

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI T. R. SENTHIL KUMAR, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.203/SRT/2025

Assessment Year: (2011-12)

(Hybrid hearing)

Promila Vinodkumar Bhatia R-102, Pramukh Vihar Phase-5, Naroli Road, Silvassa, Dadra and Nagar Haveli-396 230	Vs.	ITO, Ward – 2, Vapi
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: ADZPG2322F		
(Appellant)		(Respondent)

Appellant by	Shri P. M. Jagasheth, CA
Respondent by	Shri Ajay Uke, Sr. DR
Date of Hearing	02/07/2025
Date of Pronouncement	03/09/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal by the assessee emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') dated 23.12.2024 by Commissioner of Income-tax (Appeal) / Addl/JCIT(A), Mysore [in short, 'CIT(A)'] for the assessment year (AY) 2011-12.

2. The grounds of appeal raised by the assessee are as under:

"1. The Ld. CIT(a) has erred both in law and on facts in upholding the addition of Rs.5,76,373/- made by LD. AO being profit from sale of listed share exempt under section 10(38) of the Income Tax Act, 1961.

2. The Ld. CIT(A) has erred both in law and on facts in upholding the addition of Rs.9,489/-."

3. Facts of the case in brief are that assessee had not filed her return of income for AY 2011-12 u/s 139(1) of the Act. The case was re-opened on the

basis of information available with the department that the assessee is a non-filer. The assessee had made share transactions of Rs.3,44,582/- during the year under consideration. The case was re-opened after recording the reasons and obtaining necessary approval from the competent authority, by issuing notice u/s 148 of the Act on 28.03.2018. Various notice and show cause notices u/s 142(1) r.w.s. 129, 142(1) and 148 of the Act were issued to the assessee. The assessee was requested to file her reply / explanation, but she failed to do. The AO observed that the assessee had earned profit of Rs.5,76,373/- on share transactions during the subject year. The AO show caused as to why the said transaction should not be added to her total income. The assessee failed to offer any explanation regarding the share transactions. Further, the AO noticed from the bank statement bearing No.00741000009827 of HDFC Bank Ltd. that there were cash deposit and other credit of Rs.9,489/- during the FY 2010-11. The preliminary onus to prove the source of deposits in her bank account was on the assessee. But the assessee failed to discharge the onus casted upon her. Therefore, the entire amount of Rs.9,489/- was treated as income from undisclosed sources. The total income was assessed at Rs.5,85,862/-.

4. Aggrieved by the order of AO, the assessee filed appeal before the CIT(A). The appellant mentioned the reason for belated filing appeal before the CIT(A). The CIT(A) condoned the delay in filling appeal before him. The CIT(A) issued five notices of hearing, but assessee filed reply only two occasions. The

finding of the AO is at pages 5 to 8 of the appellate order. The reply of the appellant along with additional evidence at pages 9 to 10 of the appellate order. The same was forwarded to AO for remand report. The AO furnished remand report, which is at pages 11 to 15 of the appellate order. The CIT(A) observed that the appellant raised only one ground regarding the addition of long-term capital gains and dividend income in the assessment order. The appellant submitted reply in support of appeal along with additional evidence. The CIT(A) observed that the remand report furnished by the AO is very exhaustive and self-explanatory. The CIT(A) upheld the addition made by AO and dismissed the appeal of appellant.

5. Aggrieved by the order of CIT(A), the assessee has filed appeal before the Tribunal. The learned Authorized Representative (Id. AR) of the assessee submitted that the assessee had not received the notices sent for scrutiny and received the assessment order on 30.12.2018. He submitted that the AO as well as CIT(A) passed ex-parte orders without proper hearing of the appellant. He submitted that the non-compliance of the notices before the AO and CIT(A) was not deliberate on the part of the appellant. The Id. AR submitted that the CIT(A) dismissed the appeal without calling for the rejoinder from the appellant, which is in clear violation of the principles of natural justice. He requested that one more opportunity may be given to the appellant to plead his case on merit.

6. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) of the revenue supported the order of CIT(A). He submitted that the CIT(A) has passed the order after considering submission of the appellant and remand report of AO. He would, however, have no objection if the matter is restored to file of AO.

7. We have heard both the parties and perused the materials available on record. The AO made the addition of Rs.5,85,862/-. The CIT(A) has dismissed appeal on the basis of remand report of the AO. However, he has not forwarded the remand report to the appellant for filing a rejoinder. We also find that the share profit earned by assessee was on transactions of shares of reputed companies such as Ashok Leyland Ltd., Reliance Industries Ltd. and ICICI Bank Ltd. Therefore, the order of CIT(A) is in clear violation of the principles of natural justice as well as the express provisions of section 250(6) of the Act. Considering the facts and circumstances of the case and the fact that the assessment order was confirmed by CIT(A) without rejoinder of the appellant, we are of the considered view that the assessee deserves one more opportunity to plead his case on merit. In the interest of justice, we set aside the order of CIT(A) and remit the matter back to the file of AO for fresh assessment after granting adequate and reasonable opportunity of hearing to the assessee. The assessee is directed to be vigilant and to furnish all details and explanation as needed by the AO by not seeking adjournment without valid reason. The ground is allowed for statistical purpose.

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

Order is pronounced under provision of Rule 34 of ITAT Rules, 1963 on
03/09/2025.

Sd/-
(T. R. SENTHIL KUMAR)
JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Surat

दिनांक/ Date: 03/09/2025

SAMANTA

Copy of the Order forwarded to:

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

// TRUE COPY //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat