

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

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.5377/M/2024
Assessment Year: 2013-14
&
ITA No.5389/M/2024
Assessment Year: 2014-15**

Saleh Najmuddin Mithiborwala 1001/1002 Natura, Tapovan Co Op HSG Society, J.K. Mehta Marg, Santacruz(West) Mumbai - 400054 PAN: AABPM7757P	Vs.	Assistant Commissioner of Income Tax Room No. 357, 3 rd Floor, Aayakar Bhavan, Maharshi Karve Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Nishit Gandhi
Revenue by : Shri Nischal B, CIT DR

Date of Hearing : 26.11.2024
Date of Pronouncement : 27.11.2024

ORDER

Per : OM PRAKASH KANT, Accountant Member:

These appeals by the assessee are directed against two separate orders dated 19/08/2024 and 29/08/2024 passed by the Ld. Commissioner of Income Tax Appeals - National Faceless Appeal Centre (NFAC), Delhi, (in short 'the Ld. CIT(A)') for

Assessment Year 2013-14 and 2014-15 respectively. As common grounds have been raised in the both the appeals, therefore, same were heard together and disposed off by way of this consolidated order for convenience.

2. For ready reference, grounds raised in the A.Y. 2013-14 in ITA No. 5377/Mum/2024 are reproduced as under:

"ON VIOLATION OF NATURAL JUSTICE:

1. *In the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre "the CIT(A)" for short] erred in affirming the order passed by the Learned Assessing Officer ["the Ld. AO" for short] in gross violation of principles of natural justice and without considering the submissions already on record.*

ON VALIDITY OF THE ORDER:

2. *In the facts and circumstances of the case and in law, the Ld. CIT(A) erred in affirming the order passed by the Ld. AO without appreciating that the same is bad in law and void as it is not in the prescribed form as per the Income Tax Act and the Rules framed there under.*

ON REASSESSMENT:

- 3.1 *In the facts and circumstances of the case and in law, the Ld. CIT(A) erred in affirming the re-assessment framed by the Ld. AO u/s 147 of the Income Tax Act, 1961 without appreciating that:*
 - (i) *The necessary pre-conditions for the initiation and completion of a re-assessment are not fulfilled in the present case;*
 - (ii) *The reasons 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; and;

(iv) 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 affirming the action of the Ld. AO in treating an amount of Rs.14,59,79,653/- as income of the Appellant and taxing the same u/s 68 of the Act simply on the basis of surmises and conjectures and thereby denying the claim for exemption u/s 10(38) of the Act on sale of shares through the Bombay Stock Exchange (BSE).

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

(i) The Appellant had filed hi submissions on 22.03.2022 which fact is noted even by the Ld. CIT(A) and despite that the order came to be passed without considering the same;

(ii) The entire addition springs out of mere surmises and conjectures based on irrelevant and extraneous considerations while ignoring the relevant material and considerations;

(ii) The Appellant has rightly claimed the exemption u/s 10(38) of the Act in respect of long term capital gains earned on sale of shares through a recognized stock exchange (BSE in this case) and neither the AO nor the CIT(A) have pointed out any flaw in the said claim of exemption;

(iii) None of the evidences furnished by the Appellant have been refuted by the Ld. AO or the Ld. CIT(A) in their orders;

(iv) The Ld. AO has neither referred to nor produced any concrete evidence to manifest that the transactions carried out by the Appellant were bogus;

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 *Without prejudice to the above, in the facts and circumstances of the case and in law, the lower authorities 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, no income could be taxed at all sans classification as per section 14 of the Act.*

4.4 *In view of the above, it is submitted that the addition so made by the AO be deleted.*

ON LEVY OF INTEREST:

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

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

3. In the relation to ground No. 1 of the appeal, we have heard rival submission of the parties and perused the relevant material on record. The Ld. Council for the assessee submitted that impugned order has been passed without considering the submissions filed by the assessee which were already available on the record and therefore, order of the Ld. CIT(A) might be set aside and be restored for deciding afresh. From the impugned order, we find that Ld. CIT(A) in para 8 to 8.9 has concluded that in absence of any submissions except statement of the

facts, he was left with no option but to complete proceeding on the documentary evidence available on record. Further, in para 9, Ld. CIT(A) has rejected the legal grounds challenging the validity of reassessment as well as the grounds raised on the merit. Since from the records available before us, it is evident and clear that submissions of the assessee on the legal grounds as well as on the grounds challenging merit have not been considered by the Ld. CIT(A), partly due to for non compliance on the part of the assessee and partly due to the submissions filed were ignored. Therefore, we feel it appropriate to set aside the finding of the Ld. CIT(A) on the issues on dispute and restore the matter back to him for deciding afresh after taking into consideration submissions of the assessee. The ground no. 1 appeal of the assessee is accordingly allowed.

4. Since we have already restored the matter back to the file Ld. CIT(A) for deciding the grounds of the assessee afresh, therefore, we are not adjudicating the other grounds challenging validity of the reassessment as well as on merit of the addition and same are left open.

5. Identical grounds have been raised in assessment year 2014-15 and therefore following our finding above in assessment year 2013-14, the ground no. 1 of the appeal for the assessment year 2014-15 is also allowed and appeal is restored back to the Ld. CIT(A) for deciding afresh. The other grounds are accordingly not adjudicated and dismissed as infructuous.

6. In the result, both the appeals are allowed for statistical purpose.

Order pronounced in the open court on 27.11.2024.

**Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai, Dated:27/11/2024

Poonam Mirashi,
Stenographer

Copy to: The Appellant
The Respondent
The Pr. CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.