

THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "SMC" BENCH

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

**ITA No. 17/Ahd/2024  
Assessment Year 2012-13**

Mrs. Ilabahen Viralkumar Mehta Prop. Ila Medical Agency, 27, Krishna Housing Society Station Road, Anand-388001, Gujarat PAN: BABPM9646N (Appellant)	v.	The Income Tax Officer, Ward-3, S P Complex, Income Tax office, Beside C.K. Hall, Mayfair Road, Anand-388001 Gujarat  (Respondent)
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**Assessee by: Ms. Kinjal V. Shah, A.R.**  
**Revenue by: Shri Sanjay Jain, Sr. D.R.**

Date of hearing : 08-07-2024  
Date of pronouncement : 08-07-2024

**आदेश/ORDER**

This appeal in ITA No. 17/Ahd/2024 for assessment year 2012-13 filed by the assessee before Income Tax Appellate Tribunal, Ahmedabad Bench, Ahmedabad has arisen from the

appellate order dated 22-11-2023 in DIN & Order No. ITBA/NFAC/S/250/2023-24/1058146954(1) passed by ld. CIT(A),NFAC, New Delhi u/s 250 of the Income-tax Act, 1961, which in turn has arisen from the assessment order dated 24-12-2019 passed by learned Assessing Officer u/s. 143(3) r.w.s. 147 of the Income-tax Act, 1961.

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

**I. On Legality:**

*1. The CIT(A) has erred both in Law and in fact in upholding the Assessment Order which was Reopened u/s 148 on 31-3-2019 for A.Y.12-13 was bad in Law and Void and Time Barred beyond limitation and therefore prima face the entire proceedings conducted thereunder are void and the Assessment Order requires to be cancelled.*

*It is also submitted that the permission taken by the AO of Pr.CIT u/s.151 was mechanical without application of mind and Commissioner simply consenting without application of mind and facts of the case which is against law and not maintainable.*

*2. Your Appellant submits that the proceedings initiated u/s.148 are also bad in Law and since the notice of Reopening u/s.148 is dated 31-3-2019 where as the Reasons Recorded are dated 26-7-2019 meaning thereby that the Reasons were not recorded before issue of notice the provisions of which are mandatory and not following the provisions of Law makes the very Reopening of assessment bad in Law and Void.*

3. Your Appellant also submits that the order of CIT(A) under Appeal is also bad in Law and Void since he has acted upon and relied upon Assessment Order dated 24-12-2019 which was not bearing DIN No. and as per Circular of Central Board of Direct Taxes not mentioning DIN No. makes the Assessment Order bad-in-law & void ab initio and acting and relying on such invalid order by CIT (A) and dismissing Appeal of your Appellant is also void bad in Law and inoperative and therefore requires to be cancelled.

## **II. On Quantum:**

1. Without Prejudice to above and in alternative it is submitted that the CIT(A) has erred in upholding the Assessment Order confirming addition of Rs. 16,13,134/- as “unexplained cash deposit” in the Bank account.
2. It is submitted that the Bank deposits were through duly explained and genuine transaction duly submitted Bank Account and the entire proceedings were conducted for purchase of sale of shares of M/s Hemo Organize(sic. Organics) Ltd. through recognized Share Brokers and recognize business and Banking channel and therefore the same cannot be called “unaccounted or unexplained cash” and therefore the same is required to be deleted.

*It is therefore submitted that relief claimed above be allowed and the order of the Assessing Officer be modified accordingly. Your Appellant reserves right to add, alter, amend to withdraw any or all Ground of Appeal.”*

3. The brief facts of the case are that the assessee has filed return of income for the assessment year 2012-13 on 28.02.2013, declaring total income of Rs. 1,21,920/-. As per the information received by the AO, the assessee has traded in the scrip of M/s Hemo Organics Ltd. (Formerly known as

*Dinesh Allorga Limited*) , amounting to Rs. 4,35,781/-. The A.O. observed that the assessee has not considered this transaction for computing taxable income. The A.O. recorded the reason for reopening of the assessment u/s 147. The assessment of the assessee was reopened by the AO u/s. 147 , and notice u/s. 148 dated 31.03.2019 was issued by the A.O. to the assessee , which was claimed by the AO to have been duly served upon the assessee. In response to notice issued by the A.O. u/s. 148, the assessee filed return of income on 16.04.2019 , declaring total income of Rs. 1,24,870/-. Notices u/s. 143(2) was issued by the AO on 26.07.2019 , and reason for reopening of the assessment were also furnished by the AO to the assessee , on 26.07.2019. The assessee filed a letter dated 26.07.2019 challenging the validity of notice issued by the AO u/s. 148. The order was passed by the A.O. disposing of the objection raised by the assessee. Statutory notice u/s 142(1) was issued by the A.O. to the assessee, but the assessee as per AO did not submitted any cogent evidences in spite of the AO asking specifically of the transaction made by the assessee with *M/s Hemo Organics Ltd.* . Show cause notice was also issued by the A.O. to the assessee showcausing assessee as to why an additions be not made to the income of the assessee of the amount of Rs. 4,35,781/- w.r.t. assessee's transaction *with M/s Hemo Organics Ltd.* . The assessee was called upon by the AO to submit details of

Profit and Loss account, Statement for STCG/LTCG from the share broker in respect to transactions in share/securities along with source of payment made for purchase of shares. The assessee was also called upon by AO to submit copies of contract note for both purchase and sale of shares of *Hemo Organics Ltd.* . The assessee in reply submitted that the assessee has duly declared the capital gain earned on sale of Shares of *Hemo Organics Limited* in its return of income filed with Revenue . The assessee enclosed copy of return of income and computation of income. The assessee also enclosed copies of contract note of transactions made in shares/securities as well as justification to source of payment made for purchase of shares and securities. The assessee also enclosed copy of statement of Jhaveri Securities Limited . The assessee also submitted that the entire transactions in shares and securities were duly reported and there is no transaction which has remained un-reported, and hence there is no need to make any adjustment to the income of the assessee. But the A.O. observed that the assessee has not submitted cogent explanations and evidences. The A.O. observed that on one hand, assessee is claiming that assessee has not sold the shares of *M/s Hemo Organics Ltd.* and on the other hand, the assessee is declaring short term capital on sale of such shares. The AO observed that the assessee has sold 8000 shares of *Hemo Organics Limited* during the year under consideration,

and the capital gain on sale of said shares were not disclosed in the return of income filed u/s 139. The AO observed that the assessee has claimed that she is enclosing contract notes of share purchased and sold, but the same were not enclosed by the assessee. The AO observed that the assessee has enclosed bank statement of the Corporation Bank and Indusind Bank, but in the Balance Sheet filed by the assessee, she has only disclosed Bank account with Indusind Bank , which as per AO means that the transactions of Corporation bank are not recorded in the books of accounts. The assessee has not submitted the shareholding of stocks as at the end of the financial year. Thus , the A.O. observed that the assessee has not disclosed her true and correct income, and the assessee is misguiding the department. Thus, the A.O. observed that the assessee has not explained the sources of investment made in *M/s Hemo Organics Ltd.* . The AO also observed that the said company *M/s Hemo Organics Limited* is a listed company on Bombay Stock Exchange(BSE) , and is a penny stock which has been used to facilitate introduction of unaccounted income of members of beneficiaries in the form of exempt capital gains or short term capital loss in their books of accounts. The AO observed that the financials of the company for the relevant period do not show any substantial change so as to support such huge share price movement . The company does not have business worthwhile to justify the

sharp rise in the market price of the shares. The fundamentals of the said company *Hemo Organics Limited* do not support sharp rise in the market price. Both sale and purchase of shares are concentrated in within few person/entities. The AO also called for information directly from the Broker Jhaveri Securities Limited , by invoking provisions of Section 133(6). As per the statement received by the AO from M/s Jhaveri Securities Limited , the assessee has bought 23000 shares of *Hemo Organics Limited* during the year under consideration and sold 8000 shares during the year, making capital gain on Rs. 4512/- on the sale of 8000 shares, while 15000 shares continued to be held by the assessee. The AO observed that the assessee has not shown any shareholding of *Hemo Organics Limited* as at year end. The AO observed that the assessee is not providing the details as required by department , despite knowing well that the case of the assessee was reopened u/s 147. It was observed by the AO that the purchase of 15000 shares of Hemo Organics Limited by the assessee aggregating to Rs. 11,89,200/- was by way of book entry as the assessee as well Jhaveri Securities Limited could not show the payments made by the assessee for purchase of 15000 shares of Hemo Organics Limited in their respective books of accounts. The AO concluded that infact no source of payment could be shown by the assessee for the entire purchase of 23000 shares of Hemo Organics Limited,

which ultimately led AO to make additions in the hands of the assessee to the income of the assessee to the tune of Rs. 16,13,134/- with respect to the investment made by the assessee during the impugned assessment year in 23000 shares of *M/s Hemo Organics Ltd.*.

4. Aggrieved, the assessee filed first appeal with ld. CIT(A) . The ld. CIT(A) dismissed the appeal of the assessee for non-prosecution as the assessee did not comply with the various notices issued by Ld. CIT(A) , and an ex-parte appellate order in limine was passed by Ld. CIT(A) without deciding the issue's arising in the appeal on merits. The ld. CIT(A) observed that the assessee is not interested in pursuing its appeal and the assessee does not have any proper explanation with respect to the assessment framed by the AO.

5. Still aggrieved, the assessee has now filed second appeal with the Tribunal . The Ld. Counsel for the assessee submitted that the Ld. CIT(A) has not decided the issue's arising in the appeal on merits, and the appeal of the assessee was dismissed by ld. CIT(A) by holding that the assessee is not interested in prosecuting its appeal since the assessee did not complied with the notices issued by ld. CIT(A). The Ld. Counsel for the assessee also submitted that since DIN No. is not mentioned in the assessment order , the assessment order

is liable to be quashed. The ld. Counsel for the assessee relied upon the decision ITAT, Ahmedabad Bench, Ahmedabad in the case of *Nova Properties Private Limited v. PCIT in ITA No. 109/Ahd/2022* , and Hon'ble Supreme Court decision in the case of *CIT v. Brandix Mauritius Holdings Limited* , reported in (2024) 158 taxmann.com 247(SC) , and prayers were made to quash the assessment order. The Ld. Sr. D.R. at this stage submitted that the tax computation sheet(ITNS 150) was issued by the A.O. which carries Document No. , and the said tax computation sheet is part of the assessment order. Our attention was drawn by ld. Sr. DR to assessment order as well tax computation sheet, both dated 24.12.2019 and it is mentioned in the last page of assessment order that tax calculation sheet (ITNS-150) is enclosed as part of the assessment order. Our attention was drawn by the Ld. Counsel for the assessee to Page Nos. 44 to 78 of the Paper Book filed by the assessee in which statement of Jhaveri Securities Ltd. and the bank statements of the assessee with Corporation Bank and Indusind Bank are placed. The ld. Counsel for the assessee submitted that the ld. CIT(A) has not decided the issues on merits, and the matter can be set aside to the file of ld. CIT(A) for fresh adjudication of the appeal of the assessee.

6. I have considered the contentions of the rival parties and perused the material on record. The facts leading to the additions made by the AO are culled out in the preceding para 3 of this order and are not repeated . The crux of the matter is that the assessee has purchased 23000 shares of *Hemo Organics Limited* during the year, out of which 8000 shares were purchased as well sold in the previous year relevant to the impugned assessment year itself. As per Revenue , *Hemo Organics Limited ( formerly known as Dinesh Allorga Limited)* is a stock listed on BSE and is a penny stock. The shares are held by few people who are manipulating and rigging the shares on stock exchanges to provide bogus capital gains/losses to various beneficiaries. The assessee being one of the beneficiary. The assessee has not declared and disclosed the transaction of sale and purchase of shares of *Hemo Organics Limited* in the return of income filed u/s 139, while the assessee declared gains arising on the sale of 8000 shares in the return of income filed in response to notice u/s 148. The AO has claimed that the assessee has not disclosed the shareholding of said company *Hemo Organics Limited* as at year end in the Balance Sheet. The information was also called by the AO directly from Jhaveri Securities Limited by invoking provisions of Section 133(6), a share broker, and it was found that the assessee as well the said broker could not show that payments for said 15000 shares of *Hemo Organics Limited* was

made by the assessee and it was merely book entry. The AO observed that the assessee could not show sources of the investment of Rs. 16,13,134/- in 23000 shares of *Hemo Organics Limited*, which stood added by the AO to the income of the assessee as unexplained investment. I have observed that the ld. CIT(A) dismissed the first appeal filed by the assessee ex-parte in limine without deciding the issue arising in the appeal on merits for non-prosecution of the appeal by the assessee. I have observed that the ld. CIT(A) issued four notices to the assessee, dated 31.12.2020, 11.02.2021, 01.11.2023 and 13.11.2023. The assessee did not submitted any response to the said notices issued by ld. CIT(A). The ld. CIT(A) has not mentioned the manner and mode of the service of the said notices. As could be seen that the first two notices were issued on 31.12.2020 and 11.02.2021 respectively, which were the period covered by Covid-19. The proceedings were not carried forward further by ld. CIT(A) after issuance of the aforesaid two notices. It is only on the issuance of third notice dated 01.11.2023, the appellate proceedings resumed effectively by ld. CIT(A). It is also observed that the fourth notice dated 13.11.2023 was issued by ld. CIT(A), and the assessee did not comply with the said notice also, which culminated into an appellate order dated 22.11.2023 passed by ld. CIT(A) i.e. the whole proceedings were hastened and concluded by ld. CIT(A) within period of 22 days in November,

2023, and that too by passing an ex-parte order in limine by ld. CIT(A) without deciding the issues arising in the appeal on merits for non prosecution of the appeal by the assessee and holding that the assessee is not interested in pursuing her appeal, which appellate order passed by ld. CIT(A) is clearly not in compliance with the provisions of Section 250(6). This is travesty of justice and clearly there is a breach of principles of natural justice by ld. CIT(A). The appellate order passed by ld. CIT(A) is clearly not sustainable in the eyes of law , keeping in view provisions of Section 250(6) . 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 arising in the appeal on merit in accordance with law , as is provided u/s. 250(6). The ld. CIT(A) has to state point for determination, his reasons for decision and the decision thereof as 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 i.e. Jhaveri Securities Limited, other relevant persons/authorities etc.. 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 Id. CIT(A). The assessee has filed paper book containing 78 pages before the ITAT and it is claimed that the assessee has filed all details with the AO vide certification in the paper book. The assessee has claimed that the corporation bank was not reflected in the balance sheet as the assessee is merely a joint account holder and Mr. Mehta Viral Pankajkumar is the first holder who is having the transactions in the said bank account and he has disclosed the said bank account in the return of income filed with Revenue. The assessee has also claimed that the person whose statement is relied upon by the AO to prejudice the assessee, was not offered for cross examination. These facts ought to have been verified / inquired by Id. CIT(A) to unravel truth, before dismissing the appeal of the assessee. The Id. CIT(A) ought to have called for assessment records to verify the facts and could have unravelled the truth, but Id. CIT(A) simply dismissed the appeal of the assessee for non prosecution without adjudicating the issues arising in the appeal before Id. CIT(A). There are other powers vested with Id. CIT(A) as is provided under the 1961 Act. The Id. CIT(A) has not rebutted the claim of the assessee, but dismissed the appeal of the assessee on ground of non compliance by the assessee with respect to the notices issued by Id. CIT(A) by holding that the assessee is not interested in prosecuting its appeal and that too in a hasty

manner the appeal of the assessee stood dismissed by ld. CIT(A), and ld. CIT(A) 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 on merit in

accordance with law. I clarify that I have not commented on the merits of the issues in the appeal. So far as the contentions of ld. Counsel for the assessee that the assessment order passed by the AO be quashed as there is no mention of DIN in the assessment order, I chose not to adjudicate this issue at this stage as on perusal of judgment and order of Hon'ble Supreme Court in the case of *CIT v. Brandix Mauritius Holding Limited(supra)* as relied upon by ld. Counsel for the assessee, I have observed that this issue is sub-judice with Hon'ble Supreme Court of India, and the Hon'ble Supreme Court of India granted interim stay on the judgment and order of Hon'ble Delhi High Court dated 20.03.2023 and also on the order of ITAT, dated 19.09.2022. The assessee shall be free , if so advised to raise this legal issue also before ld. CIT(A) in the set aside remand proceedings. Thus, the appeal of the assessee is allowed for statistical purposes in the manner indicated above. I order accordingly.

7. In the result, the appeal of the assessee in ITA No. 17/Ahd/2024 for assessment year 2012-13 is allowed for statistical purposes.

Order was pronounced in the open court on 08-07-2024 on the conclusion of the hearing in the presence of both the parties, and reduced to writing and signed on 16.07.2024

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

**Ahmedabad : Dated :16/07/2024**

**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