

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "A", MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA 4376/Mum/2023  
(Assessment year : 2014-15)

<b>Ankita Nemichand Ranka 1102, 11<sup>th</sup> Floor, Shreepati Jewele, VP Road, Pimpalwadi Maharashtra-400 004 PAN : ALEPR5156R</b>	<b>vs</b>	<b>ITO-19(1)(1), Mumbai</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by : None  
Respondent by : Shri Manoj Kumar Sinha (SR.DR)  
  
Date of hearing : 06/05/2024  
Date of pronouncement : 06/ 05/2024

**ORDER**

**PER ANIKESH BANERJEE, J.M:**

Instant appeal of the assessee was filed against the order of the Learned Commissioner of Income-tax (Appeals) (NFAC, Delhi) [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), date of order 10.10.2023 for Assessment Year 2014-15. The impugned order was emanated from the order of the Ld. Income-tax Officer-19(1)(1), Mumbai (in short, 'the A.O.') passed under section 143(3) / 147 of the Act date of order 27/12/2017.

2. The assessee has taken the following grounds:-

*“1. On the facts & in the circumstances of the case and in law the Hon’ble CIT(A) erred in passing an ex parte order without providing sufficient opportunity to explain the facts of the case and the reasons assigned for doing so are wrong and contrary to the provisions of Income Tax and rule made thereunder.*

*2. Your appellant craves, leave to add, alter, amend or modify any or all grounds of appeal on or before the date of hearing.”*

3. When the matter was called for hearing, none was present on behalf of the assessee. Only the letter of adjournment was filed by the “Mohanlal Jain & Co,” CA without mentioning the specific name of the attorney holder. Further, it is mentioned by the Registry that there is no Power of Attorney filed with the appeal petition of the assessee. The adjournment petition which is duly filed is rejected. Considering the issue we proceed to dispose of the file on *ex parte qua* for assessee, after considering the hearing of Ld. Departmental Representative.

4. The brief fact of the case is that the assessee filed the return U/s 139. The proceeding U/s 148 was initiated. In the assessment proceeding the Id. AO found that the assessee had made the transaction in penny stock scrips named “SHRSHA TEX” and total turnover value Rs. 61,82,375/-. The assessee earned capital gain amount of Rs.60,57,975/- and claimed exemption under section 10(38) of the Act. The assessee earned the long-term capital gain amount to Rs.60,57,975/-. The Ld. AO added back the transaction of share under section 68 amount to Rs.60,57,975/- and amount of commission paid under section 69C of the Act amount to Rs.1,23,647/-. The aggrieved assessee filed an appeal before the Id.

CIT(A). But the ex parte order was passed without considering the ground of the assessee. Being aggrieved, the assessee filed an appeal before us.

5. We heard the submission of the Departmental Representative and considered the documents available in the record. In the ground of appeal, the assessee mentioned that the Ld. CIT(A) has not given the reasonable opportunity of hearing. As a result, the assessee was unable to represent the matter before the Ld.CIT(A). The Ld.CIT(A) allowed four dates, but none was complied on behalf of the assessee. Under these circumstances, Ld.CIT(A) dismissed the appeal of the assessee but without considering the fact / ground of the case. The relevant paragraphs of the order at 4.11 to 6 are reproduced below:-

*“4.11 In view of the facts and legal position discussed above, it is presumed that appellant is not interested in pursuing the appeal and not having any documents, explanation and evidence in support of grounds of appeal raised and thus has not discharged the onus to substantiate the grounds. It is seen that no written submission filed till date despite multiple opportunities. In view of the lack of prosecution by the appellant, I proceed to decide the appeal in view of the discussion made above.*

*5. The appellant has failed to furnish any material evidences or documents or even the written submission either with its Appeal or during the appellate proceedings. In view of the discussions in the preceding paras, the clear position of law and respectfully relying upon the judgments of Hon'ble High Courts as above I do not find merit in the grounds of appeal. Therefore, the appeal is dismissed on this count.*

*6. In the result, appeal is dismissed.”*

6. Considering the assessment order we find that the addition was made for transaction in penny stock scrips named “SHRSHA TEX” and total trading value 61,82,375/-. The assessee earned capital gain amount of Rs.60,57,975/- and claimed exemption under section 10(38) of the Act. The assessee earned the long term capital gain amount to Rs.60,57,975/-. During the assessment, the Ld. AO

added back the same U/s 68 amount to Rs.60,57,975/- and amount of commission paid under section 69C of the Act amount to Rs.1,23,647/-. But Ld.CIT(A) has not taken care the issue ground-wise. We are, therefore, of the opinion that interest of justice would be sub served if the impugned order is set aside and the matters are remitted back to the Id. CIT(A) for consideration thereof afresh. We are not expressing any views on the merits of the case so as to limit the appellate procedure before the Ld. CIT(A). Needless to say, the assessee should get a reasonable opportunity of hearing for setting aside proceedings. The assessee is also directed to be diligent and co-operate with the Ld.CIT(A) in the set aside appeal proceedings.

7. In the result, **ITA No.4376/Mum/2023** is allowed for statistical purpose.

Order pronounced in the open court on 06<sup>th</sup> day of May, 2024.

Sd/-

(GAGAN GOYAL)  
ACCOUNTANT MEMBER  
Mumbai, दिनांक/Dated: 06/05/2024  
Pavanan

sd/-

(ANIKESH BANERJEE)  
JUDICIAL MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्डफाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar), **ITAT, Mumbai**