

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA 1317/Mum/2024
(Assessment year: 2016-17)

Smt. Pawan Paras Jain 203, Sidhesh Darshan 20 th Floor, 10 th Khetwadi Main Road, Mumbai-400 004 PAN : AAJPP6519L	vs	Assessment Unit Income-tax Department
APPELLANT		RESPONDENT

Assessee by : Shri G.P. Mehta
Respondent by : Shri H.M. Bhatta (SR DR)

Date of hearing : 13/06/2024
Date of pronouncement : 19/06/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Instant appeal of the assessee is preferred against the order of the National Faceless Appeal Centre, Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2016-17, date of order 19.01.2024. The impugned order was emanated from the order of the National e-Assessment Centre, Delhi (in short, 'the A.O.') passed under section 147 r.w.s. 144B of the Act, date of order 18/05/2023.

2. The assessee filed the appeal with a delay of 29 days. The assessee filed an affidavit with petition for condonation of delay. The Ld.DR had not made any objection for condoning the delay. The assessee explained the reasonable cause for filing the appeal in delay. The delay in filing of appeal by 29 days is condoned.

3. The assessee raised the following grounds of appeal:-

- “1. The orders passed by the learned lower authorities are bad in law and bad in facts.*
- 2. The learned commissioner of Income Tax (Appeals) has grossly erred in passing ex-parte appellate order even though a specific request for adjournment was filed. Said adjournment petition has remain undisposed.*
- 3. The learned lower authorities have grossly erred in making / upholding impugned addition of Rs. 49.75.331/- without granting an opportunity to cross examine the persons whose testimony was relied upon for making impugned addition.*
- 4. The learned lower authorities have grossly erred in relying on the report of Investigation Wing Kolkata without independently conducting any inquiry in the matter.*
- 5. The learned lower authorities have grossly erred in making / upholding impugned addition of Rs.49,75,331/- by recourse to section 68 of the IT Act, inasmuch as said section has no application in appellant's case.*
- 6. The learned lower authorities have grossly erred in passing impugned orders without providing to the appellant, materials, papers, documents relied upon.*
- 7. The learned lower authorities have grossly erred in disallowing exemption claimed under section 10 (38) of the I. T. Act, 1961 at RS.48,77,775/- on account of long term gains of listed securities. Reasons assigned for said disallowance are wrong contrary to the facts of the appellant's case.*
- 8. The learned lower authorities have grossly erred in rejecting the transaction carried out at recognised stock exchange at Rs.48,77,775/-over whose functioning appellant had no control or interference. The impugned addition is tainted with arbitrariness.*

9. *The learned lower authorities have grossly erred in making an addition of Rs. 97,556/- by recourse to section 69 C of the IT. Act, 1961 even though nothing has been brought on record to establish that the appellant had in fact incurred any expenditure.*
10. *Having regard to the facts of the case, provisions of law and judicial propositions impugned addition / disallowance of Rs.49,75,331/- is wholly untenable in law.*
11. *The appellant may please be permitted to raise any additional or alternative ground on or before the hearing of appeal”*

4. The brief facts of the case are that the assessee's case was reopened under section 147 on the basis of information received from the DGIT(Inv), Kolkata. During the impugned assessment year, assessee sold the shares of M/s Greencrest Financial Services Pvt Ltd amount to Rs.48,77,775/-. The Ld.AO has treated this transaction as bogus transaction. The assessee earned long Term capital Gain on selling of the share. The Id. AO has treated this transaction as bogus long term capital gain and added back with the total income of the assessee. Further, in this transaction of the long-term capital gain, the assessee assumed to pay charges @2% on transaction amount of Rs. 48,77,775/- which works out to Rs.97,556/-. So, the total amount to Rs.48,77,775/- and Rs.97,556/- works out to Rs. 48,97,480/- are added with the total income of the assessee. Being aggrieved, the assessee filed an appeal before the Id. CIT(A). The Ld.CIT(A) passed an ex parte order and without considering the merit of the case upheld the assessment order. Being aggrieved on the appeal order, the assessee filed an appeal before us.

5. The Ld.AR argued and placed that the appeal order is ex parte and the merit is not considered. The assessee was denied to get reasonable opportunity to

represent the matter before the Ld.CIT(A). The Ld.AR invited our attention in appeal order page 11 which is reproduced as below: -

"The case was fixed for hearing on 08.01.2024 vide notice dated 27.12.2023 with detailed requisition and informing the appellant that no further opportunity will be allowed, in case no response is made by 08.01.2024. In the requisition, the following details were sought for from the appellant:

In connection with your appeal for the AY 2016-17 filed against order u/s. 147rws144 of the Act, you are required to furnish the following:

1

"i) Evidence/documents/Written submission in support of your Grounds of Appeal and Statement of Facts.

ii) Any jurisdictional High Court or Jurisdictional ITAT orders that you want to rely upon.

iii) Appellate orders passed by appellate authorities (whether in your favour or otherwise), if any, in your own case touching upon the same issues agitated by you in the instant appeal.

iv) Details of appeals pending before CIT(A)/ITAT/High Court filed by you on issues which are similar to those agitated by you in the instant appeal.

v) Upload copy of return, copy of submissions made during assessment proceedings.

The conduct of the Appellant, as inferred from the last column of the aforesaid

27/10/2023

13/11/2023

No compliance nor any request for adjournment

27/12/2023

08/01/2024

No compliance nor any request for adjournment"

6. The Ld.DR vehemently argued and fully relied on the order of the revenue authorities.

7. We heard the rival submission and considered the documents available on the record. The appeal order is passed exparte by the Ld.CIT(A). The entire order was passed on the basis of assessment order and no documents was considered from the end of the assessee in favour of his claim. The natural justice is denied in this case. We find that for the sake of natural justice, the assessee should get another opportunity for submitting his evidence before Ld. CIT(A). All the issues are restored to the file of the Id. CIT(A) for adjudicating the case on merits and directed to pass a speaking order. We are not expressing any views on the merits of the case to limit the appellate procedure before the Ld. CIT(A). Needless to say, the assessee should get a reasonable opportunity of hearing. The assessee should be diligent in appeal proceeding for expeditious disposal of appeal.

8. In the result, **ITA No.1317/Mum/2024** is allowed for statistical purposes.

Order pronounced in the open court on 19th day of June, 2024.

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 19/06/2024

Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), **ITAT, Mumbai**