

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, KOLKATA
[Before Shri Rajesh Kumar, AM& Shri Sonjoy Sarma, JM]

I.T.A. No. 102/Kol/2024
Assessment Year: 2017-18

Commitment Finance Limited, Business Communication Centre, 21, Parsee Church Street, Opp. 18, Ezra Street, Kolkata-700001. (PAN: AABCC3905A)	Vs.	Assistant Commissioner of Income-tax, Circle-2(1), Kolkata
Appellant		Respondent

Date of conclusion of Hearing	01.05.2024
Date of Pronouncement	22.05.2024
For the Assessee	Shri Siddarth Agarwal, Advocates
For the Respondent	Shri Abhijit Adhikary, Addl. CIT

ORDER

Per Shri Rajesh Kumar, AM

The appeal filed by the assessee is directed against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi dated 21.11.2023 for AY 2017-18.

2. At the outset, the ld. Counsel for the assessee submitted that the appellate order passed by the Ld. CIT(A) is an ex parte order passed without hearing the assessee on merit. The Ld. AR drew our attention to page 3 para 5 of the appellate order and submitted that the Ld. CIT(A) had fixed the dates of hearings three times viz., 18.02.2021, 06.10.2023 and 17.10.2023. The Ld. AR submitted that on 18.01.2021 the assessee applied for the adjournment whereas on the remaining two occasions there was no compliance on the part of the assessee. The Ld. AR submitted that the case was assigned to Shri Kalyan Mukherjee, CA having his office at 52/1, Shakespeare Sarani, 16th Floor, Kolkata and the assessee was under the bonafide impression that proper compliance was being made by the said counsel before the Ld. CIT(A). However, on receipt of the appellate order the assessee came to know about appeal having been heard ex parte. The Ld. AR also drew our attention to page no. 3 para 2.4 of the assessment order wherein the AO has recorded a finding that the assessee has done transactions in Jay Ushin Ltd. share which was a penny stock. The ld. AR stated that the AO has treated he said stock as penny stock whereas the list of 84 stocks as published by CAG, a copy of which was placed before the bench at the time of hearing did not contain the said stock. The Ld. AR, therefore, prayed that since the facts noted by the AO during the assessment proceeding are factually incorrect and,

therefore, in the interest of natural justice and fair-play that the matter may be restored to the file of the AO for appreciation of correct fact and therefore assessment may be made afresh and de novo.

3. The Ld. DR, on the other hand, relied on the orders of the authorities below by submitting even before the Ld. CIT(A) the assessee has not record his presence before the ld CIT(A) and, therefore, the ex parte order was passed by ld. CIT(A) was attributed to the failure of the assessee to attend the hearings on the dates fixed for hearing.

4. After hearing the rival contentions, we find that undoubtedly the assessee was non-compliance before the Ld. CIT(A) and the decision passed ex parte. However, in our opinion, the Ld. CIT(A) is duty bound to set out the point of determination and his decision thereon and the reason for taking the said decision as mandated by the provision of section 250(6) of the Act which apparently has not been done by the appellate authority. Besides, we also note that the AO has recorded a finding in para 2.4 that the transaction done in Jay Ushin Ltd. share which was a penny stock which is also apparently a wrong finding by the AO as it did not figure in the list of penny stocks as published by CAG. Accordingly, in the interest of justice and fair play, we deem it fit and proper to restore the issue back to the file of the AO so that the facts could be appreciated in correct perspective and order is passed accordingly de novo. Accordingly, we restore the issue to the file of the AO with a direction to the AO to provide a reasonable opportunity of hearing to the assessee as well.

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

Order is pronounced in the open court on 22nd May, 2024

Sd/-
(Sonjoy Sarma)
Judicial Member

Sd/-
(Rajesh Kumar)
Accountant Member

Dated: 22nd May, 2024

JD, Sr. PS

Copy of the order forwarded to:

1. Appellant–
2. Respondent .
3. CIT(A), NFAC, Delhi
4. CIT,
5. DR, ITAT, Kolkata, True Copy

By Order

Assistant Registrar
ITAT, Kolkata Bench, Kolkata