

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted through E-Court at Ahmedabad)**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.48/Rjt/2023
(Assessment Year: 2011-12)

Shri Vipulbhai Haribhai Marvaniya, Shreenathji Krupa, Nanderkhi Vanthli, Junagadh-362001 [PAN No.APGPM7224P]	Vs.	The Income Tax Officer, Ward-2, Junagadh
(Appellant)	..	(Respondent)

Appellant by :	Shri Mehul Ranpura, A.R.
Respondent by:	Shri B. D. Gupta, Sr. DR
Date of Hearing	25.05.2023
Date of Pronouncement	31.05.2023

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the assessee against the order passed by the Ld. CIT(Appeals), National Faceless Appeal Centre (in short "NFAC"), Delhi in Order No. ITBA/NFAC/S/250/2022-23/1048188101(1) vide order dated 23.12.2022 passed for Assessment Year 2011-12.

2. The assessee has taken the following grounds of appeals:-

"1. The grounds of appeal mentioned hereunder are without prejudice to one another.

2. The ld. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as the

“CIT(A)”] was erred on facts as also in law in dismissing the appeal ex-parte.

3. The ld. CIT(A) erred in not deciding the ground of appeal regarding validity of notice issued u/s 148 of the Income tax Act, 1961. That reopening of assessment is bad in law and therefore the same shall be quashed.

4. The ld. CIT(A) erred on facts as also in law in confirming addition of Rs. 12,76,700/- on the alleged ground of failure to explain source of cash deposit of Rs.6,69,700/- and 6,07,000/- in the bank account no.252010100059723 & 3580100002188 with Axis Bank and Bank of Baroda respectively. The addition made and confirmed is totally unjustified and uncalled for which deserves to be deleted may kindly be deleted.

5. Your Honour’s appellant craves leave to add, to amend, alter, or withdraw any or more grounds of appeal on or before the hearing of appeal.”

3. The brief facts of the case are that the assessee did not file return of income for the year under consideration. The Department got the information that the assessee has received a sum of Rs. 3,27,846/- on account of sales of shares of M/s. VAS Infrastructure Ltd. which is a penny stock company and assessee booked bogus LTCG. The Assessing Officer was of the view that since the assessee did not file return of income, the source of investment made in such transaction remained unexplained and the case of the assessee was reopened under Section 147 of the Act. During

the course of assessment, the Assessing Officer issued several notices, which remained uncomplied with. Accordingly, the Assessing Officer made an addition of Rs. 5,913/- on sale of the aforesaid share transaction. In addition to the above, the Assessing Officer observed that the assessee had deposited cash aggregating to Rs. 12,76,700/- in two bank accounts maintained by the assessee, the source of which remained unexplained. Accordingly, the Assessing Officer also added a sum of Rs. 12,76,700/- to the total income of the assessee.

4. In appeal before CIT(Appeals), again none appeared on behalf of the assessee and accordingly, Ld. CIT(Appeals) confirmed the additions made by the Assessing Officer with the following observations:-

“7. During the appellate proceedings, the appellant has only submitted submissions in the form of ‘Statement of Facts’. After that neither he has replied to hearing notices nor submitted any documentary evidence/information to prove his side. Sufficient and adequate opportunities were afforded to the appellant as indicate at table at page no. 1 and 2. No reply whatsoever has been submitted by the appellant. Even the assessment was completed under Section 144 of the Income Tax Act, 1961 due to non-compliance on the part of the appellant. It can be safely presumed that the appellant is not interested in pursuing his appeal. Therefore, the undersigned sees no reason to interfere with the orders of the Assessing Officer. Thus, the appeal raised by the appellant is dismissed.”

5. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(Appeals). Before us, the Counsel for the assessee produced a

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Paper Book before us and submitted that in the instant facts, no addition is called for since the assessee is in position to explain source of investment in respect of each of the additions made by the Assessing Officer. Further, the Counsel for the assessee submitted that the cause of non-appearance during the proceedings before the Department was that at the relevant time, the father-in-law of the assessee was in bad health. Further, the father-in-law of the assessee also expired on 17.02.2019 and therefore, it was in light of the aforesaid reasons that the assessee could not cause appearance before the Department. Accordingly, the Counsel for the assessee requested that in the interest of justice, the matter may be restored to the file of the Assessing Officer for denovo consideration. In response, the Ld. D.R. has also not objected to the matter being restored to the file of Ld. Assessing Officer, looking into the facts of the instant case.

6. Accordingly, given the circumstances under which the assessee could not cause appearance before Assessing Officer / CIT(Appeals), in the interest of justice, the matter is being restored to the file of the Assessing Officer for denovo consideration, after giving due opportunity of hearing, to the assessee to present its case on merits.

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

This Order pronounced in Open Court on	31/05/2023
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Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
Ahmedabad; Dated 31/05/2023
TANMAY, Sr. PS

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

TRUE COPY

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राजकोट / DR, ITAT, Rajkot
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, राजकोट / ITAT, Rajkot