

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC-1" MUMBAI**

**BEFORE SHRI KULDIP SINGH (JUDICIAL MEMBER) AND  
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 236/MUM/2022  
Assessment Year: 2011-12**

Rajiv Naresh Godiawala  
701, Laxmi Niwas, NS Road No. 5,  
Juhu Scheme, Vileparle West,  
Mumbai-400056.

**PAN No. AACPG 5086 G  
Appellant**

Income Tax Officer Ward-  
25(3)(3),  
**Vs.** C-10/606, Bandra Kurla  
Complex,  
Mumbai-400051.

**Respondent**

Assessee by : Mr. Akash Kumar, AR  
Revenue by : Mr. Kiran P. Unavekar, DR

Date of Hearing : 30/05/2022  
Date of pronouncement : 30/05/2022

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal has been preferred by assessee against the order dated 20.12.2021 passed by the Ld. Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre, Delhi [in short 'the Ld. CIT(A)'] for assessment year 2011-12 arising from order u/s 143(3)

r.w.s. 147 of the Income-tax Act, 1961 (in short 'the Act'). The grounds raised by the assessee are reproduced as under:

*1. Addition of Rs. 2,35,440 /- U/s 68 of the income tax act.*

*1.1 The learned assessing officer erred on the facts of the case and in law in adding Rs. 2,35,440/- to the total income U/s 68 of the Income Tax Act, treating Capital introduced during the year and not allowing loss Rs. 3,120/-*

*1.2 He further erred in considering only sales value of shares as income and not allowing purchase amount Rs. 2,38,560/-*

*1.3 On the facts and circumstances of case if Rs. 2,38,560/- being purchase value of shares is deducted from Rs. 2,35,440/- being sale price then there is loss of Rs. 3,120/-.*

*1.4 The appellant submits that the Id AO be directed to delete the addition Rs.2,35,440/- made U/s 68 and allow loss of Rs. 3,120/-*

*2. Penalty U/s 271 (1)(C)*

*2.1 On the facts and circumstances of the case and in law, the Id AO erred in initiating penalty proceedings U/s 271(1) (C) of the Act.*

*2.2 The appellant submits that the proceedings-initiated U/s 271(1)(C) be dropped.*

2. Briefly stated, the facts of the case are that the assessee filed return of income on 22.07.2011 declaring total income of

₹5,93,730/-. Subsequently, the case was reopened by way of issue of notice u/s 148 of the Act and reassessment was completed at total assessed income of ₹8,29,180/-.

3. Aggrieved, the assessee filed appeal before the Ld. CIT(A). The appeal of the assessee was taken up by the National Faceless Appeal Centre. The Ld. CIT(A) passed the ex-parte order without deciding the matter on the merit and dismissed the appeal of the assessee.

4. Aggrieved, the assessee is before the Tribunal raising grounds as reproduced above.

5. Before us, the Paper Book containing 16 pages has been filed by the assessee.

6. We have heard the rival submissions of the parties and perused the relevant material on record. The Ld. CIT(A) has dismissed the appeal of the assessee observing as under:

*“3.0. As per the record available, the appellant was issued notices on various dates to make submissions/replies which are as under:*

<b>Sl No.</b>	<b>Date of notice</b>	<b>Date of hearing</b>
1.	17.01.2021	01.02.2021 At 11.00 AM
2.	02.12.2021	10.12.2021 At 11.00 AM
3.	10.12.2021	17.12.2021 At 11.00 AM

*There was no response received to the notices issued by the CIT(AU), as per record available. In the latest notice issued on 10.12.2021 also, there was no response. The appellant (or Authorized Representative) neither submitted any written submission nor filed any letter seeking adjournment in response to notices. In view of the above, I am of the considered opinion that the assessee is not seriously interested in pursuing the appeals on hand. The law aids those who are vigilant, not those who sleep upon their rights. This principle is embodied in well known dictum, 'VIGILANTIBUS ET NON DORMIENTIBUS SERVIUNT LEGES'. Considering the facts and circumstances of the case and keeping in view the provisions of Rule 19(2) of the Income Tax Appellate Tribunal Rules as were considered in the case of CIT Vs. Multiplan India Ltd. (38 ITD 320 (Del)), the appeal is dismissed.*

*4.0 Without prejudice to the above, it is further stated that the records available have been perused including statements of facts and grounds of appeal and material on record. The material on record is not sufficient to allow any relief to the appellant. In view of the above, the appeal is decided on the basis of available records and the appeal is hereby dismissed."*

6.1 Before us, the Ld. counsel of the assessee has pointed out that the assessee has duly filed submission before the National Faceless Appeal Centre which was uploaded on 17.12.2021 i.e. the date of

hearing fixed vide notice dated 10.12.2021. The said reply uploaded on the Income Tax Portal on 17.12.2021 has been filed by the assessee on page 15 to 16 of the Paper Book. We have also noticed from the order of the Ld. CIT(A) that date of hearing was fixed on 17.12.2021 and the Ld. CIT(A) has passed the impugned order on 20.12.2021. Evidently, the Ld. CIT(A) has not considered the submissions of the assessee and appeal has been dismissed by the Ld. CIT(A) without deciding the issue-in-dispute on merit. We are of the opinion that the Ld. CIT(A) is required to decide the issue on merit of the appeal after hearing the submission of the assessee. In the interest of substantial justice, we feel it appropriate to restore this appeal back to the Ld. CIT(A) for deciding afresh after providing adequate opportunity of being heard to the assessee. The grounds raised by the assessee are accordingly allowed for statistical purposes.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

**Order pronounced in the open Court.**

Sd/-

**(KULDIP SINGH)  
JUDICIAL MEMBER**

Sd/-

**(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Mumbai;

Dated: 30/05/2022

Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)  
**ITAT, Mumbai**