

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

BEFORE SHRIAMARJIT SINGH, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

I.T.A No.815/Mum/2024
(Assessment Year: 2015-16)

Hansrajbhai Mohanbhai Virani B-1001, Prayosha Exotica B/h Cancer Hospital, Dsabholi Village, Surat, Gujarat-395 004 PAN: ABCPP0691H	vs	Income-taxOfficer,Ward-2(3), Thane (W) Room No.13, B-Wing, 6 th Floor, Ashar IT Park, Road 16Z, MIDC, Thane (W)-400 604
APPELLANT		RESPONDENT

Assessee by : Shri Sapnesh Seth, CA (virtually present)
Respondent by : ShriP.D. Choughule(All.CIT) SR DR
Date of hearing : 25/07/2024
Date of pronouncement : 29/ 07/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Instant appeal of the assessee was filed against the order of the Learned Commissioner of Income-tax (Appeals) / Addl / JCIT(A)-12, Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2015-16., date of order 15.12.2023.The impugned order was emanated from the order of the Learned Income-tax Officer 2(3),

Thane (in short, 'the A.O.')

 passed under section 143(3) of the Act date of order 27/12/2017.

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

"1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals), NFAC has erred in passing ex-parte order without considering the written submission filed by assessee on 15.12.2023.

2. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) NFAC has erred in confirming the action of assessing officer in making addition of Rs. 62,44,200/- as fictitious LTCG u/s 68 of the IT. Act, 1961.

3. It is therefore prayed that above addition made by assessing officer and confirmed by Commissioner of [Income-tax (Appeals), NFAC may please be deleted.

4. (Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of appeal."

3. The registry informed us that the appeal is in filing delay for 8 days. The assessee filed an affidavit for condonation of delay and the reason for delay is explained. The Id. DR has not made any objection to condonation of delay. So, the delay for 8 days is condoned and the matter is proceeded for hearing.

4. The brief facts of the case are that the assessee filed the return in impugned assessment year by declaring total income amount of Rs.4,22,250/- and earned long term capital gain (in short LTCG) of Rs.59,73,057/- on sale of shares of "M/s Maa Jagadambe Tradelink Ltd" for total sale price amount of Rs.62,44,200/- by selling 62500 shares. The assessment was completed on the

basis of information through DIT(Investigation), Kolkata and rejected the claim of LTCG by considering the income as "Income from sale of penny stock". The entire sale amount of Rs.62,44,000/- was added back with the total income of the assessee under section 68 of the Act. The aggrieved assessee filed an appeal before the Id. CIT(A). The Id.CIT(A) passed an ex parte order and upheld the assessment order. Being aggrieved, the assessee filed an appeal before us.

5. The Id.AR argued and filed a written submission which is kept on record (in short APB). In argument, it is placed that the assessee filed the requisite documents in support of his evidence before the Id.CIT(A) on dated 15/12/2023 that is on the date of hearing fixed by the Id. CIT(A). The on-line receipt is duly annexed in **APB pages 6 & 7**. The submission dated 19/12/2017 was filed before the Id.AO which is duly annexed in **APB pages 8 to 21**. The assessee submitted that without considering the submission, the appeal order was passed ex parte.

6. The Id.DR argued and only relied on the order of revenue authorities. But had not controverted the fact of the Id. AR.

7. We heard the rival submissions and considered the documents available on the record. On perusal of the appeal order, we find that the appellate authority denied that the documents were filed and the last date of hearing was 15/12/2023 which was treated as final opportunity. The relevant part of the appeal order is reproduced as below:-

"3.Appellate Finding:

3.1 Against the order of the A.O. u/s 143(3) of the Act, the appellant has filed this appeal. Notices u/s 250 of the Act were issued to the appellant electronically in E-proceeding/ITBA facility. It has been noted from the appeal record that the appellant was given ample opportunities to present the case by way of

submission of details along with supporting documents and evidence. Details of opportunities given to the assessee are as follows:

<i>S.No.</i>	<i>Date of issue of Notice</i>	<i>Date fixed for Hearing</i>	<i>Remarks</i>
<i>1</i>	<i>25/04/2018</i>	<i>10/05 /2018</i>	<i>Neither any compliance received nor any adjournment letter was filed</i>
<i>2</i>	<i>15/01/2021</i>	<i>15/03/2021</i>	<i>Neither any compliance received nor any adjournment letter was filed.</i>
<i>3</i>	<i>22/11/2022</i>	<i>02/12/2022</i>	<i>Neither any compliance received nor any adjournment letter was filed.</i>
<i>4</i>	<i>17/04/2023</i>	<i>126/04/2023</i>	<i>Neither any compliance received nor any adjournment letter was filed.</i>
<i>5.</i>	<i>07.12.2023</i>	<i>15.12.2023</i>	<i>Final Opportunity Notice was issued, Neither any compliance received nor any adjournment letter was filed.</i>

3.2 It has been brought out in the preceding part of this order that above notices u/s 250 of the Act were issued by the First Appellate Authority which have remained un-complied. Therefore, apart from the assessment order, other material available to the undersigned is the grounds of appeal and the statement of facts which have been submitted by the appellant at the time of filing of appeal. Appellant has not availed any of the opportunities given by the First Appellate Authority and no submissions, documents or evidence were filed. 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. 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 his 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 has not even bothered to pursue this appeal in any productive manner.”

8. The assessee filed the on-line receipt where it is clearly mentioned that the written submission was filed on 15/12/2023 on the date of hearing fixed by the Id.CIT(A). The appeal order was passed without considering the submission of the assessee, is violation of reasonable opportunity and as well as the violation of natural justice. In our considered view, the appeal order is itself erroneous and liable to be set aside. We remit back the matter to the file of the Id.CIT(A) for further adjudication de novo after considering the submission of the assessee filed on the date of hearing. We direct Id. CIT(A) to pass a speaking order after hearing of appeal. We are not expressing our view on the merits of the case, which will impair the appeal proceedings. Needless to say, the assessee should get a reasonable opportunity of hearing in set aside appeal proceeding, and the documents / evidence needs to be filed in his support, should be allowed to file before the Id.CIT(A).

9. In the result, appeal bearing **ITA No.815/Mum/2024** is allowed for statistical purposes.

Order pronounced in the open court on 29th day of July, 2024.

Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 29/07/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER,

(Asstt. Registrar), ITAT, Mumbai