

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

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER &  
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 547/Ahd/2024  
(निर्धारण वर्ष / Assessment Year : 2012-13)

<b>Devangbhai Jayantilal Desai</b> 9-H, Solitaire-9, Nr. Darshnam-99, Sama Savli Road, Vadodara, Gujarat, 390008	<b>बनाम/ Vs.</b>	<b>The Asst. Commissioner of Income Tax</b> Circle-3(1), Vadodara
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ABOPD1836G</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

अपीलार्थी ओर से /Appellant by :	Ms. Urvashi Shodhan, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri C. Dharani Nath, Sr. DR

<b>Date of Hearing</b>	17/09/2024
<b>Date of Pronouncement</b>	15/10/2024

**ORDER**

**PER SHRI NARENDRA PRASAD SINHA, AM:**

This appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi, (in short ‘the CIT(A)’), dated 29.02.2024 for the Assessment Year 2012-13.

2. The brief facts of the case are that the assessee had filed return of income for A.Y. 2012-13 on 25.09.2012 declaring income of Rs.65,39,000/- and revised return on 19.01.2013 declaring total income of Rs.65,87,810/-, which was processed

under Section 143(1) of the Income Tax Act, 1961 (in short 'the Act') on 20.05.2013. The case was subsequently reopened under Section 147 of the Act after obtaining prior approval of Pr.CIT-3, Vadodara and notice under Section 148 of the Act was issued on 30.03.2019. The case was reopened for the reason that the assessee had sold shares of Divine Multimedia (India) Ltd. amounting to Rs.9,87,544/-, but no capital gain was disclosed in the return of income. The re-assessment was completed u/s. 143(3) r.w.s. 147 of the Act on 27.12.2019 at total income of Rs.1,11,77,830/-.

3. Aggrieved with the order of the AO, the assessee has filed an appeal before the Ld. CIT(A), which was decided vide the impugned order and part relief was allowed to the assessee.

4. Now, the assessee is in second appeal before us and has taken the following grounds in this appeal:

*"1. The Ld. CIT (A) has erred in law and on facts of appellant's case in not holding that reopening of assessment after four years from end of relevant assessment year is not valid.*

*Both the lower authorities have erred in law and on facts of the appellant's case in holding that the reopening of assessment U/s 147 of the Act after expiry of four years from end of relevant assessment year is valid.*

2. *The Ld. CIT (A) has erred in law and on facts of the appellant's case in confirming the order of the Ld. AO of making an addition of ₹ 29,23,000/-on erroneous plea it is an unexplained cash credit U/s 68 of the Act.*

*Both the lower authorities have erred in law and on facts of the appellant's case in holding that the appellant has failed to prove genuineness and creditworthiness of unsecured loan received during the year.*

3. *The initiation of penalty proceedings U/s 271(1) (c) of the Act is not justified.”*

5. Ms. Urvashi Shodhan, Ld. AR appearing for the assessee submitted that the Ld. CIT(A) had not decided the ground of reopening as taken before him. She has drawn our attention to the order of Ld. CIT(A), wherein he had reproduced the objection of the assessee regarding reopening but no specific findings was given in this regard in the appellate order. The Ld. AR has drawn our attention to the reason for reopening recorded by the AO wherein it was mentioned that the return of the assessee was only processed u/s.143(1) of the Act and that no scrutiny assessment u/s.143(3) of the Act was completed. The Ld. Counsel has assailed this fact and submitted that the assessment u/s.143(3) of the Act was completed in this case on 31.01.2014 and a copy of the said order has also been brought on record. In view of this fact, the Ld. AR contended that the basic premise on which the case was reopened was not correct. She explained that as the case was reopened after four years, the conditions of the proviso to Section 147 of the Act was applicable which stipulated that the income should have escaped assessment by reason of failure on the part of the assessee to disclose fully and truly all material facts. According to the Ld. AR, the AO has not recorded any such satisfaction as to how this condition was fulfilled. She also

assailed the reason of reopening on the ground that the sale proceeds of shares was disclosed under the head 'business' and not under 'capital gain' in the return of income and that there was no default on the part of the assessee in fully and truly disclosing all material facts.

6. Per contra, Shri C. Dharani Nath, Ld. Sr. DR appearing for the Revenue supported the orders of the lower authorities.

7. We have carefully considered the rival submissions. It is found from the reason for reopening as recorded by the AO that there is no mention of earlier assessment u/s.143(3) of the Act dated 31.01.2014 completed in this case. The AO had recorded in the reason, on multiple occasions, that the return of the assessee was processed u/s. 143(1) of the Act on 20.05.2013 and that no scrutiny assessment u/s. 143(3) of the Act was undertaken. This fact itself is found to be incorrect as the department has completed assessment u/s.143(3) of the Act in this case on 31.01.2014, whereby the returned income of the assessee Rs.65,39,000/- was accepted. It is further found that a search action u/s.132 of the Act was carried out in this case on 09.8.2011 and the assessee had offered additional income of Rs.45 Lakhs disclosed in the course of search proceedings in the return of income. The AO had initiated penalty proceedings u/s.271AAA of the Act in respect of this additional income disclosed during search, which was part of

returned income. Thus, the basic premise on which this case was reopened is itself found to be incorrect. The AO had neither recorded in the reason nor brought on record any material or evidence to establish that there was escapement of income due to failure on the part of the assessee to fully and truly disclose all material facts. Thus, the condition as stipulated in Proviso to Section 147 of the Act is not found fulfilled in this case and the reopening done by the assessee is liable to be cancelled for this reason alone.

8. The assessee had also explained that the sale proceeds of Rs.9,87,544/-, for which the case was reopened was disclosed as 'business income'. The Ld. CIT(A) has also acknowledged the fact that the assessee had not claimed any exemption of LTCG on sale of shares but had offered the sale proceeds of shares as tax, as regular business income. In view of this fact, the Ld. CIT(A) had allowed the addition made on this account by the AO subject to verification of purchase of the shares as claimed by the assessee. In view of this fact and also the absence of any failure on the part of the assessee, the reopening done by the AO cannot be held as correct. Therefore, the reopening as done by the AO is found to be invalid and contrary to the provisions to Section 147 of the Act and is, therefore, cancelled. The Ground No.1 as taken by the assessee is allowed.

9. Since, the legal ground taken by the assessee has been allowed and the reopening of the assessment has been cancelled, we do not deem it necessary to adjudicate the other grounds.

10. In the result, the appeal of the assessee is allowed.

**This Order pronounced on 15/10/2024**

Sd/-  
(SUCHITRA KAMBLE)  
**JUDICIAL MEMBER**

Ahmedabad; Dated 15/10/2024

S. K. SINHA

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**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