

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'E', NEW DELHI**

**Before Sh. Kul Bharat, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 7448/Del/2018 : Asstt. Year : 2008-09**

Nitya Infotech Pvt. Ltd. (merged with M/s Vatsal Infraprojects Pvt. Ltd.), Plot No. M-7, M-52/53, Ground Floor, Gali No. 10, Anand Prabhat Industrial Area, New Delhi-110005	Vs	Income Tax Officer, Ward-18(3), New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AACCN5446L</b>		

**Assessee by : Sh. Ved Jain, Adv. &  
Sh. Aman Garg, CA**

**Revenue by : Sh. Jeetender Chand, Sr. DR**

**Date of Hearing: 25.10.2022**

**Date of Pronouncement: 25.10.2022**

**ORDER**

**Per Kul Bharat, Judicial Member:**

This appeal by the assessee against the order of Id. CIT(A)-28, New Delhi dated 07.09.2018 pertaining to A.Y. 2008-09.

2. The assessee has raised following grounds of appeal:

*"1. On the facts arid circumstances of the case, the order passed by the learned CIT(A) is bad both in the eye of law and on facts.*

*2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO despite the fact that the reassessment initiated on a non-existing entity and therefore reassessment proceedings are void ab initio.*

3. *On the facts and circumstances of the case the order passed by the learned CIT(A) is bad in law having been passed ex-parte without giving the assessee an appropriate and adequate opportunity of being heard in clear violation of the principles of natural justice.*

4. *On the facts and circumstance of the case the order passed by the learned CIT(A) is bad both in the eyes of law and on facts as the same has been passed without giving any finding on the merits of the case.*

5. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO despite the fact that the reopening by the AO and consequent reassessment without complying with the statutory conditions prescribed under Section 147 read with Section 148 of the Act is bad in law.*

6. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO ignoring the fact that the AO has erred both on facts and in law in making reassessment under Section 147 of the Act as the reasons recorded for reopening the assessment does not meet the requirements of Section 147 of the Act.*

7. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the reassessment proceedings initiated under section 148 are bad in law as there is no live nexus between the reasons recorded and the belief formed by the AO.*

8. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the order passed by the AO rejecting the contention of the assessee that the reopening is bad in law as the same has been made on the basis of material collected at the back of the assessee without giving assessee an opportunity to rebut the same in violation of provisions of section 142(3) of the Act.*

9. *On the facts and circumstances of the case, the learned CIT(A) has erred in confirming the initiation of proceedings under section 148 of the Act as the same has been reopened on the basis of reasons without there being any whisper that the income has escaped due to*

*the failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment, as the same has been reopened after a period of four years from the end of relevant assessment year.*

*10. On the facts and circumstances of the case, the learned CIT(A) has erred in rejecting the contention of the assessee that the notice issued under Section 148 is barred by limitation as the same has been issued after a period of four years from the end of relevant assessment year.*

*11. (i) On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in sustaining the addition of an amount of Rs. 76,00,000/- made by AO on account of share capital under Section 68 of the Act and estimation commission thereupon amounting to Rs. 1,36,900/- under section 69C of the Income Tax Act.*

*(ii) That the said additions have been confirmed rejecting the detailed explanation and evidences brought on record by the assessee to prove the identity and creditworthiness of the shareholders as well as the genuineness of the transaction.*

*12. On the facts and circumstances of the case, the learned CIT(A) has erred in confirming the action of the Ld. AO merely relying on the report of the investigation wing and without application of his own mind.*

*13. (i) On the facts and circumstances of the case the learned CIT(A) has erred both on facts and in law in confirming the addition made by AO despite the same having been made on the basis of material collected at the back of the assessee without giving it an opportunity to rebut the same.*

*(ii) That the above said addition has been confirmed despite the same having been made on the basis of statement recorded without giving assessee an opportunity to cross examine."*

3. At the outset, the Id. Counsel for the assessee submitted that the assessment has been framed in the name of non-existent entity. Therefore, the same deserves to be quashed.

4. On the contrary, the Id. DR opposed the submission.
5. We have heard the Id. DR and perused the material on record.
6. We find that the Id. CIT(A) has passed an *ex-parte* order by observing as under:

*"3. During the appellate proceedings, appellant was issued notice dated 18.09.2017, fixing the date of hearing on 09.10.2017 at 11:00 A.M. However, this notice was not complied with by appellant. Since the aforesaid notice remained unattended, a letter dated 11.10.2017 was issued and the date of hearing was fixed on 06.11.2017 at 11:30 A.M, by mentioning that appeal would be decided on the basis of material available on records if no compliance is made. Despite of service of this letter, no compliance was made by appellant. Further opportunities were granted to appellant by this office by issuing notices dated 10.11.2017, 14.08.2018 & 28.08.2018 fixing the dates of hearings on 07.12.2017 at 12:00 P.M, 24.08.2018 at 10:45 A.M. 05.09.2018 at 11:00 A.M. and duly served upon the appellant but again neither anybody attended nor any application seeking adjournment was filed. Thus, despite of giving several opportunities to appellant, the appellate proceedings remained unattended*

*3.1 From the above, it is clear that the assessee is not interested in pursuing the appeal. It has been held by the Hon'ble Supreme Court in the case of B. N. Bhattacharjee and Another (118 ITR 461) (at pages 477 & 478) that appeal does not mean only filing of memo of appeal but also pursuing it effectively. In cases where the assessee does not want to pursue the appeal, appellate authorities have inherent power to dismiss the appeal for non-prosecution as held by the Hon'ble Bombay High Court in the case of M/s. Chemipol vs. Union of India in Excise Appeal No. 62 of 2009. I am, therefore, convinced that the assessee is not interested in prosecuting the appeal. I, therefore, dismiss the appeal of the assessee and uphold the findings of AO in order u/s 143(3) of the Act dated 30.03.2016.*

*4. In the result, appeal is "Dismissed".*

7. Looking to the facts of the present case and the submissions of the assessee, we deem it proper to sub-serve the principle of natural justice to restore the appeal to the file of the Id. CIT(A) to decide afresh after adjudicating the objection of the assessee regarding assessment framed against non-existent entity. Ground raised by the assessee is allowed for statistical purpose.

8. In the result, the appeal of the assessee is allowed for statistical purpose.

Order Pronounced in the Open Court on 25/10/2022.

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**Dated: 25/10/2022**

**\*Subodh Kumar, Sr. PS\***

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(Kul Bharat)**  
**Judicial Member**

**ASSISTANT REGISTRAR**