

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1588/M/2023
Assessment Year: 2014-15**

Shri Chetas Karamshi Nandu, B/304, Jay Apartment, Nehru Road, Santacruz (East), Mumbai – 400 055 PAN: AIJPN0030C	Vs.	Income Tax Officer- 22(1)(3), Room No.314, 3 rd Floor, Piramal Chambers, Parel, Mumbai – 400 055
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Devendra Jain, A.R.
Revenue by : Shri Ajeya Kumar Ojha, D.R.

Date of Hearing : 19 . 10 . 2023
Date of Pronouncement : 10 . 11 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, Shri Chetas Karamshi Nandu (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 09.03.2023 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)) qua the assessment year 2014-15 on the grounds inter-alia that :-

“1. In the facts and circumstances of the case and in law, the Learned CIT (A) has erred in upholding the action of the Ld. Assessing Officer of issuing notice u/s 148 on borrowed satisfaction merely relying on the

basis of alleged information received without any independent application of mind thereon.

2. In the facts and circumstances of the case and in law, the Learned CIT (A) has erred in upholding the action of the Ld. Assessing Officer of completing the assessment u/s 143(3) read with section 147, without providing the material or information in his possession and without providing any opportunity of cross examination of the witnesses relied upon by the Assessing Officer and thus violating the law laid down by Honorable Supreme Court in the case of Kishanchand Chellaram v. CIT (1980) 125 ITR 713 and Andaman Timber Industries v. Commissioner of Central Excise (Civil Appeal No. 4228 of 2006.)

3. In the facts and circumstances of the case and in law, the Learned CIT (A) has erred in upholding the action of the Ld. Assessing Officer in treating the transaction of the sale of shares of M/s Sunrise Asian Ltd. as bogus and sham and has erred in confirming the addition of Rs.42,61,992/- as unexplained cash credit under section 68 of the Act.

4. In the facts and circumstances of the case and in law. the Learned CIT(A) has erred in upholding the action of the Ld. Assessing Officer of not granting the exemption of long terms capital gain under section 10(38) of the Act on sale of listed equity shares sold through recognized stock exchange which has duly been subjected to security transaction tax (S.T.T.) on surmises, conjecture and suspicion.

5. In the facts and circumstances of the case and in law, the Learned CIT (A) has erred in confirming addition in respect of commission of Rs. 1,27,860/- estimated at 3 per cent of Rs.42,61,992/-, as unexplained expenditure under section 69C of the Act.

6. The appellant craves leave to add, alter, delete or modify all or any of the above grounds of appeal. All the above grounds are without prejudice to each other.”

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : on the basis of information received from Directorate of Income Tax (Investigation), Mumbai that “organized racket generating bogus entries of Long Term Capital Gains (LTCG) in penny stock has been unearthed and the assessee is one of the beneficiaries who has availed of such entries by showing purchase and sale of shares of Sun Rise Asian Ltd. (scrip name Sun Asian) to the tune of Rs.42,61,992/- for which the

assessee has claimed exempt income on account of LTCG during the year under consideration to the tune of Rs.40,52,185/-. The assessee's assessment was reopened by initiating the proceedings under section 147/148 of the Income Tax Act, 1961 (for short 'the Act'). Declining the contentions raised by the assessee Assessing Officer (AO) proceeded to hold that LTCG of Rs.38,72,185/- shown in the return of income as sale of shares of Sun Rise Asian Ltd. was prearranged method employed by the assessee in connivance with the operators to evade the taxes. After explaining the modus operandi adopted by the assessee and examining the evidence on record the AO proceeded to make the addition of Rs.42,61,992/- under section 68 of the Act and the addition of Rs.1,27,860/- under section 69C of the Act on account of unexplained expenditure and thereby 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 filed by the assessee ex-parte. 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. We 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 the appeal filed by the assessee has been dismissed on failure of the assessee to appear and to substantiate his grounds raised in the appeal. Two notices were shown to be issued one on 02.02.2021 and another on 02.01.2023 but the assessee shown to have not appeared in compliance to the notice issued during the appellate proceedings and appeal has been dismissed ex-parte for want of prosecution.

6. No doubt the Ld. CIT(A) has also decided the appeal on merits by relying upon the findings returned by the first appellate authority in assessee's own case in the earlier years but we are of the considered view that the appeal of every year is to be decided on the facts of each case, more independently particularly by procuring the presence of the assessee.

7. No doubt the Ld. CIT(A) in para 4.1 has shown that the assessee was duly served but we are of the considered view that due to faceless proceedings and shift to the digital service of summons some time the assessee may not be served as has been argued by the Ld. A.R. for the assessee that notice was never received by the assessee, the benefit of doubt is required to be given to the assessee at least to provide adequate opportunity of being heard before disposing of his appeal.

8. In these circumstances, we are of the considered view that the impugned order passed by the Ld. CIT(A) at the back of the assessee without providing adequate opportunity of being heard is

not sustainable in the eyes of law, hence set aside to be decided afresh by providing opportunity of being heard to the assessee.

9. Resultantly, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 10.11.2023.

**Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 10.11.2023.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.