

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI
BEFORE MS. KAVITHA RAJAGOPAL, JM AND SHRI GAGAN GOYAL, AM**

ITA No.909/Mum/2024
(Assessment Year: 2011-12)

Saremal Nihalchand Jain 106, BDD Chawl, Shree Ram Mills Road, Worli, Mumbai-400 013	Vs.	ITO Ward – 21(3)(2) Piramal Chambers, Mumbai
PAN/GIR No. AINPJ 0108 R		
(Assessee)	:	(Respondent)
Assessee by	:	None
Respondent by	:	Ms. Rajni Rani Roy
Date of Hearing	:	29.10.2024
Date of Pronouncement	:	30.10.2024

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) (‘ld.CIT(A) for short), National Faceless Appeal Centre (‘NFAC’ for short) passed u/s.250 of the Income Tax Act, 1961 (‘the Act’), pertaining to the Assessment Year (‘A.Y.’ for short) 2011-12.

2. As none appeared for the assessee, we hereby dispose of this appeal by hearing the learned Departmental Representative (ld. DR for short) and by perusing the materials available on record.

3. Brief facts of the case are that the assessee is an individual and had not filed his return of income for the year under consideration. The assessee’s case was reopened vide notice dated 30.03.2018 based on the information received from DGIT(Inv) that the assessee has been one of the beneficiary of the bogus entries by way of long term capital

gain (LTCG for short)/LTCL amounting to Rs.3,80,873/-, pertaining to sale of shares of M/s. Swarna Sarita Gems Ltd., which is alleged to be a shell company. The assessee was non compliant before the learned Assessing Officer (ld. A.O. for short) who then proceeded to pass the assessment order dated 01.12.2018 u/s. 144 r.w.s. 147 of the Act being the best assessment judgment, thereby determining total income at Rs.28,70,573/- after making an addition of Rs.24,89,700/- towards cash deposit in the savings bank account of the assessee maintained with the South Indian Bank Ltd. and Rs.3,80,873/- as bogus loss from sale of shares u/s. 69A of the Act.

4. Aggrieved the assessee was in appeal before the first appellate authority, challenging the assessment order.

5. The ld. CIT(A) vide an *ex parte* order dated 12.02.2024, had partly allowed the appeal filed by the assessee, deleting the alleged bogus loss of Rs.3,80,873/- from sale of shares and upheld the addition of Rs.24,89,700/- towards the cash deposit made in the assessee's savings bank account.

6. Aggrieved the assessee is in appeal before us, challenging the impugned order of the ld. CIT(A).

7. We have heard the ld. DR and perused the materials available on record. It is observed that the assessee has challenged the additions made by the ld. A.O. before the first appellate authority, but has been non compliant throughout the appellate proceeding.

8. The ld. DR for the Revenue contended that the assessee has been habitually non compliant before the lower authorities, but the ld. CIT(A) has deleted the addition on bogus loss of Rs.3,80,873/- inspite of the assessee having failed to furnish books of

accounts or supporting documents as to the sale and purchase of these shares. The ld. DR relied on the order of the ld. A.O. and prayed that the additions be upheld.

9. In view of the above facts, it is observed that the assessee vide his letter dated 29.10.2024, requesting for adjournment has specified that the Revenue has filed an appeal, challenging the ld. CIT(A)'s order in ITA No.1819/Mum/2024 before the 'J' Bench. Pertinently, nothing has been brought to our knowledge as to whether an application for consolidation has been filed by either parties. In the absence of the same, we deem it fit to extend one more opportunity to the assessee to present his case before the ld. A.O. We, therefore, direct that the assessee to cooperate with the proceeding before the ld. A.O. without any undue delay on his side and the ld. A.O. shall decide the issue in hand on the merits of the case.

10. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 30.10.2024.
Sd/- Sd/-

(Gagan Goyal)
Accountant Member
Mumbai; Dated :30.10.2024
Roshani, Sr. PS

(Kavitha Rajagopal)
Judicial Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT- concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai