

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 3047/Mum/2023
(A.Y: 2014-15)

Sureshd Kumar Lodha (HUF), 16 th Floor, D Wing Trade World, kamala Mills, Compound, Lower Parel, Mumbai-400013.	Vs	ITO, Ward- 20(3)(1), Piramal Chamber, Lal Baugh, Parel, Mumbai-400012.
PAN/GIR No. : AAPHS4605A		
Appellant	..	Respondent

Assessee by :	Shri.Himanshu Gandhi.AR
Revenue by :	Shri.S.G.Menon.Sr.DR

Date of Hearing	08.11.2023
Date of Pronouncement	08.11.2023

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC) Delhi / CIT(A) passed u/sec 143(3) and U/sec 250 of the Ac. The assessee has raised the following grounds of appeal:

- 1. On the facts and circumstances of the case and law, the Ld CIT(A) erred in passing appeal order without providing fair opportunity of being heard and in gross violation of principal of natural justice.*

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2. *On the facts and circumstances of the case and law, the LdCIT(A) erred in confirming addition of Rs33,04,485/- u/s 68 of Income Tax Act, 1961 by denying the exemption u/s 10(38) for the long-term capital gain earned*

3. *On the facts and circumstances of the case and law, the Ld CIT(A) failed to considered that assessment order passed without furnishing the material, evidence and opportunity of cross examination to the appellant in spite of the request is in gross violation of principal of Natural justice rendering the order to be bad in law liable to be quashed*

4. *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming charging of interest under section 234B and 234D of Income Tax Act1961*

5. *Appellant craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing.*

2. The brief facts of the case are that, the assessee has filed the return of income for the A.Y 2014-15 on 30.07.2014 disclosing a total income of Rs.2,68,956/- and the return of income was processed u/sec143(1) of the Act. Subsequently, the case was selected for scrutiny under CASS and notice u/s 143(2) and 142(1) of the Act was issued. In compliance to the notice, the Ld. AR of the assessee appeared from time to time and submitted the details and the case was discussed. On perusal of the information, the AO found that the assessee has claimed long term capital

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gains on sale of shares of M/s Radford Global Ltd exempt u/sec 10(38) of the Act of Rs.32,04,485/- and the assessee was asked to furnish the details of shares purchase, mode of payment, share certificate, broker details, contract note, dematerialization details, bank details etc. Whereas the assessee has purchased 10000 shares at Rs.10/- each paid up for Rs.1,00,000/- on 23.09.2011 and subsequently the shares were split of Rs.2/- each paid up and the assessee has received 50000 shares and out of the above shares, the assessee has sold 40,000 shares in April & May 2013 for Rs.33,04,485/- through SEBI registered BSE Broker. Whereas the AO has dealt on the purchase letter, sales contract notes, bank statements and Demat Account Statement in respect of shares purchase and sale transactions and also relied on the various facts of shares price trends, modus operandi and the report of the kolkata investigation wing statements and has doubted the earning of Long Term Capital Gains (LTCG). Finally the A.O was not satisfied with the explanations and material information and observed that the transactions are not genuine and made addition as unexplained cash credits u/s 68 of

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the Act of Rs 33,04,485/-/-and assessed the total income of Rs.35,73,440/- and passed the order U/sec143(3) of the Act dated 30-12-2016.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, statement of facts and findings of the AO and has issued notices of hearing and since there was no compliance by the assessee to notices. Therefore the CIT(A) considering the information on record has confirmed the action of the A.O and dismissed the appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

4. Heard the Ld. DR submissions and perused the material on record. Prima-facie the CIT(A) has passed the order considering the fact that there is no appearance in spite of providing adequate opportunity of hearing and the notices were issued. Therefore, the CIT(A) was of the opinion that the assessee is not interested in prosecuting the appeal and dismissed the appeal ex-parte confirming the action of the assessing officer. The Ld. CIT(A) has issued the notices of hearing referred at Page 2 Para 3.1 of the order, but there was no response and thus the Ld.CIT(A) came to a

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conclusion that the assessee is not interested and decided the appeal based on the information available on record. Whereas the assessee has raised grounds of appeal challenging the addition of the A.O and there could be various reasons for non appearance which cannot be overruled. Therefore, considering the principles of natural justice shall provide with one more opportunity of hearing to the assessee to substantiate the case with evidences and information. Accordingly, set aside the order of the CIT(A) and remit the entire disputed issues to the file of the CIT(A) to adjudicate afresh and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information for early disposal of the appeal. Accordingly, allow the grounds of appeal of the assessee for statistical purposes.

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

Order pronounced in the open court on 08.11.2023.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 08.11.2023

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Mumbai
6. Guard File

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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(Asst. Registrar)
ITAT, Mumbai