

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH MUMBAI

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.1862/MUM/2024
Assessment Year: 2014-15**

Mrs. Rinky Kapoor, 201/202, Navratnmala Co-op Hsg. Soc. Ltd., CTS No.6946, CST Road, Back side of Bandra-Kurla Complex, Santacruz East, Mumbai 400 098 (PAN : ARQPK0170Q)	Vs.	Commissioner of Income Tax (Appeals), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Ms. Vinita
Revenue : Smt. Mahita Nair, Sr. DR

Date of Hearing : 09.07.2024
Date of Pronouncement : 11.07.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2022-23/1045768952(1), dated 21.09.2022 passed against the assessment order by Income Tax Officer – 16(3)(3),

Mumbai, u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 30.12.2016 for Assessment Year 2014-15.

2. Grounds taken by the assessee are reproduced as under:

"1. The Learned Assessing Officer erred in adding an amount of Rs.61,45,653/- as unexplained cash credit which was actually Long Term Capital Gain earned by the assessee on sale of shares."

3. It is noted that there is a delay of 509 days in filing this appeal before the Tribunal for which an affidavit is placed on record by the assessee explaining the reasons for the said delay. From the perusal of the details furnished by the assessee in her affidavit, explaining the delay, we find it appropriate to condone the delay and adjudicate upon the matter.

4. The only grievance of the assessee is in respect of addition of Rs.61,45,653/- as unexplained cash u/s. 68 towards long term capital gain earned by assessee on sale of shares which was claimed as exempt u/s.10(38) of the Act. Assessee had sold 7500 shares of the scrip Asianlak Ltd. For the sale consideration of Rs.62,20,653/- resulting into a long term capital gain of Rs.61,45,653/-. These shares were purchased on 10.09.2011 for the sum of Rs.75,000/-. Name of the scrip changed to Global Infratech & Finance Ltd. Necessary details and documents were called for during the course of assessment proceedings which were furnished by the assessee. Ld. Assessing Officer did not find favour with the same and held that exempt claimed by the assessee u/s.10(38) cannot be allowed. He thus, after making the disallowance, made an addition of Rs.62,20,653/- in respect of sale proceeds of the shares sold by the assessee by treating it as unexplained cash credit

u/s. 68 of the Act. Aggrieved, assessee went in appeal before the ld. CIT(A).

5. From the perusal of the order of the ld. CIT(A), we note that it is a cryptic order of six lines, dismissing the appeal for non-appearance of the assessee. The contents of the said order is reproduced as under:

“The appellant was sent notices on 09/02/2021, 05/11/2022 & 26/08/2022 There was no reply from the appellant at given E-mail. Therefore, it seems appellant has no interest in pursuing the appeal. Nothing has been brought on records by the appellant, which will allow me to defer with the findings by the AO. Therefore, I do not find any reason to interfere with the order passed by the assessing officer. In sum, appeal is dismissed.”

6. Aggrieved, assessee is in appeal before the Tribunal.

7. Before us, ld. Counsel for the assessee prayed for restoration of the matter back to the file of ld. CIT(A) and assured to comply with the notices for expeditious disposal of the appeal by the ld. CIT(A).

8. We have heard the rival contentions and perused the material on record. Despite the objection raised by the Ld. Sr. DR, in the interest of justice and fair play, we find it appropriate to accept the submissions made by the Ld. Counsel for the assessee to restore the matter back to the file of ld. CIT(A) for *denovo* meritorious adjudication of the grounds of appeal taken by the assessee at the first appellate stage. Assessee is at liberty to furnish details and documents, if she so requires, to substantiate her claim.

8.1. Section 250 of the Act provides for procedure to be adopted while disposing of the appeal by the Ld. CIT(A). Sub-section (4) of section 250 of the Act provides that the Ld. CIT(A) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing officer to make further inquiry and report the result of the same to the Commissioner (Appeals). Further, sub-section (6) provides that the CIT(A) shall pass an order in writing and shall set the points for determination, the decision thereon and the reasons for the decision. Keeping in mind the provision of sections 250 of the Act, it is incumbent upon the Ld. CIT(A) to pass a speaking order on the merits of the case by examining, verifying and analyzing the material on record.

9. While remitting the matter back to the file of Ld. CIT(A), we note that there are lapses on the part of assessee of not attending any of the hearings, for which ample opportunities were given. We thus, direct the assessee to be diligent in attending the hearings before the Ld. CIT(A) for expeditious disposal of the matter and not to seek adjournments unless warranted by compelling reasons.

10. Since the matter is restored to the file of Ld. CIT(A) for meritorious adjudication by passing a speaking order in terms of our observations made hereinabove, we are not expressing any views on the merits of the case so as to limit the assessment procedure before the Ld. CIT(A). The observations herein made by us in remanding the matter back to the

file of Ld. CIT(A) will not impair or injure the case of the Revenue nor will it cause any prejudice to the defense/explanation of the assessee.

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

Order is pronounced in the open court on 11 July, 2024

Sd/-
(Satbeer Singh Godara)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 11 July, 2024

MP, Sr.P.S.

Copy to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai