

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

BEFORE SHRI PRASHANT MAHARISHI, AM

ITA No. 244/Mum/2024

(Assessment Year: 2011-12)

Naresh Mathurdas Dudhela,
C 604, 6th Floor, Neena Sargam,
Mahavir Nagar Kandivali West,
Mumbai-400 067

Vs.

Income Tax Officer
42(3)(3), Mumbai-400
Aaykar Bhavan

(Appellant)

(Respondent)

PAN No. AACPD9636M

Assessee by : Shri Kaushik Makwana, AR

Revenue by : Shri R.R. Makwana, DR

Date of hearing: 03.06.2024

Date of pronouncement : 27.06.2024

ORDER

PER PRASHANT MAHARISHI, AM:

01. ITA No. 244/Mum/2024 is filed by Naresh Mathurdas Dudhela (assessee /appellant) against the order passed by the National Faceless Appeal Centre, Delhi [the learned CIT (A)] for A.Y. 2011-12, dated 6th October, 2023, wherein the appeal filed by the assessee against the assessment order under Section 143(3) of the Income-tax Act, 1961 (the Act) dated 28th December, 2018, passed by the Income Tax Officer, Ward 33(4), Mumbai (the learned Assessing Officer) was dismissed and therefore, assessee is in appeal before raising following grounds of appeal:-

"Ground 1:

The L.d. CIT (A) erred in passing the order and confirming the addition made by the A.O. and totally ignoring the submission made by the Appellant stating that no submission is filed by the Appellant.

Ground 2:

The CIT (A) erred in stating that there is total non-compliance on the part of Appellant during the appeal proceedings as Appellant has filed the submission within the due date against the notice issued by the L.d. CIT (A).

Ground 3:

The Ld. CIT (A) erred in alleging that the Appellant is trading in Penny Stock without considering the fact that modus Operandi of Penny Stock or of Providing Bogus Accommodation Entry of LTCG/STCL/Business Loss does not fit in the case of Appellant and thereby confirmed the addition by completely relying on the findings of investigation department.

Ground 4:

The L.d. CIT (A) erred in confirming to the addition u/s 68 made by Assessing Officer as per the Assessment order without giving an appropriate opportunity to explain the case and passed the order in haste with a pre-determined mind-set.

Ground 5:

The CIT (A) has erred confirming the addition of made by Assessing Officer in respect of entire sale consideration of Rs 31,41,756/- without giving benefit of purchase cost of Rs. 25,88,605/-in SVC Resources Ltd traded scrip as alleged.

Ground 6:

The L.d. CIT (A) erred in not considering the fact and circumstances of the case and levying interest under 234A and u/s 234B of the Income Tax Act, 1961.

Ground 7:

The L.d. CIT (A) erred in not considering the fact and circumstances of the case and initiating penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961.

Being aggrieved by the said CIT (A) order of dismissing the appeal without considering the submission made; the Appellant hereby prefers this appeal before your Honour.

The Appellant craves to leave to add, amend, alter, classify, reclassify, delate or modify any of the above grounds of appeal and requests to consider each of the above grounds without prejudice to one another."

02. The brief facts of the case shows that assessee has filed his return of income on 28th July, 2014 declaring total income of ₹2,57,450/-. The reopening notice was issued under Section 148 of the Income-tax Act, 1961 (the Act) on 27th March, 2018, for the reason that information is

received that assessee has obtained a bogus long term capital gain by transacting into the script of SVC resources limited and made total sales of ₹31,41,756/- and purchase of ₹26,88,605/-. The return of income filed by the assessee shows the business of ₹3,66,194/- and income from other sources of ₹255/-. The claim of the exemption made by the assessee and the investment is also not reflected in the balance sheet and therefore, transaction of ₹57,30,361/- is not disclosed in the return.

03. Notice under Section 142(1) of the Act was issued to the assessee on 18th September, 2018, which was not responded. The show cause notice under Section 144 of the Act was also issued on 15th November, 2018. The assessee did not comply with the same. Therefore, the learned Assessing Officer made the addition of ₹31,44,858/- to the total income of the assessee being the sale proceeds of such shares under Section 68 of the Act and passed the assessment order under Section 144 of the Act read with section 147 of the Act on 28th December, 2018, determining the total income of the assessee at ₹34,02,310/-.
04. The assessee aggrieved with the same preferred the appeal before the learned Commissioner of Income-tax (Appeals). The assessee was also issued several notices on email id but same were not responded to and therefore, the appeal was decided on merits and the addition was confirmed. Therefore, against the appellate order assessee is in appeal.

05. Before us, the assessee has submitted a paper book containing 83 pages. The claim of the assessee is that assessee submitted the response before the learned CIT (A) but without considering the explanation of the assessee the learned CIT (A) held that assessee did not submit anything and appellate order was passed ex-parte. The assessee submitted that such response is placed at page no.22 to 23 of the paper book. Another submission is placed at page no.24 to 34 of the Paper Book. Before us, assessee also tried to explain the transaction and also placed on record certain judicial precedents in favour of the assessee.
06. The learned Departmental Representative vehemently submitted that assessee did not submit anything before the learned Assessing Officer and learned CIT (A) and therefore, the orders are correct.
07. We have carefully considered the rival contentions and perused the orders of the lower authorities. In this case the facts clearly shows that assessee has furnished many submissions on 4th October, 2023, which is the due date for submission of details before the learned Commissioner of Income-tax (Appeals). There are total 9 attachments submitted by the assessee on 4th October, 2023. Therefore, by issue of notice dated 26th September, 2023, by the learned CIT (A) assessee has given time up to 4th October, 2023, and assessee submitted all the details on 4th October, 2023. This is shown to us by producing e-proceedings response acknowledgement. Therefore, it is



clear cut that the appeal of the assessee was decided by the learned CIT (A) holding that assessee did not submit information and therefore, the issue was decided on merits by order dated 6th October, 2023, is not sustainable.

08. Coming to the issue before the learned Assessing Officer, we find that the learned Assessing Officer has also passed an order under Section 144 of the Act and assessee could not submit the details before him. Therefore, neither before the learned CIT (A) nor before the learned Assessing Officer the facts of the case from the side of the assessee were represented.
09. Therefore, in the interest of justice the issue is set aside to the file of the learned Assessing Officer with a direction to the assessee to submit all the details. The learned Assessing Officer may consider the same and if require give opportunity of hearing to the assessee and decide the issue afresh. Accordingly, the appeal of the assessee is allowed as indicated above.
010. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 27.06. 2024.

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)



Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai