

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI**

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

ITA NO. 1009/MUM/2023 : A.Y : 2019-20

V.K. Patel Securities Pvt. Ltd.,
810A, 8th floor, P.J. Tower,
Dalal Street, Fort,
Mumbai 400 001.

Vs. Assistant Director of Income
Tax – CPC, Bangalore.
(Respondent)

PAN : AAACV3587A (Appellant)

**Appellant by : Shri Hiten Vasant
Respondent by : Ms. Vranda U. Matkari**

**Date of Hearing : 20/06/2023
Date of Pronouncement : 20/06/2023**

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER :

The assessee has filed this appeal challenging the order dated 13-03-2023 passed by Ld CIT(A), NFAC, Delhi and it relates to the assessment year 2019-20. The assessee is aggrieved by the decision of Ld CIT(A) in dismissing the appeal of the assessee as non-maintainable.

2. The facts relating to the case are stated in brief. The assessee is a stock broker. It filed its return of income for the year under consideration on 21-09-2019 declaring a total income of Rs.3,82,74,330/-. The CPC issued a defect notice u/s 139(9) of the Act mentioning the following as "Error Description":-

"Error Code: 331 - Tax Payer has shown gross receipts or income under the head "Profits and Gains of Business or Profession" more than Rs.1 crore, however, the books of accounts have not been audited."

Hence the CPC did not process the return of income filed by the assessee. Aggrieved by the above said defect notice issued by CPC, the assessee filed "e-Nivaran Grievance", against which response communication was issued on 16-02-2021 invalidating the return filed by the assessee. The assessee challenged the above said defect notice, by filing appeal before Ld CIT(A). The first appellate authority dismissed the appeal of the assessee holding that there is no provision to file appeal against the defect notice issued u/s 139(9) of the Act. Aggrieved by the order so passed by Ld CIT(A), the assessee has filed this appeal.

3. We heard the parties and perused the record. We notice that the Pune bench of ITAT has held in the case of Deere & Company vs. DCIT (2022)(138 taxmann.com 46)(Pune) has held that the defect notice issued u/s 139(9) of the Act is having effect of creating liability under the Act, which the assessee denies or would jeopardize refund. Hence it will get covered within the ambit of sec. 246A(1)(a) of the Act. In view of the above said decision of Pune bench of ITAT, the defect notice issued u/s 139(9) is appealable, if the assessee denies its liability or if it would jeopardise the refund. The Ld A.R submitted that the refund of about Rs.5.00 lakhs is stuck in this year due to non-processing of return of income filed by the assessee. Accordingly, we hold that the defect notice issued u/s 139(9) is appealable one. Accordingly, we set aside the order passed by Ld CIT(A) and hold that the assessee could file appeal in the instant case.

4. On merits, the Ld A.R submitted that the assessee is not liable to get its accounts audited. Referring to the Profit and Loss account, the Ld A.R submitted that the gross business receipts of the assessee was Rs.92,95,722/- and the same is below the threshold limit of Rs.1.00 crore. He further submitted that the assessee has shown other income of Rs.6.62 crores in the Profit and Loss account, but the said income was declared under the head Capital gains and Other Sources. Accordingly, he reiterated that the gross business receipts of the assessee during the year under consideration was less than Rs.1.00 crore and hence it is not liable to get its accounts audited u/s 44AB of the Act. Accordingly, the Ld

A.R submitted that the return of income filed by the assessee cannot be considered as defective return. Accordingly, he prayed that the defect notice issued by CPC and the response given under E-Nivaran Scheme should be quashed and the return of income filed by the assessee should be restored and processed u/s 143(1) of the Act.

5. We heard Ld D.R and perused the record. On a perusal of the Profit and Loss account of the assessee for the year under consideration, we notice that the gross business receipts was Rs.92,95,722/-, which is less than the threshold limit of Rs.1.00 crore prescribed u/s 44AB of the Act for getting the accounts audited. The Statement of Total income furnished by the assessee would show that the other income has been declared either under the head Capital gains or under the head Other Sources. Hence, there is merit in the submission of the assessee that it is not required to get its accounts audited u/s 44AB of the Act. Accordingly, we are of the view that the defect notice issued by CPC u/s 139(9) of the Act is not in accordance with law and accordingly, we quash the said defect notice, meaning thereby, the return of income filed by the assessee should be considered as valid return. In view of the above, the response given under "E-Nivaran" would get nullified. Accordingly, we direct the AO/CPC to treat the return of income filed by the assessee as valid return and process the same in accordance with law.

6. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 20th June, 2023.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai, Date : 20th June, 2023

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Copy to :

- 1) The Applicant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "F" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai