

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

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND  
MS.KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

ITA NO.185/MUM/2024  
ASSESSMENT YEAR :2011-12

Jatin Shantilal Shah,  
501, Saumitra CGS,  
295/A Bhimani Street, Matunga CR,  
Mumbai 400 019.  
PAN: AACPS-6128-D

---- Appellant

Vs.

Income Tax Officer-20(2)(1), Mumbai  
Room No.216, 2<sup>nd</sup> Floor,  
Piramal Chambers, Lalbaug,  
Parel, Mumbai – 400 012.

--- Respondent

Appellant by : Shri N.R.Aggrawal &  
Ms. Jenisha Mehta  
Respondent by : Ms. Rajeshwari Menon, Sr. DR

Date of Hearing : 06/05/2024  
Date of Pronouncement : 07/05/2024

**ORDER**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER :**

The assessee has filed this appeal challenging the order dated 15/11/2023 passed by CIT(A), NFAC, Delhi and it relates to the Assessment Year 2011-12. The assessee is aggrieved by the decision of CIT(A) in confirming the addition of Rs.76.27 lacs u/s. 68 of the Act, without granting proper opportunity to the assessee.

2. The Id.Counsel appearing for the assessee submitted that the assessee had earned long term capital gain on sale of shares of Comfort Intech Ltd. The Assessing Officer treated the same as bogus in nature and accordingly assessed the entire sale proceeds of

Rs.76.27 lacs as unexplained income of the assessee u/s. 68 of the Act. Before the CIT(A) the assessee filed adjournment petition on four occasions. The CIT(A) however, took the view that the assessee is not interested in pursuing the appeal and accordingly dismissed the appeal without deciding the grounds on merits. The Id.Counsel for the assessee further submitted that the capital gain on sale of shares of Comfort Intech Ltd. has been decided by the Tribunal in favour of the assessee in many other cases. Accordingly, the Id.Counsel for the assessee prayed that the appeal may be disposed of by following the decision rendered by the Co-ordinate Bench.

3. The Id. Departmental Representative admitted that the CIT(A) has not decided the issue on merits, since the assessee did not appear before him. Accordingly, he submitted that all the issues contested by the assessee may be restored to the file of CIT(A) for adjudicating them on merits and further the assessee may be directed to co-operate with the CIT(A).

4. Having heard the rival submissions, we are of the view that there is merit in the submissions made by Id.Departmental Representative. We notice that the assessee was taking adjournment repeatedly before CIT(A) and hence, he took the view that the assessee is not interested in prosecuting the appeal. However, the CIT(A) should have decided the grounds urged before him on merits. Since, the CIT(A) has not decided the issues on merits, we are of the view that all the issues urged before the Tribunal should be restored to his file for adjudicating them on merits. Accordingly, we set-aside the order passed by CIT(A) and restore all the issues to his file, for adjudicating them on merits, after affording adequate opportunity of being heard to

the assessee. We also direct the assessee to fully co-operate with CIT(A) for expeditious disposal of the appeal.

5. In the result, the appeal filed by the assessee is treated as allowed for statistical purpose.

Order pronounced in the open court on 07<sup>th</sup> May , 2024.

Sd/-

(KAVITHA RAJAGOPAL)  
JUDICIAL MEMBER

Sd/-

(B.R. BASKARAN)  
ACCOUNTANT MEMBER

Mumbai, Date : 07<sup>th</sup> May, 2024

Vm

Copy to :

- 1) The Applicant
- 2) The Respondent
- 3) The PCIT/CIT concerned
- 4) The D.R, "F" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asstt. Registrar  
I.T.A.T, Mumbai