

आयकर अपीलीय अधिकरण
मुंबई पीठ "आइ", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
एम.एस. पद्मावती एस, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "I", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
MS. PADMAVATHY S, ACCOUNTANT MEMBER
आअसं. 916/मुं/2023 (नि.व. 2015-16)
ITA NO.916/MUM/2023 (A.Y.2015-16)

Hunt International Investments LLC
205-206, Regent Chambers,
2nd Floor, Jamnalal Bajaj Road,
208, Nariman Point, Mumbai-400021.

PAN: **AADCH0520J**

..... अपीलार्थी / Appellant

बनाम Vs.

DCIT, Circle International Taxation-2(1)(1),
Civic Centre, Minto Road, New Delhi-110002.

..... प्रतिवादी / Respondent

अपीलार्थी द्वारा/ Appellant by : Sh. A.N. Shah
प्रतिवादी द्वारा/ Respondent by : Sh. Anil Sant, Sr. DR

सुनवाई की तिथि/ Date of hearing : 31/07/2023

घोषणा की तिथि/ Date of pronouncement : 31/07/2023

आदेश/ ORDER

PER VIKAS AWASTHY, JM

This appeal by the assessee is directed against the assessment order dated 27.01.2023 passed under section 144C(13)/143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), for the Assessment Year 2015-16.

2. Sh. A.N. Shah appearing on behalf of the assessee submitted that the assessee is a tax resident of USA. The assessee is a registered Foreign Portfolio Investor [Category-III]. The assessee primarily invests in shares to earn Long Term

Capital Gains and dividend income. During the period relevant to AY under appeal, the assessee had sold equity shares of Stride Aerolabs Ltd. for a total consideration of Rs. 1,99,94,497/-. The assessee earned Long Term Capital Gain (LTCG) on sale of aforesaid shares, the said LTCG was claimed as exempt from tax under section 10(38) of the Act. There being no taxable income during the relevant previous year, the assessee did not file any return of income. A notice under section 148 was issued to the assessee on 30.04.2021 for non-filing of return of income. In response to the said notice, the assessee filed return of income on 28.04.2021, thereafter, the assessee received show-cause notice under section 142(1) dated 19.01.2022. In response to the said notice, the assessee furnished detailed reply on 16.02.2022. Thereafter, the AO allegedly issued notices under section 142(1) on 03.02.2022 and 22.03.2022, the said notices were never received by the assessee. The AO passed the draft assessment order on 30.03.2022 rejecting assessee's claim of exemption u/s 10(38) of the Act. The assessee could not make proper submissions before the AO due to non-receipt of the notices. Even the draft assessment order was not received by the assessee in time. As soon as the assessee came to know about the draft assessment order, the assessee filed objections before the DRP. However, the DRP dismissed the objections of assessee on the ground of limitation.

3. The Ld. Authorized Representative (AR) fairly admitted that in the absence of proper communication of notices, the assessee could not make submissions before the AO and the objections filed before the DRP were belated. He submitted that if an opportunity is granted, the assessee would be able to show that no tax is payable on LTCG earned on sale of shares. He further submitted that the assessee has prima facie good case in its favour and balance of convenience is also in favour of the assessee.

4. Sh. Anil Sant representing the Department vehemently supported the impugned order. The Ld. DR submitted that multiple opportunities were granted to the assessee by AO to make submissions, but the assessee choose not to cooperate and did not file the requisite information as sought by the AO. The AO had no option but to complete assessment u/s 144 of the Act. He pointed that the assessee failed to file objections before the DRP within the time specified under the provisions of the Act. The DRP has no power to condone delay in filing of the objections, hence, the DRP rightly rejected the objections on the ground of limitation. In support of his submissions, he placed reliance on the decision in the case of Inno Estates (P.) Ltd. Vs. DRP-2(2018) 96 taxmann.com 646 (Madras).

5. We have heard the submissions made by rival sides and have examined the orders of authorities below. A perusal of the draft assessment order shows that the AO had issued show-cause notice under section 142(1) of the Act on 19.01.2022, 03.02.2022, 22.03.2022 and 26.03.2022. Ostensibly the assessee replied to only first notice and furnished some details. Thereafter, the AO sought further documentary evidences, the assessee failed to furnish reply to the subsequent show-cause notices. In the absence of documentary evidences as sought by the AO, the AO completed the assessment on the basis of documents already on record. The AO made the assessment under section 144 on best judgment basis. The assessee further goofed in filing objections before the DRP. The DRP dismissed the objections in limine on ground of limitation. The assessee has tried to explain the reasons for not responding to the notices filed by the AO and delay in filing of objections before the DRP. The failure to respond to the notices by the AO has been attributed to non-communication of notices to the assessee by its custodian in India-Kotak Custody Services. It is evident from records that the assessee could not represent its case before the AO, effectively.

6. At the same time we are of view that there is negligence on the part of assessee in not responding to the notices issued by the AO. The assessee should have made reliable arrangement for communication of notices. Non-communication of notices cannot be attributed to the Department. Therefore, it is a fit case for levy of cost on assessee for not responding to the notices. Accordingly, we deem it appropriate to levy cost of Rs. 10,000/- on the assessee. The cost shall be paid by assessee in accordance with Rule 32A(2) of the Income Tax (Appellate Tribunal) Rules, 1963, within a period of 3 weeks from the date of receipt of this order. Subject to payment of cost, the appeal is restored to the file of AO for denovo assessment. The AO shall allow reasonable opportunity of making submissions to the assessee, in accordance with law.

7. The assessee is directed to furnish proof of deposit of cost before the AO. The assessee is further directed to provide correct/fresh email Id on which the assessee wishes to receive notice from the AO. Upon service of the notice, the assessee shall furnish requisite information as sought by the AO. In case the assessee fails to respond to the notices, the AO shall be at liberty to take an adverse view.

8. In the result, impugned order is set-aside and the appeal is allowed for statistical purposes.

Order pronounced in the open court on **Monday**, the **31st** day of July, 2023.

Sd/-
(MS. PADMAVATHY S)

Sd/-
(VIKAS AWASTHY)

लेखाकार सदस्य/ACCOUNTANT MEMBER
मुंबई/Mumbai, दिनांक/Dated: 31/07/2023
SK, Sr. PS

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,

2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai