

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SMT RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.4438/Mum/2023
(Assessment Year :2013-14)**

&

**ITA No.4439/Mum/2023
(Assessment Year :2014-15)**

Atul Madhukar Birla 2003, Hiranandani Meadows Northside Pokhran Road No.2, Thane (W) Maharashtra-400607	Vs.	DCIT, Circle-1 Thane
PAN/GIR No.AIBPB2695K		
(Appellant)	..	(Respondent)

Assessee by	Shri Shashank Mehta
Revenue by	Shri Manoj Kumar Sinha
Date of Hearing	25/04/2024
Date of Pronouncement	30/04/2024

आदेश / O R D E R

PER RENU JAUHRI (AM):

The aforesaid appeals have been filed by the assessee against order dated 14/11/2023 passed by the learned CIT(A), National Faceless Appeal Centre, Delhi for A.Y.2013-14 & 2014-15.

2. Since the issues in both the appeals are common arising out of identical set of facts and therefore, the same were

heard together and have been disposed of by way of this consolidated order.

3. The appeal for the A.Y.2013-14 was taken as the lead case and the decision rendered thereon shall apply with equal force for A.Y.2014-15 also except with variance in figures.

4. Assessee has raised following grounds of appeal in A.Y.2013-14:-

1 On the facts and circumstances of the case and in law, the CIT (A)/ National Faceless Appeal Centre erred in confirming the order of the Ld. Assessing Officer wherein he added the exempt long-term capital gain arising on sale of shares of Kyra Landscape Ltd amounting to Rs Rs 1,21,57,387/ under section 68 of the Act, alleging the assessee to have introduced unaccounted Income in the garb of bogus long-term capital gain.

5. Assessee has raised following grounds of appeal in A.Y.2014-15:-

"1. On the facts and circumstances of the case and in law, the CIT(A)/National Faceless Appeal Centre erred in confirming the order the Ld. Assessing Officer in treating the exempt long term capital gain arising of sale of shares of Pacheli Enterprises Limited amounting to Rs 24,08,921 as that of Kyra Landscape Ltd. and adding the same to the total income of the appellant under section 68 of the Act, though it was not forming part of the information which was forwarded by the ITO(Inv)-1, Thane to the Ld. Assessing Officer based on which the assessment was reopened.

2 Subject to Ground of Appeal No. 1 and on the facts and circumstances of the case and in law, the CIT (A) / National Faceless Appeal Centre erred in confirming the order of the Ld. Assessing Officer wherein he added the exempt long-term

capital gain arising on sale of shares of Kyra Landscape Ltd amounting to Rs 1,01,14,689/- under section 68 of the Act, alleging the assessee to have introduced unaccounted income in the garb of bogus long- term capital gain.”

6. The brief facts of the case are as under:-

(i) The assessee has filed his return of income for A.Y.2013-14 on 28/09/2013 declaring total income of Rs.24,05,100/-. The return was processed u/s.143(1) of I.T. Act.

(ii) The case was subsequently reopened u/s.147 of the I.T. Act as the Assessing Officer recorded the reasons to believe that assessee had failed to disclose full and true material facts in respect of sale of scrip to M/s.Kyra Landscape Ltd, a penny stock company. Accordingly, notice u/s.148 of the Act was issued on 31/03/2021 after taking due approval of the PCIT. In response, the assessee filed return showing same income of Rs.24,05,100/- as in the original return. In response to the notice u/s.143(1) of the Act issued on 17/06/2021 and subsequent notices issued on 06/01/2022 and 18/02/2022, the assessee vide reply dated 25/02/2022 sought adjournment for second week of March. Since no reply and details called for were received, the Assessing Officer completed the assessment u/s.143(3) r.w.s. 147 and 144B of the I.T. Act on 28/03/2022 after making an addition of Rs.1,21,57,387/- u/s.68, treating long term capital gain as bogus and non-genuine.

(iii) Thereafter, the assessee filed an appeal on 02/06/2022 i.e. after delay of one month and six days before the National Faceless Appeal Centre (NFCA). The delay was condoned by the CIT(A), however, on merits the addition was upheld on the ground that the appellant had not submitted any details in the appellate proceedings despite being given sufficient opportunities of hearing.

7. Before us the learned AR of the assessee submitted at the outset that the matter has not been heard and decided on merits by the Assessing Officer and the CIT(A) as requisite compliance could not be made by the appellant due to genuine reasons. Accordingly, a request has been made to restore the matter to the file of the Assessing Officer for fresh adjudication on merits.

8. Ld. CIT DR does not have any objection to this proposition. Accordingly, we restore the matter to the file of the Assessing Officer for fresh adjudication after giving opportunity to the appellant.

9. In the result, appeal of the assessee is allowed.

Order pronounced on 30th April, 2024.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(RENU JAUHRI)
ACCOUNTANT MEMBER

Mumbai; Dated 30/04/2024
KARUNA, *sr.ps*

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,

(Asstt. Registrar)
ITAT, Mumbai