

IN THE INCOME TAX APPELLATE TRIBUNAL  
Mumbai "SMC" Bench, Mumbai.

Before Justice (Retired) C.V. Bhadang (President) & Shri B.R. Baskaran (AM)

I.T.A. No. 2813/Mum/2023 (A.Y. 2014-15)

Sagarika Infrastructure Private Limited 202, Peninsula Plaza A-16, Veera Ind. Estate Near Yeshraj Studio Off Link Road, Andheri-W Mumbai-400 053.  PAN : AAPCS1951E (Appellant)	Vs.	DCIT 11(1)(3) Aayakar Bhavan M.K. Road Churchgate Mumbai-400 020.  (Respondent)
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Assessee by	Shri Haridas Bhat
Department by	Ms. Monica Pande
Date of Hearing	05.12.2023
Date of Pronouncement	17.01.2024

ORDER

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 12.6.2023 passed by the learned CIT(A), National Faceless Appeal Centre, Delhi and it relates to A.Y. 2014-15. The assessee is aggrieved by the decision of the learned CIT(A) in confirming the order of Assessing Officer in assessing the short term capital loss incurred on sale of shares of M/s. Raford Global Limited as unexplained income of the assessee.

2. We heard the parties and perused the record. During the year under consideration the assessee had sold shares of M/s. Raford Global Ltd. and declared short term capital loss of Rs. 39.93 lakhs. Since the above said share was identified as one of the penny stocks, the Assessing Officer considered the share transactions carried on by the assessee as bogus in nature. Accordingly, the AO assessed the short term capital loss as income

of the assessee. Before the learned CIT(A) the assessee did not appear and hence the learned CIT(A) dismissed the appeal of the assessee. Aggrieved, the assessee has filed this appeal before the Tribunal.

3. The Learned AR submitted that the assessee has purchased shares of M/s Radford Global Ltd through its broker from stock exchange platform and also sold the shares through the stock exchange platform. He further submitted that the assessee has furnished all the evidences in support of the purchase and sale of shares. Accordingly, he submitted that there is no reason to doubt the genuineness of purchase and sale of shares. By placing reliance on the decision rendered by Hon'ble Bombay High Court in the case of PCIT Vs. Indravadan Jain (HUF) (ITA No. 454 of 2018 dated 12.7.2023), the Learned AR submitted that the tax authorities should have accepted the genuineness of the transactions. Accordingly, he submitted that the short term capital loss claimed by the assessee may be allowed.

4. The Learned DR, on the contrary, submitted that the assessee has not appeared before the learned CIT(A) and hence the Ld CIT(A) has dismissed the appeal of the assessee.

5. From the record, we notice that the assessee has given e-mail id of its auditor in Form no.35 filed before Ld CIT(A) and accordingly, the Ld CIT(A) has served the notice of hearing to the above said e-mail id. It appears that the auditor did not communicate the details of hearing notices sent by Ld CIT(A) to the assessee and none responded to the notices issued by Ld CIT(A). Under these set of facts, in the interest of natural justice, we are of the view that the assessee may be provided with one more opportunity to present its case properly before Ld CIT(A). Accordingly, we set aside the order passed by the learned CIT(A) and restore all the issues to his file for adjudicating them afresh on merits by duly considering various decisions that may be relied

upon by assessee before him. We also direct the assessee to fully cooperate with the learned CIT(A) for expeditious disposal of the appeal.

6. In the result, appeal filed by the assessee is treated as allowed.

Order pronounced on 17.1.2024.

Sd/-  
[Justice (Rtd.) C.V. Bhadang]  
President

Sd/-  
(B.R. Baskaran)  
Accountant Member

Mumbai.; Dated : 17/01/2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

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