

**IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT**  
**BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER**  
**AND**  
**SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER**

आयकर अपीलसं./ITA No.901/RJT/2024

**Assessment Year: (2017-18)**

**(Hybrid Hearing)**

Vishal Kanaiyalal Desai Jiya Hospital, Behind Bank of India, Hospital Road, Bhuj – 370001	Vs.	ACIT, Circle Gandhidham – 370201
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: <b>AHIPD7074N</b>		
(Appellant)		(Respondent)

**Appellant by** : Shri Samir Bhuptani, Ld. A.R.  
**Respondent by** : Shri Abhimanyu Singh Yadav, Ld. Sr. DR  
**Date of Hearing** : 28/01/2025  
**Date of Pronouncement** : 29/01/2025

**आदेश / ORDER**

**PER DINESH MOHAN SINHA, JM:**

Captioned appeal filed by the assessee is against the order passed by the National Faceless Appeal Centre [(in short “NFAC/Ld. CIT(A)”] vide order dated 27.08.2024, which in turn assessment order passed by Assessment Unit, Income Tax Department / Assessing Officer under section 147 and 144B of the Income Tax Act, 1961 (in short “the Act”).

2. Grounds of appeal raised by the assessee are as follows:

*1. Ld. CIT(A) erred in law as well as on facts in passing the ex-parte appellate order u/s 250 of the Income Tax Act, 1961 which is bad in law and without appropriate jurisdiction.*

*2. Ld. CIT(A) erred in law as well as on facts in presuming that the appellant is not interested in prosecution of the appeal.*



*3. Ld. CIT(A) erred in law as well as on facts in not adjudicating the grounds of appeal raised by the appellant in his appeal memo on merits and thereby dismissing the appeal for want of prosecution.*

*4. Ld. AO erred in law as well as on facts in issuing notice u/s. 148 of the act and thereby re-opening the concluded assessment, which is bad in law and without appropriate jurisdiction.*

*5. Ld. AO erred in law as well as on facts in passing the assessment order u/s. 147 r.w.s. 143(3) of the act, which is bad in law and without appropriate jurisdiction.*

*6. Ld. AO erred in law as well as on facts in making addition of Rs. 32,63,737/-u/s. 69A of the act on account of unexplained sale proceed of alleged penny stock scrip alleged to be arranged by the appellant to claim exempted LTCG u/s. 10(38) of the act. Ld. CIT(A) erred in law as well as on facts in not adjudicating the same.*

*7. Ld. AO erred in law as well as on facts in making addition of Rs. 49,968/- on account of alleged unexplained commission expenditure on account of arranging bogus LTCG from penny stock scrip. Ld. CIT(A) erred in law as well as on facts in not adjudicating the same.*

*8. Ld. AO erred in law as well as on facts in invoking provision of section 69A r.w.s. 115BBE in respect of the disclosure made by the appellant Rs. 25,05,400/- on account of fees from patients. Ld. CIT(A) erred in law as well as on facts in not adjudicating the same.*

3. Brief facts of the case that the Appellant is individual, practicing general physician, books of account of the appellant have been regular maintained and audited u/s 44AB of the Income Tax Act, Return of Income for the assessment year under considered was filed on 28.11.2017 wide acknowledgment no 318166381281117 declaring total income at Rs. 57,27,650/-and on 27.09.2018 selected for assessment U/s 143(2) of Income Tax Act by Deputy Commissioner of Income Tax, Gandhidham Circle, Gandhidham (Jurisdictional "AO") during the course of assessment assessee has furnished all the relevant and required details before AO.

The case was reopening for assessment u/s 147 of Income Tax Act, for verification of share transaction i.e. purchase and sale of penny stock. Notice u/s 148 of Income Tax Act has issued on 31.03.2021. in response to the notice u/s



148 return of income filed on 22.04.2021 declaring the same income as in original return. Notice u/s 143(2) of Income Tax Act, issued on 14.07.2021 assessee furnished all the relevant and required details before AO. AO has passed order u/s 147 of the Income Tax Act on 30.03.2022 which was served on 31.03.2022. AO has made following adjustments to the returned income of the appellant. Added sale proceeds of share of Rs. 32,63,737 as unexplained money u/s 69A and Rs. 49,968 as unexplained expenditure u/s 69C of Income Tax Act. Also add amount of Rs. 25,04,400 unaccounted money consequents to survey operation in the premises of assessee u/s 69A of Income Tax Act. A.O has therefore assessed income of the appellant of Rs. 1,15,46,755 and raised demand of Rs. 71,92,376 which is injustices and unfair.

4. The assessee filed an appeal before the CIT(A). Ld. CIT(A) issued notices for hearing u/s.250 of the I T Act dated 05.02.2024, 19.02.2024, 11.07.2024 and 25.07.2024 to the appellant. In response to the same, the appellant did not file any submission. The assessee failed to respond various notice issued for hearing.

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

6. Ld. Counsel of the assessee prayed that one more opportunity given to the assessee to represent the case before lower authority may kindly be granted to the assessee.

7. Ld. DR relied on the order of the Ld. CIT(A) stating that due opportunities were given to the assessee. However, Ld. Sr. DR has not objected to the prayer of the assessee.

8. We have heard both the parties and perused the material available on records. we note that assessee was not given due opportunity of being heard and could not



plead his case successfully before the Id. CIT(A) because notices were only sent not served on assessee. We also note that assessee has appeared before the Ld. AO and furnished all the documents. It is settled law that principles of natural justice and fair play require that the affected party should be granted sufficient opportunity of being heard to contest his case. Therefore, without delving much deeper into the merits of the case, in the interest of justice, we restore the matter back to the file of Ld. CIT(A) for de novo adjudication and pass a speaking order after affording opportunity of being heard to the assessee, who in turn, is also directed to contest his stand forthwith. Therefore, we deem it fit and proper to set aside the order of the Id. CIT(A) and remit the matter back to the file of the Id. CIT(A) to adjudicate the issue afresh on merits.

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

**Order is pronounced in the open court on 29/01/2025**

**Sd/-**

**(A. L. SAINI)**

**ACCOUNTANT MEMBER**

Rajkot

दिनांक/ Date: 29/01/2025

**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