

IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH, MUMBAI

BEFORE MS. PADMAVATHY S, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.2688/Mum./2024
(Assessment Year : 2013-14)

Vali Najmuddin Mithiborwala

1001/1002 Tapovan CHS Ltd,
65 J.K. Mehta Marg,
Santacruz (W), Mumbai- 400054
PAN-AABPM7758C

..... Appellant

v/s

ACIT Circle 22(3)

Piramal Chambers Lalbaug,
Mumbai- 400012

..... Respondent

Assessee by : Shri Nishit Gandhi
Revenue by : Shri Ankush Kapoor, CIT. DR

Date of Hearing – 27/08/2024

Date of Order – 29/08/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 15/03/2024 passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the assessment year 2013-14.

2. In this appeal, the assessee has raised the following grounds: -

"1.1 In the facts and circumstances of the case and in law, the order passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre ["the CIT(A)"*], is bad in law since the same is passed ex-parte in gross violation of principles of natural justice and without appreciating the facts and circumstances of the case.*

1.2 In the facts and circumstances of the case and in law, the order passed by the Ld. CIT(A) is bad in law and void since the same is passed without considering the merits of the case and without even considering the grounds raised, the facts and material before him.

ON VALIDITY OF THE ORDER:

2.1 In the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not quashing the assessment order passed by the AO despite the fact that the same is bad in law and void for want of jurisdiction since:

(i) the same is passed without any Document Identification Number (DIN) quoted in the body of the Order in violation of Circular 19 dated 14th August, 2019; and;

(ii) The same is not in the prescribed form as per the Income Tax Act and the Rules framed there under.

2.2 In the facts and circumstances of the case and in law, the assessment order be quashed as being void and non-est.

ON REASSESSMENT:

3.1 In the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating that the re-assessment framed by the AO u/s 147 of the Income Tax Act, 1961 in the present case is bad in law and void since:

(i) The necessary pre-conditions for the Initiation and completion of a re-assessment are not fulfilled in the present case;

(ii) The reasons as stated to have been recorded are no reasons at all in the eyes of law as contemplated u/s 148 of the Act;

(iii) The impugned, assessment order passed by the AO is without even considering the objections to re-opening raised by the Assessee;

(iv) Even otherwise, the re-assessment order is unsustainable since the AO has not made any additions on the basis of reasons recorded for re-opening and therefore the entire order is vitiated; and;

(v) In any case there is no income escaping assessment in the present case.

3.2 In the facts and circumstances of the case and in law, the assessment order passed by the AO u/s 143(3) r.w.s. 147 of the Act is bad in law and void for want of jurisdiction.

ON MERITS:

4.1 In the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of the Ld. AO in making an addition of Rs.22,66,86,863/- as income of the Appellant u/s 68 of the Act (being Rs. 15,37,67,024/-being sale value of shares plus Rs. 7,29,19,836/- being purchase of shares out of the said amount received on sale) in clear

contravention of law, simply on the basis of surmises and conjectures based on irrelevant and extraneous considerations while ignoring the relevant material and considerations.

4.2 While doing so, the Ld. CIT(A) failed to appreciate that:

(1) The said addition is contrary to the provisions of the Act and in fact leads to double taxation in as much as first the sale value of Rs.15,37,67,024 of shares of Blue Circle Services Ltd. is added and thereafter the purchase value of Rs. 7,29,19,836/- of shares of Unisys Holdings from the very same sale value is again added leading to double taxation;

(ii) The Appellant has rightly claimed the exemption u/s 10(38) in respect of long term capital gains of Rs.15,17,67,037/- on sale of shares of Blue Circle Services Ltd. through a recognized stock exchange (BSE in this case) and the Ld. AO has not given any basis for making an addition u/s 68 in respect of the same without first stating the exemption so claimed;

(iii) The sale as well as purchase of shares is evidenced by various documents which have not been refuted by the Ld. AO anywhere in his order,

(iv) The Ld. AO has neither referred to nor produced any concrete evidence to manifest that the transactions carried out by the Appellant were not genuine;

(v) The entire addition is based simply on certain uncontroverted statements of some unrelated third parties before the Department and other Authorities in some unconnected proceedings; and;

(vi) Neither any investigation nor any proceedings whatsoever have ever been initiated by Securities and Exchange Board of India (SEBI) against the brokers or the Appellant as regards the impugned transactions;

4.3 In the facts and circumstances of the case and in law, the Ld. AO erred in treating the amount of Rs. 7,29,19,836/- incurred on purchase of shares of Unisys Holdings Ltd. as income of the Appellant and taxing the same u/s 68 of the Act.

4.4 While doing so the Ld: AO failed to appreciate that:

(i) The provisions of section 68 are not attracted in the present case since admittedly the same is in respect of purchase of shares;

ii) The Purchase is directly debited from the Account of the Appellant held with the Brokers, the same is genuine and duly explained by numerous evidences and also recorded in the books of the Appellant which have not been doubted or disputed;

(iii) The said addition is based simply on surmises and conjectures relying on certain uncontroverted statements of some unrelated third

parties before the Department and other Authorities in some unconnected proceedings.

(iv) Neither any investigation nor any proceedings whatsoever have ever been initiated by Securities and Exchange Board of India (SEBI) against the brokers or the Appellant as regards the impugned transactions; and;

(v) No evidence has been brought on record by the AO in order to establish the fact that the impugned purchases were made by the Appellant out of unexplained sources of income.

4.5 Without prejudice to the above, it is submitted that in the facts of the present case, the amount of Rs.7,29,19,836/-incurred on purchase of shares of Unisys Holdings be treated as being sourced out of the sale consideration of Rs. 15,37,67,024/- already taxed by the AO as unexplained income of the Appellant and as such the benefit of telescoping as regards the said sum of purchase be granted to the Appellant.

4.6 Without prejudice to the above, in the facts and circumstances of the case and in law, the Ld. AO failed to appreciate that no income could be taxed unless a specific head is assigned to it as contemplated u/s 14 of the Act and since the same is not done in the present case by the AO, no income could be taxed at all sans classification as per section 14 of the Act.

4.7 In view of the above, it is submitted that the additions so made by the AO be deleted.

5. In the facts and circumstances of the case and in law, the Ld. AO erred in adding an ad-hoc amount of Rs.68,00,606/-(being 3% of Rs.22,66,86,863/-) as unexplained expenditure u/s 69C of the Act simply on the basis of surmises, suspicion and conjectures.

ON LEVY OF INTEREST:

6. In the facts and circumstances of the case and in law the Ed. AO erred in levying interest u/s 234B, 234C and 234D of the Act on the Appellant.

7. The Appellant craves leave to add, amend, alter, delete or modify all or any the above grounds at the time of hearing."

3. We have considered the submissions of both sides and perused the material available on record. In the present case, at the outset, it is evident that the learned CIT(A) has passed the order ex-parte due to the non-appearance of/on behalf of the assessee. Now in appeal before us, the assessee is duly represented by the learned AR and wishes to pursue the litigation against the addition made by the AO. In view of the above, we are of the considered opinion that in the interest of justice and fair play, the assessee be granted one more

opportunity to represent its case on merits before the learned CIT(A). We further find that the learned CIT(A) merely on the basis of non-compliance with notices, dismissed the appeal filed by the assessee without adjudicating the grounds raised by the assessee on merits, as required under section 250(6) of the Act. We find that in CIT v/s Premkumar Arjundas Luthra (HUF), [2016] 69 taxmann.com 407 (Bombay), the Hon'ble Jurisdictional High Court held that Commissioner (Appeals) cannot dismiss the appeal on account of non-prosecution of appeal by the assessee. Consequently, we deem it fit and proper to set aside the impugned order and restore the matter to the file of the learned CIT(A) for *de novo* adjudication of the appeal on merits after consideration of all the details/submissions as may be filed by the assessee. Needless to mention no order shall be passed without affording reasonable opportunity of hearing to the parties. The assessee is directed to appear before the learned CIT(A) on all the dates of hearing as may be fixed without any default. As the matter is being restored to the file of the learned CIT(A) for adjudication on merits, the other grievances raised by the assessee in the present appeal do not call for adjudication at this stage. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

4. In the result, the appeal by the assessee is allowed for statistical purposes.
Order pronounced in the open Court on 29/08/2024

Sd/-
PADMAVATHY S
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 29/08/2024

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

By Order

Assistant Registrar
ITAT, Mumbai