

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

**BEFORE: SHRI GIRISH AGRAWAL, ACCOUNTANT
MEMBER**

&

SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER

**ITA No. 4418/MUM/2023
(Assessment Year : 2014-15)**

Dilip Ramanlal Doshi Room no. 262, 3 rd Floor, New Amrat Wadi, V.P.Road, Prarthna Samaj Maharashtra 400004	Vs.	ITO-19(1)(4) 2 nd Floor, Matru Mandir, Tardeo Maharashtra 400007
PAN/GIR No. AACPD8647A		
(Appellant)	..	(Respondent)

Assessee by	Ms. Miteli Parekh (Adv)
Revenue by	Smt. Mahita Nair (SR. DR)
Date of Hearing	09/05/2024
Date of Pronouncement	11/06/2024

आदेश / O R D E R

PER SUNIL KUMAR SINGH (J.M):

1. This appeal has been preferred against the impugned order dated 06.10.2023 passed in appeal no. CIT(A)30, Mumbai/15031/2016-17, by the Ld. Commissioner of Income-tax(Appeals), National Faceless Appeal Centre (NFAC) [hereinafter referred to as the "CIT(A)"] u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for the

Assessment year [A.Y.] 2014–15, wherein learned CIT(A) has upheld the addition of Rs. 2,52,57,479/- as unexplained cash credit u/s. 68 of the Act and addition of commission of Rs. 10,10,229/- made vide assessment order dated 19.12.2016.

2. The brief facts state that the assessee is an individual and doing business of trading in diamonds in his partnership firm i.e M/s suken exports and has income from business, capital gain and income from other sources. Assessee filed his return of income on 24.03.2016 declaring total income at Rs. 4,84,690/-. The case of the assessee was selected for scrutiny. Subsequently, the statutory notice u/s. 143(2) dated 19.09.2016 and notice u/s.142(1) was also issued and served. Assessee's representative Shri Rajendra B Shah, CA attended the proceeding before AO and furnished requisite details. AO completed assessment u/s. 143(3) of the Act on 19.12 2016 and made addition of Rs. 2,52,57,479/- as sale proceeds on sale shares u/s. 68 of the Act. Further, Rs. 10,10,299/- was added u/s. 69C of the Act as an unexplained expenditure. Assessee preferred an appeal against the assessment order before learned CIT(A), who

passed ex parte impugned order in default of assessee and dismissed the assessee's appeal.

3. The appellant assessee has approached this tribunal on the following grounds:

- “1. The Ld. CIT(A) has erred in law and in facts in passing the order u/s. 250 of the Act and dismissing the appeal.*
- 2. The Ld. CIT(A) has erred in law and in facts in confirming the addition on account of sale proceeds from sale of shares of Sunrise Asian Ltd. amounting to Rs.2,52,57,479/- and disallowing the exemption claimed in respect of the long term capital gains earned thereon.*
- 3. The Ld. CIT(A) has erred in law and in facts in confirming the addition on account of alleged commission of Rs. 10,10,299/- added u/s. 69C of the Act.....”*

4. In response to the notice issued by the tribunal, learned DR appeared and participated in the proceedings.

5. We have perused the records and heard learned representative for both the parties.

6. At the very outset, learned representative for the assessee has submitted that learned CIT(A) has passed ex-parte order in violation of the principles of natural justice without any application of judicious mind. Prayed to set aside the impugned order.

7. Learned DR has submitted that assessee was provided sufficient opportunity of hearing by issuance of various notices through e-mail. Learned DR has supported impugned order.

8. Perusal of the impugned order shows that learned CIT(A) has not passed impugned order on merit, rather dismissed assessee's appeal in default simplicitor.
9. Learned CIT(A) was expected to state the points for determination, the decision there on and the reasons for the decision as provided u/s. 250(6) of the Act. We are conscious of the fact, that assessee has not turned up before the first appellate authority in response to the notices issued on various occasions. However, in the interest of justice and fair play, we deem it appropriate to remit the matter back to the file of learned CIT(A) for denovo adjudication on merit. We further direct the assessee to be diligent and cooperative in attending the hearings and making submissions before the first appellate authority for the expeditious and effective disposal of the appeal. Assessee should refrain from seeking any adjournment but for compelling and unavoidable reasons. Need less to say that learned CIT(A) shall ensure the observance of the principles of natural justice. It is made clear that we have not made any observations on the merit of the case. The appeal is liable to be allowed.

10. In the result, the appeal is allowed. Impugned order dated 06.10.2023 is set aside. The appeal is restored back to the file of the learned CIT(A) for statistical purpose.

Order pronounced on 11.06.2024.

**Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER**

**Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER**

Mumbai; Dated 11/06/2024
Anandi Nambi, *steno*

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