

आयकर अपीलिय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.476/Ind/2024
(Assessment Year: 2013-14)

Saurabh Barjatya 123, Nami Nagar Jain Colony Indore -452009 (Appellant / Assessee)	Vs.	ITO 1(2) Indore (Respondent/ Revenue)
PAN: AUWPB4768Q		
Assessee by	Shri N.D. Patwa, AR	
Revenue by	Shri Sanjeev H. Bhagat, Sr. DR	
Date of Hearing	11.12.2024	
Date of Pronouncement	12.12.2024	

ORDER

Per Vijay Pal Rao, VP :

This appeal by assessee is directed against the order dated 15.04.2024 of the Commissioner of Income Tax (Appeal) National Faceless Appeal Centre (NFAC) Delhi, for A.Y.2013-14. The assessee has raised following grounds of appeal:

"1 The Id AO was not justified in passing the order, which is bad-in-law, void ab initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled.

2. The Id CIT(A) was not justified in confirming the order, which is bad-in-law, void ab initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled.

3 The Id CIT(A) was not justified in ex-parte dismissing the appeal of the appellant, without deciding the appeal on merits, and that a fair and meaningful opportunity was not available to the appellant to present his case.

4.The Id CIT(A) was not justified in not deciding the grounds of appeal before him.

5.The Id CIT(A) was not justified in confirming the addition of Rs. 52,51,800/- as unaccounted money.

6.The appellant carves leave to add, amend or modify any of the grounds of appeal."

2. At the time of hearing, Ld. AR of the assessee has submitted that the Ld. CIT(A) has passed the impugned order ex-parte when there was no response on behalf of the assessee to the notices. Ld. AR has further submitted that the notice issued by the CIT(A) were not received by the assessee and might have sent to the different e-mail ID then e-mail ID given in form 35. He has further contended that the CIT(A) has not adjudicated the appeal on merits but dismissed the same for want of prosecution. Hence, Ld. AR has pleaded that the impugned order of the CIT(A) may be set aside and the assessee be granted one more opportunity to produce the relevant details and evidences in support of the claim of long-term capital gain exempt u/s 10(38) of the Act. He has further pointed out that the AO has made an addition on account of long-term capital gain declared by the assessee and stated in the order that the assessee has made part compliance of the notices issued by the AO. Thus, Ld. AR has pleaded that the matter may be remanded to the record of the AO for fresh adjudication after verification and examination of the relevant record to be filed by the assessee.

3. On the other hand, Id. DR has submitted that the AO has given a finding by considering all the relevant facts and surrounding circumstances that the assessee has made bogus claim of long-term capital gain on sale and purchase of sale of shares exempt u/s 10(38) of the Act. He has relied upon the orders of the authorities below.

4. We have considered rival submissions as well as relevant material on record. The AO has made addition of the long term capital gain declared by the assessee and claimed as exempt u/s 10(38) of the Act by treating the same as bogus claim when the assessee has failed to fully complied with the notices issued by the AO. On appeal the CIT(A) has passed ex-parte order and dismissed the appeal of the assessee for non-prosecution when there was no response on behalf of the assessee to the notices issued. Thus, it is clear that the addition was made by the AO for want of supporting evidences and was confirmed by the CIT(A) as the appeal of the assessee was dismissed for non-prosecution. Hence, in the facts and circumstances of the case when the AO has made the addition by referring surrounding circumstances and without bringing any direct material on record to show that the claim of the assessee is bogus then the assessee deserves one more opportunity to substantiate its claim by producing relevant record and details. Accordingly, the impugned order of the CIT(A) is set aside and the matter is remanded to the record of the AO for fresh adjudication after verification and examination of the relevant record and evidence to be filed by the assessee.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 12.12.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

sd/-
(VIJAY PAL RAO)
Vice President

Indore, 12.12.2024

Patel/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore