of accommodation entries in the form of Long Term Capital Gains in the F.Y 2010-11, therefore the AO has reason to believe that the income has escaped assessment and issued notice u/s 148 of the Act. In response to notice, the assessee has filed the copy of income tax return filed on 31.07.2011 as due compliance. Subsequently the AO has issued notice u/s 143(2) and 142(1) of the Act. In compliance to the notice, the Ld. AR of the assessee appeared from time to time and submitted the details. The AO found that the assessee has transactions of sale of shares of KCL Infra Projects( formerly known as Kadamb Construction Ltd) of Rs.2,63,055/-.The AO dealt on the various facts of transactions, modus operandi and the report of the kolkata investigation wing and the statement of persons and has doubted the earning of Long Term Capital Gains. The A.O observed that there is a no correlation of the price rise and fall of the share price and was not satisfied with the explanations and material information and observed that the transactions are not genuine and made addition as unexplained cash credit u/s 68 of the Act of Rs.2,63,055/- and assessed the total income of Rs.10,46,890/- and passed the order U/sec143(3) r.w.147 of the Act dated 14-12-2018.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). The CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the AO but has confirmed the action of the AO and dismissed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in sustaining the addition overlooking the facts and information submitted in respect of the transactions and the assessee is regular investor and the incurred loss in this scrip. Further there is no scope for the AO to make the additions based on the surmises and conjectures as the assessee has filed the documentary evidence in support of the claim. Whereas the AO has only relied on the investigation report and no independent enquiry was conducted. The Ld.AR substantiated the submissions with the factual paper book and the judicial decisions and prayed for allowing the appeal. Contra, the Ld.DR relied on the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. The Ld.AR submitted that the CIT(A) has erred in dismissing the grounds of appeal pertaining to validity of reassessment and addition u/sec68 of the Act. The Ld.AR submitted that the assessee has furnished the financial statements, summary of purchase and sale of shares in F.Y

2010-11, ledger account and the copies of bank statements, The Ld AR highlighted that the assessee has purchased and sold the shares of Kadamb Construction Ltd referred at page 29 of the paper book and has incurred loss. The Ld.AR emphasized that the AO has not considered the facts that the assessee is a regular investor and the transactions are supported with the material evidences. The Ld.AR demonstrated the reply of letters filed in lieu of notices and show cause notice issued by the assessing officer at page 15 to 55 of the paper book and. The AO has doubted the purchase and sale of shares and observed that the price rigging is not commensurate with the financials of the company. The assessee has substantiated with all details and information and the revenue could not make out a case that there is unaccounted money transactions took place in the hands of the assessee and the AO has relied on the investigation report of income tax department and treated the long term capital gains on sale of shares as not genuine. Further the A.O. has not made any enquiry or independent investigation and relied on the statement of the parties and third party investigation report. The fact remains that the assessee has submitted the requisite details in respect of purchase and sale of shares and were not disproved. The transaction of purchase and sale of shares is through banking channel. Hence Considering the facts and circumstances, we set aside the order of the CIT(A) on this

disputed issue and allow the grounds of appeal in favour of the assessee.

7. Since, the grounds of appeal on merits are decided in favour of the assessee, hence the grounds of appeal with respect to validity of reassessment proceedings raised by the assessee becomes academic and are left open.

8. In this result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 10.07.2023.

Sd/-

Sd/-

**(S RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Mumbai, Dated 10/07/2023

KRK, PS

**आदेश की प्रतिलिपि ढि ग्रेषित/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