

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

**BEFORE SHRI BR BASKARAN, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A No.2938/Mum/2024
(Assessment Year: 2010-11)**

Chhaya Mukesh Chheda 501/502, Parshva Villa, V.P. Road and S.L. Road Junction, Mulund (W), Mumbai-400 080 PAN : AADPC1012F	vs	Deputy Commissioner of Income- tax, Circle-41(2)(1), Mumbai Room No.420, Kautilya Bhavan C-41 to C-43, G Block, Bandra Kurla Complex, Bandra (E), Mumbai-400 051
APPELLANT		RESPONDENT

Assessee by : Shri Kumar Kale
Respondent by : ShriH.M. Bhatt(SRDR)

Date of hearing : 31/07/2024
Date of pronouncement : 07/ 08/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Instant appeal of the assessee was filed against the order of the National Faceless Appeal Centre (NFAC), Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for the Assessment Year 2010-11, date of order 02.05.2024. The impugned order was emanated from the order of the Id. Assistant Commissioner of Income-tax-29(1), Mumbai (in

short, the Ld.AO) passed under section 143(3) read with section 147 of the Act, date of order 29/12/2017.

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

"Being aggrieved by the order dated 02.05.2024 passed by the Ld. Commissioner of Income Tax (Appeals), Income Tax Department, National Faceless Appeal Centre, Delhi ["Ld. CIT(A)"] u/s. 250 of the Income-tax Act, 1961 ("Act"), your appellant prefers this appeal, among others, on the following grounds of appeal, each of which is without prejudice to, and independent of, the other:

1. On the facts and in the circumstances of the case, and also in law, the Ld, CIT(A) erred in passing an ex-parte order in gross violation of the principles of natural justice. Your appellant, therefore, prays that the impugned order be set aside and the matter may be restored to the file of the Ld. CIT(A) for de novo adjudication.

2. On the facts and in the circumstances of the case, and also in law, the Ld. CIT(A) erred in upholding legal validity of the re-assessment proceedings u/s. 147 of the Act. Your appellant, therefore, prays that the assessment order u/s. 143(3) r. w. s.147 dated 29.12.2017 be quashed.

3. On the facts and in the circumstances of the case, and also in law, the Ld. CIT(A) erred in confirming disallowance of long-term capital loss of Rs.11,28,255/- made by the Ld. AO. Your appellant, therefore, prays that the aforesaid disallowance be deleted.

4. On the facts and in the circumstances of the case, and also in law, the Ld. CIT(A) erred in confirming disallowance of short-term capital loss of Rs.1,84,80,000/- made by the Ld. AO. Your appellant, therefore, prays that the aforesaid disallowance be deleted.

5. Without prejudice to any of the above Grounds, the CIT(A) erred in confirming the assessment by the Ld. AO of entire short-term capital gains and long-term capital gains, without setting off the current year's business loss against the same. Your appellant, therefore, prays in alternative, and without prejudice, to the prayers made in any of the above Grounds, that the current year's business loss be set off against the short-term and the long-term gains in accordance with the law.

6. On the facts and in the circumstances of the case, and also in law, the Ld. CIT(A) erred in confirming addition of Rs.85,000/- u/s.68 of the Act being

agricultural income earned by the appellant, which was held by the Ld. AO as unexplained cash credit. Your appellant, therefore, prays that the aforesaid addition u/s. 68 be deleted.

7. Without prejudice to the Ground No.1, 2 and 6 above, the Ld. CIT(A) erred in confirming the Ld. A.O.'s action of not allowing set off current year's business loss against the income from other sources of Rs.85,000/- being agricultural income assessed u/s.68 of the Act. Your appellant, therefore, prays in alternative, and without prejudice, to the prayers made in Ground No. 1, 2 and 6 above, that the current year's business loss be set off against the aforesaid income assessed u/s.68.

8. Without prejudice to the Ground No.1, 2, 6 and 7, the CIT(A) erred in confirming levy of income-tax @30% on the income of Rs.85,000/- assessed u/s.68 by the Ld. AO, by invoking provisions of section 115BBE, which were not in force during the A.Y. 2010-11. Your appellant, therefore, prays in alternative, and without prejudice, to the prayers made in Ground No.1, 2, 6 & 7 above, that income-tax shall be charged on this income as per the applicable slab-wise rate.

9. On the facts and in the circumstances of the case, and also in law, the Ld. CIT(A) erred in confirming disallowance u/s. 14A of Rs.1,46,208/- made by the Ld. AO. Your appellant, therefore, prays that the aforesaid disallowance u/s. 14A be deleted. '

Your appellant craves leave to alter, modify, amend or delete any of the above grounds of appeal, or to add one or more new ground(s), as may be necessary."

3. The brief facts of the case are that the assessee's case was reopened under section 148 of the Act. During the assessment proceedings, the addition was made related to booking of loss in short term capital loss (STCL) amount to Rs.11,28,255/- and also the loss in STCL amount to Rs.1,84,80,000/-. Further, the addition was made related to difference in sale of property amount to Rs.38,040/- and disallowance of agricultural income amount of Rs.85,000/-. The addition was made under section 14A in relation to earning of exempted income amount to Rs.1,46,208/-. The aggrieved assessee filed an appeal before the Id. CIT(A). The Id.CIT(A) passed an exparte order and upheld the assessment order. Being aggrieved, the assessee filed an appeal before us.

4. We heard the rival submission and considered the documents available in the record. The Ld.AR argued and placed that no notice was received by the assessee during the appeal proceedings. On perusal of the appeal order, it is found that the Ld.CIT(A) has not mentioned in appeal order about issuance notice on the assessee for compliance of the appeal proceedings. The Ld.DR was not able to bring any contrary fact against the submission of the Ld.AR. The Ld.DR argued and fully relied on the order of the revenue authorities. We find that the appeal order is passed ex parte and without giving opportunity to the assessee. The reasonable opportunity is denied. So, there is a gross violation of natural justice. In our considered view, we remit the matter to the file of the Ld.CIT(A) for consideration afresh. We are not expressing any view on the merit of the case which will impair the set aside appeal proceedings. Needless to say, the Ld. CIT(A) shall provide proper and adequate opportunity of being heard to the assessee in set aside proceedings. The evidence/explanation submitted by assessee in its defense shall be admitted by the Ld. CIT(A) and adjudicated on merits in accordance with law. On the other hand, the assessee should be diligent and cooperative in appeal proceeding for quick disposal of the appeal.

5. In the result, the appeal of the assessee bearing **ITA 2938/Mum/2024** is allowed for statistical purposes.

Order pronounced in the open court on 7th day of August, 2024.

Sd/-

(BR BASKARAN)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated:

Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

07/08/2024

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