

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL, “SMC” BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

आ.अ.सं./ITA No.14/SRT/2023 (AY 2013-14)

(Hearing in Physical Court)

Dimpal Rajeshkumar Patel 9-10, Patel Kunj, N.H.8 Ankleshwar-393002 PAN No: AEJPV 3948 P	Vs	Income Tax Officer, Ward-2(1), Bharuch, Station Road, Hari Kunj Building, Above Bank of Baroda, Bharuch-392001
अपीलार्थी/ Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से /Assessee by	Ms Nilisha Shah, CA
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
अपील पंजीकरण/Appeal instituted on	04.01.2023
सुनवाई की तारीख/Date of hearing	03.05.2023
उद्घोषणा की तारीख/Date of pronouncement	24.07.2023

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of National Faceless Appeal Centre, Delhi [for short to as “Ld. NFAC/Ld.CIT(A)”] dated 08.12.2022 for assessment year 2013-14, which in turn arises from the addition made by the Assessing Officer in assessment order passed under section 143(3) r.w.s 147 of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) dated 28.12.2017. The assessee has raised the following ground of appeal:-

“1.On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in passing ex-parte order without giving reasonable and

sufficient opportunity of being heard. The notices were sent to the email domain of the account which was handled by the previous consultant. No notices were served physically.

2. On the facts and circumstances of the case as well as law on the subject, the learned Assessing Officer has erred in issuing notice u/s 148 of the Act and passing the assessment order u/s 143(3) r.w.s. 147.

3. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of Assessing Officer in considering genuine income of Rs.17,22,171/- in the form of Long Term Capital Gain as manipulated income and adding u/s 68 as unexplained cash credit without giving cogent reasons with similar transactions by some entry operators, who have recorded statement on oath u/s 131/133A.

4. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of Assessing Officer in adding to the total income, a cost of purchase of share Rs.,18,750/- u/s 69C as unexplained expenditure.

5. It is therefore prayed that the assessment u/s 143(3) r.w.s. 147 may please be quashed and/or the additions made by Assessing Officer and confirmed by Commissioner of Income Tax (Appeals) may please be deleted.

6. Appellant crave leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”

2. Facts in brief are that case of assessee was re-opened on the basis of information received from Investigation Wing of Kolkata, wherein it was informed that large number of penny stock companies, the share prices were artificially raised on the Stock Exchanges in order to book bogus claims of Long Term Capital Gains or loss (LTCG/LTCL).

The assessee was one of the beneficiary of LTGC on sale of one of such companies, which were identified by the investigation wing. On the basis of such information, the case of assessee was re-opened after recording reasons. Notice under section 148 dated 06.02.2017 was issued to the assessee for filing return of income for assessment year 2013-14. In response to such notice, assessee vide letter dated 31.30.2017 requesting the Assessing Officer to treat the original return of income filed on 28.03.2014 may be treated return of income in response to notice under section 148 of the Act. The assessee was provided reasons recorded. Notice under section 143(2) was also served. During the assessment the Assessing Officer noted that in the computation of income, the assessee has shown LTCG on sale shares of Global Securities Limited of Rs.17,00,340/-. The LTCG was claimed as exempt as per Schedule E-1, in the computation of total income. The Assessing Officer found that assessee purchased 15,000 share of Global Securities Limited on 10.11.2011 @ Rs.1.25/- per share on off market purchase. The shares were converted in demat form on 08.11.2012. The assessee

sold 7000 shares on 25.01.2013, 5000 shares on 18.02.2013 and 3000 shares on 25.02.2013 through Broker Arcadia Share and Stock Brokers Private Limited Mumbai. On sale of such shares, assessee gained almost 9076% in fifteen months. The Assessing Officer further noted that all the scrips were named in the Kolkata Investigation Wing. The statement of promoters, brokers & associates persons were recorded who confirmed that Global Securities Limited were involved in stock price manipulation. The assessee is not a trader in shares and derived salary income and income from other sources. The Global Securities Limited had no worth credentials on record. The purchase of shares was off market transactions.

3. The Assessing Officer on the basis of report of Investigation Wing Kolkata wherein the names of various entities found in their report, issued a detailed show cause notice to the assessee as to why the transaction of sale and purchase should not be treated as credit entry. The assessee filed her detailed reply as recorded in para-27 of assessment order. The assessee in her reply, submitted that she acquired

15,000 shares of Global Securities Limited @ Rs.1.25/- from Shri Mansukh Bhai D Shanghvi. At the time of purchase no vital information was available in public domain. There was no significant trade record of company when shares were purchased. The assessee sold her share through broker Arcadia Share and Stock Brokers Private Limited, Mumbai after converting in demat form, the assessee sold her shares after one year and two months. The assessee submitted that her transactions are genuine, payments were received through banking mode. She also relied upon various case law. The contention of assessee was not accepted by Assessing Officer and treated the transaction as unexplained credit. The Assessing Officer also added the cost of purchase of share of Rs.18,750/-.

4. Aggrieved by the addition in the assessment order, the assessee filed appeal before Ld. CIT(A). The appeal of assessee was migrated before NFAC/Ld. CIT(A). The ld CIT(A) recorded that despite granting various opportunities, the assessee has not made any compliance and no material was brought on record to counter the finding of Assessing Officer. The Ld. CIT(A) decided the appeal on the basis of

statement of facts provided with Form-35 and concluded that purchased and sale of the shares are a transaction by organized network of entry provider with the sole motive to sell such entries to enable the beneficiary to account for undisclosed income for consideration or commission. The ld CIT(A) also upheld the addition of commissions income added by assessing officer for availing such entry. Further, aggrieved the assessee has filed present appeal before the Tribunal.

5. I have heard the submission of Ld. Authorized Representative (Ld. AR) for the assessee and Ld. Senior Departmental Representative (Ld. Sr-DR) for the Revenue and have gone through the order of lower authorities carefully. Ground No.1 relates to passing order by Ld. CIT(A) without giving reasonable and sufficient opportunities to assessee. The Ld. AR for the assessee submits that Ld. CIT(A) passed *ex parte* order without giving fair and reasonable opportunity to assessee. The notice sent through e-mail mode was not received by assessee as the e-mail address in Form-35 was of previous tax consultant and no physical notice was served upon the

assessee. Her earlier consultant has not informed her about the notice of hearing if such notices was received by him. Hence, the assessee could not filed her detailed written submission before ld CIT(A).

6. On merit of addition, the Ld. AR for the assessee submits that transaction of assessee was genuine and assessee made transaction in purchasing share through banking transaction and physical share certificates were received, which was later on demat and was sold through recognized Stock Exchange. The Ld. AR for the assessee submits that Assessing Officer made addition solely on the basis of report of Investigation Wing, Kolkata without providing copy of same to the assessee and the assessee was not given opportunity to cross-examination the persons from whose statement, the Investigation Wing, Kolkata, wherein relied. The addition in the assessment is based on third party information which was never shared with the assessee. the ld AR further submits that she has also challenged the validity of reopening. The reopening was also based on third party information. The assessee has furnished complete details while filing her return of income.

7. On the other hand, Ld. Sr-DR for the Revenue supported the order of lower authorities and submits that Ld. CIT(A) gave ample opportunities to assessee to file detailed written submission to substantiate various grounds but no grounds of appeal. The assessee does not deserve any further leniency to consider her case on merit. The assessee is beneficiary of penny stock. The assessee has shown extraordinary gain on sale of impugned share within a span of fifteen months, which is beyond imagination. Against the validity of re-opening was raised by ae before Ld. CIT(A) and assessee never challenged about the Investigation Wing, Kolkata. The assessee has now raised such plea which was never raised either before Assessing Officer or before Ld. CIT(A). No such objections as raised in the submissions by ld AR for assessee, was raised before assessing officer.
8. In alternative submission, Ld. DR for the revenue submits that in case the bench is of the view that the assessee deserve any relief on merit, in such circumstances the matter may be restored to the file of ld CIT(A) with the direction to the assessee to file her submissions, as there is

no decision of ld CIT(A) on merit of the additions in the assessment order.

9. I have considered the rival submissions of the parties and have gone through the orders of the lower authorities carefully. Ground No.1 relates to passing *ex parte* order. I find that Ld. CIT(A) passed *ex parte* order by taking view that the assessee was given six opportunities as recorded in para-4.1 of the order and that the assessee failed to submit any submissions to substantiate the grounds of appeal. Before me, the Ld. AR for the assessee submits that no notice was received by assessee as e-mail address of her earlier tax consultant was given in form-35, who had not informed the assessee. Considering the fact that valuable right of assessee are involved in the present appeal and ld CIT(A) passed *ex parte* order. Therefore, in my view, the assessee deserves one more opportunity to contest her case on merit. Therefore, all the grounds of appeal raised by assessee are restored back to the file of Ld. CIT(A) to decide all the issues afresh in accordance with law. Needless to direct the Ld. CIT(A) shall grant opportunity of hearing to the assessee. The assessee is also directed to be more

vigilant and to make compliance in time and not to seek adjournment without any reason and to file all relevant documents and evidence before Ld. CIT(A) as and when called for. In the result, ground No1 of the appeal is allowed.

10. Considering the facts that I have allowed the ground No.1 and matter is to be restored back to the file of CIT(A) for fresh adjudication on merit, therefore adjudication of all other grounds of appeal at this stage have become academic.
11. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on 24/07/2023 in open court.

Sd/-
(PAWAN SINGH)

[न्यायिक सदस्य JUDICIAL MEMBER]

सूरत/Surat, Dated: 24/07/2023

Dkp. Out Sourcing Sr.P.S

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

By order

// True Copy //

Senior Private Secretary/ Private
Secretary/Assistant Registrar, ITAT,
Surat