

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "SMC" Bench, Mumbai.

Before Shri Prashant Maharishi (AM)

I.T.A. No. 214/Mum/2024 (A.Y. 2009-10)
I.T.A. No. 215/Mum/2024 (A.Y. 2010-11)

Kalpesh Vaghasia 7 th Floor, 701, Kings Apartment, Juhu Tara Road, Mumbai-400 049. PAN : AAEPV7332E (Appellant)	Vs.	ITO-32(2)(2) Kautilya Bhavan Mumbai. (Respondent)
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Assessee by	Shri Prateek Jain
Department by	Shri R.R. Makwana
Date of Hearing	10.06.2024
Date of Pronouncement	28.06.2024

ORDER

1. These are the two appeals filed by the assessee for assessment year 2009 – 10 and 2010 – 11 against the appellate order passed by the National faceless appeal Centre, Delhi (learned CIT – A) dated 17/11/2023 wherein the appeal is filed by the assessee were disposed of Ex party which were filed against assessment order is passed under section 144 read with section 147 of the income tax act for both the years on 27/12/2016.
2. The brief facts of the case for assessment year 2009 – 10 shows that the assessee has not filed any return of income. Subsequently the information was received that assessee has indulged in a share trading activities in the shares of Caplin point and has earned short-term capital loss of ₹ 598,630/- long-term capital loss of ₹ 51,709/- and loss of ₹ 2,393,177/- from future and option transactions. However as per the broker note the assessee has made a short-term capital gain of ₹ 191,103. Further the future and option transactions also needs

verification as assessee has not made any submission. Therefore the assessing officer recorded his reasons and issuing notice under section 148 of the act on 31/3/2016. Notice under section 142 (1) was also issued on 1/6/2016 where the sun of the assessee attended and stated that the assessee is abroad and as soon he comes back he will file the information. Thereafter nobody attended and therefore the learned assessing officer passed an assessment order under section 144 of the act wherein he made an addition to the extent of ₹ 191,103/- as short-term capital gain and addition under section 68 of the act of ₹ 4,250,000. Thus the total income of the assessee was assessed at ₹ 4,441,100 by the assessment order dated 27/12/2016. The assessee preferred appeal before the learned CIT - A wherein five different opportunities were given to the assessee but none appeared and therefore for non-prosecution the learned CIT - A dismissed the appeal of the assessee.

3. For assessment year 2010 - 11 as assessee has similarly not filed his return of income wherein it has been found that he has dealt in the shares of that company and has shown to have made a gain of ₹ 3,143,857 from National stock exchange and future and option transactions and short-term capital gain of ₹ 1,710,789/-. Further assessee has also on a speculation loss of ₹ 790,230/-. Accordingly the notice under section 148 of the act was issued and further notice under section 142 (1) was issued. Similarly it was promised by the sun of the assessee that assessee will appear as soon as he returns to the country. However as nobody turned up the learned assessing officer passed an assessment order under section 144 of the act wherein short-term capital gain of ₹ 1,710,789 and business income of ₹ 3,143,857 was assessed totaling to the total income of ₹ 4,854,646/- by an assessment order passed under section 144 of the act. Similarly the appeal was filed before the learned CIT - A but as none appeared

the learned CIT – A has dismissed the appeal of the assessee for nonprosecution.

4. On the appointed date of hearing the assessee was represented by Mr. Prateek Jain referred to the grounds of appeal and submitted that the assessment order as well as the appellate order has been passed without hearing the assessee and therefore, an opportunity to the assessee may be granted as assessee was not in the country.
5. The learned departmental representative stated that during the assessment proceedings as well as the appellate proceedings none appeared and therefore the appeal of the assessee is dismissed.
6. We have carefully considered the rival contention and perused the orders of the lower authorities. We find that the assessee did not represent his case before the learned AO as well as before the learned CIT – A. It is clear that assessee was given enough opportunities before both the authorities. However as the assessee was out of India, during the course of assessment proceedings, which was stated by his son before the assessing officer, it would be appropriate and in the interest of justice if the assessee is given one more opportunity to explain his case. This is also so because in the reasons recorded by the learned assessing officer the assessee has given a detail of various transactions as recorded in the reasons itself. Further the learned CIT – A has also not decided the issue on the merit but has dismissed the appeal of the assessee for nonprosecution. The learned CIT – A should have decided the issue on merits.
7. Ground has been raised that no 143 (2) notices were issued by the assessee does not find any merit because the assessee has not filed any return of income and therefore no such notices are required to be issued. Accordingly ground number 3 for both the appeals are dismissed.
8. All other grounds are restored back to the file of the learned assessing officer with a direction to the assessee to submit the details before the

learned that AO within 90 days from the receipt of this order. The learned AO may examine such detail and thereafter after giving an opportunity of hearing to the assessee decide the issue afresh.

9. In the result both the appeals are partly allowed for statistical purposes .

Order pronounced in the open court on 28 June, 2024.

Sd/-
(Prashant Maharishi)
Accountant Member

Mumbai : 28.06.2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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