

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH
MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No. 3026/MUM/2024
(A.Y.2016-17)

LalitKumarMohanlalJain, 1401/C, GundeChha Garden, Dattaram KhamkarMarg, Lalbag, Parel, Mumbai -400012.	Vs.	ITO, Ward 20(2)(4) Piramal Chambers, Lalbag, Mumbai-400012.
PAN/GIR No. AABPJ0792M		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Appellant by	None
Respondent by	Shri Manoj Kumar Sinha.SR.DR

सुनवाई की तारीख/Date of Hearing	29.07.2024
घोषणा की तारीख/Date of Pronouncement	30.07.2024

ORDER

PER PAVAN KUMAR GADALE, JM:

The appeal is filed by the assessee against the order of National Faceless Appeal Centre (NFAC), Delhi / (CIT(A) passed u/sec 143(3) and u/sec 250 of the Act.

2. At the time of hearing, it was brought to the knowledge of the bench, that there is a delay of 51 days in filing the appeal before the Hon'ble Tribunal and the assessee has filed an affidavit for condonation of delay. Whereas, the facts mentioned in the affidavit are reasonable and the Ld.DR has no specific objections.

Accordingly, we condone the delay and admit the appeal.

The assessee has raised the following grounds of appeal:

1. On the facts & in the circumstances of the case and in law the Hon'ble CIT (A) erred in not providing an opportunity and passing an ex parte order u/s 250 of the Act and confirming the addition made by the Id. Assessing Officer and the reasons assigned for doing so are wrong and contrary to the provisions of Income Tax and rules made thereunder

2. On the facts and in the circumstances of the case and in law the Hon'ble CIT(A) erred in upholding the addition of Rs.9,03,93,849/- made by the Ld AO to the returned income by treating genuine LTCG earned on sale of shares claimed as exempt u/s 10(38) of the I.T. Act as unexplained credit u/s 68 of the IT act 1961 and the reason assigned for doing so are wrong and contrary to the Provisions of Income Tax Act and rules made there under

3. On the facts and in the circumstances of the case and in law Hon'ble CIT (A) erred in upholding the addition of Rs.1,72,773/- made by the Ld AO to the returned income by treating genuine dividend earned on shares claimed as exempt u/s 10(38) of the I.T. Act as unexplained credit u/s 68 of the IT act 1961 and the reason assigned for doing so are wrong and contrary to the Provisions of Income Tax Act and rules made there under.

4. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in not adjudicating the penalty initiated by the Ld AO u/s. 271(1)(c) of the IT Act 1961 and the reasons assigned for doing so are wrong and contrary to the provision of Income Tax Act and rules made there under.

5. Your Appellant crave, leave to add, alter, amend or modify any or all grounds of appeal on or before the date of hearing..

2. The brief facts of the case are that the assessee has filed the return of income for the A.Y 2016-17 disclosing a total income of Rs. 14,46,050/- and the return of income was processed u/s 143(1) of the Act. Subsequently the case

was selected for Limited scrutiny under CASS reasons being “whether the share capital is genuine and from disclosed sources”. Accordingly the AO has issued notice u/s 143(2) and 142(1) of the Act along with questionnaire. In compliance, the assessee has submitted the information and details on various dates. On perusal of the information the Assessing Officer found that the assessee has disclosed and claimed the exemption u/sec10(38) of the Act being long term capital gains on sale of shares of Rs.9,03,93,849/- and also dividend income of Rs. 1,72,773/-was claimed exempt. The AO on verification of the financial statements, found that the assessee has earned long term capital gains on sale of shares of M/s Pacific Industrial Ltd, and the assessee was asked to produce the details of purchase of shares, mode of payment and relevant supporting evidences of purchase and sale of shares. Whereas the assessee has purchased 1000000 shares of M/s Pacific Industrials Ltd at Rs.10/- per share on preferential allotment basis for Rs. 1 crore on 4.02.2014. Subsequently the equity shares were split in the ratio of (1:10) i.e 1000000 equity shares of Rs.10/- paid up are split into 10000000 shares of Rs.1/-paid up each. Further the assessee has dematerialized the shares and during the F.Y 2015-16, the assessee has sold 2688366 shares for a consideration of Rs.9,30,82,215/- and claimed exemption of Long term capital gains u/sec 10(38) of the Act.

3. The AO has dealt on the purchase confirmations, sale contract notes, bank statements and demat statements in respect of shares purchase & sale and relied on the various factual aspects and has doubted the earning of long term capital gains on shares and find that there is no correlation of price rise on stock market and the financial statements of the investee company. Finally the AO was not satisfied with the explanations and material information and relied on the judicial decisions and observed that the transactions are not genuine and made addition of long term capital gains u/sec 68 of the Act of Rs.9.03,93.849/- and dividend income of Rs.1,72,773/- assessed the total income of Rs. 9,20,15,670/- and passed the order u/s 143(3) of the Act dated 21.02.2018.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, statement of facts and findings of the AO and has issued notices of hearing and since there was no proper compliance by the assessee to notices. Therefore the CIT(A) considering the information on record has sustained the additions made by the A.O. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing none appeared on behalf of the assessee and the Ld. DR supported the order of the CIT(A).

6. We heard the Ld. DR submissions and perused the material on record. Prima-facie the CIT(A) has passed the order considering the fact that there is no proper compliance in spite of providing adequate opportunity of hearing and the notices were issued on various dates but there was no compliance to the notices. Therefore, the CIT(A) was of the opinion that the assessee is not interested in prosecuting the appeal and dismissed the appeal ex-parte confirming the action of the assessing officer. The Ld. CIT(A) has issued the notices of hearing on 22-01-2021, 19-08-2021 and 5-09-2023 referred at Para 6 of the order but there was no due compliance and thus the Ld. CIT(A) came to a conclusion that the assessee is not interested and decided the appeal based on the information available on record. Whereas the assessee has raised grounds of appeal challenging the additions made by the A.O and there could be various reasons for non appearance which cannot be overruled. Therefore, considering the facts and principles of natural justice, we shall provide with one more opportunity of hearing to the assessee to substantiate the case with evidences and information. Accordingly, set aside the order of the CIT(A) and remit the entire disputed issues to the file of the CIT(A) to adjudicate afresh and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information for early disposal of the

Appeal. Accordingly, we allow the grounds of appeal of the assessee for statistical purposes.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 30.07.2024.

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated: 30/07/2024

KRK

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,
(Dy./Asstt. Registrar)ITAT,
Mumbai