

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**Mumbai “J” Bench, Mumbai.**

**Before Smt. Beena Pillai, Judicial Member,**

**&**

**Shri Ratnesh Nandan Sahay, Accountant Member**

**I.T.A. No. 3973/Mum/2024**

**(A.Y. 2017-18)**

Naraindas Essardas and Sons (HK) Limited C/o 304, Marine Chambers New Marine Lines Mumbai PAN : AAECN7768H	Vs.	ACIT(IT) Circle-3(3)(1) Mumbai
(Appellant)		(Respondent)

Assessee by	Shri Dr. K. Shivaram, Sr. Adv.
Department by	Shri Nischal B (CIT-DR)
Date of Hearing	11.09.2024
Date of Pronouncement	12.09.2024

**ORDER**

**PER SMT. BEENA PILLAI, JM :**

The present appeal arises out of the final assessment order passed by the ACIT, International Taxation, Circle-3(3)(1), Mumbai under Section 147 r.w. Section 144 dated 29<sup>th</sup> March, 2024 for A.Y. 2017-18.

2. At the outset, the Ld. AR submitted that, the assessee is a non-resident company based in Hong Kong, and during the year under

consideration, the assessee sold shares of IndusInd Bank Ltd. against which the assessee received sale consideration of Rs.45,30,24,683/-. It was submitted that, the shares were held for more than a year and STT was also paid. Accordingly, assessee claimed Long Term Capital Gains on the sale consideration to be exempt. As a result of which, the assessee did not file a return of income in India.

2.1 Subsequently, based on information received by the Department regarding remittance of money to foreign company, the assessment was reopened vide notice issued under Section 148 of the Act on 16.04.2021. It is submitted by the Ld. AR that, the assessee furnished email address of one of their consultant's son who informed the assessee that, except the draft assessment order under Section 144C(1) and recovery notices, no other communications were received by him.

2.2 Thereafter against the draft assessment order, objections were filed by the assessee before the Dispute Resolution Panel, Bangalore (DRP). It is submitted that, the notices sent by DRP at the e-mail address of the assessee were not received by the assessee and accordingly the DRP also passed an order without giving any opportunity to the assessee. Based on such DRP directions, the Ld. AO passed the final assessment order by making addition in the hands of the assessee, amounting to Rs.45,30,24,683/- on the sale proceeds of the equity shares as Short Term Capital Gains under Section 111A of the Act.

Aggrieved by the order of the Ld. AO, the assessee preferred appeal before the *Tribunal*.

3. The Ld. Counsel submitted that, all the purchase and sale of shares held by the assessee of IndusInd Bank Ltd. amounts to Long Term Capital Gain and there are documentary evidences to support the contentions of the assessee. However, he submitted that, such documents could not be filed before the authorities below, as the notices were not received by the assessee.

3.1 The Ld. Counsel has filed before this *Tribunal* list of documents to support the claim of assessee that it had purchased shares of IndusInd Bank Ltd. way back in June, 1995 that was sold through Demat Account during the year under consideration. He thus submitted that, under no circumstances the sale proceeds earned by the assessee could be treated as Short Term Capital Gain.

3.2 On the contrary, the Ld. DR submitted that, the evidences relied by the assessee were never placed before the authorities below and deserves to be verified.

We have perused the submissions advanced by both sides in the light of records placed before us.

4. It is noted that, the evidences relied by the Ld. Counsel could not be filed before the authorities below due to non receipt of the notice of hearing. In our view, the assessee is put to prejudice and principles of natural justice are violated on account of not being able to submit our effective reply. In the interest of justice, we remit the issue to the file of the AO with a direction to consider the evidences filed by the assessee and to carry out necessary verifications as per law in order to consider the claim. The purchases and the sales documents may be verified.

4.1 Needless to say that proper opportunity may be granted to the assessee in accordance with law and the. AO may pass a detail order on merits.

**Accordingly, the grounds raised by the assessee stands partly allowed for statistical purposes.**

**In the result, the appeal filed by the assessee stands partly allowed for statistical purposes.**

Order pronounced in the open court on 12.09.2024

Sd/  
[RATNESH NANDAN SAHAY]  
ACCOUNTANT MEMBER

Sd/-  
[BEENA PILLAI]  
JUDICIAL MEMBER

MUMBAI, DATED: 12/09/2024

*Prabhat*