

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“SMC” BENCH, MUMBAI**  
**BEFORE SMT. BEENA PILLAI (JUDICIAL MEMBER)**

**I.T.A. No. 6566/Mum/2024**  
**Assessment Year: 2011-12**

<b>Narendra Khimji Savla</b> 34, Uma Building, Opp. Kirti College, Kashinath Dhuru Road, Dadar – 400028. <b>PAN: AHEPS9345P</b> <b>(Appellant)</b>	Vs.	<b>Income Tax Officer</b> <b>Ward 6(1)(1)</b> Aayakar Bhavan, Maharshi Karve Road, Churchgate – 400020. <b>(Respondent)</b>
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<b>Appellant by</b>	Shri. Himanshu Gandhi
<b>Respondent by</b>	Shri. Sajit Nair SR. DR.

<b>Date of Hearing</b>	11/02/2025
<b>Date of Pronouncement</b>	20/02/2025

**ORDER**

**Per: Smt. Beena Pillai, J.M.:**

The present appeal filed by the assessee arises out of order dated 30/11/2024 passed by NFAC, Delhi, for assessment year 2011-12 on following grounds of appeal :

- “1. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming the action of Ld AO of initiating reassessment proceeding under section 147 of Income Tax Act, 1961.*

2. *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming the action of Ld AO of passing assessment order without issuing notice u/s 143(2) of the Tax Act, 1961. Income*
3. *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming the action of Ld AO that reassessment order cannot be passed without providing reasons recorded for reopening.*
4. *On the facts and circumstances of the case and law, the Ld CIT(A) erred in not adjudicating the issue where the Ld AO has made addition of Rs. 40,00,000/- on account of borrowing cash loan without providing any material which was relied by the Ld AO.*
5. *Without Prejudice to Ground No 4, on the facts and circumstances of the case and law, the Ld CIT(A) erred in not adjudicating the issue where the Ld AO failed to consider that borrowing of loan does not fall in the definition of Income and thus it cannot be added to the total income of the appellant*
6. *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in not adjudicating the issue where the Ld AO has made addition merely based on the information provided by DDIT (Inv), Unit 5 (4). However, as per the information the name of borrower is mentioned as Asoj Soft Caps which is altogether a different assessee.*
7. *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in not adjudicating the issue where the Ld AO has passed an assessment order on PAN No. DQGPS6936E (for which the appellant has already filed an application for cancellation) as against the PAN No. AHEPS9345P which is regularly used by the appellant.*
8. *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in not adjudicating the issue where the Ld AO has 7 erred in not giving credit of taxes paid on PAN No AHEPS9345P especially when the income offered of such PAN was added to reassessment proceedings.*
9. *On the facts and circumstances of the case and law, the Ld CIT(A) erred in confirming the action of Ld AO of passing 8 assessment order and making addition without mentioning any R provisions of*

*the Income Tax Act, 1961 which itself makes the assessment bad in law”*

*10. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming the action of Ld AO of initiating penalty provision under section 271(1)(c) without considering the fact, that on cash loan provisions of section 269SS are applicable and not the provisions of 271(1)(c).*

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

**Brief facts of the case are as under:**

**2.** The Assessee is an individual and had not furnished regular return of income. Subsequently, based on information received from investigation wing, notice u/s. 148 of the Act was issued to assessee on 31/03/2018. From the assessment order it is noted that, notices were served through post as well as mail. However, there was no response, the Ld.AO further records in the assessment order that, the assessee responded to the notice u/s. 142(1) of dated 09/11/2018 by filing a letter dated 29/11/2018.

**2.1** The Ld.AO noted that, assessee was having two PANs in his names and certain information received from the investigation wing reflected transaction in the PAN that assessee submitted to be not used being DQGPS6936E. It was also noted that such transaction was not included in the return of income filed by the assessee in PAN AHEPS9345P. The Ld.AO notes that, the PAN No. being DQGPS 6936E was never used by the assessee and that assessee was using PAN No. being AHEPS9345P as per the submissions made. The assessing officer also recorded that assessee submitted for cancelation of unused PAN No. Vide letter dated 14/12/2017 with ITO ward 6(1)(1), Mumbai.

**2.2** The Ld.AO further recorded that, the assessee submitted basic details in respect of Pan no. AHEPS9345P such as computation of total income and the return of income filed under the said PAN.

**2.3** The Ld.AO further noted that, search and survey carried out in case of *M/s. Evergreen Enterprises and Nilesh Bharani* being one of the partners of Evergreen Enterprises revealed that they were involved in money lending activity against un accounted cash. Statements were recorded of Nilesh Bharani and employees of *M/s. Evergreen Enterprises* during the search. From the ledger books maintain at the premises of *M/s. Evergreen Enterprises*, assessee's name surfaced in the list of borrowers through a company called Asoj Soft Caps. The assessee was thus called upon by the Ld.AO to explain the transaction; As the assessee did not file any details the Ld.AO made addition of Rs. 40lakhs as unexplained cash in the hands of the assessee.

Aggrieved by the order of the Ld.AO assessee preferred appeal before the Ld.CIT(A).

**3.** The Ld.CIT(A) dealt with ground of non issuance of notice u/s. 143(2) of the act by observing as under:

*"5.0 Grounds 1 to 3 of the appellant relate to issue of notice u/s 147 of the Act. it is argued that Ld. AO erred in initiating reassessment proceeding under section 148 as notice under section 143(2) of Act was not issued. It is also argued that the Ld. AO failed to consider that reassessment order cannot be passed without reason recorded for reopening. Providing reason recorded for reopening.*

*6.0 I have considered the submission of the appellant and grounds of appeal filed as well as the assessment order. The appellant is a non-filer. I find that the Ld AO had received report from DDIT (Inv), Mumbai that the appellant had taken cash loan. There was a specific finding in the investigation report in this regard. The investigation report received*

*shows that the appellant is part of an organized racket for providing cash loans. After examining the evidence provided by the investigation wing, Ld AO had come to the prima facie belief that this is a fit case for reopening of the assessment. Thus, there is a clear application of mind by the Ld AO. There is a live link or close nexus between the material obtained and formation of belief. It is not a case where the reasons recorded by the Ld. A.O. are not germane and the Ld. A.O. wanted to simply verify and make fishing enquiries with respect to bogus purchase bills. The Ld. A.O. has applied his own mind. After the receipt of the information, AO verified the record. Subsequently, reasons were recorded for reopening the assessment u/s 147 Of the Act and approval was sought from the Pr CIT-21. Mumbai. Thereafter, the notice u/s 148 was issued. In response to this notice, the appellant did not file any return. Thereafter notices u/s 142(1) were issued on various dates. The appellant did not respond to these notices.*

*7.0 Thus, I find that all the statutory requirements have been fulfilled by Ld AO before reopening the assessment. The AO has examined the information received along with the information available with him in the form of return of income, past assessment records available. I find that Ld AO after examining the details had formed his independent opinion that the case of the appellant is a fit case for reopening. Necessary approval for reopening was also obtained by the Ld AO. The appellant has also cooperated in the assessment proceedings by filing various submissions from time to time. A similar view has been held in the case of Yogendrakumar Gupta, [2014] 46 taxmann.com 56 (Gujarat), in which the Hon'ble court has decided that the AO acquires jurisdiction u/s 147 r.w.s. 148 of the Act when specific and reliable information is received from investigating agencies. It was held in this case that where subsequent to the completion of original assessment, Assessing Officer, on basis of search carried out in case of another person, came to know that loan transactions of assessee with a finance company were bogus as said company was engaged in providing accommodation entries, it being fresh information, he was justified in initiating reassessment proceeding in case of assessee. Reopening on the basis of the report of the Investigation Wing about receipt of loans/LTCG/bogus bills from Entry Providers held to be justified by the han'ble courts in the cases of Bright Star Syntex (P.) Ltd, 71 taxmann.com 64 (Bombay) [2016]. Peass Industrial Engineers Pvt.Ltd. 2016 (72 Taxman.com 302 (Guj), Rajat Export Import India (P.) Ltd. 18 taxmann.com 311 (Delhi) [2012], Money Growth Investment & Consultants (P.) Ltd. [2012] 21 taxmann.com 438 (Delhi), Jayant*

*Security & Finance Ltd. Vs. ACIT 91 taxmann.com 181 (Guj.), Ankit Agrochem Pvt. Ltd. Vs. JCIT 89 taxmann.com 45 (Raj.), Pushpak Bullion Pvt. Ltd. Vs. DCIT 85 taxmann.com 84 (Guj.), Aradhana Estates Pvt. Ltd. Vs. DCIT 91 taxmann.com 119 (Guj).* In this case also, the AO has received specific information from the investigation wing and the AO has applied his mind on such information and formed a reason to believe that income has escaped assessment, thus reopening of the assessment is a valid reopening. Further, it is seen that the appellant has not filed return in response to the notice u/s 148 of the Act. therefore, Ld AO has rightly issued notice u/s 142(1) of the Act. It is also seen that the appellant during the assessment never asked for the reasons recorded for reopening of the assessment. Accordingly, I find no merit in the argument of the appellant and these grounds of the appellant are dismissed.”

**3.1** On merits the Ld.CIT(A) upheld the disallowance made by the Ld.AO.

Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before this *Tribunal*.

**4.** At the outset, the Ld.AR narrated the facts in respect of the two different PAN No. stood in the name of the assessee as under:

<i>Date</i>	<i>Event</i>	<i>Remark</i>
<i>23.11.2011</i>	<i>Appellant had filed Return of Income Under PAN AHEPS9345P</i>	<i>Declaring Total Income of Rs.3,42,794/-</i>
<i>22.10.2017</i>	<i>Appellant come to know that PAN issued DOGPS6936E inadvertently</i>	<i>The appellant never used such PAN and all the returns were filed through his Original PAN AHEP99345P</i>
<i>14.12.2017</i>	<i>Appellant filed an application</i>	<i>However, till date</i>

	<i>letter for cancellation DOGPS6936E</i>	<i>the PAN which was issued inadvertently has not got cancelled.</i>
<b><u>Reassessment proceedings</u></b>		
<i>29.03.2018</i>	<i>Notice u/s 148 was issued</i>	<i>Notice issued on Incorrect PAN which was never used by the appellant and even after the date of application for cancellation of PAN</i>
<i>02.05.2018</i>	<i>Reply filed in response to 148 Notice</i>	<i>Appellant filed Reply under PAN AHEPS9345P stating that treat the Original return filed as return in response to notice u/s 148. Appellant also requested to Provide reasons recorded for re-opening of assessment. Appellant along with these details also filed Return of Income and</i>

		<i>Computation of Total Income and Form 26AS.</i>
<i>08.10.2018 and 09.11.2018</i>	<i>Notice issued u/s 142(1)</i>	<i>Appellant filed his reply in spite of non-receipt of reasons recorded by Ld AO for Reopening vide letter dated 29.11.2018 on 30.11.2018 stating the facts of issuance of PAN inadvertently and filing details of return of income and computation of total income filed under Original PAN</i>
<i>05.12.2018</i>	<i>Show Cause Notice issued</i>	<i>Show cause notice was issued without providing copy of reason recorded for reopening.</i>
	<i>Appellant received Undated Assessment order r u/s 144 r.w.s 147</i>	<i>Where addition of Rs.40,00,000/- added on allegation that appellant borrowed 40 Lakh in</i>

		<p><i>cash as per the information received from DDIT(Inv.) Unit 5(4).</i></p> <p><i>It is deliberately written in the order that the reason recorded provided to appellant. However, appellant never received reason recorded for reopening.</i></p> <p><i>Further, Notice u/s 143(2) was also not issued which is evident from the list of notice issued mentioned in assessment order. Hence, the entire reassessment proceeding is bad in law.</i></p> <p><i>Further, the reassessment order was passed on PAN No. DQGPS6936E which is never used</i></p>
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		<p><i>by the appellant and for that appellant already requested for cancellation. Thus, the assessment order is invalid.</i></p> <p><i>And further, in information (on which basis addition was made and same is mentioned in assessment order) "Borrower" is Asoj Soft Caps which is an Pvt Ltd. Company whereas addition made in hands of appellant which is an individual. Further when the Ld. AO himself saying the transaction is on loan, then the element of "Income" is missing. Because loan is a liability and repayable in</i></p>
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		<i>nature. Thus, same is out of scope of definition of Income and not liable for tax</i>
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**4.1** The Ld.AR submitted that reopening of the assessment for year under consideration is based on information received from the investigation wing, arising out of the search carried out at M/s Evergreen Enterprises along with partner Nilesh Bharani and its employees whose statements were also recorded. The Ld. AR submitted that, in the assessment order, it is alleged that M/s. Asoj Soft Caps borrowed cash loan of Rs. 40 lacs and the name of the assessee was mentioned as contact person. He also submitted that, the said Asoj Soft Caps is private limited company in which assessee is director.

**4.2** The Ld.AR further submitted that, PAN No. in which notice for reopening was issued is stated to be never used by the assessee and was surrendered for cancellation vide letter dated 14.12.2017 much before issuance of notice. He submitted that, all these were brought out by the Assessing Officer in the assessment order, however did not give necessary credit to such facts.

**4.3** The Ld. AR further submitted that, the assessment order was completed based on the return of income filed by the assessee under PAN No. AHPES9345P on 23.11.2011, but no notice u/s. 143(2) was issued to the assessee against the said return of income. The Ld. AR also, submitted that the assessment order also passed in PAN No. DQGPS6936E which

was not being used by the assessee. He submitted that the entire assessment order is completed based on wrong factual appreciation and on both the PAN Numbers that was within the knowledge of Ld. AO.

**4.4** On merits of the Ld. AR submitted that, the Ld. AO himself recorded that cash loan was received by Asoj Soft Caps and the name of the assessee was appearing under contact person. He submitted that, admittedly assessee is director of Asoj Soft Caps. Be that as it may, the Ld.AR submitted that, if the loan was received by the company where the assessee is director, the said loan cannot be added in the hands of the assessee.

**4.5** The Ld. AR further brought to the notice of this *Tribunal*, the factual recording by Ld. AO that, certain transactions were reflected in PAN No. DQGPS6936E as per the information provided by Investigation wing vide letter dated 23.03.2018. However, he submitted that such alleged information were never provided to the assessee.

**4.6** The Ld.AR thus argued that the entire assessment proceedings was completed by the Ld.AO without following the due process under law.

**4.7** On the contrary, the Ld. DR vehemently opposed the submissions of the Ld.AR . He submitted that, no doubt there were two pan numbers held in the name of the assessee, and the assessee failed to surrender the one which is not used for income tax purposes. He submitted that the notice u/s. 148 was issued on PAN No. DQGPS6936E being, the latest one. The Ld. DR submitted that assessee did not file return of income against this PAN, it was not require for the Ld. AO to issue notice u/s. 143(2)

of the Act. He thus vehemently supported the orders passed by the authorities below.

I have perused the submission advanced by both sides in the light of records placed before *Tribunal*.

**5.** Admittedly the Ld. AO has processed based on the income declared under PAN No. AHEPS9345P filed on 23.11.2011. The said PAN was under the jurisdiction of ITO 6(1)(1) Mumbai. The assessee responded to notice u/s. 148 of the Act on 20.05.2018, wherein it is categorically mentioned that, the return filed in the PAN No. AHEPS9345P is under the jurisdiction of ward 6(1)(1), and the said may be treated as return in lieu of notice u/s. 148 of the Act. The said letter was filed with the ward 21(2)(4) who issued notice u/s. 148 bearing PAN No. DQGPS6936E.

**5.1** The assessee filed letter dated 14.12.2017 placed at page no. 3 of the paper book dated 31.01.2025. The assessee had applied for cancelation of PAN No. DQGPS6936E, the said letter was filed with the Income Tax Office of 6(1)(1). All these facts were within the knowledge of the Ld. AO as is clear from the assessment order. The assessee placed screen shot of the income tax portal at page no. 1 of the paperbook filed on the date of hearing which categorically reveals that notice u/s. 143(2) was not issued to the assessee against the return of income that was considered for computing income in the hands of the assessee.

**5.2** It is also noted that, issuance of notice u/s. 143(2) of the act, is qualitatively different from the issue of notice u/s. 142(1) of the act, which is in a standard proforma. In the present facts of the case the notice u/s. 143(2) was not issued to the assessee, based on examining the return of income filed by assessee that

was picked up for scrutiny in the reassessment proceedings. Thus, based on various judicial pronouncements on this aspect, and the legal position being evidently clear that, the reassessment order cannot be passed without compliance with the mandatory requirement of notice being issued by Ld.AO u/s. 143(2) of the act, pursuant to filing of return of income. *Hon'ble Supreme Court* in case of *Hotel Blue Moon* reported in (2010) 188 *taxmann.com* 133 has held that non issuance of notice u/s. 143(2) of the act after filing of return of income cannot be said to be mere procedural irregularity and the same is not curable u/s. 292BB of the Act.

**5.3** The basic requirement under the act for issuance of notice u/s. 143(2) cannot be dispensed as also held by with *Hon'ble Delhi High Court* in case of *PCIT vs. Shree Jay Shivshakar Pvt. Ltd* reported in (2015) 64 *taxmann.com* 220 on identical set of facts. In present facts non issue notices u/s. 143(2), subsequent to the letter filed by the assessee dated 20/05/2018 intimating the Ld.AO to treat original return as return pursuant to the notice u/s. 148 of the act would be fatal to reassessment order so passed more so when the Ld.AO considered the same ROI for computing taxable income in the hands of the assessee.

**5.3** Respectfully following above discussion and decision referred to, we are of the opinion that, the reassessment orders passed for the years under consideration deserves to be quashed in the present facts of the case as no notice u/s. 143(2) was issued for both years under consideration to the assessee post response filed by the assessee to treat its original return in response to the notice u/s. 148 of the act.

**5.4** As the legal issue raised by the assessee stands allowed, in consequences, the reassessment order passed for year under consideration stands quashed. I therefore do not find any reason to discuss the issues on merits of the addition as they become academic.

**Accordingly the grounds raised by the assessee stands allowed.**

**In the result appeal filed by the assessee stands allowed.**

**Order pronounced in the open court on 20/02/2025**

**Sd/-**

**(BEENA PILLAI)  
Judicial Member**

Mumbai:  
Dated: 20/02/2025  
Poonam Mirashi,  
Stenographer

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By order

(Asstt. Registrar)  
**ITAT, Mumbai**