

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“F” BENCH, MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JM &  
MS PADMAVATHY S, AM**

**I.T.A. No. 6389/Mum/2024  
(Assessment Year: 2016-17)**

<b>Shirish Devendra Kejriwal,</b> 3A/1301, Whispering Palm, Lokhandwala, Akurli Road, Kandivali (East), Maharashtra-400101 <b>PAN: AMZPK9665N</b>	Vs.	<b>ITO Ward-12(1)(1),</b> Aayakar Bhavan, M.K. Road, Mumbai-400020.
<b>Appellant)</b>	:	<b>Respondent)</b>

**Appellant / Assessee by** : Shri Priyavrat Gupta, AR

**Revenue / Respondent by** : Shri Surendra Meena, Sr. DR

**Date of Hearing** : 30.01.2025

**Date of Pronouncement** : 04.02.2025

**ORDER**

**Per Padmavathy S, AM:**

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC), Delhi [for short 'the CIT(A)] dated 08.10.2024 for the AY 2016-17. The assessee raised the following grounds of appeal:-

*“1. That on the facts and circumstances of the case, the order passed by the Commissioner of Income Tax (Appeals) (hereinafter as "CIT(A)") u/s 250 of*

*the Income Tax Act, 1961 (hereinafter as "the Act") dated 08.10.2024 are bad in law and should be withdrawn;*

*2. That the Impugned Order has been passed in complete violation of principles of natural justice.*

*3. That the Impugned Order has completely failed to take into account the effect of pendency of the writ petition, filed by the Appellant, before the Hon'ble High Court of Bombay.*

*4. The Impugned Order fails to take into consideration that the Appellant has filed a writ petition before the Hon'ble High Court of Bombay challenging the order dated 03.05.2023 passed by the Assessment Unit of National Faceless Assessment Centre, Delhi, inter alia, on the grounds of violation of principles of natural justice.*

*5. The Impugned Order has failed to take into consideration that any order passed in the writ petition would have a direct bearing on the outcome of the appeal filed before the CIT(A)*

*6. That the judicial propriety demanded that the Ld. CIT(A), being a quasi-judicial authority, should have awaited the outcome of the writ petition filed by the appellant herein*

*7. That the Impugned Order incorrectly records that the Appellant is not interested in pursuing the appeal as the Appellant had responded to every notice issued by the authority and sought deferment of the hearing till the adjudication of the writ petition by the Hon'ble High Court of Bombay.*

*8. That the Impugned order has failed to take into consideration the various representations made by the Appellant thus, violating the legal maxim of Audi alteram partem.*

*9. That the Impugned Order incorrectly upholds the order dated 03.05.2023 passed by the Assessment Unit of National Faceless Assessment Centre, Delhi without going into the merits of the appeal and only on a misplaced assumption that the appellant is not interested in pursuing the appeal.*

*10. That the Impugned Order has been passed in complete violation of principles of natural justice and judicial propriety.*

*11. That on the facts and circumstances of the case, the learned CIT(A) erred in upholding the order of the AO as the learned AO erred in issuing the notice*

*u/s.148 on violating the provisions of Sec. 148A and 149(1) and in absence of information that suggests that the income chargeable to tax had escaped assessment;*

*12. That on the facts and circumstances of the case, the learned CIT(A) erred in upholding the order of the AO as the learned AO erred in issuing the notice u/s.148 without obtaining the valid sanction from the specified authority u/s 151, thereby the consequential re-assessment order u/s. 147 is bad in law:*

*13. That on the facts and circumstances of the case, the learned CIT(A) erred in upholding the order of the AO as the assessment order passed u/s. 147 r.w.s 144B is bad in law, since had been passed in contravention of the mandated provision laid u/s. 144B;*

*14. That the order passed u/s 250 of the Income Tax Act, 1961 by the learned CIT(A) is against law and facts on the file in as much as he has not justified in holding the addition made by the Ld. Assessing Officer on the basis of assumption and circumstantial evidence in absence of contrary material/statements against the appellant. The addition made u/s 68 r.w.s 115BBE of Rs.46,22,630/- of entire consideration received on sale of STT paid listed shares of M/s. Sunstar Realty Development Ltd without appreciating that:*

*14.1. Documentary evidences being Contract-cum-bills, D-mat statements. Global report, bank statements, bhav copy, CIN Master Data and confirmation of SEBI registered stock broker to justify the genuineness of purchase and sale of shares is filed on record,*

*14.2. The period of holding of listed shares in appellant's D-mat account exceeds 12 months and such shares had been sold on floor of Bombay stock exchange on which STT, Service Tax had been paid,*

*15. That on the facts and circumstances of the case, the learned CIT(A) erred in upholding the order of the AO as the learned AO erred in making the addition u/s.69A r.w.s.115BBE of alleged unexplained credits/deposits in bank account of Rs. 1,61,39,000/-;*

*16. That on the facts and circumstances of the case, the learned CIT(A) erred in upholding the order of the AO as the learned AO erred in making the addition u/s.69A r.w.s.115BBE of alleged unexplained cash deposits made in bank account of Rs.14,51,000/-;*

*17. That on the facts and circumstances of the case, the learned CIT(A) erred in upholding the order of the AO as the learned AO erred in making the addition u/s.69C r.w.s.115BBE of alleged unexplained expenditure of credit card payment of Rs.8.38.816/-;”*

2. The assessee is an individual engaged in investment in shares on Long Term basis. The assessee filed the return of income for AY 2016-17 on 01.08.2016 declaring a total income of Rs. 5,04,558/-. The assessee during the year under consideration has also declared a Long Term Capital Gain (LTCG) on sale of shares of M/s Sunstar Realty Development Ltd. amounting to Rs. 43,78,187/- and claimed the same as exempt under section 10(38) of the Income Tax Act, 1961 (the Act). Based on the information received from DDIT (Inv.) the AO was of the view that the LTCG claimed as exempt by the assessee is bogus and accordingly reopened the assessment by issuing notice under section 148 of the Act. The AO called on the assessee to furnish various details from time to time. The assessee filed the details as called for by the AO vide letters dated 03.01.2023 and 30.01.2023. The AO vide show-cause notice dated 17.04.2023 called for further details fixing the date of hearing on 24.04.2023 at 7 pm. The assessee vide letter dated 22.04.2023 (Page 2 & 4 of PB) sought adjournment to file the details till 03.05.2023. The assessee vide letter dated 03.05.2023 has filed the relevant details in response to show-cause notice dated 24.04.2023. The AO completed the assessment under section 147 vide order dated 03.05.2023 assessing the income of the assessee at Rs. 2,35,56,004/- by making various addition. The assessee filed a writ petition before the Hon'ble Bombay High Court on 12.06.2023 contending that the order of the AO is against the Principles of Natural Justice since the assessee was not given proper opportunity of being heard. The assessee also filed an appeal before the CIT(A) contending the additions made by the AO. In response to the various notices issued by the CIT(A) for hearing of case, the assessee filed adjournment letters (page 1 to 10 of PB) stating that the assessee has challenged

the validity of the assessment order under section 147 r.w.s. 144B of the Act before the Hon'ble High Court and hence the case may be adjourned. The CIT(A) however did not accept the adjournment application and proceeded to decide the case based on details available on record. Accordingly, the CIT(A) passed an ex-parte order dismissing the appeal. The assessee is in appeal before us against the order of the CIT(A).

3. The ld. AR at the outset submitted that Writ against the order of the AO is pending before the Hon'ble Bombay High Court and the CIT(A) has not taken into consideration the adjournment sought by the assessee for the said reason. The ld. AR further submitted that the AO has not considered the submissions made on 03.05.2023 and has proceeded to make various additions vide order dated 03.05.2023. Accordingly the ld. AR argued that there is clear violation of Principles of Nature Justice and that the same is contended before the Hon'ble Bombay High Court. Accordingly, the ld. AR argued that the appeal ought not to have been decided by the CIT(A), ex-parte.

4. The ld. DR on the other hand argued that there is no specific direction against the Writ filed by the assessee and therefore the impugned issues contended by the assessee can be decided independently. Hence the ld DR argued that the reason for seeking adjournments before the CIT(A) is not tenable and that the CIT(A) has rightly decided the case on material available on records.

5. We heard the parties and perused the material on record. From the perusal of the facts in the present case, we notice that the AO vide show-cause notice dated 17.04.2023 called on the assessee to furnish further details pertaining to the impugned LTCG and fixed the date of hearing on 24.04.2023. We further notice that the assessee vide adjournment letter filed on 22.04.2023 (page 2 & 4 of PB)

sought time till 03.05.2023 to file the relevant details as called for by the AO. We also notice that the assessee has made the online submission of various details on 03.05.2023 before the AO (page 128 to 213 of PB). The AO while completing the assessment vide order dated 03.05.2023 did not take into consideration, the details furnished by the assessee on 03.05.2023 and this fact is substantiated by the observations made by the AO in para-3.1 of assessment order. Therefore, we see merit in the argument of the ld. AR that the AO has not taken into consideration all the details furnished by the assessee while concluding the assessment. However, we are unable to agree with the contention of the ld. AR that adjournments were sought before the CIT(A) on the ground that the Writ against AO's order was pending before the Hon'ble Bombay High Court. In this regard, we are inclined to agree with the argument of the ld. DR that there is no specific direction from the Hon'ble High Court with regard to the Writ filed by the assessee against the order of the AO and therefore the present appeal can be decided independently. Having held so from the facts as enumerated here-in-above, the lower authorities have not properly examined the documentary evidences submitted by the assessee and has not recorded any finding with regard to the evidences filed. Therefore, in the interest of natural justice and fair play considering the facts peculiar to the case, we are of the view that the appeal is to be remitted back to the CIT(A) for fresh consideration. The CIT(A) is directed to call for relevant details as may be required to adjudicate the appeal on merits. The assessee is directed to file the relevant details as may be called for by the CIT(A) without seeking unnecessary adjournments. It is ordered accordingly.

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

*Order pronounced in the open court on 04-02-2025.*

**Sd/-**  
**(NARENDER KUMAR CHOUDHRY)**  
**Judicial Member**

*\*SK, Sr. PS*

**Sd/-**  
**(PADMAVATHY S)**  
**Accountant Member**

**Copy of the Order forwarded to :**

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

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**