

IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH MUMBAI
BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No. 204/MUM/2025
Assessment Year: 2012-13

Futarmal Parasmal Jain 401, Archana Apartments Rajabali Road, Opp. Breach Candy Hospital, Mumbai – 400 026 (PAN : AAFPJ0809B)	Vs.	Income-tax Officer, Ward – 19(1)(5), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Shri Prakash Jotwani, Advocate
Revenue : Ms. Kavitha Kaushik, Sr. DR

Date of Hearing : 27.02.2025
Date of Pronouncement : 04.03.2025

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), vide order no. ITBA/NFAC/S/250/2023-24/1054723165(1), dated 31.07.2023, passed against the assessment order by Income-tax Officer, Ward 19(1)(5), Mumbai, u/s. 143(3) r.w.s. 147 of the Income-tax Act (hereinafter referred to as the “Act”), dated 28.12.2017 for Assessment Year 2012-13.

2. Grounds taken by the assessee are reproduced as under:

“1. (a) The Ld. CIT(A) NFAC erred in confirming the addition made by the Ld. AO u/s 68 of Income Tax Act, 1961 ("the Act") of Rs 1,74,83,696 by rejecting the exemption claimed by the Appellant u/s 10 (38) on sale of shares of Karma Ispat Ltd. basis of information obtained from third-party reports and data available on the internet without conducting any independent enquiries and confirming the addition made on mere surmises.

1. (b) The Ld. CIT(A) NFAC erred in upholding AO's order when the AO failed to provide the appellants with a copy of the report of the Investigation wing relied upon by the AO and when there was no nexus or connection between the report of the Investigation Wing and the Appellant-Assessee and when there is no evidence placed on record by the AO of the involvement of the Appellant in the alleged price rigging.

1. (c) The Ld. CIT(A) NFAC erred in confirming the addition on merits without appreciating the documentary evidences such as depository holding, demat accounts, financial accounts and contract notes placed on record by the Appellant during the Assessment proceedings.

1. (d) The Ld. CIT(A) NFAC has failed to appreciate the fact that the transaction was done through the Appellant's normal broker and the copy of financial accounts and contract notes highlighting inward and outward entry of shares purchased and sold on the stock exchange and the shares were held in a depository which is evidenced by depository holding which was duly submitted before to the Ld. AO.

2. The Ld. CIT(A) - NFAC erred in not following the Bombay High Court's decision in the case of CIT v/s Shyam Pawar (Income Tax Appeal No. 1568 of 2012), PCIT v/s Ziauddin A Siddique (Income Tax Appeal No. 2012 of 2017) and Pr. CIT vs. Indravadan Jain HUF (Income Tax Appeal No. 454 of 2018) which held that no addition could be made if documents were provided by the Appellant and no defect was pointed out on the same.

3. The Ld. CIT(A) NFAC erred in confirming the addition on account of commission paid to the broker of Rs 3,49,673/- u/s 69C without providing any evidence or basis for the same.

4. The Appellant claims that similar issues have been allowed by the Hon'ble ITAT Mumbai Bench in case in cases of Kishore Hargovind Patel (HUF) v/s Income Tax Officer - Ward 25(2)(5) (ITA No.4631/M/2023 Assessment Year: 2012-13), Harshit Kishor Patel v/s ITO Ward 33(1)(5), Mumbai (ITA No.2040/M/2024 Assessment Year: 2012-13) and Kunal Tejesh Gandhi vs. ITO (ITA No. 3913/Mum/2023 (AY 2012-13)) concerning the script of M/s Karma Ispat Ltd. wherein the Hon'ble ITAT has deleted additions.

5. The Ld. CIT (A) -NFAC erred in dismissing the appeal ex-parte.

6. The Appellant craves leave to add, alter, amend or delete any of the above grounds of appeals at or before the hearing of the appeal.”

3. In this appeal, it is pointed out by ld. Counsel that ld. CIT(A) passed an *ex parte* order for which ground no.5 has been raised

whereby ld. CIT(A), NFAC has erred in dismissing the appeal *ex parte*. In this respect, it is noted that in para 4.1 of the said order, dates of hearing have been tabulated which are four in numbers. Assessee failed to avail the opportunity to attend these dates of hearing, as noted by ld. CIT(A). He, accordingly, concluded that assessee is not interested in pursuing the appeal and hence dismissed the same holding the stance taken by ld. Assessing Officer. However, it was pointed out that at the assessment stage, assessee furnished the requisite details, as called for from time to time and are placed on record, duly noted by the ld. Assessing Officer in the impugned assessment order. In order to explain the reasons for not attending the hearings at the first appellate stage, an affidavit is placed on record whereby it is stated that the erstwhile Authorised Representative had registered his email ID for receiving the notices. Subsequently, another Authorised Representative was appointed and services from the earlier professional was discontinued. New email ID was included in Form 35 for the purpose of communication. However, notices were not sent on the email ID specified in Form 35 but were sent on the email ID of the erstwhile professional who did not pass on the information to the assessee because of which the same could not be attended.

4. We have perused the contents placed in the affidavit and have also gone through the order of the authorities below. Assessee has also placed on record a paper book containing 68 pages, which bears a certificate that all these documents were before the authorities below, as stated in index of the paper book.

5. Having considered the facts of the case and material placed on record, we find it appropriate to remit the matter back to the file of ld. CIT(A) for *denovo* meritorious adjudication on the grounds raised by

the assessee at the first appellate stage. Needless to say, assessee be given reasonable opportunity of being heard and to make any further submissions, if so desired. Assessee is also directed to be diligent in attending the hearing proceedings. Accordingly, grounds taken by the assessee are allowed for statistical purposes.

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

Order is pronounced in the open court on 04 March, 2025

Sd/-
(Sandeep Singh Karhail)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 04 March, 2025

MP, Sr.P.S.

Copy to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai