

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER AND
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.297/Ahd/2024
Assessment Year: 2012-13**

Brijeshkumar Mahendrakumar Patel, B-16, Hiramoti Society, Chandkheda, Ahmedabad – 382424 [PAN – AUKPP 0848 F (Appellant)	Vs.	The Income Tax Officer, Ward – 2(2)(1) (Old Ward), Ward – 2(1)(2) (New Ward), Ahmedabad. (Respondent)
Assessee by	Shri Chetan Agarwal, AR	
Revenue by	Shri Sanjay Kumar, Sr. DR	
Date of Hearing	11.07.2024	
Date of Pronouncement	24.07.2024	

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

This appeal is filed by the assessee against order dated 15.12.2023 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2012-13.

2. The assessee has raised the following grounds of appeal :-

- “1. Ld. CIT(A) erred in law as well as on fact in upholding assessment u/s. 144 r.w.s. 147 ex-parte.
2. The Ld. CIT(A) erred in law as well as in facts in confirming addition of Rs.82,72,400/- made by Ld. AO being profit estimated @ 0.25% on commodity transactions without any evidences, whereas appellant had in fact incurred losses.

Additional ground of appeal

3. Ld. AO erred in law as well as on fact in reopening assessment u/s.147 on the basis of insufficient, incorrect, vague and invalid reasons recorded for reopening.

3. The assessee filed original return of income dated 18.12.2012 declaring total income at Rs.30,213/-. As per information available in Individual Transaction Statement (ITS), the Revenue observed that the assessee made transactions amounting to Rs.3,30,89,60,026/- in the commodity exchange during the Assessment Year 2012-13. The case was reopened after recording reasons for reopening and obtaining prior approval from the Competent Authority. The assessee has not responded to the notices, therefore, the Assessing Officer proceeded on the basis of Section 144 of the Income Tax Act, 1961 and made addition of Rs.82,72,400/- thereby determining at 0.25% of the total transaction of Rs.3,30,89,60,026 as income of the assessee.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that there is a delay of six days in filing the appeal for which the assessee has filed the request for condonation of delay. After going through the same, it appears that the delay is genuine and hence condoned.

6. The Ld. AR submitted that both the Assessing Officer as well as the CIT(A) has passed ex-parte order and hence it will be appropriate to remand back this matter to the file of the Assessing Officer for proper adjudication and verification of the legal issue as well as issue on merit. For the non-appearance before the Revenue Authorities and the CIT(A), the Ld. AR submitted that the email id. of the earlier Tax Consultant was not properly updated and notices issued by Department was not conveyed to the assessee during the relevant period, hence the assessee could not respond before the both the Authorities.

7. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

8. We have heard both the parties and perused all the relevant material available on record. From the perusal of the reasons recorded, it appears that the reasons have given the details which at this juncture is disputed by the assessee thereby stating that the assessee never entered into transaction amounting to Rs.3,30,89,60,026/-. The Ld. AR also was challenging validity of the reopening

as well as after going through the order of CIT(A), it appears that the CIT(A) has not given proper opportunity to the assessee to represent his case. Hence, in the interest of justice, it will be appropriate to remand back this matter to the file of the Assessing Officer for proper adjudication and verification of the issues on legal as well as on merit. Needless to say, the assessee be given opportunity of hearing. It is directed to the assessee that the assessee will fully co-operate to the Revenue Authorities for filing the relevant details within the stipulated time and promptly appear at the relevant date of hearing notified by the Assessing Officer. If the assessee fails to do so, the Assessing Officer is at liberality to proceed as per Income Tax Statute.

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

Order pronounced in the open Court on this 24th July, 2024.

Sd/-
(ANNAPURNA GUPTA)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 24th day of July, 2024

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Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad