

IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

AND

SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 861 & 863/RJT/2024

(Assessment Year: 2013-14)

(Hybrid Hearing)

Hetalkumar Bhupendrabhai Joshi. Vijay Villa, C/o, Kankrai L Mehta, 5-Mahavir Society Nirmala Road, Rajkot-360005	Vs.	The ITO, Ward-2(2)(1), Rajkot.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AGSPJ0840P		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारित की ओर से/Appellant by : Shri Raj Shekhar, Ld. AR

राजस्व की ओर से/Respondent by : Shri Abhimanyu Singh Yadav, Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing : 21/01/2025

घोषणाकीतारीख/Date of Pronouncement : 24/01/2025

आदेश/ORDER

PER DINESH MOHAN SINHA, JM:

Captioned appeals filed by the Assessee, are directed against the order passed by National Faceless Appeal Centre (in short 'NFAC'), Delhi, dated 09/09/2024, under section 250 of the Income Tax Act, 1961 (in short, 'the Act'). Which inter arises out of order passed by the Ld. AO u/s 147 r.w.s. 144 r.w.s. 144B of the Act vide order dated 13/09/2021.

2. The Grounds of appeal raised by the assessee in ITA-861/RJT/2024 are as follows:

1) *The grounds of appeal mentioned hereunder are without prejudice to one another.*

2) *The Ld. Commissioner of Income Tax (Appeals), NFAC erred on facts as also in law in dismissing appeal ex-parte.*

3) *The Ld. CIT(A) erred in facts as also in law in rejecting the appellant's application for condoning the delay in filling the appeal. The appeal may kindly be directed to be decided on merits.*

4) *The Ld. CIT(A) erred on facts as also in law in not deciding grounds of appeal related to validity of notice issued u/s 148 of the Income Tax Act, 1961. That on facts as also in law, proceedings-initiated u/s 147 of the Income Tax Act is invalid and assessment finalized on such invalid initiation deserves to be quashed and may kindly be quashed.*

5) *The Ld. CIT(A) erred on facts as also in law in confirming addition of Rs. 2,31,63,944/- being sale proceeds on sale of on sale of shares of Shrey Chemicals Ltd. On the alleged ground of accommodative entries. The addition confirmed is unjustified and uncalled for, which deserves to be deleted, may kindly be deleted.*

6) *The Ld. CIT(A) erred on facts as also in law in confirming addition Rs. 6,94,918/- made by the AO on account of alleged commission payment on above stated alleged accommodative entries. The addition confirmed is unjustified and uncalled for, which deserves to be deleted, may kindly be deleted.*

7) *Your Honour's appellant craves leave to add, to amend, alter, or withdraw any or more grounds of appeal on or before the hearing of appeal.*

3. Facts of the case are that the assessee has not filed return of income for the Assessment Year under consideration. Subsequently information was received from DDIT(Inv.), Unit-1(3), Ahmedabad that a search action u/s. 132 was carried out in the case of Sanjay Shah and Jignesh Shah of Ahmedabad, who were indulged in providing accommodation entries of Profits/Long Term Capital Gain/STCL through various listed companies managed by them through a synchronized manner. The information contained names and details of persons involved in providing accommodation entry of Profits/LTCG/STCL and their modus operandi for the same. The information received also contains the details of the beneficiaries of such bogus Profits/LTCG/STCL. As per the information received, the assessee has traded in one of the said scrips namely, Dhvanil

Chemicals Ltd (The name of Dhavnil Chemicals Ltd. was later changed to Shrey Chemicals Ltd., then Jagan Production Ltd. and presently Veronica Production Ltd.) during F.Y. 2012-13 buying 308000 shares worth Rs. 2,28,85,639/-and selling 308000 shares for Rs. 2,31,63,944/, resulting in profits of Rs.2,78,305/-. Also, the source of Rs.2,28,85,639/- were not clear as the assessee has not filed his income tax return for Assessment Year under consideration.

4. In view of the above, this case was reopened by issue of notice u/s 148 of the Income Tax Act. 1961 (hereinafter referred as Act) on 19.09.2019 with a reason to believe that the income for the A.Y. 2013-14 has escaped assessment within the meaning of provisions of section 147 of the I.T. Act, 1961 after recording the reasons as above. In response to notice u/s 148 of the Act, the assessee did not furnish return of income as per ITBA. The case was taken up for scrutiny and notice u/s. 142(1) of the Act dated 30.09.2020 was issued calling for various details. The relevant extract of said Notice u/s. 142(1) is as under:

"Please refer to the notice issued u/s 148 of the Income Tax Act did 19/09/2019, thereby you are required to furnish return of income for the A.Y 2013-14. However, till date you have not filed your return of income within the time allowed as per notice u/s 148 of the / T Act. It may please be noted that it is mandatory to file return of income electronically in response to the notice issued u/s 148 of the Income Tax Act 1961. Since no return of income filed by you within 30 days as specified in the notice u/s 148 of the / T Act assessment proceedings in your case has been initiated through this notice u/s 142 of the Income Tax Act. You are therefore directed to furnish the following details /explanation along-with supporting evidences in your case.

Furnish copy of return of income filed for the A. Y. 2013-14. copy of Bank statement for the relevant financial year, Computation of total income copy of form no.16 & form 26AS & copy of personal account if maintained. Please furnish copy of statement of demat account shares transaction if made during the year under consideration. Please furnish copy of ledger and statement of commission received during the year under the year consideration.

You are required to furnish the above information/details through e-mailonly on or before 15/10/2020. It may be noted that this is a time-barring proceedings and timely

compliance to the notice is absolute necessary. You are requested to note that incomplete compliance or non-compliance to this notice may attract penal provision of section 271(1)(b) of the IT. Act, 1961, which is 10,000/- for each default".

5. However, the assessee has not replied as per the records available on ITBA further notice was issued on 04/02/2021 which was duly served through e-mail from ITBA system. Another notice was issued on 04/02/2021 and reminder letter dated 12/02/2021 were physically served on the assessee on 25/05/2021. However assessee chose not to reply. Hence penalty proceedings were also initiated against the assessee u/s 271(1)(b) of the Act. On account of non compliance Ld. AO passed an ex-parte order.

6. Aggrieved by the order passed by the Ld. AO assessee carried the matter to the Ld. CIT(A).

7. Appeal was filed before the Ld. CIT(A) on 30/08/2022 which was beyond statutory time limit provided for filling the appeal. Assessee failed to justify any reasonable cause for delay in filling. Therefore, Ld. CIT(A) dismissed the appeal of the assessee.

8. Aggrieved by the order of the Ld. CIT(A) assessee is in appeal before us.

9. During the course of hearing Ld. Counsel for the assessee submitted that there was a delay in filling the appeal before the Ld. CIT(A) because assessee's wife was under pregnancy which resulted in miscarriage copy of the death certificate was submitted before the bench. Ld. Counsel prayed for an opportunity to present his case before the lower authority.

10. On the other hand Ld. Sr. DR has left the issue on the wisdom of the bench.

11. We have heard both the parties and perused the matter available before us. We note that Ld. CIT(A) disposed the appeal of the assessee because of delay in filling and assessee.

12. We are of the view that assessee did not have sufficient opportunities to present his cases. We are inclined to give one more opportunity to the assessee. Therefore, we are of the view that one more opportunity should be given to the assessee to present his case before the Ld. AO and penalty proceedings were also conducted on this issue therefore, assessee filed another appeal against the order of Ld. AO dated 16/02/2022 u/s 271 (1)(C) in ITA-863/RJT/2024. We set aside both the orders of Ld. AO and remit the matters back to the files of Ld. AO for fresh adjudication on merit after giving due opportunity to the assessee of being heard.

13. In the result, the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 24 /01/2025

Sd/-

(Dr. A.L. SAINI)

ACCOUNTANT MEMBER

Rajkot

Date:24/01/2025

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

Sd/-

(DINESH MOHAN SINHA)

JUDICIAL MEMBER

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot