

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

**BEFORE DR. B.R.R. KUMAR, VICE-PRESIDENT
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No. 987/Ahd/2024
(Assessment Year: 2013-14)

M/s. Sandip Kiritbhai Patel HUF 16, Devkutir Bungalows, Opp. Ambli Bus Stand, Ambli Bopal Road, Ahmedabad-380058 PAN: AAFHP 7013 P	Vs.	Deputy Commissioner of Income-tax, Circle 2(2)(1), Ahmedabad
(Appellant)	..	(Respondent)

Appellant by :	Shri Prithu Parimal, Advocate
Respondent by:	Shri B.P. Srivastava, Sr DR
Date of Hearing	26.11.2024
Date of Pronouncement	28.11.2024

ORDER

PER DR. B.R.R. KUMAR, VICE-PRESIDENT :

This appeal has been filed by the assessee against the order passed by the Ld. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre [NFAC], Delhi (hereinafter referred to as "CIT(A)" for short), dated 11.03.2024 passed under Section 250 of the Income-tax Act, 1961 [hereinafter referred to as "the Act" for short], for Assessment Year (AY) 2013-14.

2. The grounds of appeal taken by the Assessee are as follows :-

"1. The Ld. CIT(A) has erred by dismissing the appeal of the Appellant for non-prosecution. It is held in a catena of judgments that once an appeal is filed u/s 249 of the Act, the same is required to be adjudicated upon merits by the Ld. CIT(A), even in the absence of the Appellant. It is submitted that on this ground alone, the present petition deserves consideration and is required to be allowed.

2. The Ld. CIT(A) has erred in not appreciating that the notices issued to the Appellant u/s 148 & 148A of the Act are time barred since the present proceedings are arising out of A.Y. 2013-14. Therefore, the present proceedings are time barred not sustainable in the eyes of law.

3. The reasons for reopening supplied to the Appellant along with the notice u/s 148A(b) of the Act are vague, arbitrary and the intelligence being relied upon does not have any nexus whatsoever with the reasons being assigned for reopening and addition of income to the returns of the assessee. In fact, no reasons whatsoever are provided to establish a link between the Appellant and Shri Naresh Manakchand Jain.

4. The Ld. CIT(A) and the Ld. AO have erred in not appreciating that the Appellant is in the business of stock trading. Therefore, the Appellant treats and reports the same as profit and loss instead of capital gains or capital loss. It is stated that the subject securities transactions have been reported as part of the Appellants profit and loss account.

5. The Appellant had clearly informed at all the stages that he is in the business of share trading and there is no question of LTCG or even accommodation entry. Further, all his transactions are through SEBI registered brokers and on BSE NSE exchanges and all transactions are through banking channels. Moreover, the Appellant is dealing in the scripts of VAS Infra Ltd since FY 2010- 11, as part of his regular business. In total, the appellant may have dealt in more than 100 equity scripts and VAS Infra is just one of them. All transactions are duly recorded in his books of accounts and all the details were duly provided at all stages of assessment proceedings.

6. The Ld. AO has erred in making an addition of Rs. 47,12,842/- u/s 68 of the Act, on account of accommodation entry from one Mr. Naresh Manakchand Jain. It is stated and submitted that the Appellant has not received any such amounts from Mr. Naresh Manakchand Jain. It is further stated and submitted that the said person is unknown to the Appellant herein.

7. The appellant has filed its return of income for A.Y. 2013-14 on 30.09.2013 declaring total income at Rs. Nil. The return was processed u/s 143(1) of the Act. The case was selected for scrutiny and assessment was finalized u/s 143(3) and total income was assessed at Rs. Nil. The case of the appellant was reopened based on information received from

investigation unit that the appellant is one of the beneficiaries of accommodation entries and bogus LTCG through VAS Infra Ltd and Mr. Naresh Jain.

8. The Appellant craves leave of this Hon'ble Tribunal to rely upon such other grounds as may be advanced during the course of hearing. The Appellant also craves leave of this Hon'ble Tribunal to add/alter/amend the grounds of appeal as and when required in the interest of justice."

3. In this case, the assessee had filed return of income for AY 2013-14 on 30.09.2013 declaring Rs. Nil income. The case of the assessee was reopened based on information received from investigation unit that the assessee is one of the beneficiaries of accommodation entries and bogus LTCG through VAS Infra Ltd and Mr. Naresh Jain. The Assessing Officer thereafter framed assessment order u/s 147 r.w.s. 144/144B of the Act, making additions under Section 68 of the Act on account of bogus accommodation entry as the assessee could not explain the same with proper documents.

4. Aggrieved, the assessee filed an appeal before the Id. CIT(A) who summarily dismissed the appeal of the assessee owing to non-prosecution and confirmed the order of the Assessing Officer.

5. Aggrieved with the order of the Id. CIT(A) confirming the order of the Assessing Officer, the assessee filed appeal before the Tribunal on 10.05.2024. It is found that the assessee failed to appear before the Id. CIT(A) on several occasions resulting in passing of an "ex-parte" order by the Id. CIT(A). We strongly believe that every assessee has a right to appeal before the authorities against any addition or disallowance made to the returned income; at the same time, it is expected that the assessee would

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comply to the notices issued by the authorities in an appropriate way. The assessee has been miserably failed to attend before the Id. CIT(A). While the grievance of the assessee is not being preempted by us, at the same time, we feel that the conduct of the assessee is clogging the already burdened justice delivery system. Hence, we hereby direct the assessee to pay an amount of Rs.5,000/- to the "Prime Minister's National Relief Fund" and approach the Id. CIT(A) for a fresh hearing *de novo* which shall be considered. The Id. CIT(A) is hereby directed to afford an opportunity of being heard to the assessee before conclusion of the proceedings.

6. In the result, the appeal of the Assessee is allowed for statistical purposes.

The order is pronounced in the open Court on 28.11.2024

Sd/-

Sd/-

(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

(DR. B.R.R. KUMAR)
VICE-PRESIDENT

Ahmedabad; Dated 28/11/2024

btk

आदेश की प्रतिलिपि □ ग्रेषित / 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,

True Copy

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