

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'C', KOLKATA

[Before Dr. Manish Borad, Accountant Member &
Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 935/Kol/2023
Assessment Year : 2014-15

Sri Sujit Singhania	vs	ITO, Ward-49(4), Kolkata
PAN: AKOPS 4569 C		
Appellant		Respondent

Date of Hearing	11.06.2024
Date of Pronouncement	19.06.2024
For the Assessee	Miraj D. Shah, AR
For the Revenue	Bonnine Debbarma, JCIT, Sr. DR

ORDER

Per Sonjoy Sarma, JM:

The present appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre [hereinafter the "Id. CIT(A)"] dated 10.07.2023 passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2014-15.

2. Brief facts of the case are that the assessee originally furnished his return of income for the A.Y. 2014-15 declaring total income of Rs. 2,24,930/-. The return of the assessee was processed u/s 143(1) of the Act. Subsequent to the processing of the return, the case was selected for complete scrutiny through CASS with the reasons 'suspicious long term capital gain on shares (inputs from the Investigation Wing)' followed by notices issued u/s 143(2) and 142(1) of the Act. In response to the notices, the assessee appeared time to time before the Id. AO and furnished the computation of total income along with other details of long term capital gain from

the transactions in shares and other documents as asked for. The ld. AO further issued summons u/s 131 of the Act to the assessee. However, the ld. AO viewed that assessee had not any explanation to offer in respect of bogus LTCG claimed exempt income u/s 10(38) of the Act. The ld. AO after elaborate findings viewed that transaction of Smart Champs IT & Infra Ltd. (Cressanda Solutions Ltd.) was a bogus or sham transaction which is nothing but used as a colourable device to defraud the revenue with the clear and planned intention to evade tax which was not accepted as genuine transaction. However, the entire LTCG of Rs. 58,69,098/- as claimed exempt income u/s 10(38) of the Act treated as unexplained cash credit and added to the income of the assessee.

3. Dissatisfied with the above order, assessee went into appeal before the ld. CIT(A) where the appeal of the assessee was dismissed.

4. Aggrieved by the above order, assessee is in appeal before the Tribunal raising multiple grounds. However, the main grievance of the assessee is that the material relied upon on the basis of which the ld. AO has passed the impugned assessment order are collected behind the back of the assessee and were not provided during the course of assessment proceedings. The same is not compliance with the provisions of section 142(3) of the Act which is a statutory mandatory procedural requirement. He further stated that during the assessment proceedings summons were issued to the assessee and could not appear before the ld. AO during the course of assessment proceedings has failed to submit such supported documents in order to substantiate his claim. Therefore, another

opportunity may be given to him in order to furnish documents. The ld. AR relied on the decision of co-ordinate bench in the case of Amit Agarwal vs ACIT in ITA No. 2592/Kol/2019 held as under:

“13.1. Thus, in the context of the present case, our view as stated herein is confined to the non-supply of material gathered by the ld. AO from the enquiries conducted by him in the course of assessment and utilised for the purpose of assessment without complying with the mandatory statutory procedural requirement stated in section 142(3). In the present case before us, from the perusal of the impugned assessment order, as a matter of fact, it is noted that Ld. AO has not provided the effective opportunity of cross examination and other material relied upon for taking the adverse view.

13.2. Considering the above discussion in respect of provisions contained in sec. 142(3) read with sec. 142(2), we are inclined to consider the plea taken by the ld. Counsel to remit the matter back to the file of Ld. AO and direct the Ld. AO to make available the material gathered by him in the course of enquiry conducted in terms of sec. 142(2) and provide a reasonable opportunity of being heard to the assessee as enunciated u/s. 142(3) of the Act along with effective opportunity of cross examination as requested several times by the assessee. Thereafter, Ld. AO may complete the assessment in accordance with the provisions of law. Accordingly, ground no. 3 taken by the assessee is allowed for statistical purposes.

14. Since the matter has been remitted back to the file of Ld. AO in terms of above observations and finding, all other grounds taken by the assessee are rendered academic in nature and are, therefore, not adjudicated upon. Accordingly, the appeal of the assessee is allowed for statistical purposes. The above observations and finding apply mutatis mutandis all the other six appeals in this consolidated order.”

5. He therefore prayed before the bench by considering the view of the co-ordinate bench, the appeal may be set aside to the file of ld. AO with the direction to re-examine the issue afresh.

6. We after hearing the rival submission of the parties and following the decision of co-ordinate bench in the case of Amit

Agarwal vs ACIT, remit back the whole issue to the file of AO with the direction to re-examine the issue afresh after affording reasonable opportunity of being heard to the assessee. The assessee is also directed to appear before the AO in compliance to the notices issued from the ends of AO.

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

Order pronounced in the open court on 19.06.2024.

Sd/-

Sd/-

(Dr. Manish Borad)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 19.06.2024
Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant- Sri Sujit Singhania, 12B2, Block-6, Aria-IV, Greenwood Elements, Action Area-IID, Rajarhat, Newtown, Kolkata-700157.
2. Respondent – ITO, Ward-49(4), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata