



IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH PUNE
BEFORE HON'BLE SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

AND

SHRI VINAY BHAMORE, JUDICIAL MEMBER

ITA No. 794/PUN/2024

Assessment Year : 2011-12

Aarti Monish Bhandari,
790, Moti Chowk, Budhwar Peth,
Pune – 411 042.
PAN: AAAP07585N

..... *Appellant*

V/s

The Income Tax Officer,
Ward -6(1), Pune.

..... *Respondent*

Appearances

Assessee by : Mr Suhas P. Bora ['Ld. AR']

Revenue by : Mr Umesh Phade ['Ld. DR']

Date of conclusive Hearing : 01/08/2024

Date of Pronouncement : 08/08/2024

ORDER

PER G. D. PADMAHSHALI, AM;

This appeal of the assessee challenges the DIN & Order No. ITBA/APL/S/250/2023-24/1060550961(1) dt. 06/02/2024 passed u/s 250 of the Income-tax Act, 1961 ['the Act' hereinafter] by the Addl./Jt. Commissioner of Income Tax Appeals-(6), Kolkata ['CIT(A)' hereinafter] which in turn arisen out of order of assessment passed u/s 143(3) r.w.s. 147 of the Act by the Income Tax Officer, Ward - 6(1), Pune ['AO' hereinafter] for assessment year 2011-12 ['AY' hereinafter];



2. Facts of the case briefly stated as;

2.1 The assessee is an individual who filed her original return of income ['ITR' hereinafter] on 30/06/2011 declaring total income at 8,73,850/-, which was summarily processed u/s 143(1) of the Act.

2.2 The Document from DGIT (Inv) Kolkata explaining the *modus-operandi* alongwith list of beneficiaries regarding systematic evasion of taxes by clients/members of National Multi-Commodity Exchange ['NMCE' hereinafter] was forwarded by Ld. PCIT based upon which the Ld. AO after recording reasons & obtaining prior approval re-opened the case of the assessee for AY 2011-12 by notice dt. 30/03/2018 u/s 148 of the Act.

2.3 Vide letter dt. 24/08/2018 the assessee sought the re-opening reasons which was supplied to her vide letter dt. 07/05/2018. Upon the receipt thereof the assessee further vide letter dt. 24/08/2018 objected the re-opening proceedings which came disposed-off by the Ld. AO vide his letter dt. 15/10/2018.

2.4 The information that the assessee vide seven speculative transactions executed through broker 'Anand Resources Pvt. Ltd.'



had earned a short-term capital gain ['STCG' hereinafter] of ₹4,00,100/- for the year under consideration, was during the course of re-assessment proceedings confronted which remained unexplained by the assessee. In the event of assessee's effective failure to explain the genuineness of STCG earned by her and its disclosure in ITR filed u/s 139(1) of the Act, the Ld. AO added the same as speculative income of the assessee and framed the assessment accordingly u/s 143(3) r.w.s. 147 of the Act.

2.5 The re-opening, addition and passing of order u/s 143(3) r.w.s. 147 of the Act was unsuccessfully challenged in an appeal before the Ld. CIT(A). Aggrieved by the actions of tax authorities below, the assessee filed the present appeal on following grounds;

- 1. The learned CIT(A) has failed to appreciate that the CIT(A) Order passed by them was not sent on appellant's mail and was only reflected on the e-portal which is not a valid mode of service.*
- 2. The learned CIT(A) has erred in dismissing appellant's appeal and confirming the action of the AO of making addition of Rs.4,00,100/- on account of short-term speculative gain without appreciating that the assessment order passed U/Sec. 143(3) r.w.s. 147 of the Act is bad in law and void ab-initio, since it is passed without verifying the submissions submitted by appellant.*
- 3. The learned CIT(A) has erred in confirming the addition of Rs.4,00,100/- on account short term speculative gain only on the basis of information called from National Commodity Exchange of India (NMCE)*



U/Sec. 133(6) of the Act on the ground that as per the information received the appellant had executed 7 different transaction on 25.06.2010 in stock futures with the broker Anand Resources Pvt Ltd and had a STCG of Rs.4,00,100/- without bringing any corroborative material on record in support of the addition.

4. The learned CIT(A) has further erred in dismissing appellant's appeal in a summary manner only on the basis of observations of the AO given in the assessment order.

5. The learned CIT(A) has erred in not giving the opportunity of physical hearing through video conferencing facility in the interest of natural justice inspite o request of the appellant.

6. The appellant craves leave to add, alter, amend, or delete any of the above grounds of appeal.

3. Heard rival submission on ground 4 & 5 and subject to the provisions of rule 18 of Income Tax Appellate Tribunal Rules, 1963 [for short 'ITAT, Rules'] perused the material placed on records.

4. We note that, when preliminary submission hindsight adverse perception to the Ld. CIT(A), the appellant assessee requested for video conferencing so has make better deprecative explanation against the adversarial understanding. However, the Ld. CIT(A) brush-aside the same and proceeded to adjudicate the issue summarily in line with the findings of Ld. AO.

5. An opportunity to be heard is an important facet of natural justice, therefore, before passing an adverse order it is incumbent



upon the quasi-judicial authority to afford the assessee with a reasonable opportunity through hearings. In the present case, since the specific request of the appellant for video conferencing is turned-down without any convincing & supporting reasons hence in our considered view the impugned proceeding is suffered from principle of natural justice, thus making it irregular and in consequence fit for setting-aside. For aforesaid reasons, we set-aside the impugned order and remand the file to Ld. CIT(A) at the stage of submission with a direction to grant hearing through video conferring and decide the issue *de-novo* in accordance with law and pass a speaking order in terms of section 250(6) of the Act. The ground no 4, & 5 accordingly stands allowed for statistical purposes.

6. In result, the appeal stands ALLOWED FOR STATISTICAL PURPOSES in aforesaid terms.

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Thursday, 08th August, 2024.

-S/d-

VINAY BHAMORE
JUDICIAL MEMBER

-S/d-

G. D. PADMAHSHALI
ACCOUNTANT MEMBER

पुणे / PUNE ; दिनांक / Dated : 08th August, 2024.

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

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|-------------------------------|---------------------------------|----------------------------|
| 1. अपीलार्थी / The Appellant. | 2. प्रत्यर्थी / The Respondent. | 3. The Pr. CIT Concerned. |
| 4. The CIT(A)/NFAC Concerned. | 5. DR, ITAT, 'SMC' Bench, Pune | 6. गार्डफाइल / Guard File. |

आदेशानुसार / By Order

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.