

**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI**  
**BEFORE MS. KAVITHA RAJAGOPAL, JM AND MS. PADMAVATHY, AM**

ITA No.3781/Mum/2023  
(Assessment Year: 2013-14)

Shri Amritlal Futarmal Jain 211/213, 3 <sup>rd</sup> Floor, Raja Bhavan, Kalbadevi, Mumbai- 400 002	Vs.	ITO Ward-4(1)(3) (Erstwhile Te ACIT, Circle-18(1) Mumbai
PAN/GIR No. ADEPJ 3177 C		
(Assessee)	:	(Respondent)

Assessee by	:	Ms. Shraddha Malekar
Respondent by	:	Shri Manoj Kumar Sinha

Date of Hearing	:	04.03.2024
Date of Pronouncement	:	05.03.2024

**ORDER**

**Per Kavitha Rajagopal, J M:**

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals)- ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2013-14.

2. The assessee has challenged this appeal on the following grounds:

Sr. no.	Grounds of appeal	Tax effect relating to each ground of appeal
1.1	<i>The learned Commissioner of Income Tax (Appeals), NFAC, Delhi erred in passing order u/s. 250 of the Income Tax Act, 1961 without providing proper opportunity of being heard. The order is bad, illegal, void and against the provisions of law and natural justice</i>	-
1.2	<i>The learned Commissioner of Income Tax (Appeals), NFAC, Delhi erred in not serving the notices on registered email address of the appellant and not providing real time alert on registered email address or on registered mobile number of the appellant;</i>	
1.3	<i>Without prejudice to above; the learned Commissioner of Income Tax (Appeals), NFAC, Delhi erred in making assessment u/s. 250 of the Income Tax Act, 1961 without considering the relevant</i>	

	<i>material and documentary evidences readily available with the learned Commissioner of Income Tax (Appeals), NFAC, Delhi. The order passed u/s. 250 of the Income Tax Act, 1961 is without application of mind.</i>	
2.1	<i>The learned Commissioner of Income Tax (Appeals), NFAC, Delhi erred in treating short term capital gains of Rs.2,33,73,151/- as business income;</i>	<i>Rs.40,79,970/-</i>
2.2	<i>The learned Commissioner of Income Tax (Appeals), NFAC, Delhi erred in confirming the transaction of purchase and sales of shares as adventure in nature of trade;</i>	
2.3	<i>The learned Commissioner of Income Tax (Appeals), NFAC, Delhi ought to have appreciated that appellant is an investor and gain arising are regularly treated as capital gains throughout;</i>	
	<i>Total tax effect</i>	<i>Rs.40,79,970/-</i>

3. The brief facts are that the assessee is an individual and a director in Alankar International Pvt. Ltd. working whole time for the company. The assessee is also a registered stock broker and trading member of MCX Stock Exchange Ltd. The assessee had filed his return of income dated 29.07.2013 declaring total income at Rs.2,22,84,596/- as income from salary, business income, short term capital gain (STCG for short), long term capital gain (LTCG for short) and income from other sources. The assessee's case was selected for scrutiny under CASS and notice u/s. 143(2) and 142(1) were issued and served upon the assessee.

4. The Id. Assessing Officer ('A.O.' for short) observed that the assessee had earned income from STCG amounting to Rs.2,33,73,151/- on sale of listed scripts namely Garware Wall Ropes and Asian Granito within a short span of time, for which the assessee was show caused as to why the STCG should not be considered as his 'business income'. The Id. A.O. not convinced with the submission of the assessee held the STCG of Rs.2,33,73,151/- to be the 'business income' of the assessee and determined the total income at Rs.2,22,84,600/- vide the assessment order dated 21.03.2016 passed u/s. 143(3) of the Act.

5. The assessee was in appeal before the first appellate authority, challenging the order of the Id. A.O. in treating the STCG as 'business income'.

6. The Id. CIT(A) vide an *ex parte* order upheld the order of the Id. A.O. on the ground that the assessee has failed to furnish any explanation or supporting documents to substantiate his claim.

7. The assessee is in appeal before us, challenging the order of the Id. CIT(A).

8. Heard the rival submissions and perused the material available on record. It is observed that the assessee has been non compliant throughout the proceeding before the first appellate authority and had failed to furnish any explanation along with any supporting documentary evidence in support of his claim. The Id. CIT(A) has also not decided the issue on the merits of the case for the above mentioned reason. In view of the same, we are of the considered opinion that the assessee shall be given one more opportunity to present his case before the first appellate authority in view of the principle of natural justice with direction that the assessee should cooperate with the proceeding before the Id. CIT(A) without any undue delay.

9. In the result, the appeal filed by the assessee is allowed for statistical purpose.

*Order pronounced in the open court on 05.03.2024.*

Sd/-

(Padmavathy S.)  
Accountant Member

Mumbai; Dated : 05.03.2024  
Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)  
Judicial Member

**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