

IN THE INCOME TAX APPELLATE TRIBUNAL  
Mumbai "SMC" Bench, Mumbai.

Before Shri Prashant Maharishi (AM)

I.T.A. No. 471/Mum/2024 (A.Y. 2015-16)

Smt. Pawan Paras Jain 203-Sidhesh Darshan 20 <sup>th</sup> Floor, 10 <sup>th</sup> Khet wadi Main Road Mumbai-400 004.  PAN : AAJPP6519L  (Appellant)	Vs.	ITO Ward 19(2)(6) 5 <sup>th</sup> Floor Piramal Chamber Lalbagh, Parel Mumbai-400 013.  (Respondent)
---	-----	---

Assessee by	Shri G.P. Mehta
Department by	Shri R.R. Makwana
Date of Hearing	12.06.2024
Date of Pronouncement	12.08.2024

ORDER

1. This appeal is filed by the assessee against the appellate order passed by the National faceless appeal Centre (NFAC), Delhi (the learned CIT – A) for assessment year 2015 – 16 dated 19/1/2024 wherein the appeal filed by the assessee against the assessment order passed by The Income Tax Officer – 19 (2) (5), Mumbai (the learned AO) making an addition of the sale proceeds of the shares under section 68 of The Income Tax Act [ the ACT] of ₹ 3,152, 330/- against the returned income of ₹ 128,303/- , was dismissed.
2. Assessee is aggrieved with the same and has preferred this appeal. The main grievance of the assessee is that (1) the learned CIT – A has passed an ex parte appellate order without giving adequate opportunity of being heard and (2) confirming the addition of ₹ 3,152,330/- without granting an opportunity to cross examine the persons whose testimony was relied upon by the assessing officer and merely following the investigation Wing report of Kolkata.

3. In substance the grievance of the assessee is denial of exemption under section 10 (38) of the act of the above amount.
4. Brief facts of the case shows that assessee is an individual who filed her return of income on 8/3/2016 at a total income of ₹ 128,350/-. The return was picked up for scrutiny by issuing notice under section 143 (2) on 26/7/2016. As per the return of income assessee has shown income from capital gain and income from other sources. The amount of capital gain of ₹ 3,152,330 was credited as income on sale of shares of Greencrest financial services Ltd during the year and claimed exemption under section 10 (38) of the act. The detailed working of the same is not submitted by the assessee before the learned assessing officer. The reason for the selection of the complete scrutiny of the return of income was to examine the suspicious sale transaction in shares and exempt long-term capital gain shown in the return. The assessee was asked to show when the shares were purchased and how the shares are purchased along with the evidence. The assessee was allotted 12,500 shares of Marigolds Glass industries Ltd whose name was subsequently changed to Greencrest financial services Ltd , purchased from Octopus Infotech private limited and subsequently demated BP committees Ltd.
5. The learned AO found that the face value of ₹ 10 each of the shares of the company had no proven financial result but the price of the script kept rising throughout the period even when the shares were locked up for trading. There is a humongous rise of over 2500% over a very short period of just 17 months. Therefore, the learned assessing officer made deeper scrutiny. On the basis of the scrutiny the learned assessing officer issued a show cause notice on 8/12/2017 which was replied to on 11/12/2017. Assessee was also issued a summons under section 131 of the income tax act to record her statement, but the assessee did not attend. On the basis of this and finding of the investigation wing, failure of the assessee to discharge her onus, cash

trail in the accounts of the entry providers, the learned AO held that it is an arranged transaction and assessee is creating smokescreen by creating documents to claim the exemption under section 10 (38) of the act. Thus, the learned AO made the addition of the same under section 68 of The Income Tax Act and determined the total income of the assessee at ₹ 3,280,630 against the returned income of ₹ 128,303 by passing an assessment order under section 143 (3) of the income tax act on 19/12/2017.

6. Assessee aggrieved with the same preferred an appeal before the learned CIT – A wherein assessee was granted opportunity of hearing for 5 times, assessee requested for adjournment on three occasions and no compliance was made on two different occasions. Therefore, the learned CIT – A issued final notice for hearing on 13/11/2023 asking for some details as per page number 46 – 47 of his appellate order. This was also not replied. Therefore, the learned CIT – A held that the statement of facts and the grounds of appeal remained unsubstantiated in absence of any evidence or facts to counter the findings of the learned AO during the assessment proceedings. Even in the appellate proceedings same are not substantiated and therefore he did not have any other option but to dismiss the grounds of appeal of the assessee. He relied on the decision of the honourable Calcutta High Court in case of principal Commissioner of income tax versus Swati Bajaj (2022) 139 taxmann.com 352 confirmed the addition as according to him the facts of that case apply squarely to the facts of this case. Thus, the appeal of the assessee was dismissed.
7. The learned authorized representative contesting the appellate orders submitted that
  - a. email ID of the assessee was mentioned in form number 35 as qualitytubes@vsnl.net which was given on 9/1/2018 after receipt of the assessment order. Subsequently the notices were issued by the learned CIT – A in 2021 on one occasion, in 2023

on 4 different occasions. Subsequently there was a change in the email ID, or the old email was not working and therefore, the assessee did not receive any such notices. This is the reason that the assessee could not respond to the notices of the learned CIT – A.

- b. He otherwise submitted that assessee has produced all the evidence available with the assessee for purchase of the shares, sale of the shares etc. Assessee is not aware about any price rigging in the shares of the company. Assessee is also not named in any of the reports. None of the people named in the investigation report are remotely related to the assessee in the above transaction. Therefore, even on the merit the addition made by the learned assessing officer is not sustainable.
  - c. He otherwise submitted that if some statements are used against the assessee, it is the duty of the assessing officer to give the cross examination of those persons to the assessee.
  - d. Thus, the order of the learned CIT – A is not sustainable as it is passed without giving any reasonable opportunity of hearing. The order of the learned AO is also not sustainable as it is also passed in violation of the principles of natural justice.
  - e. Even otherwise he submitted that there are several judicial precedents wherein addition made on identical basis is deleted.
8. The learned departmental representative vehemently supported orders of the learned lower authorities and submitted that the CIT – A did not have any other option but to dispose of the appeal of the assessee in absence of any material submitted by the assessee in support of grounds of appeal and against the finding of the learned AO. He submits that if there is a change in the email ID, it is for the assessee to intimate as it is the appeal of the assessee. He submits that even if the assessment order is after giving complete opportunity to the assessee therefore now assessee cannot say that there is no

opportunity given to him. He submits that assessee was issued a summons under section 131 of the act, but assessee did not appear before the assessing officer. There was no request of asking for cross-examination of the persons, therefore there is no fault on the part of the assessing officer to give any opportunity of cross examination to the assessee. He otherwise submitted that the learned AO has not used any statement against assessee but has considered the evidence furnished by the assessee which assessee could not support for its genuineness and therefore the addition is made under section 68 of the act.

9. We have carefully considered the rival contention and perused the orders of the learned lower authorities. Admittedly the assessee has shown profit on sale of shares and claimed exemption under section 10 (38) of the act. The detailed working of the same was not submitted initially. The script in which the assessee has claimed availability of gain skyrocketed at the rate of 2500 percentage, is named as a penny stock having a poor financial during the period where the preferential sales were allotted. The business profile of the company was also not showing any confidence. The investigation report of the income tax department shows that there is a rigging in the price of the stock at the stock exchange by manipulation and whole smokescreen is created from the stage of issue of preferential allotment till the sale of the shares by various entry providers who are named in the report of the investigation wing. The assessee was issued summons under section 131 of the act, but assessee did not respond and therefore the learned assessing officer giving several reasons made the addition under section 68 of the act. The assessment order was passed on 19/12/2017 against which the assessee filed an appeal on 9/1/2018. Admittedly in form number 35 the assessee has mentioned the email address of qualitytubes@vsnl.net, the notices were issued by the learned CIT – A on the above email address presumably which were

not responded to. This has resulted into passing an ex parte order by the learned CIT – A. Before us assessee has given a different email address in form number 36 as mehtagp@gmail.com. It may be possible that the email ID provided by the assessee in 2018 May not be working in 2023 when notices were issued by the learned CIT – A. There would not be any benefit to the assessee by not appearing before the learned CIT – A when she has filed an appeal. Though it is correct that the assessee did not respond to summons issued under section 131 of the act by the assessing officer, thus, there is no violation of the principles of natural justice by the learned AO as assessee was given a complete opportunity to make all her statements before him. Even otherwise assessee has not asked for cross-examination of the persons which assessee presumes that their statements are used against her. Looking at the overall facts and circumstances of the case, there would not be any effective resolution of the dispute involved in the appeal if the issue is set-aside once again back to the file of the learned CIT – A as, the learned assessing officer has not made any enquiry, the assessee did not respond to summons issued under section 131 of the act. Therefore, in the interest of justice, we restore the appeal of the assessee back to the file of the learned assessing officer with a direction to the assessee to substantiate her claim of exemption of ₹ 3,152,330/- under section 10 (38) of the act.

10. In the result, ground number 6 of the appeal of the assessee is allowed with above direction, in view of this, other grounds are not required to be adjudicated hence dismissed.
11. Accordingly appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 12<sup>th</sup> August 2024.

Sd/-  
(Prashant Maharishi)  
Accountant Member

Mumbai : 12 .08.2024

Dragon

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT,Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

PS