

**IN THE INCOME-TAX APPELLATE TRIBUNAL, MUMBAI "F" BENCH, MUMBAI
BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER
ITA No. 4172/MUM/2025(AY: 2012-13)**

Vinod Kumar Ghisulal Shah (HUF). A-101, P2 floor, Vijaya Residency, Chiwda Gully, Lalbaugh, Mumbai-400012.	vs.	ITO, Ward 20(3)(5), Mumbai. Room No.205, 2 nd Floor, Piramal Chamber, Lalbaug, Parel Mumbai-400012.
PAN/GIR No: AAGHV3367R		
(Appellant)		(Respondent)

Appellant by	None
Respondent by	Shri Kavitha Kaushik (SR DR)
Date of Hearing	28.01.2026
Date of Pronouncement	03.02.2026

ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal filed by the assessee emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'Act') by the ITO, Mumbai-20(3)(5) dated 07.04.2025 for the assessment year (AY) 2012-13.

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

"1. In the facts and circumstances of the case and in law, the Id. CIT (A)-51, Mumbai has erred in upholding the initiation of assessment under 147 instead of section 153C of the Act.

2. In the facts and circumstances of the case and in law, Ld. CIT (A)-51. Mumbai, has erred in confirming the action of Ld. Assessing officer of initiating the reassessment proceedings under section 147 merely on surmises and conjectures without being in possession of any tangible material.

3. In the facts and circumstances of the case and in law, the Ld. CIT (A)-51, Mumbai has erred in upholding the action of the Ld. Assessing Officer of issuing notice u/s 148 on borrowed satisfaction merely on the basis of

information received from DGIT-2(Inv), Mumbai without any independent application of mind.

4. In the facts and circumstances of the case and in law, the Ld. CIT (A)-51, Mumbai, has erred in upholding the reassessment proceedings which was initiated with a mechanical and invalid sanction granted u/s 151.

5. In the facts and circumstances of the case and in law, the Learned CIT (Appeals) -51, Mumbai has erred in upholding the action of the Ld. Assessing Officer of completing the assessment u/s 143(3) read with section 147, without providing the material or information in his possession and without providing any opportunity of cross examination of the witnesses relied upon by the Assessing Officer and thus violating the law laid down by Honorable Supreme Court in the case of Kishanchand Chellaram v. CIT (1980) 125 ITR 713 and Andaman Timber Industries v. Commissioner of Central Excise (Civil Appeal No. 4228 of 2006.).

6. In the facts and circumstances of the case and in law, the Learned CIT(Appeals)-51 has erred in sustaining addition of Rs.2,61,31,711/- to the income of the appellant under section 68 as unexplained cash credit of the Act even after providing all requisite explanations and evidences to substantiate the genuineness of the transactions undertaken.

7. In the facts and circumstances of the case and in law, the Learned National Faceless Appeal Centre (NFAC), CIT (Appeals) has erred in not allowing exemption u/s. 10(38) in respect of long term capital gains arising on transfer of STT paid equity shares on recognized stock exchange of Rs. 2,19,90,600/-.

8. In the facts and circumstances of the case and in law, the Learned CIT (Appeals)-51 has erred in sustaining addition of Rs. 7,83,951/- (3% of Trade Value) to the income of the appellant under section 69C of the Act as unexplained cash expenditure even after providing all requisite explanations and evidences to substantiate the genuineness of the transactions undertaken.

9. The appellant craves leave to add, alter, delete or modify all or any of the above grounds of appeal. All the above grounds are without prejudice to each other."

3. The case was posted for hearing on 11.08.2025, 15.09.2025, 23.10.2025, 11.12.2025 and 28.01.2026. The case was adjourned thrice on the request of the learned authorized representative (AR) of the assessee and was refixed for hearing on 15.09.2025, 11.12.2025 and 28.01.2026. However, none appeared on behalf of the assessee on 28.01.2026 nor any request for adjournment nor

written submission were filed. Hence, no useful purpose would be served by prolonging the proceedings before us. The case is, accordingly, decided on the basis of materials available on record.

4. Facts of the case in brief are that the assessee filed his return of income for the AY 2012-13 on 30.03.2013 declaring total income at Rs.1,420/-. The case was re-opened u/s 147 and notice u/s 148 of the Act was issued on 30.03.2019. The reasons recorded for reopening are at pages 1 and 2 of the assessment order, wherein it is mentioned that the assessee has shown bogus long-term capital gain on sale of shares of penny stock company, namely, M/s Divine Multimedia (India) Ltd. After giving opportunity of hearing to the assessee and confronting him on the impugned issue, the AO held that the trading transactions of purchase and sale of shares were not for commercial purpose but to create artificial gains with a view to evade tax. Accordingly, he treated the amount of Rs.2,61,31,711/- received on the impugned sale of share of Divine Multimedia (India) Ltd. as unexplained cash credit u/s 68 of the Act. He also added 3% of the above amount of Rs.7,83,951/- as unexplained expenses and added u/s 69C of the Act.

5. Aggrieved by the order of AO, the assessee filed appeal before the CIT(A). In the appellate proceedings, the CIT(A) issued hearing notices and the appellant filed written submissions. The CIT(A) has discussed the findings of the AO, grounds of appeal, submissions of the assessee and upheld the additions after

detailed discussion on the facts of the case and the precedents on the issue. In the result, the appeal of the assessee was dismissed.

6. Aggrieved by the order of CIT(A), the assessee filed appeal before the Tribunal. The fact that the assessee received the exempt long-term capital gain from sale of shares of Divine Multimedia (India) Ltd., which was proved to be a penny stock, has not been disproved by the assessee before the AO, CIT(A) and the Tribunal with proper explanation and cogent evidence. Despite being given the adequate and reasonable opportunity of being heard, the appellant did not appear before the Tribunal with proper explanation and supporting evidence in respect of the grounds raised by him. It has also been held in a number of cases that dismissal of appeal is an inherent power, which every Tribunal possesses. The Hon'ble Bombay High Court in case of M/s Chemipol vs. UOI, Central Excise Appeal No.62 of 2009, referred to the decision in case of Sundarlal vs. Nandramdas, AIR 1958 MP 206, where it was observed that though the Act does not give any power of dismissal, it is axiomatic that no Court or Tribunal is supposed to continue the proceedings before it when the party who has moved it has not appeared nor cared to remain present. The dismissal, therefore, is an inherent power which every Tribunal possesses. This was approved in Dr. P. Nalla Thampy vs. Shankar, 1984 (Supp) SCC 631. In New India Assurance vs. Srinivasan, (2000) 3 SCC 242, it was held that every Court or judicial body or authority which

has a duty to decide a lis between two parties, inherently possesses the power to dismiss a case in default. Where a case is called for hearing and the party is not present, the Court or the judicial or quasi-judicial body is under no obligation to keep the matter pending before it or to pursue the matter on behalf of the complainant who had instituted the proceedings. The Hon'ble Supreme Court in case of CIT vs. B. N. Bhattacharjee & Ors., (1979) 10 CTR 354 (SC) observed that preferring an appeal means effectively pursuing it. In the instant case, the appellant did not effectively pursue the appeal by filing proper explanation and supporting evidence in respect of the grounds of appeal raised by him. Hence, following the above authoritative precedents, the appeal is liable to be dismissed. Accordingly, the grounds raised by the appellant are dismissed.

7. In the result, the appeal of the assessee is dismissed.

Order is pronounced on 03.02.2026.

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-
(BIJYANANDA PRUSETH)
ACCOUNTANT MEMBER

*Aniket Chand; Sr. PS

MUMBAI

Date: 03.02.2026

Copy of the Order forwarded to:

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

By Order

Assistant Registrar
ITAT, MUMBAI