

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “SMC”, MUMBAI**

BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER

**ITA No.1442/M/2023
Assessment Year: 2011-12**

Shri Sushil Kaandgul, 7, 1 st Floor, Pandit Niwas, S.K. Bole Road, Dadar (West), Mumbai – 400 028 PAN: AGPPK2161B	Vs.	Income Tax Officer-Ward 22(3)(6), Piramal Chambers, Lalbaug, Parel, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Ashwin Jain, 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 09.02.2023 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)) qua the assessment year 2011-12 on the grounds inter-alia that :-

“1. In the facts and circumstances of the case and in Law the Ld. CIT(A) erred in upholding the validity of reassessment proceedings initiated by the Assessing Officer without being in possession of any fresh information and merely on the basis of information from the revenue department without any independent application of mind on the information so obtained.

2. In the facts and circumstances of the case and in Law the Ld. CIT(A) erred in passing an ex parte order without considering the adjournment

request filed by the appellant thereby grossly violating the principles of natural justice.

3. In the facts and circumstances of the case and in law, the Ld. CIT(A) erred in holding the initiation of reassessment proceedings as valid despite the fact that the reasons for reopening were factually incorrect thereby violating the law laid down by the Hon'ble Jurisdictional Bombay High Court in Ankita A. Choksey v. ITO (2019) 411 ITR 207 (Bom.)(HC) which held the reopening of assessment based on incorrect information to be invalid.

4. In the facts and circumstances of the case and in Law the Ld. CIT(A) erred in adding Rs. 3,19,500/- to the income of the appellant under section 68 merely on the basis of surmises and conjectures as he has failed to find any fault with the ample documentary evidences produced in support of purchase and sale of shares.

5. In the facts and circumstances of the case and in law, the learned CIT(A) has erred in upholding the actions of the AO of making an addition of Rs.3,19,500/- as unexplained income u/s 68 by not providing the specific documents/information supplied by Investigation wing to the Appellant and not allowing cross examination of the parties to the Appellant who have made hostile and vague statements.

6. In the facts and circumstances of the case and in law, the CIT(A) erred in upholding the actions of the Assessing Officer of adding a sum of Rs.3,19,500/- as undisclosed income u/s 68 without appreciating that the net credit in the books of the Appellant was only Rs 14041/- and therefore addition should have been restricted to that extent only.

7. In the facts and circumstances of the case and in Law the Ld. CIT(A) erred in adding Rs. 9,585/- to the income of the appellant under section 69C merely on the basis of surmises and conjectures without even verifying whether such an expenditure was actually incurred by the appellant.

8. The Appellant craves leave to (i) add any new ground of appeal and/or(ii) amend, alter or delete any of the above grounds of appeal.”

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : on the basis of information received from DCIT, Central Circle that one Shri Sushil Kaandgul, the assessee in this case is beneficiary of taking accommodation entries in the form of bogus capital gain/loss on sale of shares from M/s. Comfort Intech Ltd., a penny stock. As per information, the

assessee has sold 20,000 of shares for a consideration of Rs.3,19,500/- during the year under consideration and transaction was not genuine rather accommodation entries used to manage bogus Short Term Capital Loss (STCL) and Long Term Capital Gains (STCG) and also to book artificial losses and gains to various beneficiaries. Declining the contentions raised by the assessee the Assessing Officer (AO) proceeded to hold that the assessee has failed to prove the genuineness and creditworthiness of the transactions in number of STCL/business loss incurred by the assessee on account of sale of shares of M/s. Comfort Intech Ltd. and thereby disallowed the amount of Rs.3,19,500/- received by the assessee as sale profits and made addition thereof to the total income of the assessee under section 68 of the Income Tax Act, 1961 (for short 'the Act'). The AO also made addition of Rs.9,585/- on account of commission @ 3% on the trade value of Rs.3,19,500/- which was paid by the assessee and treated as unexplained expenditure. Accordingly the AO 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 for want of non prosecution by the assessee. 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 in para 4 of the impugned order the Ld. CIT(A) mentioned that “various notices were issued to the assessee through ITBA from time to time and last notice was issued on 01.02.2023 requiring compliance on 08.02.2023 but none appeared on behalf of the assessee nor uploaded any reply/written submissions and then the Ld. CIT(A) proceeded to dismiss the appeal due to non prosecution of the appeal by the assessee.

6. It is settled principle of law as per decision rendered by 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) that even if the assessee has not appeared before the Ld. CIT(A), appeal is required to be decided on merits by applying mind and the Ld. CIT(A) is not empowered to dismiss the appeal for want of non prosecution.

7. In the instant case from the order itself it is prima-facie not proved on record if notices alleged to have been issued to the assessee were ever served upon. Because the only notice alleged to be issued on 01.02.2023 for compliance on 08.02.2023 was not reported to be served upon the assessee and appeal was decided in haste on 09.02.2023 within 8 days of issuance of notice. In these circumstances I am of the considered view that impugned order passed by the Ld. CIT(A) is not sustainable, hence set aside and appeal is remitted back to the Ld. CIT(A) to decide afresh after providing opportunity of being heard to the assessee.

8. 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.