

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI

**BEFORE MS KAVITHA RAJAGOPAL, JM AND
SHRI GIRISH AGRAWAL, AM**

ITA No. 4124/Mum/2023
(Assessment Year: 2015-16)

Rakesh Chandranath Sharma 4, Adhikari Bhavan, Near Hotel Classic, Behind Jain Sweets, Old Nagardas Road, Andheri(E), Mumbai-400 069	Vs.	ITO-42(3)(2) Kautilya Bhavan, G Block, BKC Bandra Kurla Complex, Bandra (E), Mumbai-400 051
PAN/GIR No. AAZPS 4562 N		
(Assessee)	:	(Respondent)
Assessee by	:	Shri Bhupendra Shah
Respondent by	:	Smt. Mahita Nair
Date of Hearing	:	24.06.2024
Date of Pronouncement	:	24.06.2024

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the *ex parte* order of the learned Commissioner of Income Tax (Appeals) ('ld.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2015-16.

2. The assessee has raised the following grounds of appeal:

1. The ld. CIT(A) has erred in upholding the order the learned Assessing Officer (AO) for an addition of Rs.64,84,598/- by treating it as unexplained cash credit under section 68 of the Act even though the same was explained to ld. A.O. with all the requisite documents asked for during the course of assessment proceedings.
2. The ld. CIT(A) has erred in confirming an adhoc addition of Rs.1,94,538/- (being 3% commission on the above Rs.64,84,598/-) by treating it as unexplained expenditure which were duly explained along with supporting during the assessment proceedings.
3. On the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in upholding the A.O. order which was purely on the basis of third party statements which were not furnished to the appellant.

4. *On the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in upholding the A.O. order which was passed by not providing an opportunity to cross examine the third parties, whose statements have been used to make the additions.*
5. *The ld. AO erred in initiating penalty proceedings u/s. 271(1)© of the Act.*

3. The brief facts are that the assessee is an individual and had filed his return of income dated 31.08.2015, declaring total income at Rs.8,67,261/- and the same was processed u/s. 143(1) of the Act. The assessee's case was then selected for scrutiny under CASS for the reason that the assessee is said to have transacted with scrips alleged to be a penny stock out of which transaction the assessee is said to have claimed long term capital gain amounting to Rs.64,84,398/-. The learned Assessing Officer (ld. A.O. for short) passed the assessment order u/s. 143(3) of the Act dated 29.12.2017, determining the total income at Rs.75,46,400/- after making an addition of RS.64,84,598/-, relating to sale proceeds of shares as unexplained investment and Rs.1,94,538/- being the addition on account of commission for the said transaction as unexplained expenditure.

4. The assessee was in appeal before the first appellate authority where the impugned addition was upheld by the ld. CIT(A).

5. The assessee is in appeal before us, challenging the impugned order of the ld. CIT(A).

6. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has challenged the addition on account of alleged penny stock of M/s. Sunrise Asian Ltd. which transaction has not been substantiated by the assessee before the lower authorities to be a genuine transaction. The ld. A.O. and the ld. CIT(A) upheld the impugned addition u/s. 68 of the Act as unexplained cash credit

and also the commission expenditure of 3% on the same. It is observed that neither before the Id. A.O. nor before the Id. CIT(A), the assessee has discharged his onus on proving the identity and creditworthiness of the parties along with the genuineness of the transaction. It is also pertinent to mention that the assessee has been non compliant before the first appellate authority.

7. The learned Authorised Representative (Id. AR for short) for the assessee prayed that the assessee may be given one more opportunity to present his case before the first appellate authority which was vehemently opposed by the learned Departmental Representative (Id. DR for short).

8. On considering the submissions placed before us, we are of the considered view that adhering to the principles of the natural justice, all these issues may be remanded back to the file of the Id. CIT(A) for *de nova* adjudication on the merits of the case. The Id. CIT(A) is directed to dispose of the said issues based on the merits of the assessee's submission as expeditiously as possible and the assessee is also directed to co-operate with the appellate proceeding without any undue delay on his side. We, therefore, remit these issues back to the file of the Id. CIT(A).

9. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 24.06.2024

Sd/-

(Girish Agrawal)
Accountant Member

Mumbai; Dated : 24.06.2024

Sd/-

(Kavitha Rajagopal)
Judicial Member

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai