

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "C", MUMBAI

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER  
ITA No. 979/Mum/2024 (A.Y.2012-13)**

**M/s. Calcom Realty Pvt. Ltd.**

Unit No. 34A, 2<sup>nd</sup> floor,  
Arsiwala Building, Colaba  
Maharashtra – 400 005  
PAN: AADCC1764B

..... Appellant

Vs.

**ITO 3(1)(3)**

Aayakar Bhavan,  
M. K. Road,  
Mumbai- 400 020

..... Respondent

Appellant by : None  
Respondent by : Ms. Madhu Malati Ghosh, Ld. DR  
Date of hearing : 06/06/2024  
Date of pronouncement : 12/06/2024

**ORDER**

**PER GAGAN GOYAL, A.M:**

This appeal by assessee is directed against the order of National Faceless Appeal Centre (for short "NFAC") dated 08.08.2023 u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2012-13. The assessee has raised the following grounds of appeal:-

1. *That the assessment order u/s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 ("the Act") dated 30.12.2019 passed by the Assessing Officer ("AO") and the additions/disallowances made therein are illegal, bad in law and without jurisdiction. Ground*
2. *That the AO and the Commissioner of Income Tax (Appeals) CIT (A) have grossly erred on facts and in law in passing the orders without giving a sufficient and reasonable opportunity to the assessee to be heard. The orders have been passed in violation of principles of natural justice.*
3. *That, on the facts and circumstances of the case, the CIT (A) has erred in law and on facts in upholding the assessment order u/s. 143(3) r.w.s. 147 of the Act and the additions/ disallowances made therein.*
4. *That, on the facts and circumstances of the case, the AO has erred on facts and in law the learned assessing officer erred in passing order u/s. 143(3) r.w.s. 147 of the Act without supplying reason for reopening and also not uploading the same in ITBA module and hence the order passed by AO is illegal.*
5. *That, on the facts and circumstances of the case, the CIT(A) has erred in law and on facts in upholding estimated commission income @ 1% on sales and purchases shown in profit & loss account of Rs. 139,83,676/ made wrongly & illegally by the AO by disallowing all the administration expenses without any basis or justification.*
6. *That, on the facts and circumstances of the case, the CIT (A) has erred in law and on facts in upholding the disallowance long term Capital Gain of Rs. 27, 22, 70,528/- which was long term capital gain and exempted u/s. 10(38) of the Act but AO has treated short term capital gain and computed without cost of acquisition of share..*
7. *All of the above grounds of appeal are without prejudice and are mutually exclusive to each other.*

2. The brief facts of the case are that assessee filed its return of income on 23.09.2012 at Rs. NIL under the normal provisions of the Act and at Rs. (-) 33,00,755/- under the provisions of section 115JB of the Act. Case of the assessee was selected for scrutiny and returned income was accepted. Thereafter, this office had received information from the Dy. Director of Income Tax (Inv.) Uhit-1, Vapi vide letter no. F. No. Vapi/DDIT (Inv.)/Unit-1/STR-AKS/2018-19/194 dated 18/03/2019. According to aforesaid information, the DDIT (Inv.), Unit 1, Vapi had initiated investigation of STR in the case of M/s. Raves Trades Pvt. Ltd., which had

executed high value bank transactions. Further, aforesaid company has provided accommodation entries through large debit & credits in banks for routing the funds and the assessee M/s. Calcom Realty Pvt. Ltd. (PAN: AADCC1764B) is one of such beneficiaries who has transferred funds to the tune of Rs. 22,65,835/- in to the bank account of M/s. Raves Trades Pvt. Ltd. Furthermore, the DDIT (Inv.) Unit - 1, Vapi has also informed that "Tayal Group" owner of erstwhile Bank of Rajasthan' has routed funds through M/s. Raves Trades Pvt. Ltd. & other group companies. On the basis of aforesaid information, the reasons for reopening of the assessment u/s. 147 of the IT Act were recorded. Relevant parts of the said reasons are reproduced as under:

*"In this case, information has been received from the Dy. Director of Income Tax (Inv.) Unit-1, Vapi vide letter No. F.No. Vapi/DDIT (Inv.)/Unit-1/STR-AKS/2018-19/194 dated (18/3) / 2019 received in tapal on 25.03.2019. According to aforesaid information, the DDIT (Inv.), Unit 1, Vapi had initiated investigation of STR in the case of M/s. Raves Trades Pvt. Ltd., which had executed high value bank transactions. Further, aforesaid company has provided accommodation entries through large debit & credits in banks for routing the funds and my assessee M/s. Calcom Realty Pvt. Ltd. (PAN: AADCC1764B) is one of such beneficiaries who has transferred funds to the tune of Rs. 27,22,65,835/- in to the bank account of M/s Raves Trades Pvt. Ltd. Furthermore, the DDIT (Inv.) Unit-1, Vapi has also informed that 'Tayal Group' owner of erstwhile 'Bank of Rajasthan' has routed funds through M/s Raves Trades Pvt. Ltd. & other group companies."*

*3. The assessee has filed its return of income for the A.Y. 2012-13 on 23.09.2012 & said return of income was selected for 'complete scrutiny' through CASS & assessment u/s. 143(3) of the IT Act is completed on 25.02.2015. It is seen from the assessment records that the assessee has shown business loss of Rs. 26,64,40,145/-, capital gains of Rs. 26,27,99,339/- exempt u/s. 10(38) of the IT Act & dividend income received from the*

shares of Rs. 36,98,716/. As per information referred in para 1 above, M/s Raves Trades Pvt. Ltd. was not doing genuine business but only provided accommodation entries of debit & credit entries and the assessee has transferred Rs. 27,22,65,835/- to aforesaid company. It is also seen from the assessment records that the assessee has shown purchase of goods to the tune of Rs. 27, 22, 65,835/- from M/s. Raves Trades Pvt. Ltd. however said company was not doing genuine business & providing only accommodation entries. Thus the assessee had transferred aforesaid funds to M/s Raves Trades Pvt. Ltd. against accommodation entry of bogus purchases. Aforesaid fact shows that the assessee has failed to disclose fully & truly all the material facts necessary for its assessment for A.Y. 2012-13.

4. Further during the course of the assessment proceedings, the Assessing Officer(AO) vide notice u/s. 142(1) dated 31.10.2014 had required the assessee to furnish details of sale & purchase of shares(scrip wise) and also produce relevant supporting documents related to long term capital gains declared by the assessee. The assessee has submitted working of capital gains & brokers note in respect of sale of 2,64,194 shares of ICICI Bank however it has not submitted details of acquisition of shares of ICICI Bank. It is seen from the demat account submitted by the assessee that it has received 2,64,194 shares of ICICI Bank on 30.03.2011 into the said demat A/c, however the assessee has not submitted supporting documentary evidence to prove acquisition of said shares. Since the assessee has claimed capital gains of Rs. 26,27,99,339/- exempt u/s. 10(38) of the IT Act & case was selected for 'complete scrutiny' therefore AO had rightly required the assessee to submit all the details & documents related to the aforesaid capital gains however the assessee has not complied with the said requirement. It is pertinent to mention here that as per STR, funds were transferred from the bank accounts held by India Infoline Ltd. & A. C. Choksi Share Brokers Pvt. Ltd. in to the bank accounts held by the companies related to the 'Tayal Group' and in this case funds were received by the assessee from the bank account held by M/s A. C. Choksi Share Brokers Pvt. Ltd.. Thus, the assessee has failed to disclose fully & truly all the material facts necessary for its assessment for A.Y. 2012-13.

5. In view of the above, capital gains & net sale proceeds of Rs. 27,22,70,528/- received on sale of ICICI Bank shares from M/s. A. C. Choksi share Brokers Pvt. Ltd. had been routed through M/s. Raves Trades Pvt. Ltd A.Y. 2012-13. Hence I am satisfied that this is fit case for issue of notice u/s. 148 r. w. s 147 of the IT Act and notice u/s. 148 of the IT Act is being issued to assess such income and also any other income chargeable to tax which has escaped assessment & which comes to my notice subsequently in the course of proceedings for assessment for A.Y. 2012-13.

3. The AO issued certain questionnaires based on the information with him relevant to the assessee's matter, which assessee tried to explain with this submission. Ultimately the whole assessment proceedings came to an end and following additions / disallowances were made by the AO:-

i) Short Term Capital Gains amounting to Rs. 27, 22, 70,528/-

ii) Commission under the head income from other sources amounting to Rs. 1, 39, 83,676/- and consequential calculation of tax liability under the provisions of section 115JB of the Act, which is higher than normal tax liability of the assessee.

4. The assessee being aggrieved with this order of AO preferred an appeal before the Ld. CIT (A) who in turn dismissed the appeal of the assessee on the ground of non-appearance.

5. We have gone through the order of AO, order of the Ld. CIT (A) and submissions of the assessee alongwith grounds raised before us. It is observed vide para 4.0 of the Ld. CIT (A)'s order that following notices were issued to the assessee, but there was no compliance by the assessee as under:-

Sr. No.	Date of issue of notice	Date on which hearing fixed	Remarks
1.	14.02.2020	17.02.2020	No response
2.	29.09.2021	14.10.2021	No response
3.	01.12.2021	16.12.2021	No response
4.	10.03.2022	25.03.2022	No response
5.	18.08.2023	27.07.2023	No response

6. It is further observed that notices were sent on an e-mail id and the correctness of the same has not been challenged by the assessee. It is observed that in Form No. 35, assessee submitted email ID **calcom.realty@rediffmail.com** whereas in Form No. 36 before us, the email ID given was **krishnaincometax123@gmail.com**. In view of the fact that appeal order was passed ex-parte, **although on merits relying on the records and documents available with him, but as there was no participation at the end of the assessee,** we deem it fit to restore the matter to the file of Ld. CIT (A) with a direction to communicate on the email IDs furnished by the assessee in Form No. 35 and 36. The assessee is directed to check its email ID on a regular interval so that progress of the matter before the Ld. CIT (A) can be updated in his records for compliance purposes. In this era of digitization, all the communications are being done on the email addresses of both the sides and the assessee is changing his email id again and again, which creates confusion. With these observations and keeping the fact in mind that there is no finding on the facts of the case and law applicable, appeal of the assessee is allowed for statistical purposes with a direction to the Ld. CIT (A) to provide a reasonable opportunity of being heard to the assessee.

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

Order pronounced in the open court on 12<sup>th</sup> day of June, 2024.

Sd/-

(ANIKESH BANERJEE)

JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 12/06/2024

*Dhananjay, Sr. PS*

Sd/-

(GAGAN GOYAL)

ACCOUNTANT MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai