

**आयकर अपीलीय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad ' A ' Bench, Hyderabad**

**Before Shri Laliet Kumar, Judicial Member**  
**And**  
**Shri Manjunatha, G. Accountant Member**

आ.अपी.सं / **ITA Nos.404 & 405/Hyd/2024**  
(निर्धारण वर्ष / sessment Year: 2016-17 & 2018-19)

Shri Anish Puskur Hyderabad PAN:BECPP1231B (Appellant)	Vs.	Asstt C. I. T. Central Circle 2(3) Hyderabad (Respondent)
निर्धारिती द्वारा / Assessee by: Shri P Murali Mohan Rao, CA		
राजस्व द्वारा / Revenue by: Shri Srinath Sadanala, DR		
सुनवाई की तारीख / Date of hearing: 26/08/2024		
घोषणा की तारीख / Pronouncement: 26/08/2024		

**आदेश/ORDER**

**Per Laliet Kumar, J.M**

These two appeals filed by the assessee are directed against the separate but identical orders of the learned CIT (A)-12 Hyderabad dated 21/02/2024 and pertains to A.Ys.2016-17 & 2018-19.

2. The brief facts of the case are that the assessee is an individual and has not filed his return of income u/s 139(1) of the I.T. Act, 1961 for both the A.Ys. A search & seizure operation u/s

132 of the I.T. Act, 1961 was conducted on 22.10.2019 in the case of M/s. Asian Multiplexes (P) Ltd. During the course of search, certain loose sheets were seized pertaining to the assessee. In view of the above, notice u/s 153C of the Act dated 30.09.2021 was issued to the assessee requiring to file return of income for both the A.Ys. In response, the assessee has filed return of income for both the A.Ys on 27.01.2022 declaring total income of Rs. Nil. The case was selected for scrutiny. During the course of assesment proceedings, the Assessing Officer noticed that on perusal of the information available from Insight Portal, it is found that the assessee has sold equity shares of Rs.50,14,397/- and purchased equity shares of Rs.35,74,792/- for A.Y 2016-17. Similarly, the assessee has sold equity shares of Rs.5,49,949/- and purchased equity shares of Rs.1,28,190/- for the ay 2018-19. However, it is seen from the computation of income filed by the assessee for both the A.Ys, no capital gain from the said transaction was shown. Hence, the assessee was asked to submit details of transaction and also explain why capital gain was not declared. However, the assessee has not produced the same. In absence of any evidence, the Assessing Officer has treated the difference between purchase and sale of shares as capital gain and added to the total income for both the A.Ys.

3. The assessee carried the matter in appeal before the first appellate authority but neither appeared nor furnished any

details, which is evident from para 6.1 of CIT (A)'s order where 7 dates of hearing was provided to the assessee but no compliance. The assessee neither appeared nor filed any details. Therefore, the learned CIT (A) dismissed the appeals filed by the assessee ex-parte for want of prosecution by following the decision of the ITAT Delhi Benches in the case of CIT vs. Multiplan India (P) Ltd (38 ITD 320).

4. Aggrieved by the order of the learned CIT (A), the assessee is in appeal before the Tribunal.

5. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. Admittedly, the assessee did not furnish relevant details before the Assessing Officer to explain purchase and sale of shares and also capital gain, if any, derived from the said transaction. Before the learned CIT (A), the assessee neither appeared nor filed any details which is evident from the ex-parte order passed by the learned CIT (A) for both the A.Ys. Although, the learned CIT (A) disposed off the appeal filed by the assessee, but such appeals have been disposed off on technical ground for non-prosecution by following certain judicial precedents including ITAT Delhi Benches in the case of CIT vs. Multiplan India (P) Ltd (Supra). It is well established principles of law by the decision of various Courts and Tribunals that even in a case of disposal of appeal by the first appellate authority, ex-parte for non-

prosecution of appellant, but such appeal should be disposed off on merit on the basis of material available on record. In the present case, the learned CIT (A) disposed of the appeal on technical ground without discussing the issues on merit. Therefore, we are of the considered view that the issue needs to go back to the file of the learned CIT (A) for fresh consideration and further to give another opportunity of hearing to the assessee. Thus, we set aside the order of the learned CIT (A) for both the A.Ys and restore the issue back to the file of the learned CIT (A) for fresh consideration. The learned CIT (A) is directed to decide the appeal for both the A.Ys on merit after affording reasonable opportunity of being heard to the assessee. Needless to say, the assessee shall appear before the learned CIT (A) without seeking any adjournment unless otherwise warranted.

6. In the result, appeals filed by the for both the A.Ys are allowed for statistical purposes.

Order pronounced in the Open Court on 26<sup>th</sup> August, 2024.

Sd/- <b>(MANJUNATHA, G)</b> <b>ACCOUNTANT MEMBER</b>	Sd/- <b>(LALIET KUMAR)</b> <b>JUDICIAL MEMBER</b>
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Hyderabad, dated 26<sup>th</sup> August, 2024

*Vinodan/sps*

Copy to:

S.No	Addresses
1	Shri Anish Puskur C/o P Murali & Co. CAs, 6-3-655/2/3 Somajiguda, Hyderabad 500082
2	ACIT Central Circle 2(3) Hyderabad
3	Pr. CIT – Central, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*