

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 2386/Mum/2023 (A.Y.2011-12)

Shri Suresh Gopal Kadge

Flat no. 223, B-14,

Adarsh Nagar, Veer

Nariman Road, Century

Bazar, Worli,

Mumbai- 400030,

PAN: AAAPK6624L

..... Appellant

Vs.

ITO WD 35(3)(4),

Kautilya Bhavan,

III Floor, BKC Bandra (E),

Mumbai- 4000251

..... Respondent

Appellant by : Shri G. P. Mehta, Ld. AR
Respondent by : Shri Virabhandra Mahajan, Ld. DR

Date of hearing : 18/10/2023
Date of pronouncement : 06/11/2023

ORDER

PER GAGAN GOYAL, A.M.:

This appeal by assessee is directed against the order of National Faceless Appeal Centre (NFAC), Delhi dated 15.05.2023 u/s. 250 of the Income Tax Act,

1961 (in short 'the Act') for A.Y. 2011-12. The assessee has raised the following grounds of appeal:-

- 1 The orders passed by the learned lower authorities are bad in law and bad in facts.*
- 2 The learned lower authorities have grossly erred in passing ex-parte orders even though the appellant had fully complied with the notices issued.*
- 3 The notice issued u/s 148 of the I.T. Act, 1961 is ab-initio void for want of compliance of mandatory requirements of law. Consequently the assessment order passed in pursuance of said notice is also void ab-initio.*
- 4 The notice issued u/s 148 of the I.T. Act, 1961, is ab-initio void, in as much as, sanction for issue of notice was not granted by the prescribed authority.*
- 5 Assessment order passed under section 148 of the I.T. Act, 1961 is ab-initio void, as much as no reasons were communicated to the appellant prior to completion of the assessment.*
- 6 The learned lower authorities have grossly erred in making/ upholding an addition of Rs. 42, 09,000/- by recourse to section 69 of the I.T. Act, 1961, even though said section has no application in appellant's case.*
- 7 The learned lower authorities have grossly erred in not appreciating the details / explanations submitted and have further erred in making impugned addition of Rs. 42,09,000/-.*
- 8 Having regard to the facts of the case, provisions of law & judicial propositions, impugned addition of Rs. for and untenable in law 42, 09,000/- is wholly uncalled*
- 9 The appellant may please be permitted to raise any additional or alternative ground on or before the hearing of appeal.*

2. The brief facts of the case are that assessee is a senior citizen and as per the submissions before us suffering with blood cancer and not in a position to move without help. For the year under consideration assessee has not filed any return of income u/s. 139 of the Act. Revenue received certain information from their i-taxnet system about assessee's involvement in shares transactions on BSE and NSE amounting to Rs. 36.58 Lacs and 147.07 Lacs respectively. Based on this information, case of the assessee was re-opened vide notice dated: 27.03.2018 u/s. 148 of the Act and assessee was asked to furnish his return of income u/s. 148 of the Act. Assessee failed to file return u/s. 148 of the Act also.

3. AO collected information from assessee's broker M/s. Share Khan Ltd. u/s. 133(6) of the Act. As per this information assessee earned speculation profit of Rs. 2, 16,907/- and Short Capital Gains of Rs. 2, 54,216/-. In addition to this assessee invested Rs. 42.09 Lacs in shares as per the ledger of assessee with stock broker. Assessee received salary also from employer amounting to Rs. 6, 50,132/-. Based on these figures AO assessed the income u/s. 147 r.w.s. 144 of the Act at a total figure of Rs. 53, 30,260/-. Assessee being aggrieved with this order of AO preferred an appeal before the Ld. CIT (A), who in turn confirmed the order of AO, as never participated in the proceedings before the Ld. CIT (A) also. Assessee being further aggrieved and not satisfied with the order of Ld. CIT (A) preferred present appeal before us.

4. We have gone through the order of AO, order of Ld. CIT (A) and submissions of the assessee alongwith grounds of appeal raised before us. We observed that at both the stages proceedings finalized on *ex-parte* basis

and facts of the matter were never examined by the authorities below, which is *sine-qua-non* for us to adjudicate the matter on facts and law. In view of this, grounds raised by the assessee are allowed and matter is restored back to the file of jurisdictional AO for fresh hearing of the matter after providing a proper opportunity to the assessee, keeping in view his health and medical conditions. **In the result grounds raised are allowed for statistical purposes.**

5. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 6th day of November, 2023.

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 06/11/2023

Sr. PS (Dhananjay)

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai