

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH: BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.621/Bang/2024
Assessment Year: 2014-15

Manoj Kumar C/o Sha Lalchand Madanraj & Co. #7/28, MP Lane Chickpet Cross Bengaluru 560 053 PAN NO : AGEPK8816E	Vs.	DCIT Circle-2(2)(1) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Sri G. Venkatesh, A.R.
Respondent by	:	Sri Ganesh R. Gale, Standing Counsel for Department

Date of Hearing	:	25.07.2024
Date of Pronouncement	:	30.08.2024

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This appeal by assessee is directed against the order of NFAC dated 17.8.2023 for the AY 2014-15 passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”).

2. The assessee has raised following grounds of appeal:

1. *“The impugned order of the Commissioner of Income Tax (Appeals), Income tax department, National Faceless Appeal Center, Delhi, [for short 'CIT(A), NFAC'] passed under section 250 of the Income Tax Act, 1961, in so far the same is against the appellant, is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case.*
2. *The learned CIT (A), NFAC is not justified in dismissing the appeal of the Appellant without affording effective opportunity of representation to the appellant despite seeking time for filing the submissions and documentary evidence on the facts and circumstances of the case.*

3. *The learned CIT(A), NFAC erred in dismissing the appeal of the appellant and confirming the assessment order for default without effectively going into the merits of the grounds of appeal on the facts and circumstances of the case.*
4. *The learned CIT(A), NFAC ought to have appreciated that it is a well settled position of law that no appeal can be dismissed merely on grounds of non-prosecution and the grounds of the appeal ought to be adjudicated on the material available on record even in such circumstances.*
5. *The learned CIT (A), NFAC has erred in dealing with the merits of the matter very superficially only and mechanically confirming the order of the assessing officer despite the fact that substantial records were already furnished by the appellant in the course of the assessment proceedings on the facts and circumstances of the Case.*
6. *The appellant denies himself liable to be assessed to Rs.41,44,100/- as against the returned income of Rs.1,89,350/on the facts and circumstances of the case.*
7. *The learned assessing officer is not justified in law and in fact in assuming jurisdiction u/s 147 of the Act and consequently the impugned assessment order is bad in law for want of valid assumption of jurisdiction and is liable to be quashed as void ab initio on the facts and circumstances of the case.*
8. *The learned assessing officer is not justified in assuming the jurisdiction u/s 147 of the Act when no notice u/s 148 of the Act has been validly served on the appellant on the facts and circumstances of the case.*
9. *The learned assessing officer erred in not appreciating that after 01.04.2021, the reassessment proceedings ought to be conducted and concluded as per the new law prevailing when the order is passed on the facts and circumstances of the case.*
10. *The learned CIT(A), NFAC is not justified in effectively confirming the addition of Rs.39,54,750/- u/s 68 of the Act facts and circumstances of the case.*
11. *The learned CIT(A), NFAC ought to have appreciated that the appellant as demonstrated the genuineness of earning capital gains on sale of the scrip Turbotech Engineering Limited by way of all the relevant documentary evidence on the facts and circumstances of the case.*
12. *The learned authorities below erred in making the above addition allegedly as bogus or sham long term capital gain in respect of allege*

penny stock merely on the basis of certain general investigation said to be carried on the facts and circumstances of the case.

- 13. The learned authorities below are not justified in relying on any investigation report without putting forth or providing a copy of the same to the appellant for his explanations thereon and consequently passing the impugned assessment order in violation of principles of natural justice on the facts and circumstances of the case.*
 - 14. The learned authorities below, failed to appreciate that there was no occasion to hold that the long-term capital gain in question as bogus or unexplained cash credits in terms of section 68 of the Act based on the documentary evidences placed on record on the facts and circumstances of the case.*
 - 15. The learned authorities below are not justified coming to a conclusion that the appellant is one of the beneficiaries who has taken entry of bogus long term capital gain without any basis whatsoever on the facts and circumstances of the case.*
 - 16. The learned authorities below are not justified in making the above additions merely on the presumption, surmise and conjecture and not based on any cogent material facts and circumstances of the case.*
 - 17. The learned authorities below are also not justified in making the addition u/s 68 of the Act when the said provision of the Act is wholly inapplicable to the facts and circumstances of the case.*
 - 18. The learned CIT (A), NFAC is not justified in confirming the addition without even making any reference to the subject matter involved in the appeal on the facts and circumstances of the case.*
 - 19. The Authorities below are not justified in levying interest u/s 234B and 234C of the Act on the facts and circumstances of the case and further the quantum, period and are not discernible from the assessment order.*
 - 20. The appellant craves for leave of this Hon'ble Tribunal, to add, alter, delete, amend or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing.*
 - 21. For these and other grounds that may be urged at the time of hearing of appeal, the appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity.*
- 3.** Brief facts of the case are that the assessee filed his return of income for AY 2014-15 declaring total income of Rs.1,89,350/-. Assessment proceedings were reopened by issue of notice u/s 148 of

the Act. The assessee filed return of income in response to the notice, admitting a total income of Rs.1,89,350/-. As per information received, the assessee sold shares of Turbo Tech Engineering Ltd for Rs.39,54,750/- during financial year 2013-14. Notices u/s 142(1) of the Act were issued asking the assessee to give details of all shares sold along with copy of documents related to such transactions including bank statements.

3.1 The AO concluded from the detailed investigations on the penny stock company's affairs, comparative financials of the company for last 5 years that the company did not have any turnover and the company had declared only losses continuously from 2009 to 2013. The Director's Report also stated that the company was facing huge set back. After examining the circumstances, AO concluded that it was beyond belief that the value of equity of the company had gone up without any sound financials to back the astronomical rise in the price of the shares of Turbo Tech Engineering Ltd from Rs.2 per share in 2011 to Rs. 360-430/- per share. The AO inferred that this was not on account of normal market forces, but due to manipulation of stock prices and a discerning investor would definitely not consider buying such a scrip.

3.2 The submissions of the assessee were rejected in the backdrop of detailed investigations carried out by various investigative agencies including SEBI and also in the circumstances of the implausible hike in the shares of M/s. Turbotech. The AO asked the assessee to explain his decision to invest in Turbotech given the weak financials and absence of business activity by the company. The assessee was not able to give any explanation on this account. In view of the above facts and other facts discussed in detail in the Assessment Order, the transaction of purchase and sale of Turbo Tech scrips by the assessee were treated by the AO as sham transaction to convert the unaccounted money in the guise of exempting long term capital gains. The AO accordingly, treated the

entire sale consideration of Rs.39,54,750/- from the sale of shares of Turbotech Engineering Ltd as unexplained credits brought in the hands of the assessee and brought it to tax u/s. 68 of the Act and disallowed the exemption claimed u/s 10(38) of the Act. Accordingly, the total income of the assessee was assessed at Rs.41,44,100/-. Against this assessee went in appeal before ld. CIT(A)/NFAC and the NFAC issued notices on various dates to appear for hearing, details of which are as follows:

Date of compliance	Status
26.07.2023	No compliance
04.08.2023	No compliance
14.08.2023	No compliance

3.3 In spite of aforesaid notices, the assessee did not appear for hearing before Ld. CIT(A)/NFAC and hence the NFAC issued an ex-parte order for non-prosecution confirming the additions made by AO. Against the ex-parte order of NFAC, now the assessee is in appeal before us.

4. We have heard the rival submissions and perused the materials available on record. The ld. A.R. pleaded that the assessee encountered unforeseen personal challenges the disclosure of which would compromise his privacy and security. Further, there was a change in the consultant also responsible for handling appeal before First Appellate Authority and accordingly, failed to take measures in replying to the notices issued by the NFAC. Considering the facts and circumstances of the case, in our opinion, it is appropriate to remit the entire issue in dispute to the file of ld. CIT(A) for giving a fair opportunity of hearing to the assessee. As such, he shall cooperate with the department and file necessary documents in support of the claim of the assessee. Even in second round also, if the assessee is not cooperating with the department, the ld. CIT(A)/NFAC is at liberty to take decision in accordance with law.

4. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 30th Aug, 2024

Sd/-
(Waseem Ahmed)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated 30th Aug, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.