

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SANDEEP SINGH KARHAIL, JM

ITA No. 2685/Mum/2023

(Assessment Year 2014-15)

Shri Nitin Amratlal
Brahmbhatt
711 May Fair Garden,
Azad Lane, S. V. Road,
Mumbai-400058

(Appellant)
PAN No.

Vs. The Assistant Commissioner of
Income tax
24(3)
Presently DCIT CC 2(1),
Room No. 803, 8th floor, Pratishta
Bhavan,
Old CGO Annexe,
New Marine Lines,
Mumbai-400020

(Respondent)

Assessee by : Shri K. Gopal &
Shri Om Kandalkar, Advocates
Revenue by : Shri Ashok Kumar Ambastha,
SR AR

Date of hearing: 08.11.2023

Date of pronouncement : 10.11.2023

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal filed by the assessee Shri. Nitin Amratlal Brahmbhatt for A.Y. 2014-15 against the order of the Ld. Commissioner of Income Tax (Appeals)-48, Mumbai ("the



Ld. CIT (A)”) dated 16.06.2023 wherein the appeal filed by the assessee against the assessment order passed u/s **143(3) of the Income tax Act, 1961(“the Act”)** by The Assistant Commissioner Of Income Tax-24(3), Mumbai (**“the AO”**) dated **02.12.2016**, was dismissed.

02. The main grievance of the assessee is that the Ld. CIT (A) has dismissed the appeal of the assessee without granting proper opportunity of hearing and therefore it is in violation of principles of the natural justice. Assessee is also aggrieved by the confirmation of addition on merits.
03. Brief facts of the case shows that
 - a. Assessee is an individual who filed his return of income on 21.11.2014 **declaring total income of ₹ 27,41,317/-**. The case of the assessee was picked up for scrutiny.
 - b. The Ld. AO noted that the assessee has long term capital gain on sale of share of Rissa International Ltd. **amounting to ₹ 4,99,10,775/-** which is claimed as exempt u/s 10(38) of the Act.



- c. During the course of assessment proceedings the Id. AO doubted genuineness of the above claim and thereafter based on the inquiry passed assessment order u/s 143(3) of the Act on 27.12.2016 determining total income **of the assessee at ₹ 5,41,49,470/-** wherein above long term capital gain was added to the total income of the assessee and further commission at the rate of 3% was also added.
04. The assessee aggrieved with the above, preferred appeal before the Ld. CIT (A). The Id. CIT (A) has decided the issue on the merit of the case against the assessee because of the reason that despite notices to the assessee on four different occasions, assessee did not remain present before him. On the merits, the Ld. CIT (A) reiterated the findings of the Ld. AO in absence of assessee remaining unrepresented before Ld. CIT (A).
05. The assessee aggrieved with that order, has preferred the appeal against the exparte order of Ld. CIT (A) stating that the assessee remains unheard and further on the merits that the addition was not required to be made.



06. Ld. Authorized representative of submitted that the assessee missed various notices before the Ld. CIT(A) and could not remain present as stated by the Ld. CIT(A) in paragraph no. 4 of his order. He submitted that the assessee has not received such notices or such notices remain unnoticed by the assessee. He submitted that the assessee is director in share broking firm. He submitted that the assessee deserves a fair opportunity of hearing before Ld. CIT (A) first. He on the merits also stated that additions are not deserved.
07. The **Ld. Departmental Representative ("the DR")** also submitted that the order of the Ld. CIT(A) has been passed exparte, as despite notice issued 4 times, none appeared before him.
08. We have carefully considered the rival contentions and perused the order of lower authorities. The Ld. CIT (A) has categorically held that notices were issued four times to the assessee but there is no explanation from side of the assessee and therefore reiterating the assessment order the addition were confirmed. There is nothing wrong in the order of the LD CIT [A]. Though the Id. CIT (A) might



have issued notices, however, there is no reference that whether the assessee received those notices or not. Further, it is not known that whether the assessee was issued notices on ITBA portal or by Postal Authorities. There is change in email id of the assessee what was mentioned in Form No 35 and what is mentioned before us. There is no mention of service of notice to the assessee. However whatever may be the reason, assessee is duty bound to represent its case before authorities, if it is willing to pursue his grievance. It is also true that assessee does not gain anything by not representing himself, had the notices been received. Thus, it is apparent that the assessee could not represent himself before the Ld. CIT (A), thus passing an order by the appellate authority without assessee getting a fair opportunity of hearing does not serve interest of justice and it is also true that repeated non appearance of the assessee despite receipt of notice does not leave appellate authority with any other option but to decide the case on the basis of material available on record. For the reason that there is no objection by the Id SR DR, if the issue is restored back to the file of the Id CIT (A) and in absence



of any statement in appellate order that assessee has received notices of hearing, in the interest of justice, we set aside the issue back to the file of the Id CIT(A) with direction to the assessee to remain present before the Ld. CIT(A) and submit his submissions as well as any paper book which is required to be filed within 90 days of date of this order. After that, the Ld. CIT (A) after giving opportunity of hearing to the assessee may decide the issue on merits. Accordingly, ground no.1 of the appeal of the assessee is allowed with above direction.

09. The other grounds of appeals are left open to be argued before the first appellate authority.

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

Order pronounced in the open court on 10.11. 2023.

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

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 10.11.2023

Aniket Singh Rajput/Stenographer

Copy of the Order forwarded to :

BY ORDER,

1. The Appellant



2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai