

IN THE INCOME TAX APPELLATE TRIBUNAL

"SMC" BENCH, MUMBAI

BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER AND

SMT. RENU JAUHRI, ACCOUNTANT MEMBER

ITA no.95/Mum./2024
(Assessment Year : 2015-16)

Abhishek Rajesh Mehta

Flat No.1101, Multan Heights,
Dadabhai Road, Vile Parle
West, Mumbai-400056
PAN – AGCPM6239M

..... Appellant

v/s

ITO-13(3)(4)

Aayakar Bhavan, M. K. Road,
Mumbai-400020

..... Respondent

Assessee by : Shri Arnav Jariwala
Revenue by : Shri R. R. Makwana, Sr. DR

Date of Hearing – 29/07/2024

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 19/09/2023 passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the assessment year 2015-16.

2. In the interest of justice, the slight delay of 49 days in filing the present appeal is condoned.

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

"1. The Ld. CIT(A), NFAC, erred in passing the Appellate Order without granting the appellant reasonable and effective opportunity of being heard.

2. The Ld CIT(A), NFAC, erred in not appreciating that the Ld AO had made addition of Rs.3,71,235/- being entire sale proceeds of equity shares as unexplained credit under section 68 of the IT Act without appreciating the facts and circumstances of the case.

3. Without prejudice to Ground No. 2, the Ld CIT(A), NFAC, erred in not appreciating that in the case of sale of shares only surplus/capital gains is liable to be taxed not the entire sale consideration and deduction has to be allowed for the cost of the shares sold.

4. The Ld CIT(A), NFAC, erred in not appreciating that the Ld AO had made addition of Rs.7,425/- on account of commission purely on imagination and conjectures without having any material to hold that the assessee had incurred such expenditure.

5. The above grounds of appeal are without prejudice to one another.

6. The appellant craves leave to furnish Additional Evidence which may be relevant to the above Grounds of Appeal in course of the appeal proceedings."

4. Having considered the submissions and perused the material available on record, it is evident that the learned CIT(A) has passed the order ex-parte due to the non-appearance of/on behalf of the assessee. 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 CIT(A) on a different email address and not the one provided by the assessee in Form no.35. The learned AR submitted that since the assessee was not aware about the notices of hearing, therefore, the hearings could not be attended before the learned CIT(A). Accordingly, the learned AR submitted that there was no willful or deliberate attempt on the part of the assessee for not complying with the notices issued by the learned

CIT(A). From the perusal of the copy of hearing notices furnished by the learned AR, we find that the notices were sent on the email address abhishek@karamispat.com and itmgroup@gmail.com, while the email address as mentioned in Form no.35 is armehta1@gmail.com.

5. In view of the facts and circumstances as noted above, we are of the considered opinion that in the interest of justice, the assessee be hereby granted one more opportunity to represent its case on merits before the learned CIT(A). Consequently, we deem it fit and proper to restore the matter to the file of the learned 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.35, i.e. armehta1@gmail.com, shall be complied with by the assessee. Accordingly, the learned 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 CIT(A) in advance. Thus, the assessee is directed to appear before the learned 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 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.

6. 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**

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.

Sd/-

**SANDEEP SINGH KARHAIL
JUDICIAL MEMBER**

By Order

Assistant Registrar
ITAT, Mumbai