

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 449/JPR/2023
निर्धारण वर्ष / Assessment Years : 2013-14

Nahta Trading Co. 0 Bhawani Mandi, Jhalawar-326502.	बनाम Vs.	ITO, Ward, Jhalawar.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAAFN 8982 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Devang Gargieya (Adv.)
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 11/10/2023
उदघोषणा की तारीख / Date of Pronouncement : 30/11/2023

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal is filed by the assessee is directed against the order of the Ld. CIT(A) dated 19.05.2023, National Faceless Appeal Centre, Delhi [herein after referred to as (NFAC)] for the assessment year 2013-14.

2. The assessee has raised the following grounds of appeal:-

*"1. 1. The ld. CIT(A) erred in law as well as on the facts of the case in passing the impugned order ex-parte, in a haste without affording adequate and reasonable opportunity of being heard. The impugned order having been passed in gross breach of natural justice, kindly be quashed or alternatively be restored to the file of the ld. CIT(A).
1.2 The ld. CIT(A) also erred in law as well as on the facts of the case in not deciding the appeal on merits, which is violation of mandate of statutory provisions. Thus, the*

impugned order having been framed in gross breach of statutory provisions, kindly be quashed or alternatively be restored to the file of the ld. CIT(A).

2.1 The ld. AO erred in law as well as on the facts of the case in framing the asst. u/s 147/144 without affording adequate and reasonable opportunity and even without complying with the mandatory statutory requirement of law. The impugned order having been framed in gross breach of natural justice, kindly be quashed.

2.2 Rs. 16,69,950/- The ld. CIT(A) has erred in law as well as in facts in confirming the additions made on account of the alleged long term capital gain even though the same pertained/belonged to Smt. Sangeeta Nahata and not to the appellant. The addition so made and the confirmation thereof by the ld. CIT(A) being contrary to the provisions of law and facts of the case, the same kindly be allowed in full.

3. The Ld. CIT(A) erred in law as well as in facts of the case in confirming the levy of interest u/s 234A, 234B, 234C. The levy interest being charged, is contrary to the provisions of law and facts, kindly be deleted in full.

4. the appellant prays your honor indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing.”

3. Brief facts of the case are that the assessee is a partnership firm running business by the name M/s. Nahta Trading company, Kota. The Ld. AO issued a notice U/s 148 dated 09.10.2018, in response to which the assessee filed ITR on 09.06.2018 and copies of ITR, Computation of total Income and Profit & Loss a/c were submitted to the Ld. AO. The Ld. AO issued notices u/s 142 for hearing on a couple of occasions however, alleged that there was non-compliance of the notices as nobody attended, nor reply to the questionnaire was given. The ld. AO finally passed the Assessment Order ex- parte after making an addition of Rs 16,69,950/-, being the LTCG. In the First Appeal the ld. CIT (A) also passed ex-parte Order and confirmed the additions so made alleging that the notices issued were not complied with.

4. Being aggrieved by the order of the AO, the assessee filed an appeal before the Id. CIT(A). The Ld. CIT(A) observed that various notices were issued and requiring the assessee to file the details in support of grounds taken by the assessee. Since the assessee has not complied with the notices issued the Id. CIT(A) dismissed the appeal of the assessee ex-parte order. The extract of the finding of the Id. CIT(A) is reproduced as under:-

“ 5. Decision:

During the course of appellate proceedings, opportunity of being heard was given by this office notice dated 08.01.2021, 04.03.2022, 31.03.2022, 18.04.2022 and 19.04.2023. However, there is no response. The appellant has thus failed to avail the opportunities provided by this office to furnish explanation/submission in support of its contentions.

5.2 As has been brought out above, it is evident that the appellant is not interested in filing any details during the appellate proceedings and to avail the opportunity under the principle of natural justice. As many as five notices were issued through ITBA portal as noted above. However, it is a matter of record that no documents or details were submitted by the appellant.

5.3 It has been held by the Hon'ble Supreme Court in the case of B.N. Bhattacharjee and another (118 ITR 461) (at pages 477 & 478) that appeal does not mean filing of memo of appeal but also pursuing it effectively. In cases where the appellant does not want to pursue the appeal, appellate authorities have inherent power to dismiss the appeal for non-prosecution as held by the Hon'ble Bombay High Court in the case of M/s Chemipol Vs. Union of India in Excise Appeal No. 62 of 2009.

5.4 This appeal has been filed by the appellant claiming that the action of the Assessing Officer is not supported by facts and laws and that is unjust. In such a situation, it is for the appellant to furnish submissions with relevant evidence(s), case laws, if any, to support the claim. The burden of proof is always on the person who makes the claim. In this case, it is the appellant who has made the claim by filing the appeal. However, the appellant has not availed the opportunities provided to file submission/evidence in support of the claim made. In view of the said non-submission of explanation, the appeal is decided on the facts and material available on record assuming that the appellant has nothing to submit in the matter.

5.5 I have carefully examined the facts of the case, finding of AO in assessment order and material available on record. The brief facts of case relevant to purpose of appeal are that the case of the appellant, M/s Nahta Trading Co., a partnership firm, was opened for scrutiny u/s 147

of the Act. The Assessment u/s 147/144 of the Act was finalized by AO, vide order dated 18.10.2018 wherein an addition of Rs. 16,69,950/- has been made on account of bogus LTCCG.

Being aggrieved, the appellant is in appeal against the said order u/s 147/143(3) of the Act. The grounds of appeal are adjudicated as under:

5.6 Ground no. 1 Through this ground, the appellant has challenged the re-opening of assessment stating that reason for reopening of case for the AY under consideration is same as the reason used for reopening the case of earlier AY. A case can be re-opened under the provisions of section 147 if the AO has reason to believe that any income chargeable to tax has escaped assessment. In this case, AO had prima facie evidence in the form of information from DIT(Inv.), Kolkata, that the appellant had obtained bogus LTCCG. It may be the case that the appellant has received such bogus LTCCG over many assessment years. Therefore, there is no merit in the ground raised by the appellant.

5.6.2 Further, the appellant has submitted through statement of facts that A.O. has issued notice u/s 147 on the basis of report of investigation wing only. A case can be re-opened under the provisions of section 147 if the AO has reason to believe that any income chargeable to tax has escaped assessment. There are a plethora of decisions where it has been held that at the time of reopening an assessment, the AO should have prima facie some material to form reason to believe and at that stage the sufficiency or correctness of the material is not required to be proven. In the landmark decision of Raymond Woolen Mills Ltd V ITO [1999]236 ITR 34, the Supreme Court held that-

"We have only to see whether there was prima facie some material on the basis of which the Department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage."

5.6.3 Further, in the case of ACIT v Rajesh Jhaveri Stockbrokers (P.) Ltd. [2007] 291 ITR 500 (SC), it was observed by the Hon'ble Supreme court that-

"...at the initiation stage, what is required is "reason to believe", but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not the concern at that stage."

5.6.4 The Courts have also held that the AO must have 'tangible material' on the basis of which AO can form reason to believe that income has escaped assessment. The Hon'ble High Court of Delhi in the case of PCIT Vs Paramount Communication (P.) Ltd. [2017] 79 taxmann.com 409 (Delhi)/[2017] 392 ITR 444 (Delhi) has held that Information regarding bogus purchase by assessee received by DRI from CCE which was passed on to revenue authorities was 'tangible material outside record' to initiate valid reassessment proceedings. The SLP against the decision has been dismissed by Hon'ble Supreme Court in PCIT VS Paramount Communication (P.) Ltd. [2017] 84 taxmann.com 300 (SC)/ [2017] 250 Taxman 100 (SC), 2017-TIOL-253-SC-IT. Further, the assessment can be reopened on the basis of information received from the Investigative Authorities, has also been held in the following decisions:

1. Aradhna Estate (P.) Ltd. Vs DCIT [2018] 91 taxmann.com 119 (Gujarat)

where Hon'ble Gujarat High Court held that where reassessment proceedings were initiated on basis of information received from Investigation wing that assessee had received certain amount from shell companies working as an accommodation entry provider, merely because these transactions were scrutinized by Assessing Officer during original assessment, reassessment could not be held unjustified.

2. Pushpak Bullion (P.) Ltd. Vs DCIT[2017] 85 taxmann.com 84 (Gujarat)

where Hon'ble Gujarat High Court held that where investigation wing of department had during course of investigation in case of a third party found that he was indulged in providing accommodation entries and bogus bills, and assessee had made sizeable purchases from him, reopening notice against assessee was justified.

3. Ankit Financial Services Ltd. Vs DCIT [2017] 78 taxmann.com 58 (Gujarat) where Hon'ble Gujarat High Court held that where material recovered in search of another person indicated that assessee had received bogus share applications through accommodation entries, since assessee was beneficiary, initiation of re-opening was justified.

4. Aaspas Multimedia Ltd. Vs DCIT[2017] 83 taxmann.com 82 (Gujarat)

where Hon'ble Gujarat High Court held that where reassessment was made on basis of information received from Principal DIT (Investigation) that assessee was beneficiary of accommodation entries by way of share application provided by a third party, same was justified.

5. Ankit Agrochem (P.) Ltd. Vs JCIT[2018] 89 taxmann.com 45 (Rajasthan)

where Hon'ble Rajasthan High Court held that where DIT informed that assessee-company had received share application money from several entities which were only engaged in business of providing bogus accommodation entries to beneficiary said information was justified E TAX DE Berns, reassessment on basis of

5.6.5 Considering the provisions of the Act and the judicial precedents discussed above it is clear that the AO had prima facie evidence in the form of information from Directorate of Investigation, Kolkata. This tangible material enabled the AO to form a belief that income chargeable to tax had escaped assessment within the meaning of provision of section 147. The Assessing Officer perused the information supplied by the Directorate of Investigation, Kolkata and having formed the belief that income chargeable to tax had escaped assessment, cannot be stated to have acted mechanically.

5.6.6 In light of above facts, the initiation of proceedings u/s 147 is therefore upheld and Ground no. 1 is dismissed.

5.7 Ground No. 2 Through this ground, the appellant has challenged the addition of exempt LTCG. During the year under consideration, the appellant has claimed Long Term Capital Gain

(LTCG) of Rs. 16,69,950/- as Exempt Income u/s 10(38), arising out of sale of shares of M/s Shreenath Ltd.

5.8 As per records, the appellant had purchased 30,000 shares @ Rs 10 per share of M/s Shreenath Ltd. for an amount of Rs. 3,00,000/- on 30.11.2011. Subsequently, the appellant sold these shares for total amount of Rs. 19,69,950/- as per following details:

Date of Sale	No. of shares of M/s Shreenath Ltd.	Rate per share (in Rs.)
03.12.2012	17000	67.20
18.12.2012	3000	72.15
26.11.2012	10000	60.60

The appellant has claimed LTCG of Rs. 16,69,950/- as Exempt Income u/s 10(38) of the Act. It is noteworthy that the appellant has earned a return of more than 556% within a short span of 11 months.

5.9 The assessing officer has relied on report of Directorate of Investigation, Kolkata, as per which, various BSE listed penny stock companies have been used for providing bogus long term capital gain and M/s Shreenath Ltd. in which transactions were made by the Appellant is one such penny stock company. such penny Mack.

5.10 The investigation conducted by the Department identified M/s Shreenath Ltd. as a company which has been used by the entry operators to provide accommodation entries to various persons by artificially inflating the share price of the company through circular trading. M/s Shreenath Ltd. is one of those identified companies, scrips of which have been used to generate bogus LTCG.

5.11 The AO has emphasized on the following findings to hold the aforesaid share transactions as sham:

(i) In the report of Directorate of Investigation, it has been conclusively established that M/s Shreenath Ltd. was penny stock which indulged in providing fictitious LTCG entries.

(ii) SEBI considering the inputs from Income Tax Department as well as from its own surveillance system and that of the stock exchanges has taken appropriate action in case of the suspect scrips. These actions include suspending the trade of M/s Shreenath Ltd.

(iii) During the assessment proceedings, the appellant has failed to furnish documentary evidences in support of share transaction of M/s Sreenath Ltd. to justify its claim that it is exempt from taxation.

5.12 It is clear that as a result of investigation carried out, the modus operandi involved in generating bogus Long Term Capital Gains was unearthed. Such modus operandi has been

discussed in detail in page 4 and 5 of the assessment order. As per the information available with the AO, the shares of M/s Shreenath Ltd. were found to be heavily traded through the brokers whose activities were scrutinized by the Investigation Wing. The investigation wing recorded the statement of such brokers and subbrokers who accepted having been taken the entries for commission. After a detailed analysis of the investigation report and the considering the non-compliance from the appellant, the AO came to the conclusion that the LTCG transaction was sham and aimed only to bring appellant's unaccounted money in the guise of exempt income.

5.13 During the appellate proceeding, no documents or details were submitted by the appellant. The onus was on the appellant to prove that the transaction leading to claim of LTCG was distinctly genuine transaction and not bogus, premeditated transaction arranged with a view to evade taxes. The onus was on the appellant to support the findings that M/s Shreenath Ltd. was a company whose scrips were capable of being traded at high price as it was the appellant who had traded in the shares of this company which resulted into claim of long term capital gains exempted under section 10 (38). The appellant has failed to discharge its burden of proof and the AO, on the other hand, has thoroughly analysed the investigation carried out by the Directorate to prove that the assessee has introduced bogus LTCG in his books of account by routing his unaccounted income through a tax evasion scheme and M/s Shreenath Ltd is such company whose scrips have been manipulated to provide bogus LTCG.

5.14 At this juncture I would like to place reliance on the recent judgement of the Hon'ble High Court of Calcutta (DB) in the lead case of Principal Commissioner of Income-tax v. Swati Bajaj [2022] 139 taxmann.com 352 (Calcutta) dated 14.06.2022 wherein the hon'ble court has decided a batch of 90 Appeals in favour of Revenue on the issue of bogus capital gains/loss:

Section 68, read with section 10(38), of the Income-tax Act, 1961- Cash credit (Share dealings) Assessment year 2014-15 Whether if there is information and data available of unreasonable rise in price of shares of penny stock companies over a short period of time of little more than one year, genuinity of such steep rise in prices of shares needs to be established and onus is on assessee to do so as mandated in section 68 Held, yes - Assessee made investments in shares of company, 'S' - During relevant assessment year, assessee sold said shares and claimed exemption on long term capital gains - Assessing Officer received Information from Investigation Wing that prices of some shares of penny stock companies which included company, 'S' were artificially rigged to benefit shareholders through bogus claim of LTCG- Consequently, notices were issued by Assessing Officer for scrutiny and on analyzing documents submitted by assessee it was observed that assessee purchased shares of 'S' for Rs. 1 lakh and when investments in shares became eligible for LTCG it was sold for Rs. 29 lakhs during period when general market trend was recessive He thus, opined that shares of 'S' matched all features of companies which were providing bogus LTCG and made additions under section 68 by treating LTCG as unaccounted income - Whether since assessee failed to establish credit worthiness of companies and that rise of price of shares within a short period of time that too when market trend was recessive was genuine, genuineness could not be established merely on basis of documents like bank details, purchase/sell documents and detail of d-mat account - Held, yes Whether thus, in absence of satisfactory explanation by assessee, Assessing Officer was bound to make additions under section 68 - Held, yes [Paras 75, 99 and 102] [In favour of revenue]

5.15 In view of the above discussion, I am of the considered view that share transactions leading to LTCG by the appellant are sham transaction entered into for the purpose of evading tax. The appellant indulged in manipulation of the share prices of M/s Shreenath Ltd with a view to record fictitious Long Term Capital Gains claiming it as exempt from taxation. The entire transactions were stage managed with the object to facilitate the assessee to plough back its unaccounted income in the form of fictitious Long Term Capital Gains and claim bogus exemption. The prices of rigged shares of penny stocks were artificially rigged to benefit of appellant and entire transaction was part of colourable device to generate fictitious LTCG with the aim to evade taxes due.

5.16 Accordingly, it is held that the AO has rightly added the amount of Rs. 16,69,950/- being LTCG from sale of stock M/s Shreenath Ltd as undisclosed income of the appellant. Accordingly, the addition made by the AO is confirmed and Ground No. 2 is dismissed.

6. In the result, appeal is dismissed.”

5. Aggrieved from the order of the ld. CIT(A), the assessee preferred the present appeal on the grounds as stated here in above in para 2. Apropos to the grounds so raised the ld. AR of the assessee filed a detailed submission which is reproduced here in below:-

“ Brief Facts: Assessee was a partnership firm running business by the name Nahta Trading company, Kota. TheAO issued a Notice U/s 148 dated 09.10.2018, in response to which the assessee filed ITR on 09.06.2018 and copies of ITR, Computation of Total Income and Profit & Loss a/c were submitted to the AO. The AO issued notices u/s 142 for hearing on a couple of occasions however, alleged that there was noncompliance of the notices as nobody attended, nor reply to the questionnaire was given. The ld. AO finally passed the Assessment Order ex-parte after making an addition of Rs 16,69,950/-, being the LTCG.

In the First Appeal the ld. CIT (A) also passed ex-parte Order and confirmed the additions so made alleging that the notices issued were not complied with.

Hence, this appeal.

Submissions:

GOA 1&2: No adequate opportunity by AO & CIT (A)

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NOTICE OF HEARING	DATE OF NOTICE	SERVICE OF NOTICE DATE	DUE DATE / HEARING DATE AS PER NOTICE	REPLY
U/S 250	8.01.2021	08.01.2021	02.02.2021	NIL
U/S 250	04.03.2022	04.03.2022	14.03.2022	NIL
U/S 250	31.03.2022	31.03.2022	07.04.2022	NIL
U/S 250	18.04.2022	18.04.2022	25.04.2022	NIL
U/S 250	19.04.2023	19.04.2023	24.04.2023	NIL
ORDER U/S 250	19.05.2023	19.05.2023	—	

1. The Id. CIT(A) erred in law as well as on the facts of the case in passing the impugned order in on dated 19.05.2023 without affording adequate and reasonable opportunity of being heard.

2. Reason of Non-Compliance: It is submitted that Nahata Trading Company, the erstwhile Partnership firm was already dissolved on 01.04.2014. In other words, there was no Firm in existence in A.Y. 2015-16 and onwards. The firm consisted of two partners Shrimati Sangeeta Nahata w/o Sh. Tarun Nahata and Sh. Pardeep Nahata. Sh. Pardeep Nahta was the working partner but did not have much knowledge and was not fully aware of the complexities of tax laws. Additionally, when the firm stood dissolved, without staff and other assistants who were convergent with affairs of the erstwhile firm, he was not able to collect details and to respond. The assessment proceedings were commenced mainly on 07.06.2018 onwards for hearing purposes. The appellant was also not assisted by a regular tax consultant who could take care of their tax affairs. It was only the partner who were supposed to make compliance. For this reason, the authorities below had to pass the Ex-Parte orders. Otherwise also, the subject transaction did not at all belong to parties and the appellant firm who did not carry out such transactions as more detailed in further paras.

3. No LTCG in the hands of the Appellant: During the year under consideration some share transaction were carried out by Smt. Sangeeta Nahata in her individual capacity AANPN5818J. However, since the name and PAN AA AFN8982C of the assessee were in the record of the broker Anand Rathi Share and Stock Brokers Ltd, hence they recorded these transactions under the name of the assessee. From a perusal of the copy of Capital a/c

(PB 1) in the books of the Firm there appears credit of Rs. 19,65,400/- on account of sale of Shares which matches with the copy of her ledger/c (PB 4-5) in the books of M/s Anand Rathi Shares and Stock Brokers Ltd. Further, income of Rs. 16,69,950/- from the LTCG was exempt u/s 10(38).

Under this background, the Department initially also issued notice u/s 148 of the Act for A.Y. 2012-13 but later on the same was dropped/completed without any addition. Similarly, the Assessment for A.Y. 2014-15 was also completed without any addition (PB 2-3). Thereafter, a notice u/s 148 of the Act was also issued for A.Y. 2013-14 with reference to these very share transactions under consideration however, there was no income of Rs. 16,69,950/- from the LTCG.

The impugned orders thus, having been framed in gross breach of natural justice, kindly be quashed or alternatively be restored to the file of the ld. AO or the CIT(A).”

6. In addition the ld. AR of the assessee submitted that the ld. CIT(A) has given 5 opportunities but since the firm was dissolved and there is no staff and no submission was made on merit. Therefore, the ld. AR of the assessee prayed that the matter may be restore back to the file of the ld. CIT(A).

7. Per contra, ld. DR objected to the prayer of the assessee and submitted that even the assessee did not represent case before the ld. AO and therefore, in that case the Bench feels the matter may be restored to the file of the Assessing Officer.

8. We have heard both the parties and perused the materials available on record. The Bench observed that the assessee was really lethargic and unserious in pursuing his case in spite of providing various opportunities by the ld. CIT(A) and ld. AO as mentioned in his order. The assessee did not appear or filed any reply to the notices which were issued by the ld. AO during the assessment proceedings, finally the assessee completed ex-parte order even before the ld. CIT(A). Further, we observed that the assessee or his legal representative did not appear even appellate proceedings in spite of several notices it is evident in the ld. CIT(A) order. But considering the fact that the firm is closed and assessee may be given one chance represent the merits of his case. Thus, bench feels that the assessee because of any reasons

could not advanced his arguments/submissions to contest the case before the lower authorities and the ld. AR for the assessee also prayed to give one more opportunity to submit the evidences concerning the issue in question, with grounds so raised by the assessee, to decide it afresh by providing one more opportunity of hearing. Therefore, we set aside the issue before the ld. AO. However, the assessee will not seek any adjournment on frivolous ground and remain cooperative during the course of proceedings before the ld. AO.

9. Before parting, we may make it clear that our decision to restore the matter back to the file of the ld. AO shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the ld. AO independently in accordance with law.

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

Order pronounced in the open court on 30/11/2023.

Sd/-
(राठोड कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-
(डॉ.एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 30 /11/2023

*Santosh

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

1. The Appellant- Nahta Trading Co., Jhalawar.
2. प्रत्यर्था / The Respondent- ITO, Ward,Jhalawar.
3. आयकर आयुक्त / The ld CIT

4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File ITA No. 449/JPR/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar