

**IN THE INCOME TAX APPELLATE TRIBUNAL ‘F’ BENCH, MUMBAI**  
**BEFORE MS. KAVITHA RAJAGOPAL, JM AND SHRI GAGAN GOYAL, AM**

ITA No. 1342/Mum/2024  
(Assessment Year: 2014-15)

Vandana Deepak Savla 25,47, Divya Darshan, Jagdhusha Nagar, Ghatkopar (W), Mumbai-400 086	Vs.	Income Tax Officer 27(3)(5) Mumbai
PAN/GIR No. AACPS 5170 R		
<b>(Assessee)</b>	:	<b>(Respondent)</b>
<b>Assessee by</b>	:	Shri Bharat B Raichandani/ Bhagrati Sahu
<b>Respondent by</b>	:	Shri Ankush Kapoor
<b>Date of Hearing</b>	:	01.08.2024
<b>Date of Pronouncement</b>	:	01.08.2024

**ORDER**

**Per Kavitha Rajagopal, JM:**

This appeal has been filed by the assessee, challenging the *ex parte* order of the learned Commissioner of Income Tax (Appeals) (‘ld.CIT(A) for short), National Faceless Appeal Centre (‘NFAC’ for short) passed u/s.250 of the Income Tax Act, 1961 (‘the Act’), pertaining to the Assessment Year (‘A.Y.’ for short) 2014-15.

2. The grounds of appeal raised by the assessee reads as under:

1	<i>The Learned Commissioner has erred in not taking into consideration that the appellant had purchased 20,000 shares and the payment of the said purchase of shares was made through banking channel, also erred in not taking into consideration the shares has been sold on recognized stock exchange by paying necessary Securities Transaction Tax The Ld. Commissioner has erred in not taking into consideration that the appellant has fulfilled all the conditions required for claiming the benefit of exemption u/s 10(38) of the act. The Ld. Commissioner has erred in not taking into consideration the appellant was a prudent investor and wanted to retain its investment. The Ld. Commissioner has erred in not taking into consideration that the SEBI report has nowhere mentioned the appellant to be involved The Ld. Commissioner has erred in not taking into consideration that the Ld. Assessing officer has not established any nexus in connection of the alleged money trail found by the investigation wing</i>	1,55,47,275
2	<i>The Ld. Commissioner has erred in making addition on account of 3% commission on long term capital gain</i>	4,66,418

3. The brief facts are that the assessee is an individual and had filed her return of income for the year under consideration on 12.12.2014, declaring total income of Rs.9,09,390/- and the same was processed u/s. 143(1) of the Act. The Id. Assessing Officer ('A.O.' for short) reopened the assessee's case vide notice u/s.148 of the Act dated 13.02.2017 on the ground that the assessee has received Rs.1,54,17,081/- as consideration on sale of shares of the scrip M/s. SRK Industries Ltd. which are alleged to be a penny stock out and had claimed the same as exempt u/s.10(38) of the Act. The Id. A.O. then passed the assessment order dated 28.12.2017 u/s. 143(3) r.w.s. 147 of the Act, thereby determining the total income at Rs.1,69,23,083/- by making an addition u/s. 68 of the Act on the sale proceeds of the shares amounting to Rs.1,55,47,275/- and Rs.4,66,418/- u/s. 69C of the Act being the commission @ 3% on the said amount alleged to have been paid to the brokers.

4. Aggrieved, the assessee was in appeal before the first appellate authority, challenging the assessment order.

5. The Id. CIT(A) vide order dated 24.01.2024, upheld the order of the Id. A.O. for the reason that inspite of several opportunity the assessee has failed to substantiate her claim and has been non compliant throughout the appellate proceedings.

6. The assessee is in appeal before us, challenging the impugned order of the Id. CIT(A).

7. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has challenged the additions made by the Id. A.O.

before the first appellate authority but has been non compliant throughout the appellate proceeding.

8. The learned Authorised Representative ('Id. AR' for short) for the assessee contended that the assessee if given another opportunity would be able to substantiate her claim before the Id. CIT(A) and prayed that the issues be remanded back to the Id. CIT(A).

9. The learned Departmental Representative ('Id.DR' for short) vehemently opposed to setting aside the issue to the file of the Id. CIT(A) for the reason that the assessee was given several opportunity by the Id. CIT(A) which was not availed by the assessee, which is evident from the Id. CIT(A)'s order at pg. no.2 where he has recorded that inspite of various notices the assessee has neither filed any written submission nor has responded to the notices.

10. On the above factual matrix of the case, we are of the considered view that the assessee may be given one more opportunity to present her case before the first appellate authority by adhering to the principles of natural justice. We, therefore, remand all these issues back to the file of the Id. CIT(A) for *de novo* adjudication on the merits of the case. The assessee is directed to comply with the proceedings without any undue delay on her side.

11. In the result, the appeal filed by the assessee is allowed for statistical purpose.

*Order pronounced in the open court on 01.08.2024*

Sd/-

(Gagan Goyal)  
Accountant Member

Mumbai; Dated : 01.08.2024

Roshani, Sr. PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

Sd/-

(Kavitha Rajagopal)  
Judicial Member

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai