

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

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA 2336/Mum/2024
(Assessment Year: 2015-16)

Anilkumar Manoharlal Aggarwal 505, Maker Bhavan III, 21, New Marine Lines, Churchgate, Mumbai PAN : ACSPA5647B	vs	Assistant Commissioner of Income-tax, Circle 17(1), Mumbai
APPELLANT		RESPONDENT

Assessee by : Shri Aakash Kumar
Respondent by : Shri Manoj Kumar Sinha (SR. DR.)
Date of hearing : 09/07/2024
Date of pronouncement : 10/ 07/2024

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 U/s 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2015-16, passed on dated 05.03.2024. The impugned order was emanated from the order of the Id. Assistant Commissioner of Income-tax, Circle 17(1), Mumbai(in

short, 'the A.O. '), order passed U/s 143(3) of the Act, date of order 29/12/2017.

2. The assessee has taken the following grounds of appeal: -

"The following grounds of appeal are independent of, and without prejudice to, one another -

1. The Commissioner of Income-tax (Appeals) at the National Faceless Appeal Centre (hereinafter referred to as the CIT(A)) erred in framing an ex parte order.

The appellant contends that on the facts and in the circumstances of die case and in law, the CIT(A) ought not to have framed an ex parte order inasmuch as the appellant has

e-filed the written submissions and all relevant paper land documents on 21st February, 2024; he ought to have considered the submissions while disposing of the appeal by his order dated 05.03.2024.

2. The CIT(A) erred in upholding the action of the Assistant Commissioner of Income-tax - 17(1), Mumbai (hereinafter referred to as the Assessing Officer) in making an addition of a sum of Rs 83,16,405 under section 68 of the Act by holding the capital gains on sale of long-term capital assets, being shares of Moryo Industries Limited to be non-genuine and thereby not allowing exemption claimed under section 10(3 8) of the Act.

The appellant contends that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the action of the Assessing Officer in considering the capital gains on sale of long-term capital assets being, shares of Moryo Industries Limited to be non-genuine inasmuch as the said shares have been purchased during an earlier year as investments; the same being sold shall necessarily give rise to capital gains and the impugned shares being long-term capital asset, the capital gains Rs 83,16,405 are long-term capital gains in respect of which the Assessing Officer ought to have allowed exemption of section 10(38) of the Act; accordingly, the impugned addition under section 68 of the Act is not justified and needs to be deleted.

3. The CIT(A) erred in upholding the action of the Assessing Officer in making an addition of Rs 4,15,820, being commission at the rate of 5% for obtaining the alleged accommodation entries for capital gains on sale of long-term capital asset, being shares of Moryo Industries Limited.

The appellant contends mat on facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the action of the Assessing Officer in making the impugned addition inasmuch as there is no accommodation entry availed by the appellant and the Assessing Officer has failed to bring any evidence on record to make the impugned addition; hence, the impugned addition ought to be deleted."

The appellant contends that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the action of the Assessing Officer in considering the capital gains on sale of long-term capital assets being, shares of Moryo Industries Limited to be non-genuine inasmuch as the said shares have been purchased during an earlier year as investments; the same being sold shall necessarily give rise to capital gains and the impugned shares being long-term capital asset, the capital gains Rs 83,16,405 are long-term capital gains in respect of which the Assessing Officer ought

3. Brief fact of the case is that the assessee individual capacity filed the return U/s 139 of the Act and claimed exempted income U/s 10(38) of the act related to long term capital gain amount of Rs. 83,16,405/-. During the assessment proceeding the Id. AO disallowed the claim of the assessee and had added the LTCG as unexplained cash credit U/s 68 of the Act and Rs. 4,15,820/- U/s 69C of the Act as unexplained expenditure related to the earning of capital gain with total income of the assessee. The aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) has passed an order without considering the submission of the assessee filed on dated 21.02.2024. The Id. CIT(A) upheld the assessment order and rejected the appeal of the assessee. Being aggrieved on the appeal order the assessee filed an appeal before us.

4. The Id. AR confirmed that the appeal was passed exparte. The Id. AR invited our attention in appeal order para 5.1 which is reproduced as below:

“5.1 It is pertinent that in order to decide this appeal in a timely manner a number of notices/ communications through ITBA portal were sent to the appellant, viz. Communications dated 02.11.2018, 11.02.2019, 26.03.2019, 08.01.2021, 23.08.2022, 11.05.2023 and 15.02.2024. However, there evidently has been no response from the appellant till date. There is no gainsaying that once the appeal is filed by the appellant, it is obligatory on its part to purposefully and co-operatively pursue the same in a worthwhile manner, which the appellant has evidently failed to do. It clearly appears that the appellant's compliance or rather lack of it, the appellant has not even bothered to pursue this appeal in any productive manner. Hence, in view of the aforesaid total non-compliance/non prosecution of the instant appeal on the part of the appellant, the instant appeal is adjudicated and disposed of, as under, ex-parte, primarily on the basis of documentation available on record.”

The Id. AR further argued that the last notice is dated 15.02.2024. Considering the notice of the appellate authority the assessee filed the submission on dated 21.02.2024 with 10 annexures. The receipt is placed before the bench for verification. The grievance of the Id. AR is that without considering the submission of the assessee the order was passed. There is clear violation of the natural justice, and the reasonable opportunity of the assessee is denied. The Id. AR prayed for further opportunity for hearing before the Id. CIT(A) by considering the submission of the assessee.

5. The Id. DR argued and fully relied on the orders of revenue authorities.

6. We heard the rival submission and perused the documents available in the record. The apple order is passed exparte. The assessee earned the LTCG and claim exemption U/s 10(38) of the act. The disallowance was made U/s 68 and U/s 69C of the Act in assessment. During the appellate proceedings, the assessee submitted written arguments in support of his case. The assessee duly mentioned the date of filing these submissions. However, the appellate decision was made without considering the assessee's submissions, leading to a denial of a fair opportunity and a violation of natural justice. The assessee was deprived of the chance to present their claim before the 1st appellate authority. We are, therefore, of the opinion that interest of justice would be sub served if the impugned order is set aside and the matters are remitted back to the Id. CIT(A) for consideration thereof afresh. The Id. DR has not made any strong objection against the submission of the Id. AR. We are not expressing any views on the merits of the case so as to limit the appellate procedure before the Id. CIT(A). Needless to say, the assessee should get a reasonable opportunity of hearing for setting aside proceedings.

7. In the result, the appeal in **ITA No.2336/Mum/2024** is allowed for statistical purposes.

Order pronounced in the open court on 10th day of July, 2024.

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 10/07/2024
Pavanan

(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.

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BY ORDER,

(Asstt. Registrar), ITAT, Mumbai