

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

SHRI KULDIP SINGH, JUDICIAL MEMBER

**ITA No.1443/M/2023
Assessment Year: 2009-10**

Shri R. Vaidyanathan, 1103/04, Laxmi Vani CHS Ltd, 17 th Road, Chembur (E), Near Chembur Monorail Station, Mumbai- 400 071 PAN: AACPV9507H	Vs.	Assistant Commissioner Of Income Tax-27(3), Room No.432, Vashi Infotech Complex, Vashi, Navi Mumbai- 400 703
(Appellant)		(Respondent)

Present for:

Assessee by : Shri. M.M.Golvala , A.R. &
Shri. Hormuzd Jamshedji, A.R.

Revenue by : Shri. B. Laxmi Kanth, D.R.

Date of Hearing : 12.07. 2023

Date of Pronouncement : 26.07. 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

The assessee by filing the present appeal, sought to set aside the impugned order dated 02.03.2023 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)] qua the assessment year 2009-10 on the grounds inter-alia that :-

"1) The learned Commissioner of Income tax (Appeals) erred in dismissing the appeal of the Appellant by drawing an inference that the assessee is not interested in pursuing the appeal.

2) *The learned Commissioner of Income tax (Appeals) erred in dismissing the appeal of the Appellant without discussing the merits of the appeal, when there was sufficient material in the Statement of Facts before him to decide the matter.*

3) *Both the lower authorities erred in assuming jurisdiction under section 147 when the jurisdictional conditions were not satisfied.*

4) *Both the lower authorities erred in resorting to the provisions of section 147 when there was no "reason to believe" that income chargeable to tax has escaped assessment.*

5) *Both the lower authorities erred in resorting to the provisions of section 147 when there was no live link or nexus between the material and the belief that income chargeable to tax had escaped assessment.*

6) *Both the lower authorities erred in resorting to reassessment proceedings on borrowed satisfaction.*

7) *Both the lower authorities erred in not granting cross examination to the Appellant.*

8) *Both the lower authorities erred in resorting to the provisions of section 147 on a mere change of opinion.*

9) *Both the lower authorities erred in disallowing Rs.10,84,985/- out of F&O losses to be carried forward.*

10) *Both the lower authorities erred in holding that the Appellant had obtained non genuine losses in order to reduce his profits and thereby his taxable income."*

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : original return of income filed by the assessee declaring total income of Rs.48,40,524/- was subjected to scrutiny and assessment was framed at the returned income under section 143(3) of the Income Tax Act, 1961 (for short 'the Act'). Thereafter on the basis of information received from additional Director of Income Tax (Investigation), Ahmedabad case of the assessee was reopened. Assessee's objection raised for reopening was disposed of by the Assessing Officer (AO). The AO after declining the contentions raised by the

assessee disallowed an amount of Rs.10,84,985/- out of F&O losses to be carried forward on the ground that the loss has been shifted from some other person to the assessee and that the assessee has obtained a non genuine losses in order to reduce his profit and thereby framed the assessment under section 143(3) read with section 147 of the Act.

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

4. I 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. Bare perusal of the impugned order passed by the Ld. CIT(A) goes to prove that the appeal filed by the assessee has been dismissed on ground of non prosecution by the assessee. In para 3.1 of the impugned order the date fixed by the Ld. CIT(A) for hearing and for issuance of notice are mentioned. On four occasions the assessee has filed adjournment applications which were allowed but ultimately did not appear.

6. No doubt the assessee has been careless throughout pendency of his appeal before the Ld. CIT(A) but in that situation the Ld. CIT(A) was required to dispose of the appeal on merits.

However, the Ld. CIT(A) by stretching the legal provisions contained under section 114G of the Indian Evidence Act and judgment delivered by various High Courts proceeded to dismiss the appeal for non prosecution. Hon'ble Bombay High Court in case of Commissioner of Income-tax (Central) Nagpur vs. Premkumar Arjundas Luthra (HUF) [2016] 69 taxmann.com 407 (Bombay) held that the Ld. CIT(A) is required to apply his mind to all issues which arise from the impugned order before him and he is not empowered to dismiss the appeal for non prosecution. In these circumstances the impugned order passed by the Ld. CIT(A) is not sustainable, hence ordered to be set aside and remanded back to Ld. CIT(A) to decide afresh after providing opportunity of being heard to the assessee. The Ld. A.R. for the assessee ensured that the assessee will appear before the Ld. CIT(A) on each and every date of hearing without fail.

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

Order pronounced in the open court on 26.07.2023.

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

Mumbai, Dated: 26.07.2023.

* 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.