

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F': NEW DELHI**

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

ITA No.4824/Del./2024, A.Y. 2013-14

Raghupati Commodities Private Limited 4056-57C, Room No. 3C, 3 rd Floor Naya Bazar, Naya Bazar, Near Lahori Gate, New Delhi PAN: AACCCJ9550B	Vs.	Income Tax Officer, Ward-20(3), C. R. Building, New Delhi
(Appellant)		(Respondent)

Appellant by	None
Respondent by	Ms. Harpreet Kaur Hansra, Sr. DR

Date of Hearing	18/02/2025
Date of Pronouncement	18/02/2025

ORDER

PER AVDHESH KUMAR MISHRA, AM

The appeal for the Assessment Year (hereinafter, the 'AY') 2013-14 filed by the assessee is directed against the order dated 21.06.2024 of the Commissioner of Income Tax (Appeals), NFAC, New Delhi [In Short 'the CIT(A)'].

2. The assessee, vide 15 grounds, raised following issues: -
 - i. Addition of Rs.8,80,16,255/-

ii. Jurisdiction under section 148 of the Income Tax Act, 1961
(hereinafter, the 'Act')

iii. Validity of notice of demand under section 148 of the Act

3. The relevant facts giving rise to this appeal are that the appellant/ assessee is a company 'M/s. Raghupati Commodities Pvt. Ltd.', engaged in commodities trading, filed its Income Tax Return (hereinafter, the 'ITR') for the relevant year declaring income of Rs.50/-. Later on, the case was reopened under section 148 of the Act. The assessee did not ensure any compliance during the assessment proceedings. Therefore, the Assessing Officer (hereinafter, the 'AO') had not any option except to complete assessment under section 147 r.w.s. 144 r.w.s. 144B of the Act. Therefore, the AO completed the assessment at income of Rs.8,80,16,260/- holding as under:

"A. On the basis of material available with the department, during the year under consideration, the assessee company was involved in financial transactions with Surya Sales Corporation being Proprietorship concern of Shri Lalit Kumar (PAN AGQPK0745E) having account no.031605500186 maintained with ICICI Bank, Nayabazar Branch, wherein high value of cash deposition followed by transfer to another account has been noticed. On perusal of the said bank account statement, it has been observed that there are huge credits by cash and debits by RTGS/Transfer. During the Investigation carried out by the Investigation wing, it has been observed that the said account holder is non traceable and he had not filed his ITR Accordingly, it was established by the investigation wing that the transaction made with the help of the alleged bank account is nothing

but accommodation entry to route unaccounted cash in the books under guise of banking transaction. The assessee company is one of the beneficiaries, who got benefitted from the alleged bank account and got accommodation entry for Rs. 1,85,75,000/-.

During the course of assessment proceeding, the assessee was asked to submit his explanation with supporting documents to justify the nature of the transaction. The assessee didn't submit any submission; hence, the same transaction remained to be verified. On the basis of the findings noted above and looking the fact of the case, it can safely be concluded that the assessee was in receipt of unaccounted cash of Rs. 1,85,75,000/-, which has been routed in its book under the guise of banking transaction with the alleged bank account. The action of the assessee comes under deeming provision of the Act and deserves to be treated as income of the assessee company within the meaning of Section 69A of the I.T. Act being unexplained money and the same is suppressed by the assessee for taxation. Further, I am fully satisfied that the assessee has concealed its particulars of income, hence, it is liable for penalty proceeding u/s 271(1)(c) of the Act. Accordingly, Penalty proceedings U/s. 271 (1) (c) of the I.T. Act, 1961 is also proposed for concealment of particulars of income for A.Y. 2013-14.

B. During the course of assessment proceeding, on the basis of information in possession of the department, it has been observed that the assessee company has entered into high value transactions with M/s. India Trade Link prop. Shri Sanjay Sharma, Ghaziabad having PAN BIIPS5688D, through Dhanlaxmi Bank Account No. 019106200002981, for Rs.55,70,650/-, which is credited to assessee company's bank account. Further, it has also been gathered and the relevant information is in possession of the department, that an amount of Rs.45,81,650/- was also transferred to assessee company from M/s. India Trade Link bank account maintained with Dhanlaxmi Bank of Shri Sanjay Sharma prop of M/s India Trade Link, who has never filed his ITR. Therefore, the total amount of Rs.1,01,52,300/-(55,70,650/-+45,81,650/-) are remained to be verified and the genuineness of these transactions could not be

established as the assessee company has decided to remain non-responsive. Hence, it can safely be concluded that the said amount is nothing but unexplained money of the assessee, which needs to be treated as income of the assessee company within the meaning of Section 69A of the I.T. Act being un-explained money and the same is suppressed by the assessee for taxation. Further, I am fully satisfied that the assessee has concealed his particulars of income and hence, liable for penalty proceeding u/s 271(1)(c) of the Act. Therefore, penalty proceedings u/s 271(1)(c) of the I.T. Act, 1961 for concealment of income is also proposed to be initiated separately for the AY 2013-14.

C. During the assessment proceedings and as per the information in possession of this office the assessee company has made Sale of futures (derivative) in a recognized stock exchange of being trade value of taxable securities transaction of Rs.1,21,94,100/- using Trading Client Code INS405 through stock broker code 14323 during the F.Y.2012-13 relevant to the A.Y.2013-14. The same is not reflected in the ITR filed by the assessee company and which is not in commensurate with income shown in the ITR filed for A.Y.2013-14. The assessee company has not furnished any reply or documents to substantiate its claim. Therefore, the amount of Rs.1,21,94,100/- is treated as unexplained investment u/s 69 of the I.T. Act being unexplained investment and the same is suppressed by the assessee for taxation. Further, I am fully satisfied that the assessee has concealed his particulars of income and hence, liable for penalty proceeding u/s 271(1)(c) of the Act. Therefore, penalty proceedings u/s 271(1)(c) of the IT Act, 1961 for concealment of income is also proposed to be initiated separately for the AY 2013-14.

D. During the assessment proceeding and as per the information in possession of this office, it has been observed that the assessee company has purchased equity shares in a recognized stock exchange NSE being value of taxable securities transaction of Rs.4,70,94,805.70 rounded off to Rs. 4,70,94,806/- using trading client code INS405 and stock broker code 14323 during the F.Y.2012-13 relevant to the A.Y.2013-14. The same is not reflected in the ITR

filed by the assessee company and is not in commensurate with income shown in the ITR filed for A.Y.2013-14. The assessee company has not furnished any reply or documents to substantiate its claim. Therefore, the amount of Rs.4,70,94,806/- is treated as unexplained investment U/s.69 of the I.T. Act being unexplained investment and the same is suppressed by the assessee for taxation. Further, I am fully satisfied that the assessee has concealed his particulars of income and hence, liable for penalty proceeding u/s 271(1)(c) of the Act. Therefore, penalty proceedings U/s.271(1)(c) of the I.T. Act, 1961 for concealment of income is also proposed to be initiated separately for the AY 2013-14.

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Final computation of taxable income:

<i>Sl. No.</i>	<i>Description</i>	<i>Amount (in INR)</i>
1.	<i>Income as per Return of Income filed</i>	<i>50/-</i>
2.	<i>Income as computed u/s 143(1)(a)</i>	<i>50/-</i>
3.	<i>Un-explained money u/s 69A as discussed in para-A above.</i>	<i>1,85,75,000/-</i>
4.	<i>Un-explained investment u/s 69A as discussed in para-B above</i>	<i>1,01,52,300/-</i>
5.	<i>Un-explained investment u/s 69 as discussed in para-C above</i>	<i>1,21,94,100/-</i>
6.	<i>Un-explained investment u/s 69 as discussed in para-D above</i>	<i>4,70,94,806/-</i>
7.	<i>Total Income/Loss determined</i>	<i>8,80,16,260/-</i>

3.1 Aggrieved, the assessee filed appeal before the CIT(A), who dismissed the appeal due to non-prosecution.

4. The assessee was not represented by anyone.

5. On the other hand, the Ld. Sr. DR, drawing our attention to various paras of the assessment order and impugned appellate order, submitted that

reasonable opportunities of being heard were provided to the appellant assessee by the AO and the Ld. CIT(A). However, the appellant assessee tactfully ensured noncompliance to avoid proper investigations. Hence, she prayed for upholding of orders of the lower authorities. On specific query by us, she admitted that the issue in dispute had not been decided on merit either by the AO or the Ld. CIT(A).

6. We have heard the Sr. DR have perused the material available on the record. We take note of the fact that the Ld. CIT(A) has dismissed the appeal ex parte due to non-prosecution and has not adjudicated the case on merits. Moreover, the Ld. CIT(A) has not decided each ground of appeal after discussing issues in detail and his reasons for agreeing with the assessment order though he, as per provisions of section 250(6) of the Act, is obliged to dispose of the appeal in writing with well-reasoned order on each point of determination arisen for his consideration. It is evident from the perusal of section 251(1)(a), 251(1)(b) and Explanation of section 251(2) of the Act that the CIT(A) is required to apply his/her mind to all issues arise from the impugned order before him/her, whether or not these issues have been raised by the assessee before him/her.

7. Section 251(1)(a) of the Act provides that while disposing of an appeal against assessment order, the CIT(A) shall have the power to confirm, reduce, enhance or annul the assessment. Similarly, the section 251(1) (b) of

the Act provides that in disposing of an appeal against an order imposing a penalty, the CIT(A) may confirm or cancel such orders or vary it so as to either to enhance or to reduce the penalty. On cumulative consideration of the provisions of section 250(6) of the Act read with sections 250(4), 250(5), 251(1)(a), 251(1)(b) of the Act and Explanation of section 251(2) of the Act, it is concluded that the CIT is not empowered to dismiss the appeal for non-prosecution of appeal and is obliged to dispose of the appeal on merits. In this regard, the finding of the Delhi Bench in the case of MARC Laboratories Ltd. in ITA No.2731, 2732, 2733, 2730, 2734 & 2735/DEL/ 2022 is worth extracting as under:

“5. We straightway refer to Section 250(6) of the Act which enjoins that the CIT(A) shall state the points for determination before it and the decision shall be rendered on such points along with reasons for the decision. Thus, it is incumbent upon the CIT(A) to deal with the grounds on merits even in ex parte order. In view of Section 250(6) of the Act, the CIT(A) has no power to dismiss an appeal on account of non-prosecution. This view is also taken by the Hon'ble Bombay High Court in case of CIT vs. Premkumar Arjundas Luthra HUF, (2017) 291 CTR 614 (Bom.). A bare glance of the order of the CIT(A) shows that CIT(A) has not addressed itself on various points placed for its determination at all and dismissed the appeal of assessee for default in non-appearance. Needless to say, the CIT(A) plays role of both adjudicating authority as well as appellate authority. Thus, the CIT(A) could not have shunned the appeal for non-compliance without addressing the issue on merits.

6. In the totality of the circumstances, we consider it just and expedient to restore the matter back to the CIT(A) in the larger interest of justice with a view to enable the assessee to avail proper opportunity for disposal of appeal by the CIT(A) on various points. The assessee is cautioned to extend full co-operation to the CIT(A) without any demur,

failing which, the CIT(A) shall be at liberty to conclude the appellate proceedings in accordance with law. Hence, the order of the CIT(A) appealed against, is set aside and all the issues raised in the impugned appeal are restored back to the file of the CIT(A) for fresh adjudication in accordance with law after giving reasonable opportunity of hearing to the assessee.”

8. Neither the AO nor the Ld. CIT(A) has decided the case on merit due to consistent non-compliance of the assessee before them. Even before us, the assessee was also not represented. However, without offering any comment on merit of the case and in the interest of justice & facts of the case in entirety, we deem it fit to set aside the impugned order and remit the matter back to the file of the AO for deciding the case afresh, in accordance with law, after providing adequate opportunity of being heard to the appellant assessee. The appellant assessee, no doubt, shall cooperate in remitted assessment proceedings.

9. In the result, the assessee's appeal is allowed for statistical purposes.

Order pronounced in open Court on 18th February, 2025

Sd/-

(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-

(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER

Dated: 18/02/2025

Binita, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. PCIT
4. CIT(Appeals)

ITA No.4824 /Del/2024
Raghupati Commodities P. Ltd.

5. Sr. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI