

IN THE INCOME TAX APPELLATE TRIBUNAL “ D” BENCH, MUMBAI

**BEFORE SHRI BR BASKARAN, AM AND
SHRI SANDEEP SINGH KARHAIL, JM**

ITA No.3000/Mum/2023
(Assessment Year: 2014-15)

Madhukanta Natwarlal Mehta 192, Samuel Street Masjid Bunder, Mumbai – 400 009.	Vs.	Ward 17(2)(3), Mumbai Aaykar Bhawan, M.K. Marg, Mumbai – 400 020
PAN/GIR No. AAHPM3978Q		
(Assessee)	:	(Respondent)

Assessee by	:	Shri Mehul Shah
Respondent by	:	Smt. Mahita Nair

Date of Hearing	:	20.12.2023
Date of Pronouncement	:	20.12 .2023

ORDER

Per BR BASKARAN, AM :

The assessee has filed this appeal challenging the order dated 16.8.2023 passed by the learned Commissioner of Income Tax (Appeals), NFAC (‘Ld. CIT(A)’ for short), Delhi for Assessment Year (‘A.Y.’ for short) 2014-15.

2. The assessee is aggrieved by the decision of the Ld. CIT(A) in confirming the assessment of sale value of shares sold by the assessee and also in confirming the commission expenditure estimated by the Assessing Officer.

3. At the outset, we have noticed that the assessee did not appear before the Ld. CIT(A) and hence the Ld. CIT(A) has passed the order ex-parte, without hearing the assessee. The Ld. A.R submitted that the

assessee is an aged man and is not well versed with computer usage. Hence he has specifically asked for physical notice of hearing. However, the Ld. CIT(A) has sent the notices by e-mail which was not accessed by the assessee and hence he could not appear before the Ld. CIT(A).

4. We further noticed that the Ld. CIT(A) has not adjudicated the matter on merits and dismissed the appeal of the assessee by confirming the order passed by the Assessing Officer. Accordingly, the bench proposed to restore the matter back to the file of Ld. CIT(A). The Ld. Authorised Representative, however, submitted that the details relating to purchase and sale of shares are very much available with the Assessing Officer and the same is also being presented before the Tribunal. Accordingly, the Ld. Authorised Representative prayed that the Tribunal may examine the evidences and dispose the appeal of the assessee on merits. In this regard, the Ld. Authorised Representative placed reliance on the decision given by Hon'ble High Court of Rajasthan in case of Smt. Kusum Devi Vijayvarghya Vs Assistant Commissioner of Income Tax, Central Circle, Ajmer (D.B. Income Tax Appeal No. 58/2017, dated 1.3.2017). He submitted that the Hon'ble High Court of Rajasthan has expressed the view that, if the documents are available before the Tribunal, it was the duty of the Tribunal to consider the same instead of remanding back the matter.

5. We heard Ld D.R and perused the record. We have also gone through the decision of Hon'ble High Court of Rajasthan. We noticed that, in the above said case, the Ld. CIT(A) has passed the order after affording opportunity to the assessee. When the matter came before the Tribunal, the Tribunal has restored the matter back to the file of tax authorities without examining the evidences produced before it. Hence the Hon'ble High Court of Rajasthan has given above said decision. On the contrary, in the instant case, the assessee has not appeared before

the Ld. CIT(A) and hence there was no occasion for Ld CIT(A) to examine the evidences. Hence, we are of the view that the above said decision of Hon'ble Rajasthan High Court cannot be taken support of in this case. Under the principles of natural justice, the assessee should be heard before deciding against him. Since the Ld. CIT(A) has not adjudicated the matter on merits with reasoned order and since the Ld. CIT(A) passed an order ex-parte, we are of the view that all the issues urged before us need to be restored to the file of the Ld. CIT(A).

6. Accordingly, we set aside the order of the Ld. CIT(A) and restore all the issues to his file for adjudicating them on merits by a reasoned order, after affording adequate opportunity to the assessee. We also direct the assessee to fully co-operate with the Ld. CIT(A) for expeditious disposal of the matter.

7. In the result, the appeal filed by the assessee is treated as allowed for statistical purpose.

Order pronounced in the open court on 20.12.2023.

Sd/-
(SANDEEP SINGH KARHAIL)
Judicial Member

Sd/-
(BR BASKARAN)
Accountant Member

Mumbai; Dated : 20.12.2023
Mini, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT- concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai