

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)**

**ITA No. 3169/MUM/2023
Assessment Year: 2013-14**

Jaynik Mahendrakumar Shah,
Flat No. 802, 8th floor,
Arunodaya CHSL, Juhu Lane,
Opp. New Indiastaff Colony,
Andheri (W),
Mumbai-400069.

**PAN NO. ABUPS 6099 L
Appellant**

Earlier ITO Ward 24(2)(2), Mumbai
Now ITO Ward 24(2)(1),
Vs. Piramal Chambers,
Mumbai-400012.

Respondent

Assessee by : Ms. Bhargavi Raval
Revenue by : Ms. Rajeshwari Menon, DR

Date of Hearing : 18/04/2024
Date of pronouncement : 25/04/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 11.07.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)'] for assessment year 2013-14, raising following grounds:



1. *On the facts and in the circumstances of the case and in law the learned CIT (A) erred in confirming long term capital gain on sale of shares as bogus long term capital gain and confirm the addition us 68 of the entire sale proceeds from the sale of shares amounting to Rs. 1,25,55,092/-. The learned CIT (A) has ignored the facts written in statement of facts that shares were traded on a recognized stock exchange i.e. BSE and there can not be a manipulation in the share price.*
2. *On the facts and in the circumstances of the case and in law the learned CIT (A) erred in confirming the addition u/s 69C on adhoc basis amounting to Rs. 3,76,652/- being 3% of sale proceeds of Rs. 1,25,55,092/- as commission to the broker for the purpose of trading. The appellant has not paid any commission to the broker. He had paid the brokerage to the broker on sale transactions which is duly reflected in the contract notes.*
3. *On the facts and in the circumstances of the case and in law the learned CIT (A) erred in confirming the issuing notice u/s 148 merely on the basis of the information allegedly received from Kolkata Investigation wing stating that the shares sold by the appellant are penny stocks though it was submitted in the statement of facts that shares were traded on a recognized stock exchange. However while issuing reasons for reopening the learned A.O. has never asked about the two companies namely Aricent Infra Ltd. and KGN Enterprises Ltd. He had asked only about one company i.e. Esaar (India) Ltd. The reopening is bad in law as the reasons which are not provided during the course of assessment.*
4. *On the facts and in the circumstances of the case and in law the learned CIT (A) erred in passing the order without ensuring service of notice or intimation and/or offering opportunity to make submissions to your appellant. The appellant had sought adjournment on 29.05.2023 for 15 days as details and documents which were submitted during assessment were not with me and were with C.A. BAPS & Associates partner Bimal V Rathi. The appellant had to collect papers from him and give the same to M/s V. C. Shah & Co. They were subsequently collected and they had prepared reply. The appellant was waiting for notice of refixing the matter and no messages and no mails regarding notice for fixing of hearing is received by the appellant hence he had not filed any submission as new notice has not been issued though awaited. The appellant is also enclosing affidavit containing facts of non filing of submission to CIT (A).*

2. At the outset, before us, the Ld. counsel for the assessee submitted that the impugned order has been passed *ex-parte* by the Ld. CIT(A) without considering submissions of the assessee and therefore, matter may be restored back to the Ld. CIT(A) for deciding afresh after considering the submission of the assessee. The Ld.



counsel referred to the affidavit explaining reasons as why the notices issued by the Ld. CIT(A) could not be responded. The relevant part of the affidavit of the assessee is reproduced as under:

“AFFIDAVIT

I, Jaynik Mahendrakumar Shah, aged 59 years, having PAN ABUPS6099L residing at 802, Dena Bank Staff Arunodaya, Juhu Lane Andheri (W) Mumbai-400058 hereby state on solemn affirmation as follows: -

I have preferred the appeal before the Commissioner of Income Tax (Appeals) for e A.Y. 2013-14 by filing the same in February, 2019.

I had sought adjournment on 29.05.2023 for 15 days as details and documents which were submitted during assessment were not with me and were with C.A. BAPS & Associates partner Bimal V Rathi. I had to collect papers from him and give the same to M/s V. C. Shah & Co. They were subsequently collected and they had prepared reply. I was waiting for notice of refixing the matter.

After that no messages and no mails regarding notice for fixing of hearing is received by me hence I had not filed any submission as new notice has not been issued.

Meanwhile I have received message of order passed by the CIT Appeal and I checked the portal then I come to know about the two notices for fixing the date has been issued dated 02.06.2023 and 22.06.2023 has been missed by me due to non receipt of messages or email.

Hence I could not file the submission to the CIT (A).

I request your honour to kindly accept the submissions and consider while deciding the appeal.”

3. The Ld. Departmental Representative (DR) did not seriously object for restoring the matter back to the file of the Ld. CIT(A).

4. We have heard rival submission of the parties and perused the relevant material on record. In view of the reasons for non-compliance before the Ld. CIT(A) explained by the assessee. we feel that there exists a reasonable cause on the part of the assessee in



failure to comply the notices by the Ld. CIT(A). Accordingly, in the interest of substantial justice, we feel it appropriate to restore the issue in dispute involved in the appeal back to the file of the Ld. CIT(A) for deciding afresh after taking into consideration submission of the assessee. The Ld. counsel for the assessee has given undertaking before us that notices which will be issued by the Ld. CIT(A) would be duly complied by the assessee. Accordingly, the grounds of the appeal of the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 25/04/2024.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 25/04/2024
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai