

**THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH**

**Before Ms. Suchitra Kamble, Judicial Member
And Shri Narendra Prasad Sinha, Accountant Member**

**ITA No. 618/Ahd/2023
Assessment Year 2011-12**

Bindu Dharmesh Bhatt, 15, Pankaj Soicity, Nr. Kalpataru Store, Ellorapark, Vadodara-390007 PAN: AGJPB7400L (Appellant)	Vs	The ACIT, Circle-1(3) Vadodara (Respondent)
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**Assessee by: Shri Tushar Hemani, Sr. A.R.
Revenue by: Shri Rameshwar P. Meena, Sr. D.R.**

Date of hearing : 26-11-2025
Date of pronouncement : 29-01-2026

आदेश/ORDER

Per Suchitra Kamble, Judicial Member:

This is an appeal filed against the order dated 14-06-2023 passed by National Faceless Appeal Centre(NFAC), Delhi for assessment year 2011-12.

2. The grounds of appeal are as under:-

"1. The Ld. CIT(A) has erred in law and on facts of the case in confirming action of Ld. AO of reopening the assessment u/s. 147 of the Act. Under the facts and circumstances of the case, the action of reopening is without jurisdiction and is not permissible either in law or on facts.

the assessee filed submissions dated 10-05-2018. The assessee submitted before the Assessing Officer that the return of income for assessment year 2011-12 was filed on 30-09-2011, should be treated as return of income against notice u/s. 148 of the Act. The assessee is engaged in the business of share investment. After taking cognizance of the assessee's reply, the Assessing Officer observed that assessee purchased commodities worth Rs. 46,23,25,903/- and sold the same for Rs. 45,38,26,890/- within the time span of only 5 days i.e. from 24-03-2011 to 30-03-2011. The assessee has purchased the commodity from M/s. Darpan Commosales KTULP Pvt. Ltd. From the perusal of the income tax return for assessment year 2011-12, it was evident that assessee has capital of Rs. 30,43,718/- which includes 19,77,980/- as fixed assets and Rs. 10,00,000/- in other normal current asset. He purchased commodity at Rs.46,23,25,903/- and sold for Rs. 45,38,26,890/-. Thus, gross loss in trading transaction was Rs. 82,67,738/-. Thereby, the Assessing Officer observed that assessee does not have capacity to bear loss of Rs. 82,67,378/-. The Assessing Officer therefore made disallowance of bogus loss at Rs. 82,67,778/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. As regards ground no. 1 relating to reopening u/s. 147, the Ld. A.R. submitted that the addition is not based on the reasons recorded for reopening. The reasons for reopening was only for two counts, firstly in respect of that the assessee purchased commodity scrip of Rs. 5,99,250/- from Darpan Commosales KTULP Pvt. Ltd. which was disclosed in the ITR and secondly,

that the assessee has received interest of Rs. 2,16,102/- from ICICI Bank which was disclosed in the ITR. The ld. A.R. submitted that AO, vide show cause notice dated 04.12.18 called upon the assessee to show cause as to why "undisclosed income of Rs.8,15,352/-" (i.e. Rs.5,99,250 + Rs.2,16,102) should not be added. The Assessee vide letter dated 10.12.2018 submitted before the Assessing Officer that the interest income of Rs.2,16,102/-, was part of total interest of Rs.2,70,173/- credited to P&L account. For the purchase of commodities scrips of Rs.5,99,250/- from "Darshan Commodities" via KTUPL, the assessee requested the Assessing Officer to supply copy of statement available with the Assessing Officer. The Assessing Officer vide another SCN dated 21.12.2018, called upon the assessee to show cause as to why loss of Rs.82,67,738/- incurred in relation to commodities should not be disallowed. In view of assessee's reply dated 10.12.18, 2nd SCN is silent on issues referred in reasons for reopening. Eventually, the Assessing Officer framed the assessment whereby "loss of Rs.82,67,738/-" incurred in relation to commodities was disallowed. The Assessing Officer has not made any addition in respect of issues referred to in reasons for reopening. The Ld. AR submitted that the issues referred to in reasons for reopening were "investment in commodities" and "interest income". However, while framing assessment, addition was made in respect of "loss" but no addition was made with respect to issues referred to in reasons for reopening. The Ld. AR submitted that it is well settled that if no addition has been made in respect of the issue for which the case was reopened, reopening is not justified. The Ld. AR relied upon the following decisions:

- i) CIT vs. Mohmed Juned Dadani -355 ITR 172 (Guj);
- ii) CIT vs. Jet Airways-331 ITR 236 (Bom);

iii) Ranbaxy Laboratories Ltd. - 336 ITR 136)Del);

The Ld. AR further submitted that as regards not disclosing "investment in commodities" amounting to Rs.5,99,250/- in ITR, no such investment has been made by the assessee. As regards not disclosing "interest income" amounting to Rs.2,70,173/- in ITR, such interest income is part of larger interest income offered for tax in ITR. The very fact that no fact addition has been made by the Assessing Officer in respect of the aforesaid issues while framing assessment proves that "jurisdictional facts", based on which the case was reopened, are "incorrect". The Ld. AR relied upon the following decisions:

- i) Manish P. Kiri vs. ACIT - SCA 15475 of 2015;
- ii) Mumtaz Haji Mohmad Memon vs. ITO - 408 ITR 268 (Gujarat);
- iii) Kolahai Infotech Pvt. Ltd. vs. ITO - (409 ITR 595 (Delhi);

Thus, the Ld. AR submitted that the reopening is not justified, hence, consequential assessment order is not justified and the same may be quashed.

6. The ld. D.R. relied upon the assessment order and the order of the CIT(A).

7. We have heard both the parties and perused all the material available on record. The reason for reopening as per notice u/s. 142(1) dated 12-10-2018 was annexed to the same and are as follows:-

"1. Brief details of the assessee:-

The assessee is an individual and filed return of income on 30.09.2011 declaring therein total income of Rs. (-) 82,67,738/-. The said return of income was processed u/s 143(1) of Income-tax Act, 1961. On verification of the ITD/ITBA Systems, it is noticed that the case of the assessee was not subjected to scrutiny assessment.

2. Brief details of information collected / received by the AO:-

As per information received on 23.03.2018 from the Dy. Director of Income Tax (Inv.), Unit-3(1), Kolkata the assessee has traded on the NMCE platform and purchased the commodities scrips to the tune of Rs. 5,99,250/- during the F.Y. 2010-11 relevant to A.Y. 2011-12.

3. Analysis of the information collected

The information has been analyzed and it is found that the assessee has purchased the commodities scrips of Rs. 5,99,250/- from Darpan Commodities via Kalkut Tie Up Private Limited.

4. Enquiries made by the AO as sequel to information collected/received:-

The assessee has traded on NMCE platform and purchased the commodities scrips of Rs. 5,99,250/- which has not been disclosed in the ITR.

On the perusal of ITS detail, it is seen that the assessee has received interest of Rs. 2,16,102/- from ICICI Bank Limited during the F.Y. 2010-11 relevant to A.Y. 2011-12 but the same was not offered for taxation in the ITR.

5. Findings of the AQ-On the perusal of the return of income, it has been seen that the assessee has shown loss of Rs. 82,67,738/- and has shown investment of Rs. 2,69,811/- only under the head of equity shares. The from the Dy. Director of Income Tax (Inv.), Unit-3(1), Kolkata, the NMCE platform has been used by assessee has not shown any investment made by him on NMCE platform. As per information receive clients/members for the systematic evasion of taxes. The assessee has purchased the commons Scrips of Rs. 5,99,250/- from Darpan Commodities via Kalkut Tie Up Private Limited which was not Commissioner of income disclosed by the assessee in the ITR. Hence, it is clear that the above said purchase has been made through undisclosed income.

On the perusal of ITS detail, it is seen that the assessee has received interest of Rs 2,16,102/- from ICICI Bank Limited during the FY 2010-11 relevant to AY 2011-12. On examination of return of income of the assessee, it is found that the assessee has shown interest income of Rs. 44,965/- which is an altogether different sum and the same has nothing to do with the interest of Rs. 2,16,102/-. Hence, it is believed that the assessee has not disclosed the interest income of Rs. 2,16,102/- in ITR. Therefore, I have reason to believe that in this case income of Rs 8,15,352/- [15,99,250-+2,16,102/-] has escaped assessment for the relevant assessment year 2011-12.

6 Basis of forming reasons to believe and details of escapement of income:-

The assessee is found to have traded in NMCE platform and purchased the commodities scrips of Rs. 5,99,250/- which has not been

disclosed by the assessee in the ITR. Hence, it is believed that the above said purchase has been made through undisclosed income.

Further it is also found that the assessee has received interest of Rs. 2,16,102/- from ICICI Bank Limited during the F.Y. 2010-11 relevant to A.Y. 2011-12 but the same was also not offered for taxation in the ITR. In view of above, there is a reason to believe that income to the tune of Rs. 8,15,352/-15,99,250 +2,16,102) has escaped assessment.

7 Applicability of the provisions of section 147/151 to the facts of the case-

In this case, a return of income was filed for the year under consideration but no scrutiny assessment u/s 143(3) of the Act was made. Accordingly, in this case the only requirement to initiate proceedings u/s. 147 is reason to believe which has been recorded above in Para 6.

It is pertinent to mention here that in this case the assessee has filed return of income for the year under consideration but no assessment as stipulated u/s 2(40) of the Act was made and the return of income was only processed u/s 143(1) of the Act. In view of the above, provisions of clause (b) of explanation 2 to section 147 are applicable to facts of the case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment.

In this case, more than four years have lapsed from the end of the assessment year under consideration. Hence, necessary sanction to issue notice u/s 148 has been obtained separately from the Principal Commissioner of Income-tax Vadodara-1, Vadodara as per the provisions of section 151 of the Act.

This notice is being issued u/s 142(1) r.w.s. 129 of the Act due to the change of incumbent.”

The contention of the assessee is that assessment was reopened merely on the suspicion and the addition was not made on the basis of reasons recorded while reopening. The amount mentioned on Darpan Commosales via KTULP Pvt. Ltd. was Rs. 5,99,250/- but the addition is made of Rs. 82,67,778/- which was totally absent in para 5 of the reasons recorded. Thus, the contentions of the assessee appears to be correct that no addition was made on the basis of reasons recorded for reopening. Thus the addition is merely on the suspicion. The ld. A.R relied upon the decision of the Hon'ble Gujarat High Court in

case of CIT vs. Mohmed Juned Dadani 355 ITR 172 (Gujarat) which categorically stated that merely on suspicion the addition cannot be made when the proper reason are not mentioned. Thus, the said ratio is applicable in the present assessee's case as well. Therefore, the assessment itself is not justified. Since the assessment itself becomes invalid, we are not taking up on the merits of the case at this juncture. The appeal of the assessee is allowed.

8. In result appeal of the assessee is allowed.

Order pronounced in the open court on 29-01-2026

Sd/-
(Narendra Prasad Sinha)
Accountant Member
Ahmedabad : Dated 29/01/2026

Sd/-
(Suchitra Kamble)
Judicial Member

a.k.

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद