

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'C' BENCH, KOLKATA**

**Before**

**SHRI GEORGE MATHAN, JUDICIAL MEMBER  
&  
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 1389/KOL/2023  
Assessment Year: 2009-10**

Diamond Tradecom Private Ltd.	Vs.	National Faceless Appeal Centre (NFAC), Delhi
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN: AACCD8131A</b>		

**Appearances:**

**Assessee represented by** : None.

**Department represented by** : Praveen Kishore, CIT (DR).

Date of concluding the hearing : 14-August-2025

Date of pronouncing the order : 29-September-2025

**ORDER**

**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2009-10 dated 10.11.2023, which has been passed against the assessment order u/s 143(3)/147/263/144 of the Act, dated 04.03.2015.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

*"1. The Ld. CIT(A) erred confirming the addition of Share application money along with premium amounting to Rs. 13,55,00,000/- received during the year as unexplained cash credit u/s. 68 of the Income Tax Act, 1961.*

*2. The Ld. CIT(A) erred in initiating penalty 271(1)(b) of the act.*



3. *The Ld. CIT(A) erred in initiating penalty 271(1)(c) of the act.*

4. *The appellant craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing.”*

3. Brief facts of the case are that the assessee company electronically filed its income tax return for AY 2009-10 showing total income of ₹105/-. However, the assessment order dated 04.05.2011 was framed u/s 143(3)/147 of the Act assessing the total income at ₹34,310/-. The assessee company had shown receipt of significant fresh share capital subscription including share premium amounting to ₹13.55 crores during the relevant previous year. The Commissioner of Income Tax, Kolkata, noted that the Assessing Officer (hereinafter referred to as Ld. 'AO') had not conducted a thorough inquiry into the existence, creditworthiness, or genuineness of the share subscribers or the investments made. Consequently, the earlier assessment order was set aside for reassessment with directions to the Ld. AO to conduct detailed inquiries into the source of the share capital and premium, examine the source of funds, verify documents, and examine the directors and the subscriber companies to determine the true nature and authenticity of the capital infusion. Repeated notices were issued to the assessee company and also to the directors of both the companies and its share subscribers requesting for detailed documentation and evidence to substantiate the share subscriptions and to prove the genuineness of the transactions. The assessee and its directors failed to respond, to produce the required documents or appear for examination. The Ld. AO cited several judicial precedents and held that the onus of proving the identity, creditworthiness, and genuineness of the subscriber lies on the assessee. Since the assessee failed to discharge this burden, the alleged fresh share capital subscription of ₹13.55 crores, including share



premium, was treated as unexplained cash deposits. The assessee was found to have no real business activity during the year, and it was held improbable that prudent investors would subscribe at such a large premium to a company without a genuine business or promising returns. Hence, the Ld. AO added back the amount of ₹13.55 crore to the assessee's income as unexplained cash credit and assessed the total income of the assessee at ₹13,55,34,310/- u/s 147/143(3)263/144 of the Act. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who issued several notices for hearing but there was no response to the notices from the assessee except seeking adjournment. Accordingly, the Ld. CIT(A) held as under:

*“5.3 This appeal has been filed by the appellant claiming that the AO has erred in making addition of Rs. 13,55,00,000 as unexplained cash credits u/s.68 of the act. In such a situation, it is for the appellant to furnish submissions with relevant evidence(s) to support its claim. The burden of proof is always on the person who makes the claim. In this case, it is the appellant who has made the claim by filing the appeal. Thus, in cases where a particular receipt is sought to be taxed as income, the initial onus is on the Assessing Officer to prove that it is taxable. Where, however, the assessee claims exemption, the burden is on the assessee to prove it to be exempted. Same is the position in case of all allowances, deductions, claims or loss, etc. Since an appeal is nothing but the claim of the appellant that he has been unduly and unjustifiably taxed, it is for the appellant to prove its case.*

*5.4 From the conduct of the appellant as per the facts noted above, it is clear that the appellant does not wish to pursue the appeal. However in this regard, various Tribunals have held that once an appeal is preferred before the CIT(A), it becomes obligatory on his part to dispose off the same on merit and it is not open for him to summarily dismiss the appeal on account of non-prosecution of the same by the assessee. This is fortified by Hon'ble High Court of Mumbai in the case of CIT VS Premkumar Arjundas (HUF) (2017) 297 CTR 614 (Bom).*

*5.5 The only material available to decide the appeal is the assessment order. In my considered view, the findings of the AO in the assessment order are self-speaking and do not require any interference. Hence the appeal is liable to be dismissed.*



6. *In the result, the appeal is dismissed.*”

4. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

5. None appeared on behalf of the assessee and the case was heard with the assistance of the Ld. DR. It was submitted that no reply was filed before the Ld. CIT(A) and the assessment order before the Ld. AO is also *ex parte*. He vehemently argued that the order of the Ld. CIT(A) may be upheld and the appeal may be dismissed.

6. We have considered the submissions made by the Ld. DR. A perusal of the appellate order shows that while the Ld. CIT(A) has discussed non-compliance on the part of the assessee as the notices sent were not complied with but he has not adjudicated the appeal on merit. We note that section 250(6) casts a duty on the Ld. CIT(A) to pass an order in appeal which should state the points for determination and a decision as well as the reason for arriving at such decision. The provisions of section 250(6) are reproduced as under:

*“250(6) – The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.”*

7. A perusal of the appellate order shows that while the Ld. CIT(A) has discussed non-compliance on the part of the assessee as the notices sent were not complied with but he has not adjudicated the appeal on merit. The Ld. CIT(A) upheld the view of the AO and has not passed a reasoned order for arriving at the decision, as is required u/s 250(6) of the Act. We further note that in **Ajji Basha Vs. CIT (2019) 111 taxmann.com 348 (Madras)** it has been held that a speaking order on merits with reasons and findings is to be passed by Commissioner (Appeals) on basis of ground raised in assessee's appeal; he cannot

dispose assessee's appeal merely by holding that Assessing Officer's order is a self-speaking order which requires no interference. The relevant extract from the order is as under:

*“6. ... The first respondent is the appellate authority. Needless to state that the Appellate Authority is also a fact finding authority and therefore, he has to consider the order of assessment on the grounds raised in the appeal and thereafter, pass a speaking order on merits and in accordance with law by giving his own reasons and findings as to whether the order of assessment can be sustained or not. In other words, the order passed by the Appellate Authority should explicitly exhibit his application of mind to the facts and circumstances and the objections raised in the grounds of appeal, also by expressing his reasons and findings in support of his conclusion.*

*7. In this case, the Appellate Authority, after extracting the order of the Assessing Officer in full, has not given any other reason or finding to dismiss the appeal except by stating that he is of the considered view that the Assessing Officer's order is a self speaking order and does not call for any interference. In my considered view, such single line finding of the Appellate Authority, cannot be sustained as a proper exercise of the Appellate Authority, while disposing the appeal. Therefore, it is apparent that the order impugned in this writ petition is an outcome of total non-application of mind. Consequently, the impugned order cannot be sustained. It is further contended that before passing the order, the petitioner was not heard.”*

8. It has also been held in the case of **Commissioner of Income-tax (Central) Nagpur v. Premkumar Arjundas Luthra (HUF) [2016] 69 taxmann.com 407 (Bombay)** after discussing the provisions of sections 250(1) and 251(1) that the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act. The relevant extract is as under:

*“8. From the aforesaid provisions, it is very clear once an appeal is preferred before the CIT(A), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the Assessing Officer to make further inquiry and report the result of the same to him as found in Section 250(4) of the Act. Further Section 250(6) of the Act obliges the CIT(A) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration with reasons in support. Section 251(1)(a) and (b) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm,*



*reduce, enhance or annul an assessment and/or penalty. Besides Explanation to sub-section (2) of Section 251 of the Act also makes it clear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). Thus once an assessee files an appeal under Section 246A of the Act, it is not open to him as of right to withdraw or not press the appeal. In fact the CIT(A) is obliged to dispose of the appeal on merits. In fact with effect from 1st June, 2001 the power of the CIT(A) to set aside the order of the Assessing Officer and restore it to the Assessing Officer for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) is co-terminus with that of the Assessing Officer i.e. he can do all that Assessing Officer could do. Therefore just as it is not open to the Assessing Officer to not complete the assessment by allowing the assessee to withdraw its return of income, it is not open to the assessee in appeal to withdraw and/or the CIT(A) to dismiss the appeal on account of non-prosecution of the appeal by the assessee. This is amply clear from the Section 251(1)(a) and (b) and Explanation to Section 251(2) of the Act which requires the CIT(A) to apply his mind to all the issues which arise from the impugned order before him whether or not the same has been raised by the appellant before him. Accordingly, the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act.”*

9. The assessee had received the share capital and since proper representation could not be made either before the Ld. CIT(A) or before Ld. AO, therefore, in the interest of justice and fair play, it was considered that the assessee may be given another hearing by the Ld. AO so that a proper opportunity of being heard may be provided. Hence, after examining the facts of the case, we deem it appropriate to set aside the order of the Ld. CIT(A) as well as the order of the Ld. AO and remit the matter back to the Ld. AO for making the reassessment *de novo*. This being so, the issue in this appeal is restored to the file of the Ld. AO subject to the assessee paying a cost of ₹1,00,000/- (Rupees one lakh) to the Legal Aid Services, 3<sup>rd</sup> Floor of the Centenary Building, High Court, Calcutta - 700001, within sixty days from the date of this order and produce the receipt of the same before the Ld. AO. In case the



assessee does not pay the above-mentioned cost of ₹1,00,000/- within the prescribed period of sixty days from the date of this order, the order of the Ld. AO which has also been confirmed by the Ld. CIT(A) shall stand confirmed. Needless to say, the assessee shall be given a reasonable opportunity of being heard to make any further submission it wants to make in support of its grounds of appeal and shall not seek unnecessary adjournments. Accordingly, the grounds taken by the assessee in his appeal are partly allowed for statistical purposes.

10. We may add that since the assessee has received the share capital therefore, in order to substantiate the three ingredients of the cash credits *viz.* the identity and creditworthiness of the creditor and the genuineness of the transaction, the assessee shall produce the directors for cross-examination before the Ld. AO and the failure to do so may result in an adverse view, which the Ld. AO may draw on the facts of the case.

11. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

**Order pronounced in the open Court on 29<sup>th</sup> September, 2025.**

*Sd/-*

**[George Mathan]**  
Judicial Member

*Sd/-*

**[Rakesh Mishra]**  
Accountant Member

Dated: 29.09.2025

*Bidhan (Sr. P.S.)*



*Copy of the order forwarded to:*

1. **Diamond Tradecom Private Ltd., Shop No-1 Shiv Ganga CHS Ltd., Ram Kuwar Thakur Road Dahisar (East), Mumbai, Maharashtra, 400068.**
2. **National Faceless Appeal Centre (NFAC), Delhi.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

*// True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata