

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

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &  
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. Nos.311&312/Ahd/2024  
(Assessment Years: 2011-12 & 2012-13)

M/s. Aditech Infotech Pvt. Ltd., 89/2, 1 <sup>st</sup> Floor, Girdharnagar Society Shahibag, Ahmedabad-380004	Vs.	Income Tax Officer, Ward-1(1)(1), Ahmedabad
[PAN No.AADCA7707Q]		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

<b>Appellant by :</b>	Shri Jimit Shah, A.R.
<b>Respondent by:</b>	Shri Rignesh Das, Sr. D.R.

<b>Date of Hearing</b>	01.10.2024
<b>Date of Pronouncement</b>	21.11.2024

ORDER

**PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:**

Both appeals have been filed by the Assessee 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 orders dated 21.12.2023 passed for A.Ys. 2011-12 & 2012-13. Since common facts and issues for consideration are involved in both the years under consideration before us, both the appeals filed by the assessee for the aforesaid Assessment Years are being taken up together.

**We shall first deal with the appeal of the assessee (ITA No. 311/Ahd/2024) for A.Y. 2011-12**

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

**ITA No. 311/Ahd/2024**

“1. *The ld. CIT-A has upheld the action of the ld. AO in making the addition amounting to Rs. 1,89,34,890/- to the total income of the appellant.*

2. *The ld. CIT-A has upheld the action of the ld. AO in making the addition during the course of assessment proceedings and has confirmed the addition of Rs 1,50,60,560/- to the total income of the appellant on account of various cash deposits in his bank account. The ld. CIT-A has upheld the action of ld. AO and has treated the same as unexplained income of the appellant and thus confirmed the addition to the total income of the appellant.*

3. *The CIT-A has upheld the action of the ld. AO in making the addition amounting to Rs. 38,74,331/- being 20% of Rs. 1,93,71,657/- The ld. CIT-A as upheld the action of the ld. AO in making the addition by on estimation basis. The ld. CIT-A has confirmed the addition on estimation basis and has added 20% of the total credits of Ra. 1,93,71,657/- amounting to Rs. 38,74,331/- and has confirmed the addition made by the ld. AO during the course of assessment proceedings*

4. *The assessment order passed by the ld. AO is bad in law and is against the principles of natural justice. The ld. AO without giving appellant an opportunity to submit evidences has added the said income to the appellant on estimation basis.*

5. *The ld. AO has erred in law and on facts of the case in levying interest u/s 234A/B/C of the Act.*

6. *The learned ld. AO has erred in law and on facts of the case in initiating penalty u/s 271(1)(c) of the Act.*

*The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.”*

3. The brief facts of the case are that the assessee did not file the appeal for the impugned year under consideration. As per information available, the assessee deposited cash of Rs. 22,13,000/- in it's bank accounts and also received contract income of Rs. 1,54,203/-.

4. The case of the assessee was reopened under Section 148 of the Act, in response to which the assessee filed reply dated 23.08.2018 stating that the company had discontinued it's operation and was not in existence. However, on verification of records, the AO observed that the assessee had continued it's

business activities from A.Y. 2013-14 to A.Y. 2018-19 and had received contract income on which TDS was deducted by the payers. Thereafter, notice under Section 133(6) was issued to Central Bank of India, HDFC Bank and ICICI Bank for furnishing the bank account statement of the assessee. On perusal of the bank statements, AO observed that assessee had deposited a total amount of Rs. 1,50,60,650/- as cash deposits in the bank account and besides the above, there were other credits totaling to Rs. 1,93,71,657/- also appearing in the bank account. The AO observed that despite being given several opportunities, the assessee failed to furnish copy of Audit Report, Return of Income, computation of total income, cash book and final statements. Instead, the assessee simply filed statement showing cash deposits and withdrawals during the year. Therefore, in absence of any documentary evidence, the AO treated the total amount of cash deposits of Rs. 1,50,60,650/- as unexplained income of the assessee and added the same to the total income of the assessee. Further, the AO held that since the assessee failed to explain the credit entries in the bank accounts hence the amount of Rs. 38,74,331/-, being 20% of the gross receipts to the tune of Rs. 1,93,71,657/- was also added to the income of the assessee.

5. The assessee filed appeal before CIT(A). However, despite issuance of various notices of hearing, the assessee did not cause appearance before Ld. CIT(A) and in absence of any details filed by the assessee the Ld. CIT(A) confirmed the addition made by the AO. While passing the order the Ld. CIT(A) made the following observations:

*“5.3 As brought out above, the appellant filed only part submissions during the assessment proceedings and also failed in furnishing supporting evidence to substantiate its contention. During the appellate proceedings, the appellant chose not to respond to any of the notices listed above issued by this office. As such, it is clear that the appellant has nothing to submit in support of its contention made in the*

grounds of appeal and statement of facts, and therefore, I do not find any basis to interfere with the findings of the AO.

5.4 Though the appellant did admittedly receive the order passed u/s 144 r.w.s. 147 of the Act and duly filed the present appeal, it, however, after filing the appeal, chose not to respond to any of the notices listed above issued by this office. It has been held by several courts that the law assists those who are vigilant and not those who sleep over their rights as found in the Maxim "*Vigilantibus Non Dormientibus Jura Subveniunt*". The maxim refers to the obligation of individuals to not only be aware of their rights under the law, but also to be vigilant while exercising or using the same. Hence, as an aware citizen, it was incumbent upon the appellant to be aware of the statutory provisions, to simultaneously comply with the requirements of law, and that it should pursue the legal remedies available diligently

5.5 The Hon'ble High Court of Delhi, in the case of *Moddus Media Pvt. Ltd. vs M/s Scone Exhibition Pvt. Ltd.* (RFA 497/201 dated 18 May 2017), while holding that the appellant ought to be vigilant and pursue the appeal filed by it, had observed as under 11 The litigant owes a duty to be vigilant of his rights and is also expected to be equally vigilant about the judicial proceedings pending in the court of law against him or initiated at his instance After filing the civil suit or written statement, the litigant cannot go off to sleep and wake up from a deep slumber after passing a long time as if the court is storage of the suits filed by such negligent litigants..."

5.6 By its own act, the appellant has failed to remain vigilant and did not avail the opportunity to submit its point of view/contention, as it did not respond to various notices issued The fact that the appellant did receive the order and filed the present appeal, but chose not to respond to any notices issued by this office clearly establish total disregard to the due process of law Therefore, the conclusion that the appellant could not controvert the findings given by the AO on merits of the issue either is inescapable.

5.7 In view of the above, I am of the considered view that the Assessing Officer was justified in making total additions of Rs. 1,89,34,890/- in his order passed u/s 144 r.w.s. 147 of the Act, and accordingly, the grounds of appeal no. 1-4 of the appellant are "**Dismissed**"."

6. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(A).

7. Before us, the Counsel for the assessee submitted that on perusal of the assessment order, it is clear that all the cash deposits made in the bank accounts of the assessee were added as unexplained income of the assessee. Thus, despite the fact that the assessee had furnished statement showing both cash deposits

and cash withdrawals during the year under consideration, while passing the assessment order, no credit for cash withdrawals was given by the AO. Secondly, the Counsel for the assessee submitted that the company has been running into continuous losses and name of the company has also been struck off from the registrar of companies by ROC. However, the Counsel for the assessee submitted that during the impugned year under consideration the assessee is in a position to produce relevant invoices for purchases and sales to prove the source of cash deposits / credits appearing in the bank account of the assessee. The Counsel for the assessee submitted that if given an opportunity, the assessee is willing to comply with all notices issued by the Tax Department and is in a position to explain the source of cash deposits / credits in the bank account of the assessee.

8. In response, Ld. D.R. submitted that the assessee has not filed return of income for the impugned year under consideration and also has remained non-complaint during the course of appellate proceedings before CIT(A). Accordingly, it was submitted that no further opportunity of hearing should be granted to the assessee.

9. We have heard the rival contentions and perused the material on record.

10. On going through the facts of the instant case, we observe that while making the addition, the AO has added all the cash deposits as income for the assessee for the impugned year under consideration. Further, no credit for withdrawal has been given to the assessee as well. Further, in view of the submissions of the Counsel for the assessee that the assessee shall comply with all notices of hearing issued by the Department, in the interest of justice, one more opportunity is being granted to the assessee to present it's case on merits.

Accordingly, the case of the assessee is restored to the file of the AO for de-novo consideration, after giving due opportunity of hearing to the assessee. Further, the assessee is directed to promptly comply with all notices of hearing without any delay. In case, it is found that there is further non-compliance / non-appearance by the assessee, the AO would be at liberty to frame assessment order, in accordance with law, on the basis of material available on record.

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

**ITA No. 312/Ahd/2024 (A.Y. 2012-13)**

12. The assessee has raised the following grounds of appeal:

**ITA No. 312/Ahd/2024**

“1. The ld. CIT-A has upheld the action of the ld. AO in making the addition amounting to Rs. 1,47,11,677/- to the total income of the appellant.

2. The ld. CIT-A has upheld the action of the ld. AO in making the addition during the course of assessment proceedings and has confirmed the addition of Rs. 1,44,04,177/- to the total income of the appellant on account of various cash deposits and credit entries appearing in the bank account. During the year under consideration, the appellant has deposited 36,97,645/ in the bank account and there are certain credit entries amounting to Rs. 1,07,06,532/- The ld. CIT-A has upheld the action of ld. AO and has treated the same as unexplained income of the appellant and thus confirmed the addition to the total income of the appellant.

3. The CIT-A has upheld the action of the ld. AO in making the addition amounting to Rs.3,07,500/ on account of contract income as per information received from 26AS and ITS. The ld. CIT-A has confirmed the addition made by the ld. AO during the course of assessment proceedings.

4. The assessment order passed by the ld. AO is bad in law and is against the principles of natural justice. The ld. AO without giving appellant an opportunity to submit evidences has added the said income to the appellant on estimation basis.

5. The ld. AO has erred in law and on facts of the case in levying interest u/s 234A/B/C of the Act.

6. *The learned ld.AO has erred in law and on facts of the case in initiating penalty u/s 271(1)(c) of the Act.*

*The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.”*

13. Since same facts and issues for consideration are involved for both the years under consideration, the appeal of the assessee for A.Y. 2012-13 is also restored to the file of the AO for de-novo consideration and with similar directions as applicable for A.Y. 2011-12.

14. In the combined result, appeal of the assessee is allowed for statistical purposes for both the years under consideration before us.

<b>This Order is pronounced in the Open Court on</b>	<b>21/11/2024</b>
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**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 21/11/2024

TANMAY, Sr. PS

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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