

IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 2289/Mum/2023

(A.Y: 2015-16)

Surekha Arvind Jain, 301,3 rd Floor,Gulshan Bldg No. 1, Juhu Lane, Andheri (W), Mumbai-400058.	Vs.	The ITO – 32(1)(1), Kautilya Bhawan, BKC,Bandra (E), Mumbai-400051.
PAN/GIR No. : ADLPJ8732E		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	Shri. Dr.Kishore Dhule. CIT DR

Date of Hearing	09.10.2023
Date of Pronouncement	11.10.2023

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

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

- 1. On the facts and circumstances of the case, the Assessment order passed u/s 143(3) by the learned assessing officer is undated, thereby the Assessment order loses its significance and is bad in law and void ab initio.*

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2. *The learned Assessing Officer erred in treating the Sale of Shares made through a recognized Stock Exchange as accommodation entries and accordingly making an addition of Rs.98,37,400/-u/s.68 of the Income Tax Act*

3. *The learned Assessing Officer erred in placing reliance on irrelevant considerations which had no bearing on the Sale of Shares made by the appellant on the recognized Stock Exchange.*

4. *The learned Assessing Officer erred in relying upon certain Reports of DDIT(Inv.), Kolkata without even giving the copy of the same to the appellant for the purpose of rebutting the same and therefore the same could not have been considered for the purpose of concluding addition u/s.68.*

5. *The learned Assessing Officer erred in making further addition of Rs.2,95,122/- u/s.69C of the I.TAct being 3% of the above sales consideration of the shares under the presumption that the appellant would have paid such a Commission for obtaining the accommodation entries.*

2. The brief facts of the case are that, the assessee is an individual and has filed the return of income for the A.Y 2015-16 on 21.01.2016 disclosing a total income of Rs.30,91,170/- and the return of income was processed u/s 143(1) of the Act. Subsequently the case was selected for scrutiny and notice u/sec 143(2) and U/sec 142(1) of the Act were issued. In

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compliance to the notice, the Ld. AR of the assessee submitted the details. The Assessing Officer (AO) on perusal of the financial statements found that during the year under consideration the assessee has traded in the penny stock of PS IT Infrastructure and Service(formerly known as shilp investments Ltd) and has disclosed the long term capital gains of Rs.96,50,940/- and has exempted U/sec10(38) of the Act. Whereas the assessee has purchased the 15000 shares of Rs.10/- of Crescent Digital Technologies Pvt Ltd on 22.03.2012 from M/s Octopus Infotel Pvt Ltd for a consideration of Rs.1,50,000/-, subsequently M/s Crescent Digital Technologies Pvt Ltd was merged with PS IT Infrastructure & Services (formerly known as Parag Shilp Investment Ltd) vide High Court of Bombay order dated 03.05.2013 and the shares of PS IT Infrastructure & Services are credited to demat account of assessee on 28.12.2012. Further the assessee has sold 3,000 shares on 25.08.2014 for a consideration of Rs.17,65,088/- and 12000 remaining shares were split into 1,20,000 shares of face value of Rs.1/- each and resulting shares were sold between 16.09.2014 to 22.10.2014 for a total consideration of

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Rs.80,33,552/-.The AO dealt on the various facts of transactions, modus operandi and the report of the kolkata investigation wing and the statement of persons and has doubted the earning of Long Term Capital Gains. The A.O find that there is a no correlation of the price rise and fall of the share price and was not satisfied with the explanations and material information and observed that the transactions are not genuine and made addition as unexplained cash credit u/s 68 of the Act of Rs.98,37,400/-andestimated unexplained expenditure U/sec 69C of the Act of Rs.2,95,122/- and assessed the total income of Rs.1,32,23,690/- and passed order U/sec143(3)of the Act dated 2-1-2018.

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.

5. We 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 4 of the order i.e 28-12-2020, 08-08-2022,16-09-2022,30-09-2022 & 07-11-2022 but there was no response and thus the CIT(A) came to a 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 additions 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

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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. And the grounds of appeal of the assessee are allowed for statistical purposes.

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

Order pronounced in the open court on 11.10.2023.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 11.10.2023

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

ITA No. 2289/Mum/2023
Surekha Arvind Jain, Mumbai.

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सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Asst. Registrar)
ITAT, Mumbai