

THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "SMC" BENCH

**Before: Shri Ramit Kochar, Accountant Member**

**ITA No. 248/Ahd/2024  
Assessment Year 2012-13**

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| Shaileshbhai<br>Bhavsangbhai Chavda<br>193, Mokhandaka,<br>Paleetana,<br>Bhavnagar 364270,<br>Gujarat, India<br><br><b>PAN: AIWPC1539L<br/>(Appellant)</b> | v. | The Income Tax<br>Officer,<br>Ward-1(4),<br>Aayakar Bhawan,<br>Bhavnagar-<br>364002 ,Gujarat<br><br><b>(Respondent)</b> |
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**Assessee by: Shri Jignesh Parikh, A.R.  
Revenue by: Smt. Trupti Patel, Sr. D.R.**

Date of hearing : 03-07-2024  
Date of pronouncement : 03-07-2024

**आदेश/ORDER**

This appeal in ITA No. 248/Ahd/2024 for assessment year 2012-13 filed by the assessee with Income Tax Appellate Tribunal, Ahmedabad Bench, Ahmedabad has arisen from the appellate order dated 18/12/2023 passed by ld.

Commissioner of Income Tax(Appeals), NFAC, Delhi u/s. 250 of the Income-tax Act,1961 vide DIN and Order No. ITBA/NFAC/S/250/2023-24/1058838309(1) , which in turn has arisen from the assessment order dated 26-12-2019 passed by ld. Assessing Officer u/s. 143(3) r.w.s 147 of the 1961 Act.

2. The grounds of appeal raised by the assessee in Memo of appeal filed with ITAT, Ahmedabad Bench, Ahmedabad , reads as under:-

*“1. On the facts and in the circumstances of the case as well in law, the Ld CIT(A)/NFAC, New Delhi erred in dismissing the appeal of the appellant by not granting adequate opportunity of being heard.*

*2. On the facts and in the circumstances of the case as well in law, the CIT (Appeals) / NFAC, New Delhi erred in dismissing the appeal of the appellant without considering the submissions on record of Ld AO as well as submissions made while filing Form 35.*

*3. The Ld CIT(Appeals)/NFAC has erred in law and in facts in confirming the reopening by Ld AO u/s 147 of The Income Tax Act, 1961.*

*4. The Ld CIT(Appeals) / NFAC has erred in law and in facts in confirming the addition made u/s 68 to the tune of Rs 16,79,307/- in gross violation of Principle of Natural Justice.*

*5. The Ld CIT(Appeals) / NFAC has erred in law and in facts in confirming the addition made u/s 68 to the tune of*

*Rs 16,79,307/- ignoring the evidences and submissions filed before Ld AO.*

*6. The appellant further reserves its right to add, alter, amend or modify any of the aforesaid grounds before or at the time of hearing of an appeal.*

3. The brief facts of the case are that as per NMS data, the assessee has not filed return of income for the year under consideration despite having undertaken substantial financial transactions. The information was received by the A.O. from the office of DDIT(Inv.), Mumbai on conclusion of search action carried out in the case of Shri Naresh Jain (Sub Broker) and other associates (Syndicate Members). Search action was carried out as the above against syndicate of persons who are acting in collusion and executing managed transactions on the stock exchange thus generating bogus Long term capital gains/bogus short term capital loss/bogus loss entries of various beneficiaries. This search action unraveled the workings of the syndicate and brought on record the make-believe nature of paper work that was manufactured in order to show the arranged transactions as legitimate market transactions. The A.O. in his order has elaborately discussed how this syndicate was carrying out providing of accommodation entries of bogus long term capital gains/bogus short term capital loss, and various incriminating documents were seized from the premises of the concerned persons.

Statements of Mr. Naresh Jain, Shri Satish Shah , Shri Bhupesh Rathod and Shri Bhavesh Pabri were recorded and they admitted of being involved in providing accommodation entries of bogus long term capital gains/bogus short term capital loss/bogus purchase loss etc. . Various incriminating documents were seized by Revenue during the course of search operations. Therefore, there was a reason to believe that the scrips of M/s. Divine Multimedia India Ltd., M/s. Diamant Infrastructure Ltd. and M/s VMS Industries Ltd. are not genuine. Shri Naresh Jain in his statement recorded u/s. 132(4) stated that with the help of some associates, there was front running and rigging of price. It was also observed by the A.O. that the assessee had received accommodation entries of long term capital gains/ short term capital loss/unsecured loans , and the total sale value of the scrips of these three companies aggregated to Rs.16,79,307/. Proceedings u/s. 147/148 were initiated against the assessee by the AO after recording of the reasons and after taking of necessary administrative approvals from the higher authorities. Notice u/s. 148 dated 30.03.2019 was issued and served upon the assessee. The assessee filed return of income in response to notice u/s. 148 on 21.11.2019 declaring total income of Rs. Nil. Thereafter notices u/s. 142(1) were issued to the assessee but the assessee did not comply with the aforesaid notices. The assessee was show caused by the A.O. as to why an

amount of Rs.16,79,307/- being the total sale traded value of the aforesaid three scrips be not added to the income of the assessee. The assessee did not file submissions in response to SCN. Summons were also issued to the assessee by the AO u/s. 131. Statement of the assessee on oath u/s. 131 was also recorded by the AO on 17.12.2019. In his statement, the assessee submitted that he is not aware about the share trading and his friend has done share trading on his behalf. In most of the question put during recording of statement, the assessee submitted that he does not know anything about the aforesaid transactions. The assessee also filed submissions before the AO on 21.11.2019 , wherein as per AO the assessee filed capital account, balance sheet, contract notes of the Broker etc.. After perusal of the various submissions filed by the assessee, the A.O. made an addition of Rs.16,79,307/- to the income of the assessee being sale proceed on account of sale of these three scrips holding the whole transactions to be sham. The cost of acquisition was not allowed by the AO to the assessee.

4. Aggrieved, the assessee filed first appeal before Id. CIT(A). The Id. CIT(A) issued as many as five notices of hearing to the assessee, but there was no compliance on behalf of the assessee. The Ld. CIT(A) dismissed the appeal of the assessee ex-parte in-limine without discussing the issues arising in the

appeal on merits, on the grounds that the assessee has not complied with the notices issued by ld. CIT(A).

5. Still Aggrieved, the assessee filed second appeal with the Tribunal. The assessee has raised as many as six grounds of appeal before the Tribunal , both on legal as well factual ground, challenging the additions made by the AO and as sustained by ld. CIT(A). The Ld. Counsel for the assessee, at the outset, submitted that Ld. CIT(A) has dismissed the appeal of the assessee ex-parte in limine without discussing the issue arising in the appeal on merits, and the said order is not in compliance with the provisions of Section 250(6). It was submitted that the assessee has filed all the relevant details before the A.O. , and my attention was drawn to the Paper Book filed by the assessee containing 95 pages before the Tribunal, which is placed on record in file. It was submitted that Ld. CIT(A) has not adjudicated the grounds of appeal raised by the assessee on merits as is required under the provisions of Section 250(6). The prayers were made to set aside the appellate order passed by ld. CIT(A) , and to restore the matter back to the file of ld. CIT(A) for denovo adjudication of the appeal of the assessee. My attention was drawn to Page 22/PB which is the detail of the capital gains/capital loss made by the assessee on the sale and purchase of various scrips during the year. My attention was also drawn to page 23-26/PB, wherein details of sale/purchase of shares of M/s.

Divine Multimedia India Ltd., M/s. Diamant Infrastructure Ltd. and M/s VMS Industries Ltd. are placed. The Id. Counsel for the assessee drew my attention to the statement of account of the Broker Marwadi Shares and Finance Ltd. to contend that the transactions were carried out through a Broker who is Member of National Stock Exchange and Bombay Stock Exchange(Page 13-21/PB). Copies of contract note issued by the Broker Marwadi Shares and Finance Limited are also placed on record in Paper Book(page 27-68/PB). The Id. Counsel for the assessee drew my attention to the bank statement of the assessee which is also placed on record(page 12/PB). My attention was also drawn to the balance Sheet & Profit and loss account of the assessee, which is placed on record in Paper Book. It is submitted by Id. Counsel that the aforesaid documents were filed before the AO. It was submitted that Id. CIT(A) did not consider these documents filed by the assessee before the AO as well statement of facts/ grounds of appeal raised by the assessee before Id. CIT(A), and dismissed the appeal of the assessee exparte in limine without deciding the issues arising in the appeal on merits in accordance with law which appellate order is not in consonance with provisions of Section 250(6). The Ld. Sr. D.R. submitted that the assessee has not asked for the reason recorded by the A.O. for reopening of the assessment. It was also submitted that the assessee did not comply with the

notices issued by Ld. CIT(A) during appellate proceedings . Ld. Sr. D.R. fairly submitted that the matter can be set aside back to the file of Ld. CIT(A) for fresh adjudication, as the ld. CIT(A) has passed the appellate order without deciding the issues on merit in accordance with provisions of Section 250(6).

6. I have considered rival contentions and perused the material on record. I have observed that the Ld. CIT(A) has dismissed the appeal of the assessee ex-parte in limine without deciding the issues , both legal and factual, on merits in accordance with law as is provided u/s. 250(6). I have also observed that the assessee did not complied with the five notices of the hearing issued by the Ld. CIT(A). I have also observed that Ld. CIT(A) has stated that the notices were issued to the assessee , but it is not stated by ld. CIT(A) as to the manner and mode of service of these notices upon the assessee. I have further observed that the assessee has filed paper book containing 95 pages before the ITAT , and certificate is enclosed that these documents were filed before the AO and/or ld. CIT(A). The AO has also stated in the assessment order that the assessee has filed replies before A.O. as well as Capital Account, Balance Sheet , Contract Notes etc. , but the reply to SCN was not submitted by the assessee. The assessee has also claimed to have filed the contract note issued by Marwadi Share and Finance Ltd. along with the statement of account issued by the said broker,

before the A.O. during assessment proceedings. The said contract notes along with statement of broker are placed in paper book filed with Tribunal. The assessee has filed its bank statement in the paper book filed with the Tribunal, and it is submitted that the said bank statement was filed before the AO during assessment proceedings . The assessee has also filed computation of capital gains/loss in the paper book. The Ld. CIT(A) is obligated to decide the appeal of the assessee on merits in accordance with law as is provided u/s. 250(6) which stipulate that the appellate order of Ld. CIT(A) should be in writing and it should state point for determination, decision of ld. CIT(A) and reasoning thereof. The ld. CIT(A) in the instant case dismissed the appeal of the assessee ex-parte in-limine mainly on the ground of non prosecution of the appeal by the assessee as the assessee did not complied with the notices issued by ld. CIT(A), without deciding the issue's arising in the appeal before ld. CIT(A) on merits as is required u/s 250(6). The assessee has also challenged before ld. CIT(A) reopening of the assessment by AO u/s 147 raising legal challenge to reopening of the assessment . The assessee has also raised vide ground of appeal before Ld. CIT(A) that the assessment order passed by the A.O. u/s 143(3) read with Section 147 was without giving proper opportunity of being heard. The assessee, apart from challenging the addition on merits before Ld. CIT(A), has also raised the issue that copies of relied upon

material were not supplied to the assessee nor opportunity to cross-examine the persons whose statement were relied upon by the AO were granted to the assessee. The ld. CIT(A) chose not to adjudicate various grounds of appeal raised by the assessee , but dismissed the appeal of the assessee ex-parte in limine without deciding the issues arising in the appeal on merits. The ld. CIT(A) did not make any inquiry nor called for assessment records to verify the contentions of the assessee and to unravel truth, and the appeal of the assessee was dismissed by ld. CIT(A) on the ground of non prosecution by the assessee without adjudicating the issues arising in the appeal on merits as is required u/s 250(6). The ld. CIT(A) could have made inquiries by calling information u/s 133(6) from third parties. Even the copies of relied upon documents and statements recorded to prejudice the assessee were not provided/made available to the assessee by ld. CIT(A). Cross Examination was also not allowed by ld. CIT(A). Even copy of statement recorded of the assessee was not made available to the assessee by ld. CIT(A). The principles of natural justice are clearly breached. As per section 250(6), the CIT(A) has to state the points for determination, decision thereof and reasoning thereof. But in the instant case, the CIT(A) has dismissed the appeal of the appeal of the assessee ex-parte in-limine without deciding the issues on merit. The appellate order passed by the CIT(A) is non-speaking and non-reasoned cryptic order in

which ld. CIT(A) has simply upheld the order of the Assessing Officer on the ground that the assessee has not complied with the notices issued by ld. CIT(A). The power of ld. CIT(A) are co-terminus with the power of Assessing Officer which even includes power of enhancement(Section 251(1)(a)). The ld. CIT(A) is required to adjudicate the issues on merit in accordance with law , as is provided u/s. 250(6). The CIT(A) has power to make such inquiries as he thinks fit and may also direct AO to make such enquiries and report to ld CIT(A), as is provided u/s 250(4), and to adjudicate issues arising in the appeal before him on merits in accordance with law. The CIT(A) could have issued summons u/s. 131 to the assessee and/or could have called for information from third parties u/s. 133(6). The ld. CIT(A) could have called for assessment records to verify the contentions of the assessee raised in ground of appeal/statement of facts filed before ld. CIT(A). The assessee has claimed that it has furnished all details before the AO. There are other powers vested with ld. CIT(A) as is provided under the 1961 Act. The ld. CIT(A) has not rebutted the claim of the assessee, but dismissed the appeal of the assessee on ground of non compliance with the notices issued by ld. CIT(A) by holding that the assessee is not interested in prosecuting its appeal , and simply upheld the additions as were made by the AO. The ld. CIT(A) is required and obligated to pass order in compliance with the provisions of section

250(6), as ld CIT(A) is required to pass reasoned and speaking order on merits in accordance with law, but the appellate order passed by ld. CIT(A) is a non speaking and non reasoned appellate order which is not in compliance with provisions of Section 250(6), and is liable to be set aside. The appellate order passed by ld. CIT(A) is subject to further appeal with ITAT u/s 253. The appellate order passed by ITAT is subject to further appeal before Hon'ble High Court u/s 260A. The judgment and order passed by Hon'ble High Court is also subject to challenge before Hon'ble Supreme Court. Thus, the appellate order passed by ld. CIT(A) is not a final order, as it is subject to challenge before higher appellate authority. Thus, Reasons which weighed in the minds of the adjudicating authority while adjudicating appeal on merits of the issue are cardinal as the higher appellate authority can then adjudicate appeal on the issues arising in appeal before them, based on decision and reasoning of ld. CIT(A) in deciding the issues. If the ld. CIT(A) simply dismiss the appeal merely because the assessee did not appear before ld. CIT(A) or did not comply with the notices, ex-parte in limine without adjudicating issues arising in the appeal on merits , such order is not sustainable in the eyes of law keeping in view provisions of Section 250(6) , and also higher appellate authorities will be deprived to see what weighed in the mind of the ld. CIT(A) while adjudicating appeal as it will be an order passed without

reasoning on the issues on merits . It is equally true that the assessee also did not complied with the notices issued by ld. CIT(A) and did not file the requisite details/documents to support his contentions. The assessee is also equally responsible for its woes. Under these facts and circumstances and fairness of both the parties, in the interest of justice, the appellate order passed by ld. CIT(A) is set aside and the matter can go back to the file of ld. CIT(A) for fresh adjudication of the appeal of the assessee on merit in accordance with law after giving opportunities to both the parties. The ld. CIT(A) shall pass the appellate order in compliance with the provision of section 250(6) of the Act on merit in accordance with law, in set aside proceedings ,after giving opportunity to both the parties in compliance with principles of natural justice. The assessee on his part is also directed to comply with the direction/notices of CIT(A) , and in case of failure of the assessee, the ld. CIT(A) shall be free to pass such appellate order as deemed fit ex-parte in accordance with law on merits and after complying with the provisions of section 250(6) of the Act. Thus, the matter is restored back to the file of ld. CIT(A) for fresh adjudication of the appeal of the assessee both on legal as well factual grounds taken by the assessee, on merit in accordance with law. I clarify that I have not commented on the merits of the issues in the appeal. Thus, the appeal of

the assessee is allowed for statistical purposes. I order accordingly.

7. In the result, the appeal of the assessee in ITA No. 248/Ahd/2024 for assessment year 2012-13 is allowed for statistical purposes.

Orders pronounced in the open court on 03-07-2024 at the Conclusion of the hearing in the presence of both the parties, and reduced to writing and signed on 11<sup>th</sup> July, 2024

**Sd/-**  
**(RAMIT KOCHAR)**  
**ACCOUNTANT MEMBER**

**Ahmedabad : Dated 11/07/2024**

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद