

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, AHMEDABAD**

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
& SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER**

I.T.A. No.461/Ahd/2024
(Assessment Year: 2016-17)

Deep Energy Resources Ltd., (Formerly DEEP Industries Ltd.), 12A & 14, Abhishree Corporate Park, Nr. Shell Petrol Pump, Ambli Bopal Road, Ahmedabad-380058	Vs.	Assistant Commissioner of Income-Tax, Circle-1(1)(1), Ahmedabad
[PAN No.AAACD6915E]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Sakar Sharma, A.R.
Respondent by:	Shri Ketan Gajjar, Sr. DR

Date of Hearing	23.08.2024
Date of Pronouncement	29.08.2024

O R D E R

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

The appeal filed by the Assessee is against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), Delhi vide order dated 19.02.2024 passed for Assessment Year 2016-17.

2. The Assessee has taken the following grounds of appeal:

“1. The Ld. CIT(A)-NFAC erred on facts and in law in dismissing appeal of the appellant due to non prosecution without appreciating that no notice(s) were received by the appellant and therefore, appellant had no occasion to make submissions in the appellate proceedings.

2. Ld. CIT(A)-NFAC erred on facts and in law in not adjudicating ground relating to validity of reassessment when case was reopened without satisfying the mandatory conditions specified in section 147,148,149,151 of the Act

3. Ld. CIT(A)-NFAC erred on facts and in law in not adjudicating ground relating to issuance of notice u/s 143(2) immediately after filing of return u/s 148 but before disclosing reasons for reopening and before furnishing of objections by the appellant.

4. *The Ld. CIT (A)-NFAC erred on facts and in law in not adjudicating ground relating to addition made u/s 68 for the amount of Rs. 3,69,50,000/-received from Rati Diamonds P Ltd by holding the same to be accommodation entry based on unsustainable evidences*

5. *The Ld. CIT(A)-NFAC erred on facts and in law in not adjudicating the ground relating to addition made u/s 69C of Rs. 10,16,125/- being alleged commission paid to obtain accommodation entry from Rati Diamonds P. Ltd.”*

3. The brief facts of the case are that the assessee is a company and it filed its return of income for A.Y. 2016-17 declaring total income of Rs. 40,20,66,630/-. Later on, the case of the assessee was selected under CASS and assessment order was passed under Section 143(3) of the Act on 10.12.2018, after assessing income at Rs. 40,53,06,812/-. Subsequently, the case of the assessee was reopened on the basis of information that the assessee has taken accommodation entry in the guise of unsecured loan of Rs. 3,69,50,000/- from M/s. Rati Diamonds Pvt. Ltd., one of the paper concerns of Shri Shripal Vora.

4. During the course of 147 proceedings, the assessee raised objections against the reopening of the case. However, the Assessing Officer disposed of the objections by holding that based on tangible material available regarding the assessee, the Assessing Officer had a valid “reason to believe” that income chargeable to tax has escaped assessment. The Assessing Officer relied on the case of ITO vs. Selected Dalurband Cold Co. Pvt. Ltd. 217 ITR 597 (SC) and on the case of Raymond Woollen Mills Ltd. vs. ITO 236 ITR 34 (SC) which have held that at the stage of initiation of proceedings under Section 147 of the Act, all that is required is formation of “reasons to believe” that the income has escaped assessment but not the established fact of escapement of income. Further, the Assessing Officer placed reliance on the case of ACIT vs. Rajesh Jhaveri Stock Brokers Pvt.

Ltd. (2007) 291 ITR 500 (SC), wherein the Supreme Court has categorically stated that “reason to believe” does not mean that the reason for reopening should have been factually ascertained by legal evidence or conclusion before the reopening of an assessment. Accordingly, the Assessing Officer rejected the challenge to reopening of assessment by holding that given the facts before the Assessing Officer, he had valid reason to believe that income of the assessee had escaped assessment.

5. On merits of the case, the Assessing Officer observed that as per information available, it is found that the assessee had taken accommodation entries in the guise of unsecured loans of Rs. 3,69,50,000/- from M/s. Rati Diamonds Pvt. Ltd., one of the paper concerns of Shri Shripal Vora, a famous entry operator. During the search under Section 132 of the Act done by the Investigation Wing on Shripal Vora, the statement of Shripal Vora was recorded. In his statement, Shri Shripal Vora categorically deposed that he is an accommodation entry provider through various paper companies, wherein he also the Director of many companies. The assessee company was one of the beneficiaries who obtained accommodation entry of Rs. 3,69,50,000/- from bogus concerns of Shri Shripal Vora. During the course of assessment proceedings, the assessee was asked to furnish details to prove the genuineness and creditworthiness of M/s. Rati Diamonds Pvt. Ltd. and from where the assessee had received huge unsecured loan of Rs.3,69,50,000/-. On perusal of details submitted by the assessee, the Assessing Officer observed that M/s. Rati Diamonds Pvt. Ltd. has high turnover but it is paying minuscule taxes. On perusal of balance sheet of the said entity, the Assessing Officer observed that the

entity was having almost NIL fixed assets. The entity has meagre accumulated profits and has shown only Rs. 6,54,912/- as their reserves and surplus. Accordingly, the Assessing Officer held that M/s. Rati Diamonds Pvt. Ltd. is nothing but a paper company and only entry provider. The said company was not found at its registered address during the enquiry conducted by the Investigation Wing. Accordingly, the Assessing Officer was of the view that Shri Shripal Vora is only the operator of these paper concerns and these company was a mere name lender and not doing any real business other than providing accommodation entries. The Assessing Officer was of the view that the assessee has not proved the creditworthiness of the party and genuineness of the nature of the above transaction. Therefore, the provisions of Section 68 of the Act are attracted this case. Accordingly, the Assessing Officer added a sum of Rs. 3,69,50,000/- in respect of loan received from M/s. Rati Diamonds Pvt. Ltd. In addition to the above, the Assessing Officer also added a sum of Rs. 10,16,125/- under Section 69C of the Act, amounting to Rs. 10,16,125/- being alleged amount of commission paid to obtain loan from M/s. Rati Diamonds Pvt. Ltd.

6. In appeal before Ld. CIT(A), he dismissed the appeal of the assessee on account of non-appearance with the following observations:-

“4. Except for filing the above appeal, the appellant did not file any further documents/explanation in support of the grounds of appeal. The appellant stated in col.11 that documentary evidence relied upon shall be submitted at the time of hearing, but did not file any such submission till date. As seen from the assessment order, the case was reopened after recording proper reasons upon receipt of reliable information. The AO followed due procedure in reopening of the assessment. Further the appellant was afforded opportunities of hearing during the reassessment proceedings. As such the action of the AO in making addition of the bogus unsecured loans entered with M/s. Rati Diamonds P Ltd of Rs. 3,69,50,000/- and the addition towards estimated commission of Rs. 10,16,125/- are upheld in view of the elaborate discussion of the AO and the relevant case laws relied upon by him.

5. Without prejudice to the above, the final appeal hearing in this case was fixed on 16.02.2024. However, neither anybody attended nor was any request for adjournment made by the appellant till date. Before this several notices were issued fixing the case for hearing, but they were neither responded to nor any adjournment was sought. Except for filing the grounds of appeal and reiterating the submissions through statement of facts, the appellant has not filed any supporting evidence. The details of opportunities afforded are as under:-

SI. No.	Date of Notice	Date of hearing	Remarks
	16.11.2022	Enablement of communication window through ITBA	No reply
1.	15.09.2023	25.09.2023	No reply
2.	11.01.2024	22.01.2024	No reply
3.	09.02.2024	16.02.2024	No reply

6. All notices were sent by registered mail. Sufficient opportunity has been afforded to the appellant. It appears that, the appellant is not interested in pursuing the appeal. The law aids those who are vigilant, not those who sleep upon their rights. This principle is embodied in the well-known dictum, *VIGILANTIBUS ET NONDORMIENTIBUS JURA SUBVENIUNT*".

7. The provisions of Sec.250(6) provides that the appellate orders of CIT(A) are to state the points arising out of appellant's appeal. The order shall give out the reasons for such decisions. The underline rationale of the position is that such order is further appealed.

8. Speaking order obviously will enable any party to know positively the points decided in his favour or against. Absence of formulation of the point of decision for want of quality due to the lack of information inadvertently puts the authority in a Quandary.

9. Sec.250(6) expressly embodies such provision, if an appellant fails to appear before the CIT(A) and fails to submit the relevant documents, the CIT(A) is restricted to the disposal of the appeal based on the merits available in the record.

10. This stand was furthered by the Hon'ble Tribunals/High Court in the following Judgements.

1. SHREE BALAJI WOOLLEN MILLS vs. ASSISTANT COMMISSIONER OF INCOME TAX, ITAT, DELHI 'G' BENCH.
ITA No. 1238 & 1239/Del/2011; Asst. yr. 2005-06.

2. PRAVEEN KUMAR PRUTHI vs. INCOME TAX OFFICER ITAT, DELHI 'F' BENCH ITA. No. 478/Del/2011; Asst. yr. 1999-2000,

3. ASSISTANT DIRECTOR OF INCOME TAX vs. WHITE INDUSTRIES AUSTRALIA LTD, ITAT, BENCH 'C' KOLKATA
ITA No. 507/Ko1/2010; Asst yr. 1992-93.

4. JAI INTERNATIONAL vs. DEPUTY COMMISSIONER OF INCOME TAX ITAT, JODHPUR BENCH, ITA No. 138/Jcl/201g; Asst. yr. 2012-13.

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5. **RAMESH SHARMA vs. ASSISTANT COMMISSIONER OF INCOME TAX, ITAT, DELHI 'F' BENCH, ITA No. 2911/Del/2013; Asst. yr. 2006-07.**

6. **ESTATE OF LATE TUKOJIRAO HOLKAR vs. COMMISSIONER OF WEALTH TAX HIGH COURT OF MADHYA PRADESH, Misc. Civil Case No. 302 of 1991.**

7. **U-LIKE PROMOTERS (P) LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX, ITAT, DELHI 'H' BENCH, ITA Nos. 1569 to 1572/Del/2009 and 1377 to 1379/Del/2012; Asst. yrs. 1998-99 to 2004-05.**

11. *In view of the above explained rationale, the appeal stands **dismissed.***”

7. The assessee is in appeal before us against the order passed by Ld. CIT(A), dismissing the appeal of the assessee on account of non-appearance. Before us, the Counsel for the assessee filed an Affidavit stating that the assessee did not receive any notice for hearing under Section 250 of the Act at the email id info@deepindustries.com. In absence of any service of notice on the aforesaid email id, no representation could be made before the CIT(A)-NFAC. Accordingly, it was submitted that in absence of any service of notice, the assessee did not get adequate opportunity to present it's case on merits. Accordingly, it was submitted that the case may be restored to the file of lower authorities for de-novo adjudication, after giving due opportunity of hearing to the assessee.

8. In response, Ld. D.R. placed reliance on the observations made by the Assessing Officer and Ld. CIT(A) on their respective orders.

9. On going through the facts of the instant case, and the contents of the order passed by Ld. CIT(A), we are of the considered view that in the interest of justice, the matter may be restored to the file of Ld. CIT(A) for de-novo consideration, after giving due opportunity of hearing to the

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assessee to prove it's case on merits. At the time of hearing though a request was made before us that the matter may be restored back to the file of Assessing Officer, but we are of the considered view that the Assessing Officer has passed a detailed speaking order on the merits of the case and has also elaborated / discussed all the factual and legal contentions raised by the assessee and therefore, in our view we find that it is a fit case that the matter may restored to the file of Ld. CIT(A) for de-novo consideration after calling for necessary inputs from the concerned Assessing Officer.

10. In the result, the matter is restored to the file of Ld. CIT(A) for de-novo consideration, after giving due opportunity of hearing to the assessee to present it's case on merits.

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

This Order pronounced in Open Court on	29/08/2024
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Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

Ahmedabad; Dated 29/08/2024

TANMAY, Sr. PS

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, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad