

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

**Before: Shri Waseem Ahmed, Accountant Member
And Ms. Madhumita Roy, Judicial Member**

**ITA No. 1076/Ahd/2023
Assessment Year 2012-13**

Nishithkumar Dineshkumar Shah, 1 st Floor Kqureshi Manzil, Opp Jansatta Press Mirzapur Road,Ahmedabad-380001 PAN: AQFPS4984A (Appellant)	Vs	The CIT NFAC, Delhi (Respondent)
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**Assessee by: Shri Nitin M. Pathak, A.R.
Revenue by: Shri Purushottam Kumar, Sr. D.R.**

Date of hearing : 14-03-2024
Date of pronouncement : 18-03-2024

आदेश/ORDER

PER : MADHUMITA ROY, JUDICIAL MEMBER:-

The appeal filed by the assessee is directed against the order dated 15-09-2023 passed by National Faceless Appeal Centre, NFAC, Delhi for assessment year 2012-13.

2. The grounds of appeal raised by the assessee are as under:-

*“The order is passed as Ex-prate / dismissed appeal
We could not reply because of:*

2. Miscommunication between me and consultant

Addition :1: Page 3 para 6 of Assessment order of AO dated 21st Dec, 2019, showing penny stock addition amounting to Rs. 14,45,745/- is not correct. We are attaching herewith our statement from BP equity private limited as an additional evidence showing loss of Rs. 83,580/- from BSE (Cash division).

We are attaching herewith BSE transaction showing profit and loss qua each script including VMS script no. 533427.

25,000 buy shares at the average rate of 33.33 amounting Rs. 8,33,347.5/-

25,000 sale shares at the average rate of 29.99 amounting Rs. 7,49,676.5/-

Thus, loss of Rs. 83,580/-

Addition:2:Page 30 of para 10 of Assessment order of AO dated 21st Dec, 2019, showing 20% of the credit entry of the total credit in the books of accounts of Rs. 30,76,854/- is having no base.

The estimation base is not explained. Hence, it is ultra vires as per law.

Hence, result to be deleted.

Our plea is to delete the addition on no base for 20% of business receipts & not considering our loss as per statement showing the VMS scrips details transactions”

3. The application is barred by limitation for 36 days. An affidavit explaining delay has been filed before us content whereof is this that no notice was received by the assessee and further that email casachinthakkar2015 @gmail.com belonged to the CA who already expired, hence the assessee could not appear before the authorities below. Therefore, he prays for

condonation of delay in preferring the appeal since the same could not be filed within time. Such prayer made by the ld. A.R. has not been controverted by the ld. D.R. with all his friends. Having regard to the facts and circumstances of the case and having regard to the submissions made by the parties, we find that the explanation rendered by the assessee can be considered as 'sufficient cause' in filing the appeal before us late. Hence, the delay is condoned.

4. The assessee before us has challenged the order passed by the ld. CIT(A) which admittedly an ex-parte one. However, as the assessee did not appear before the CIT(A), the issue was disposed of by the CIT(A) ex-parte that too on merit. It has also been pointed out by the ld. D.R. that the assessment order was also passed ex-parte u/s. 143(3) r.w.s. 147 of the Act upon making addition to the tune of Rs. 14,45,745/- on account of transaction being found as penny stock treating the same as income from other sources and further addition of Rs. 30,76,854/- as business receipt not offered to tax which were further been confirmed by the First Appellate Authority and affirmed by him ex-parte on merit. The ld. D.R. vehemently argued in supported of the order passed by the authorities below stressing on the issue of non-cooperation and lackadaisical approach of the assessee in not pursuing the matter before the authorities diligently. Such submission

made by the ld. D.R. has not to be controverted by the ld. A.R. The ld. A.R. fails to justify such non-cooperation of the assessee with both the authorities below. However, a further opportunity has been prayed for in regard to the hearing of the matter to get the issues disposed of in its appropriate perspective.

5. Being heard the ld. counsels appearing for the parties and having regard to the facts and circumstances of the case, we find that when admittedly both the authorities below have passed the orders ex-parte, of course due to non-cooperation of the assessee, we find ultimately in order to prevent the miscarriage of justice a further opportunity is required to be given to the assessee to enable him to represent the case before the authorities below. However, having regard to the conduct of the assessee, particularly the lackadaisical approach in dealing with the matter before the authorities below, we would like to impose cost of Rs. 10,000/- upon the assessee to be paid to the Prime Minister Relief Fund within one month from the date of receipt of this order which has been consented by the ld. A.R. with all his fairness. Thus, with the above conditions, we remit the issue to the file of the ld. A.O. to dispose of the same upon giving an opportunity of being heard to the assessee and upon considering the evidence on record and any other evidence which the assessee may

choose to file at the time of hearing of the matter. However, the ld. A.O. is requested to verify the payment of cost to be made by the assessee as directed hereinabove on the basis of receipt/challan and to proceed with the matter for hearing thereafter. Further that, on merit, in the event the ld. Assessing Officer, if finds, the assessee non-cooperative enough, the ld. A.O. would be at liberty to dispose of the matter strictly in accordance with law.

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

Order pronounced in the open court on 18-03-2024

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad : Dated 18/03/2024

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद