

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH, KOLKATA

BEFORE SHRI SANJAY GARG, HON'BLE JUDICIAL MEMBER  
&  
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

**I.T.A. No. 265/Kol/2019**  
**Assessment Year: 2014-15**

<b>Prahlad Dutt Lata</b> Urvashi Apartment 3, Hunger Ford Street Kolkata - 700017 [PAN : AAXPL1559J]	Vs	<b>Income tax Officer, Ward - 35(1), Kolkata</b>
--	----	--

अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
------------------------	--	--------------------------

Assessee by :	None
Revenue by :	Shri Raja Sengupta, Addl. CIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 22/02/2024  
घोषणा की तारीख /Date of Pronouncement: 05/03/2024

**आदेश/ORDER**

**PER DR. MANISH BORAD, ACCOUNTANT MEMBER :**

The present appeal is directed at the instance of the assessee against the order of the learned Commissioner of Income Tax (Appeals) - 2, Kolkata (hereinafter the "ld. CIT(A)") dt. 13/08/2018, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2014-15.

2. The Registry has pointed out that there is a delay of 86 days in filing of this appeal. There is a petition for condonation of delay along with an affidavit and the reason for the said delay is mainly on account of old age of the assessee and the delay on the part of the person who received the envelope sent from the office of the ld. CIT(A) which was required to be handed over to the assessee. On perusal of the affidavit, we are convinced that the assessee was prevented for reasonable cause

from filing this appeal in prescribed time limit. Accordingly, we condone the delay and admit the appeal for hearing on merits.

3. When the case was called for hearing, none appeared on behalf of the assessee. In the past also, when this case has been fixed for hearing on 07/09/2022, 27/04/2023, 31/07/2023, 10/10/2023 and 03/01/2024, there was no compliance even though the notices have been sent through e-mail and RPAD. We, therefore, proceed to adjudicate the appeal *ex-parte qua* the assessee.

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

*"1. That the order passed by the Ld. CIT (Appeals) sustaining addition made by the A.O. is in flagrant violation of principles of natural justice as the same has been passed in a biased manner, without affording reasonable opportunity of being heard, without properly considering the submissions furnished before the A.O., using by the A.O. the material collected behind the back of the appellant without confronting the same with the appellant, and thus bad in law.*

*2. That the order passed by the Ld. CIT (Appeals) sustaining disallowance) of exemption of Long Term Capital Gains amounting to Rs.31,64,785/- and instead sustaining an addition of Rs. 33 Lakhs being the gross sale proceeds of shares ignoring the facts and evidences produced by the appellant before the A.O.*

*3. That the order passed by the Ld. CIT (Appeals) sustaining disallowance of payment of Interest paid amounting to Rs.3,01,034 claimed by the assessee appellant.*

*4. That the A.O. was not justified in disallowing the claim of exemption in respect of agricultural income amounting to Rs.12,20,775 claimed by the assessee despite the relevant evidences produced in course of assessment proceedings though the same is exempt under section 10(1) of the Income Tax Act and the CIT (Appeals) has also not considered the same.*

*5. That the rate of tax charged at the rate of 30 per cent in Order u/s 154/144 of the Income Tax Act (instead of slab rate as charged in the original assessment) is not justified in law.*

6. That the disallowance of Rs.503053 being the interest paid on borrowed capital used in partnership firm, allegedly due to non-furnishing of explanation of claim of expenses in Order u/s 144 dated 27.12.2016 and also in order u/s 154/144 dated 19.11.2018 of the Income Tax Act is not justified in law.

7. That the interest charged under sections 234A amounting to Rs.61,780 (Rs.61,600 as per order u/s 154/144) and u/s 234B amounting to Rs.5,26,996 (as per order u/s 154/144) has been wrongly charged.

8. That the appellant craves leave to add to or modify the grounds off appeal on or before the final hearing of the appeal."

5. Facts in brief are that the assessee is an individual engaged in business and for Assessment Year 2014-15 furnished income tax return on 09/01/2015 declaring income of Rs.4,26,620/-. Based on the reason "Suspicious Transactions relating to Long term capital gain on shares", case selected for scrutiny through CASS followed by issuance of notices u/s 143(2) and 142(1) of the Act. Though various opportunities were granted but the assessee failed to appear, which left the Assessing Officer with no option except to frame an *ex-parte* order after examining the income tax return of the relevant information possessed by him, against the income declared at Rs.4,26,620/-, income assessed at Rs.52,48,429/-, after making following three additions:-

(i) Denial of exemption for agricultural income at **Rs.12,20,775/-;**

(ii) Disallowance of interest expenditure u/s 57 of the Act at **Rs.3,01,034/-;**

(iii) Addition u/s 68 of the Act for unexplained credit received in the form of sale of equity shares of penny stock companies at **Rs. 33,00,000/- ;**

**Total addition - Rs.48,21,809/-**

6. Aggrieved the assessee preferred appeal before the Id. CIT(A) only raising two grounds. Firstly, for addition u/s 68 of the Act at Rs.33,00,000/- and consequently disallowance of expenditure u/s 57(3) of the Act at Rs.3,01,034/-. The assessee has not raised the grounds towards denial of exemption on account of agricultural income. The Id. CIT(A) after considering the facts of the case, firstly observed that the assessee has dealt in penny stock company, namely, Shree Shaleen Textiles Limited, which is part of the 84 companies detected by the SEBI were found to be part of a racket of the entry operators providing accommodation entries. The Id. CIT(A) based on the settled judicial precedents and also based on the various decisions as referred in the impugned order in para 6 to 10 came to the conclusion that the assessee has merely taken accommodation entries in the form of capital gain and the sale consideration of Rs.33,00,000/- has been received from unexplained sources which is liable to be added u/s 68 of the Act. So far as the disallowance of interest expenditure at Rs.3,01,034/- is concerned, in absence of any reply or details furnished by the assessee, the addition made by the Assessing Officer was confirmed.

7. Aggrieved, now the assessee is in appeal before this Tribunal.

8. We have heard rival contentions and perused the material placed before us. Ground No. 1 has been raised against the violation

of principles of natural justice. We fail to find any merit in this ground because sufficient opportunity was granted to the assessee but the assessee did not attend the hearing before the Id. Assessing Officer and again before the Id. CIT(A) came up with an adjournment and thereafter nobody appeared. It shows that the assessee is negligent and is not serious with the appellate procedures. Even before us, he has not appeared himself or through the Id. A/R. Under these given facts and circumstances, this ground of the assessee deserves to be dismissed. Accordingly, we dismiss Ground No. 1 raised by the assessee.

9. Vide Ground No. 2 the assessee has claimed that it had shown long term capital gain of Rs. 31,64,785/- but the addition has been made at Rs.33,00,000/- as receipt of gross sale proceeds. We notice that the Assessing Officer received information about the suspicious long term capital gain. Though there is a purchase of equity share of Shree Shaleen Textiles Limited but the accommodation entry has been received in the form of sale consideration through sale of equity shares. The SEBI has found that Shree Shaleen Textiles Limited is a penny stock company which has been used by the share brokers and operators for providing bogus long term capital gain. The Id. Assessing Officer has also observed that there is a huge profit of 2500% in a short span of time. Such transactions were not found to be genuine. Recently, Hon'ble Jurisdictional High Court in the case of *PCIT vs. Swati Bajaj & Ors.* [2022] 139 taxmann.com 352 (Calcutta), has also considered similar set of facts and circumstances and has held such type of transactions as non-genuine and benefit of Section 10(38) of the Act has been denied. Respectfully following the ratio of law laid

down by the Hon'ble Jurisdictional High Court, we find that the Id. CIT(A) was justified in confirming the addition u/s 68 of the Act for unexplained sale proceeds of equity shares thereby denying the benefit u/s 10(38) of the Act. Accordingly, Ground No. 2 raised by the assessee is dismissed.

10. Ground No. 3 is against the disallowance of interest expenditure paid at Rs. 3,01,034/-. Perusal of the impugned order shows that in para 7, details have been mentioned about the income from other sources. In this list, there is interest income on loan at Rs.42,411/- and bank interest of Rs.6,036/- has been mentioned. The other details are income from other heads. The assessee has claimed deduction of Rs.3,01,034/- of interest. However, the same cannot exceed interest income earned by the assessee which in this case is only Rs.48,447/-. We, therefore, sustain the disallowance at Rs.2,52,587/- and partly allow Ground No. 3 raised by the assessee.

11. Ground No. 4 is regarding the claim of exemption for agricultural income. We find that the assessee has not raised this ground before the Id. CIT(A) and before us also no evidence has been filed to prove that the assessee had earned agricultural income during the year to the tune of Rs.12,20,775/-. Thus, the assessee fails to succeed on Ground No. 4. Accordingly, Ground No. 4 raised by the assessee is dismissed.

12. Ground No. 5 is regarding applicability of tax rates instead of slab rates charged in the original assessment. We restore this issue to the file of the Assessing Officer who shall check the correct tax calculation and recalculate the same as per the provisions of Income

Tax Act. Ground No. 5 raised by the assessee is allowed for statistical purposes.

13. Ground No. 6 deals with the disallowance of interest paid on borrowings at Rs.5,03,053/- allegedly used for the purpose of borrowing capital to be used in the partnership firm. We observe that in the assessment order, the ld. Assessing Officer has disallowed the interest expenditure claimed by the assessee against the salary and interest income from partnership firm. The assessee failed to make any representation on this issue before the Assessing Officer. Further we notice that while computing the total income, the ld. Assessing Officer has not taken into consideration the alleged disallowance. Even the assessee has not raised any specific ground against the ld. CIT(A) on this issue. However, in the interest of justices and being fair to both the parties, we remit this issue to the file of the ld. CIT(A) for adjudication on merits and to decide in accordance with law. Accordingly, Ground No. 6 raised by the assessee is allowed for statistical purposes.

14. Ground No. 7 is consequential in nature.

15. Ground No. 8 is general in nature.

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

**Order pronounced in the Court on 5<sup>th</sup> March, 2024 at Kolkata.**

*Sd/-*

**(SANJAY GARG)  
JUDICIAL MEMBER**

*Sd/-*

**(DR. MANISH BORAD)  
ACCOUNTANT MEMBER**

Kolkata, Dated 05/03/2024

*\*S.C.S.P.*

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

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

**Assistant Registrar**  
आयकर अपीलीय अधिकरण  
**ITAT, Kolkata**