

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

Before Shri Prashant Maharishi (AM)

I.T.A. No. 1122/Mum/2024 (A.Y. 2012-13)

Sharad Harivallabh Shrma 405, A Wing, Lancelot CHS Swami Vivekanand Road Borivali West Mumbai-400 092.	Vs.	ITO 42(1)(5) Kautilya Bhavan Bandra Kurla Complex Bandra East Mumbai-400 051.
--	-----	---

PAN : AGDPS6603A
(Appellant)

(Respondent)

Assessee by
Department by
Date of Hearing
Date of Pronouncement

Shri Kailash Kaveria
Shri R.R. Makwana
11.06.2024
20.08.2024

ORDER

1. This appeal is filed by Mr. Sharad Hari Vallabh Sharma (the assessee/appellant) for assessment year 2012 - 13 against the appellate order passed by the National faceless appeal Centre (NFAC), Delhi (the learned CIT - A) dated 20/1/2024 wherein the appeal filed by the assessee against the assessment order passed under section 147 read with section 144 dated 11/12/2019 by The Income Tax Officer, Ward - 32 (1) (8), Mumbai (the learned assessing officer) was dismissed. Assessee is aggrieved and is in appeal raising solitary ground that the addition of Rs 4,33,469/- confirmed by the learned CIT - A is not correct.
2. The brief fact of the case shows that the assessee did not file any return of income for impugned assessment year, the information was gathered from the database of the income tax department that assessee has entered into a transaction of sale or purchase of

securities amounting to ₹ 4,334,694/-. Since the assessee has not filed any return of income, notice under section 148 of the income tax act was issued to the assessee on 30/3/2019 after recording the reasons and approval. The assessee did not file any return of income in response to such notice also. The learned assessing officer has issued nine notices under section 142 (1) including notice under section 148 of the income tax act along with the notice for levy of penalty for non-compliance, Assessee did not reply to any of them. Therefore, notice under section 133 (6) of the income tax act was also issued to other parties and the information was collected wherefrom it is found that the assessee has transacted in the securities of sale/purchase amounting to ₹ 4,334,694. Thus, show cause notice was issued on 25/11/2019 to the assessee to show cause as to why ₹ 4,334,694/- should not be treated as an unexplained investment under section 69 in the hands of the assessee. The assessee did not file any compliances therefore the learned AO computed the income at the rate of 1% of the above transaction of the securities and made the addition of ₹ 4,33,469/- to the total income of the assessee and assessment order under section 144 read with section 147 of the income tax act was passed on 11/12/2019.

3. The assessee aggrieved with the order of the learned AO preferred an appeal before the learned CIT – A. The learned CIT – A issued 3 notices to the assessee but same were not complied with and therefore the learned CIT – A confirmed the action of the learned assessing officer.
4. The assessee aggrieved with the same is in appeal before us. The learned authorized representative submitted that assessee is an individual deriving income from trading in shares and securities. Assessee has incurred huge losses in shares and securities and

hence it did not file any return of income for assessment year 2012 – 13. The case was reopened under section 147 of the income tax act by the issue of notice under section 148 of the act however the assessee did not receive any physical notice from the Department and all the notices were delivered electronically through email which appellant could not check as he was not in the right state of mind due to the huge losses. Due to this the assessment order and the appellate order both were passed due to non-submission of any information. Only claim of the authorized representative is that one more opportunity may be given to the assessee to show that he did not earn anything from the above security transaction.

5. The learned authorized representative also put up one glaring thing that the assessing officer himself wanted to make an addition of 1% of ₹ 4,334,694 as per page number 3 of the assessment order but despite that he made an addition at the rate of 10% which is confirmed by the learned CIT – A. He also raised without prejudice ground that the addition is though required to be made by the learned assessing officer at the rate of 1% but it is made of Rs 4,33,469/- being 10% of the transaction value instead of ₹ 43,347/-.
6. The learned departmental representative vehemently supported the order of the learned lower authorities stated that the assessee did not submit any detail before the learned lower authorities and therefore no infirmity can be found in the orders.
7. We have carefully considered the rival contention and perused the orders of the learned lower authorities. The assessee is not filing any return of income but has entered into a securities transaction of ₹ 4,334,694/-. Assessee did not file any return of income in response to notice under section 148 of the income tax act which was issued to him pursuant to information received by the learned assessing

officer. Several notices were issued by the learned assessing officer, but the assessee did not reply to any of such notices. Therefore, the learned assessing officer asked for the information under section 133 (6) of the act. The assessment order was passed under section 144 of the income tax act wherein the learned assessing officer wanted to make an addition at the rate of 1% of the transaction insecurities of ₹ 4,334,694/-. However, he made an addition of Rs 4,33,469/- which is 10% of the total transaction. No doubt before the learned CIT – A assessee was given many opportunities and the notices were also sent through speed post and e-portal, but the assessee did not remain present. It is undisputedly noncooperative attitude of the assessee which has resulted into the assessment order and appellate order. Thus, on this plea assessee does not deserve any further opportunities. However, we are more concerned with the fact that the learned assessing officer was required to make an addition at the rate of 1% of ₹ 4,334,694/- but made addition at the rate of 10% of the transaction value amounting to ₹ 4,033,469/-. Therefore, there is apparently an error in the order of the learned assessing officer and the learned CIT – A in confirming the addition which is 10 times higher than the proposed addition by the learned assessing officer himself. Though the statement of the assessee before us is that there is no profit earned by him in the above transaction but in fact, he has incurred losses, no details were submitted even before us.

8. In view of this we restore the whole matter back to the file of the learned assessing officer with a direction to the assessee to submit the details of transactions carried out along with the requisite profit and loss earned out of it within 90 days of the receipt of this order. The learned assessing officer may inquire and examine the same and then decide the issue in accordance with the law de novo.

9. In the result appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 20th August, 2024.

Sd/-
(Prashant Maharishi)
Accountant Member

Mumbai : 20. 08.2024

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