

IN THE INCOME TAX APPELLATE TRIBUNAL

"SMC" BENCH, MUMBAI

BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER AND

SMT. RENU JAUHRI, ACCOUNTANT MEMBER

ITA no.2158/Mum./2024

(Assessment Year : 2012-13)

Mrs. Tanvi Mitesh Punamiya

A-902, Shree Said Tower, Sodawala

Lane, Borivali West, Dist.

Mumbai-400092

PAN -AIZPJ5502H

..... Appellant

v/s

ITO Ward-32(1)(8)

R. No.735, Kautilya Bhavan,

Bandra Kurla Complex,

Bandra East, Mumbai-400051

..... Respondent

Assessee by : Shri Mukesh Jain

Revenue by : Shri R. R. Makwana, Sr. DR

Date of Hearing – 30/07/2024

Date of Order – 05/08/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 29/02/2024 passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Additional/Joint Commissioner of Income Tax (Appeals)-2, Ludhiana [*learned Addl./Joint CIT(A)*], for the assessment year 2012-13.

2. In this appeal, the assessee has raised the following grounds:-

"A) Natural Justice:

1. The Ld. ADDL/JCIT (A)-2, Ludhiana has erred in dismissing the appeal *ex parte* holding that Appellant is not interested in pursuing the appeal thereby dismissing the same without adjudicating on merits without appreciating that the Appellant is aggrieved by the additions made and interested in adjudicating the appeal and had filed all the relevant papers before the Learned ITO 32(1)(8), Mumbai and thus, the appeal dismissing without adjudicating the same on merits is without any justification and the addition confirmed may be deleted.

2. The Ld. ADDL/JCIT (A)-2, Ludhiana failed to appreciate that the Appellant did not receive any notice of hearing from NFAC either via email or message on mobile and in fact, did not even receive the impugned order (income-tax portal was checked while viewing 26AS and order passed by The Ld. ADDL/JCIT (A)-2, Ludhiana was found and downloaded and even otherwise, having filed submission before the Learned ITO 32(1)(8), Mumbai and also detailed statement of facts in the form of submission while filing appeal, which is reproduced in the order passed, the Ld. CIT(A) ought to have adjudicated the issue on merits of the case and thus, the appeal dismissed *ex-parte* without adjudicating the same on merits is without any justification and the additions confirmed may be deleted.

Without prejudice to the above, on merits:

B) Addition of Rs.3,27,521 u/s.68 of the Act is unjustified and liable to be deleted

3. The additions of Rs. 3,27,521 contains two transactions as per Assessment order is explained as follows :

a. Addition of Rs. 3,27,521 on account of sale proceeds of shares of M/s Diamant Infrastructure Ltd :

As per Bill dated 18.4.2011 of M/s Bonanza Portfolio Ltd there was sale of 5000 shares of Diamant Infrastructure Ltd on 18.4.2011 for Rs. 3,06,271. After deductions of STT, Sebi Fees and Turnover Tax of Rs. 554.82 the Net Credit was Rs.3,05,716.18. However since delivery of the said shares was not given the same were auctioned on 19.4.2011 and 11.5.2011 b debiting total Rs. 3,11,886.63. Therefore there was a loss of Rs. 6,170.45 and therefore there is no question of additions of Rs. 3,07,521 and should be deleted

b. Addition of Rs. 20000 on account of sale proceeds of shares of M/s Diamant Multimedia Ltd Previous] known as M/s Kaleidosco Films Ltd :

As per Bill dated 15.2.2012 of M/s Bonanza Portfolio Ltd there was sale of 500 shares of Kaleidoscope Films Ltd on 15.2.2012 for Rs. 19,920. After deductions of STT, Sebi Fees and Turnover Tax of Rs. 35.98 the Net Credit was Rs. 19,884.02. The above shares were purchased on 22.6.2011 for Rs. 16,480.45. Therefore there was a short term capital gain of Rs. 3,403.57. Thus overall there is a short term loss of Rs. 2,766.88 and therefore there is no question of additions of Rs. 20,000 and should be deleted

4. The Ld. ADDL/JCIT (A)-2, Ludhiana has erred in passing ex-parte order and dismissing the appeal without adjudicating on merits and thereby confirming the Adhoc addition made by AO of Rs.3,27,521/- u/s.68 of the Act without appreciating that there are not Capital Gains and capital losses were genuine and supported by the Contract Notes by the recognized members of the Stock Exchange and none of the documentary evidences is doubted or disputed by the AO and thus, the addition made u/s.68 of the Act of Rs.3,27,521/- is without any justification and needs to be deleted.

5. Without prejudice to the above and without admitting and accepting, the Ld. CIT (Appeals) failed to appreciate that the AO has not brought any evidence on record and/or any details to show any such alleged bogus transactions was taken and the AO neither provided copies of any statement recorded nor allowed cross-examination and thus, the addition made of Rs.3,27,521/- is unjustified and liable to be deleted.

6. The Appellant craves leave to add, amend, alter or delete all or any of the aforesaid grounds of appeal."

3. We have considered the submissions and perused the material available on record. It is evident that the learned Addl./Joint CIT(A) has passed the order ex-parte due to the non-appearance of/on behalf of the assessee. From the perusal of the impugned order, it is evident that the learned Addl./Joint CIT(A) issued four (4) notices of hearing to the assessee, however the assessee did not comply with any of the notices. Now in appeal before us, the assessee is duly represented by the learned Authorised Representative ("*learned AR*") and wishes to pursue the litigation against the addition made by the AO. During the hearing, the learned AR submitted that the hearing notices were sent by the learned Addl./Joint CIT(A) on the email address of the consultant, who neither attended the appellate proceedings before the learned Addl./Joint CIT(A) nor informed the assessee.

4. In view of the facts and circumstances as noted above, we are of the considered opinion that in the interest of justice and fair play, the assessee be hereby granted one more opportunity to represent its case on merits before

the learned Addl./Joint CIT(A)/CIT(A). Consequently, we deem it fit and proper to set aside the impugned order and restore the matter to the file of the learned Addl./Joint CIT(A)/CIT(A) for *de novo* adjudication of the appeal on merits after consideration of all the details/submissions as may be filed by the assessee. Needless to mention no order shall be passed without affording reasonable opportunity of hearing to the parties. During the hearing, the learned AR undertook that the hearing notice issued on the email address as mentioned in Form No.36, i.e. tanvipunamiya@gmail.com, shall be complied with by the assessee. Accordingly, the learned Addl./Joint CIT(A)/CIT(A) is directed to issue the hearing notice(s) on the aforesaid email address, unless at a subsequent stage, the assessee wishes to change its email address for the purpose of communication of hearing notice, for which the assessee is directed to intimate the learned Addl./Joint CIT(A)/CIT(A) in advance. Thus, the assessee is directed to appear before the learned Addl./Joint CIT(A)/CIT(A) on all the dates of hearing as may be fixed without any default. As the matter is being restored to the file of the learned Addl./Joint CIT(A)/CIT(A) for adjudication on merits, the other grievances raised by the assessee in the present appeal do not call for adjudication at this stage. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 05/08/2024.

Sd/-

**RENU JAUHRI
ACCOUNTANT MEMBER**

Sd/-

**SANDEEP SINGH KARHAIL
JUDICIAL MEMBER**

MUMBAI, DATED: 05/08/2024

Vijay Pal Singh, (Sr. PS)

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai