

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI**

**SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 562/MUM/2024
(Assessment Year: 2015-16)**

Paras Meghraj Jain (HUF),

301, Mahaveer Darshan, Sai Dham Compound,

V.P.Road, Mumbai - 400004

[PAN: AAHHP7843M]

..... **Appellant**

Vs

Income Tax Officer Ward 19(2)(5),

Piramal Chambers, 5th floor, Parel,

Lalbaug, Mumbai – 400013.

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri G.P.Mehta

For the Respondent/Department : Shri Himanshu Sharma

Date

Conclusion of hearing : 03.07.2024

Pronouncement of order : 24.09.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Assessee has challenged the order dated 12/12/2023, passed by the National Faceless Appeal Centre (NFAC), Delhi, [hereinafter referred to as the '**CIT(A)**'], whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 19/12/2017, passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the **Act**') for the Assessment Year 2015-16.
2. The appellant has raised following grounds of appeal :
 - "1. *The orders passed by the learned lower authorities are bad in law and bad in facts.*
 2. *The learned Commissioner of Income Tax (Appeals) have grossly erred in passing ex-parte order without giving an*

adequate & reasonable opportunity of being heard.

3. *The learned lower authorities have grossly erred in making impugned addition of Rs. 30,16,975/- without granting an opportunity to cross examine the persons whose testimony was relied upon for making impugned addition.*
 4. *The learned lower authorities have grossly erred in relying on the report of Investigation Wing Kolkata without independently conducting any inquiry in the matter.*
 5. *The learned lower authorities have grossly erred in passing impugned orders without providing to the appellant, materials, papers, documents relied upon for making addition of Rs. 30,16,975/-*
 6. *The learned lower authorities have grossly erred in making/upholding impugned addition of Rs. 30,16,975/- by recourse to sec. 68, inasmuch as said section has no application in appellant's case.*
 7. *The learned lower authorities have grossly erred in disallowing exemption claimed under sec. 10(38) of the I.T.Act, 1961 at Rs. 30,16,975/-on account of long term capital gain on listed securities. Reasons assigned for said disallowance are wrong and contrary to the facts of the appellant's case.*
 8. *The learned lower authorities have grossly erred in rejecting the transactions carried out at recognised Stock Exchange at Rs.30,16,975/- over whose functioning appellant had no control or interference. The impugned addition is tainted with arbitrariness.*
 9. *The assessment order passed by the learned Assessing Officer is ab-initio void, inasmuch as he has not independently applied his mind to the facts of the case as is evident from the recordings in the assessment order.*
 10. *Having regard to the facts of the case, provisions of law, and judicial propositions, entire amount of the addition at Rs. 30,16,975/-is wholly untenable in law."*
3. During the course of hearing, the learned Authorised Representative for the Appellant submitted that the appeal preferred by the Assessee against the Assessment Order dated 19/12/2007 passed under Section 143(3) of the Act was dismissed by the Ld. CIT(A) for non-prosecution and therefore, the order passed by the Ld. CIT(A) be set aside.
4. Per contra, the learned Departmental Representative pointed out that while the Ld. CIT(A) had dismissed the appeal for want of

prosecution, the Ld. CIT(A) had also decided the issue on merits.

5. On perusal of the order passed by the Ld. CIT(A) we find that the appeal preferred by the Assessee was dismissed, both on account of non compliance as well as on merits. However, we find that all the grounds raised by the Appellant have been dismissed by placing reliance upon Judgment of the Tribunal in the case of Archana Rajendra Malu Vs. ITO 2023 155 (Taxmann.com.625) (Pune Tribunal) without taking into consideration the grounds raised by the Appellant in Form No. 35 filed before the Ld. CIT(A). Accordingly, keeping in view of the facts and circumstances of the case, we deem it proper and interest of justice to set aside the order passed by the Ld. CIT(A) and restored the appeal back to the file of Ld. CIT(A) for deciding the appeal afresh as per law. The Appellant is directed to pursue the appeal diligently and file the submission/documents before the Ld. CIT(A). It is clarified that in case the Appellant fails to enter appearance before the Ld. CIT(A) and/or fails to furnish relevant submission/details before the Ld. CIT(A), the Ld. CIT(A) would be at liberty to adjudicate the grounds raised in appeal on merits as per law on the basis of material on record. In terms of the aforesaid, Ground No. 2 raised by the Appellant is allowed while all the other grounds are dismissed as being infructuous.
6. In result the present appeal is allowed for statistical purposes.

Order pronounced on 24.09.2024.

Sd/-
(Narnedra Kumar Billayia)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 24.09.2024
Y.S.Patil, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /((Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai