

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

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 2052/MUM/2023
(Assessment Year: 2009-10)**

**M/s Blue Square Corporate Services
Private Limited,**

103, 10th Floor, Yugdharma Goregaon (West),
Mumbai – 400062
[PAN: AADCB4038M]

.....

Appellant

Income Tax Officer

Ward-12(1)(3), Mumbai,
Room No. 145A, 1st Floor,
Aayakar Bhawan, M.K. Road,
Mumbai - 400020

Vs

.....

Respondent

Appearance

For the Appellant/Assessee : Ms. Vinita Shah
For the Respondent/Department : Shri Ashok Kumar Ambastha

Date : 12.09.2023
Conclusion of hearing : 21.09.2023
Pronouncement of order

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant has challenged the order, dated 11/05/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2009-10, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 28/12/2016, passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The Appellant has raised following grounds of appeal:
 1. *"On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in passing the ex-parte order, without granting sufficient opportunity of being heard to the appellant.*
 2. *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the actions of Learned Assessing Officer in reopening the assessment u/s 147 of the Income Tax Act, 1961, without considering the facts and circumstances of the case.*
 3. *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the actions of Learned Assessing Officer in making an addition of Rs. 7,95,000/- under Section 68 of the Income Tax Act, as alleged Unexplained Cash Credit, without considering the facts and circumstances of the case."*
3. The Appellant filed return of income for the Assessment Year 2009-10 on 30/09/2009 declaring income of INR 1,14,92,500/-. The return was processed under Section 143(1) of the Act on 04/03/2011. Thereafter, vide Assessment Order passed under Section 143(3) of the Act, regular scrutiny assessment was framed on the Appellant. The Assessment Order was rectified under Section 154 of the Act vide order, dated 25/08/2016 and the income of the Appellant was computed at INR 4,75,92,500/-. Subsequently, the case of the Appellant was reopened under Section 147 of the Act. The reason for reopening the assessment was that the Appellant has benefitted from Client Code Modification (CCM). The Assessing Officer noted that during the year Appellant had entered into transaction of share trading through broker M/s India Infoline Ltd., which resulted in net reduction of income to the tune of INR 7,95,000/- on account of CCM. As information was received from by the Assessing Officer from the ADIT(Inv), Unit-1(3), Ahmedabad that factitious profit/losses were created by some brokers by misusing the

CCM facility in F&O segment on National Stock Exchange (NSE), notice under Section 142(1) of the Act, dated 13/12/2016, was issued to the Appellant directing the Appellant to furnish details alongwith supporting documents/explanation in respect of CCM transaction. Further, verification notice was also sent to the NSE for verification of the said CCM transaction. While no reply was received from NSE, the Appellant filed reply vide letter dated 16/12/2016 in response to notice under Section 142(1) of the Act. It was submitted by the Appellant that there was no trade modification in accounting year 2008-09 for INR 7,95,000/- and a copy of mail received by Appellant from the broker M/s. India Infoline Ltd was also furnished. The Appellant was requested vide, order sheet entry dated 16/12/2016 to furnish the documentary evidences in support of its claim. According to the Assessing Officer, the Appellant did not comply with the aforesaid and therefore, reassessment was framed on the Appellant vide order, dated 28/12/2016, passed under Section 143(3) read with Section 147 of the Act, addition of INR 7,95,000/- was made under Section 68 of the Act in the hands of the Appellant.

4. Being aggrieved, the Appellant preferred appeal before CIT(A) against the order dated, 28/12/2016, passed under Section 143(3) read with Section 147 of the Act which was dismissed by the CIT(A) vide order, dated 11/05/2023.
5. Being aggrieved, the Appellant is now before us against the dismissal of appeal by the CIT(A) vide order, dated 11/05/2023.
6. We have heard the rival submissions and perused the material on record. On perusal of record, we find that when the notice for hearing was received from the CIT(A), the Appellant proceeded with

the misconception that the notice pertained to appeal already disposed by the CIT(A) vide order dated 02/12/2016 while filing reply dated 14/12/2022 and 25/04/2023. Thus, in effect no submission were filed by the Appellant before the CIT(A). However, the CIT(A) dismissed the appeal without examining merits vide order dated 11/05/2023. Therefore, in the facts and circumstances of the present case, we deem it appropriate to set aside the order dated 11/05/2023, passed by the CIT(A) with the directions adjudicate the appeal afresh after giving the Appellant reasonable opportunity of being heard. The Appellant is directed to file all necessary documents, details and submissions on receiving notice of hearing. It is clarified that the Appellant would be at liberty to raise contention relating to grounds raise before CIT(A) relating to the validity of reassessment proceedings as well as merits of the addition. In terms of aforesaid, Ground No. 1, 2 & 3 raised by the Appellant are allowed for statistical purposes.

7. In result, the present appeal preferred by the Assessee is allowed for statistical purposes.

Order pronounced on 21.09.2023.

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 21.09.2023
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai