IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD

BEFORE Ms. SUCHITRA R. KAMBLE, JUDICIAL MEMBER

ITA No. 546/Ahd/2023
Assessment Year: 2011-12

Parag Abhaybhai Shah, E-497, Part-2, Parshwanath Township, Shivaji Chok, Krisnanagar, Nava Naroda, Ahmedabad PAN : BEZPS 3603 F	Vs	Income Tax Officer, Ward-7(2)(4), Ahmedabad
अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)

Assessee by :	Shri Hasmukh V. Doshi & Shri Mehal H. Doshi, ARs
Revenue by :	Shri Purushottam Kumar, Sr DR

सुनवाई की तारीख/**Date of Hearing** : **08/01/2024**
घोषणा की तारीख /**Date of Pronouncement** : **19/01/2024**

O R D E R

This appeal filed by the assessee is directed against the order of the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "CIT(A)" for short] dated 26.05.2023 passed under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as "the Act" for short] for the Assessment Year (AY) 2011-12.

2. The grounds raised by the assessee in his appeal read as under:-

"1. The Ld. CIT(Appeal) national faceless appeal center Delhi has erred in law and on facts of the case and not justified in confirming the addition made by AO of Rs.9,37,025/- u/s 69-A of IT Act as unexplained money by way of estimating profit on turnover of share market transactions.

2. Ld. CIT(A) has further erred in confirming the order of AO made u/s 144 without considering the facts about change in address of appellant.

3. The Id. CIT(A) has not considered the facts that assessment order u/s 144 is made without any valid reason for issuance of notice u/s 148 and also without proper service of notice to appellant."

3. The assessee filed return of income for Assessment Year 2011-12 showing Rs.1,53,720/- as total income which is majorly from salary income. The Assessing Officer observed that the assessee had made financial transactions during FY 2010-11 and the assessee had entered into transactions of shares exceeding Rs.10,00,000/-, which further reflected that the said transactions were that of Rs.18,74,05,170/- till 31.03.2012 during FY 2010-11. The case of the assessee was reopened u/s 147 of the Act after prior approval of Pr. CIT-7, Ahmedabad. Thereafter, a notice u/s 148 of the Act was issued on 28.03.2018 through RPAD. Several opportunities were granted, but the assessee has not submitted any reply or responded to any notices. Therefore, the Assessing Officer passed assessment order u/s 144 r.w.s. 147 of the Act on 19.12.2018, thereby making addition of Rs.9,37,025/- towards unexplained money u/s 69A of the Act as profit from share transactions.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the Assessing Officer as well as CIT(A) has not given ample opportunity to the assessee, and without verifying the service of notice, made the addition. The ld. AR further submitted that the notice u/s 148 of the Act is invalid as the same was issued without any reason and without any proper service of notice. On merit, the ld. AR submitted that the addition of Rs.9,37,025/- made u/s 69A of the Act by estimating ½% of turnover of share transactions of Rs.18,74,05,170/- is not justifiable. The ld. AR further submitted that the assessee had also made an application for admission of new evidence under Rule 46A of the Income-tax Rules, 1962 before the CIT(A) which was not accepted.

6. The ld. DR relied upon the assessment order and the order of the CIT(A).

7. Heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee claimed that the notices were not received by the assessee and the service of the notice u/s 148 of the Act was not

properly done. From the perusal of the records, it appears that the assessee has not informed the change in his address to the Assessing Officer and, therefore, the plea taken by the assessee that the notice u/s 148 and other statutory notices are invalid appears to be incorrect, and therefore, Ground Nos. 2 & 3 of the appeal are dismissed.

8. As regards the addition on merit, the assessee has not appeared before the CIT(A); therefore, in the interest of natural justice, it will be appropriate to remand back the matter to the file of the CIT(A) for proper adjudication of the issue on merit after taking cognizance of the evidence filed under Rule 46 of the Income-tax Rules, 1962 by the assessee. The CIT(A) is directed to take appropriate decision as per the due process of law. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. The assessee is also directed to fully cooperate with the proceedings before the CIT(A) and, if the assessee is non-cooperative, the CIT(A) is at liberty to take appropriate action and decide the case as per law.

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

Order pronounced in the open Court on this 19th day of January, 2024.

Sd/-

(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 19th day of January, 2024

*Bt**

Copies to:
(1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

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Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad