

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "बी", अहमदाबाद ।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
" B " BENCH, AHMEDABAD

श्री संजय गर्ग, न्यायिक सदस्य एवं  
श्री नरेन्द्र प्रसाद सिन्हा, लेखा सदस्य के समक्ष।

Before Shri Sanjay Garg, Judicial Member And  
Shri Narendra Prasad Sinha, Accountant Member

1. आयकर अपील सं/ITA No.1622/Ahd/2024 - Asst.Year 2013-14
2. आयकर अपील सं/ITA No.1623/Ahd/2024 - Asst.Year 2015-16
3. आयकर अपील सं/ITA No.1624/Ahd/2024 - Asst.Year 2016-17

Jigneshkumar Jivrajbhai Patel A-61, Vasudev Park Bapasitaram Chowk Parshwanath Township New Naroda Ahmedabad - 382 346	<u>बनाम/</u> <u>v/s.</u>	National Faceless Assessment Centre, Delhi. Present Jurisdiction : The ITO Ward-7(2)(1) Ahmedabad - 380 015
स्थायी लेखा सं./PAN: AWIPP 4696 B		
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)
Assessee by :	Shri Biren Shah, AR	
Revenue by :	Shri Amit Pratap Singh, Sr.DR	

सुनवाई की तारीख/Date of Hearing : 13/05/2025  
घोषणा की तारीख /Date of Pronouncement: 20/05/2025

आदेश/ORDER

Per Sanjay Garg, Judicial Member:

The captioned appeals have been preferred by the assessee against the separate orders, dated 26/07/2021, 16/07/2024 & 07/08/2024 for Assessment Years (AYs) 2013-14, 2015-16 & 2016-17 respectively, of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter referred to as 'CIT(A)'] passed u/s.250 of the Income Tax Act (hereinafter referred to as 'the Act').

2. Since the facts and issues involved in all these three appeals are identical, hence the same have been heard together and are being disposed of by this common order. First, we shall take up ITA No.1622/Ahd/2024 for AY 2013-14, as a lead case.

**ITA No.1622/Ahd/2024**

3. The assessee has taken following grounds of appeal:

1. *In law and in the facts and circumstances of the appellant's case, the reassessment notice issued u/s 148 of the Act is bad in law and deserves to be quashed.*
2. *In law and in the facts and circumstances of the appellant's case, the Ld. CIT(A) has erred in upholding addition of Rs.1,61,75,577/-as sham transaction and concealed income. The Ld CIT(A) ought to appreciate that the Appellant has furnished all possible evidence to justify genuine Job work Receipt. The addition should be deleted.*
3. *In law and in the facts and circumstances of the appellant's case, the Ld. CIT(A) ought to have appreciate that the genuineness of the labor payments made to the appellant by M/s Kiran Gems Pvt. Ltd. has already been accepted by the Revenue Authority. Given this acceptance, there is no justification for treating these labor receipts as unexplained or sham transactions in the hands of the appellant.*
4. *In law and in the facts and circumstances of Appellant's case, the LD.CIT(A) ought to have appreciate that the reopening of assessments initiated with similar reasons of "alleged unaccounted receipt from M/s Kiran Gems Pvt. Ltd" for various other labor contractors associated with M/s Kiran Gems Pvt. Ltd. was dropped under Section 148A(d) of the Income Tax Act. Hence, same principal should apply to the Appellant and addition in question deserves to be deleted.*
5. *In law and in the facts and circumstances of the case, the Ld. CIT(A) has erred in dismissing the appeal of appellant without awarding opportunity of video hearing which was specifically requested by the appellant.*
6. *The appellant craves leave to add, alter or amend and/or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal.*

4, The assessee in this appeal has agitated against the confirmation of addition of Rs.1,61,75,577/- by the Ld.CIT(A) as made by the Assessing

Officer (AO) treating the job-work shown by the assessee as 'sham transactions'. The assessee apart from challenging the additions on merits has also contested the validity of the reopening of the assessment.

5. At the outset, the Ld.Counsel for the assessee has invited our attention to the copy of the reasons recorded by the AO for re-opening of the assessment, the contents of which, for the sake of ready reference, are reproduced as under:-

*"1. The above named assessee is having PAN: AWIPP46968. As per information available on records the assessee has carried out significant financial transactions during the concerned financial year. On verification of ITD and ITBA module, it is seen that the assessee has filed his/her/its RoI on 06-Aug-13 declaring total income of Rs. 3,14,760/- for the A.Y. 2013-14 relevant to FY. 2012-13. The return of income was processed u/s. 143(1)(a) of the I. T. Act, 1961,*

*2. In this case, a STR in the case of V. Nitin was received by the investigation wing, Surat Thereafter, the STR report was prepared by the o/o, the DDIT(Ino), Unit-2, Surat and disseminated the information in the case of its beneficiaries in category of High Risk Transaction CRIU/VRU Information through Insight Portal of the department to the Jurisdictional Assessing Officer.*

*3. On perusal and analysis of information received, it is noticed that a current account was opened on 09.04.2012 in the name of V Nitin operated for a partnership firm Kiran Gems Pvt. Ltd. Within a span of 30 months, the turnover of this current account was Rs.22874 lacs. This account exhibited a transaction pattern of huge credit transactions from the other accounts of Kiran Gems Pvt. Ltd and V. Nitin, Thereafter, that amount was immediately transferred to the various entities and the funds transferred were immediately withdrawn in cash keeping the minimum balance in account.*

*4. On further verification of the information received, it is found that the above named assessee is also a beneficiary of these suspicious transactions and the assessee has entered into financial transactions exceeding the taxable limits. The assessee has undertaken unexplained credits in his bank accounts of Rs.1,61,75,577/-however despite making these financial transactions the assessee has not truly and correctly disclosed the quantum of transactions done during the year under consideration.*

5. Thus, on perusal of the details available on record, it is noticed that during the previous year relevant to the assessment year under consideration, the assessee has undertaken financial transactions much beyond the taxable limit. However, as per the income profile of the assessee, verified from the (TR of concerned A.Y., the huge credits in the bank account of the assessee is not conclusively proved. Hence, it is concluded that the assessee has not offered the amount of Rs 1,81,75,577/- for taxation

6. In view, of the above facts narrated in above paras, I have reason to believe that income upto the extent of Rs.1,61,75,577/- which is chargeable to tax, has escaped assessment for the A.Y. 2013-14. within the meaning of the provisions of clause (b) of Explanation 2 to Section 147 are applicable to facts of this case of the I.T. Act.

7. 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 under section 2(40) of the Income Tax Act, 1961 was made and the return of income was only processed under section 143(1) of the Act. In view of the above, the provisions of clause (b) of Explanation 2 to section 147 of the Income Tax Act, 1961 are applicable to the facts of this case and the assessment year under consideration is deemed to be case where income chargeable to tax has escaped assessment

8. In this case, more than four years have lapsed from the end of assessment year under consideration. Hence necessary sanction to issue notice under section 148 of the Income Tax Act, 1961 has been obtained separately from the Principal Commissioner of Income Tax-3, Ahmedabad as per the provisions of section 151 of the Income Tax Act, 1961.

3. In this regard, it is further brought to your notice that if you have any objection, the same may be filed within 7 days from the receipt of this letter. In the case, anything is not heard from you, it would be presumed that you have no objection for proceedings initiated u/s. 147 of the Act as per the above and the matter will be finalized on merits as per the provisions laid down under the Act."

6. The assessee filed objections against the said reasons recorded for reopening of the assessment, copy of which has been placed at page Nos.3 to 5 of the paper-book. The relevant para of which is reproduced, as under:-

"(1) I have filed my return of income on 06-08-2013 showing an Income of Rs.3,14,760/for A.Y. 2013-14 based on the books of account maintained as prescribed under Income Tax Act duly got audited as required to be audited u/s 44AB of Income Tax Act and also have filed Tax Audit Report as required to be filed under the Act.

(2) The amount of Rs. 1,61,75,577/- being the amount of proposed addition in the return of income as per brief notes of the letter is in fact amount of Labour Income earned by me by doing labour work of cutting and polishing of Diamonds on Job Work basis for and on behalf of Kiran Gems Pvt Ltd, Surat. Accordingly Rs.1,61,75,577/- have been credited by Kiran Gems Pvt Ltd in my account in their books and Your Hon, has also confirmed this fact that the amount is appearing in my I.T. Form No. 26AS of the said year since Kiran Gems Pvt Ltd has deducted the Tax at Source on the said Labour Income carried out by me on their behalf during A.Y 2013-14.

All these facts and figures have been given in audited Profit & Loss account and Balance Sheet attached with Tax Audit Report and also these figures have been reflected in return of income filed on 06-08-2013.

(3) it is also further submitted that the uploaded return of income and Tax Audit Report on the web site of your department have been duly processed as per the norms fixed by CBDT and on completion of the process order u/s 143(1) of the I.T. Act has been issued accepting the correctness of the financial statements which does contain the figures of Rs. 1,61,75,577/ shown as Labour Income earned during the year in the Income side of audited P&L A/c and tallied with I.T. Form No. 26AS. Hence the amount of Rs. 1,61,75,577/- being suspicious high value transaction escaped the income of A.Y. 2013-14 as claimed by you in your letter is totally incorrect, far from (acts, misinterpreted and misunderstood without going through the financial statements and reports duly audited and submitted to your office as required to be filed under the Act.

(4) It is also further submitted that the letter of reopening the assessment proceedings for A.Y. 2013-14 issued u/s 147/148 has been done without verifying the records. placed by me on record with your office as It prima facie appears on the fact that an amount of Rs. 1,61,75,577/- has escaped as mentioned in brief notes of your letter is already considered as Labour Income of A.Y. 2013-14 and has already considered while arriving at taxable income of that year and the same has been confirmed by I.T. Form 26AS.

(5) it is also observed that Your Hon has arrived at the conclusion of suspicious High Value transactions which in fact is the aggregate value of Labour Income earned by me out of the Business activity carried out during the A.Y. 2013-14 and all these payments have been received through Bank transfer. It is true that the amounts credited in the Bank account were withdrawn immediately on account of payment of wages and salaries to workers which normally were to be paid on 7th of each month out of the payment received by 3rd or 4th day of beginning of the month. The amounts due on workers wages and salaries and other expenses could have been verified from the audited financial statements placed on your records.”

7. The AO, however, rejected the submissions filed by the assessee in a summarily manner observing that the transactions relating to receipt of amount of Rs.1,61,75,577/- were suspicious in nature and that these transactions were needed to be verified. He accordingly re-opened the assessment of the assessee u/s.147 r.w.s.144B of the Act. He, thereafter, completed the assessment u/s.143(3) r.w.s.147 of the Act and made the impugned additions, which have been further confirmed by the Ld.CIT(A).

8. We have heard the rival contentions and perused the material available on record. A perusal of the reasons recorded for reopening of the assessment would reveal that the only information passed on by the Investigation Wing to the AO was that the assessee had entered into financial transactions exceeding the taxable limits and that the assessee had undertaken unexplained credits in his bank account of Rs.1,61,75,577/-, which were received from Kiran Gems Pvt.Ltd. The AO formed his reasons to believe that the income of the assessee has escaped assessment only on the basis of above information, without verifying as to whether the assessee has disclosed the said receipts in his return of income/audited accounts attached with the return of income. It is pertinent to mention here that the AO has himself recorded in para-7 of his order that the assessee had filed return of income for the year under consideration, which was processed u/s.143(1) of the Act, which means that all the record relating to the return filed by the assessee for the year under consideration was available with the Department/AO.

9. The assessee in his objections has categorically stated before the AO that the alleged receipt of Rs.1,61,75,577/- was duly disclosed by the assessee in his audited books of accounts and that, in fact, the said receipts were on

account of job-work charges of cutting and polishing of diamonds received from Kiram Gems Pvt.Ltd., Surat That, the said amount was duly appearing in IT return, as well as Form No.26-AS of the said year, as Kiran Gems Pvt.Ltd. had deducted the tax at source on the said job-work charges received by the assessee from them. That, the said receipt was duly disclosed in audited profit & loss account and balance-sheet attached with the tax audit report and that the said receipt had also been duly reflected in the return of income filed for the year under consideration. It has been further mentioned that the re-opening of the assessment has been proposed without verifying the records available with the Department. It has also been explained that the amounts credited in the bank account were withdrawn immediately on account of payment of wages and salaries to workers, which normally were to be paid on 7<sup>th</sup> of each month out of the payment received by 3<sup>rd</sup> to 4<sup>th</sup> day of beginning of the month. The AO, however, without considering the aforesaid objections filed by the assessee and without co-relating the information received from the Investigation Wing with the available assessment records, proceeded to re-open the assessment in a casual manner without application of mind. The only information received by the AO from the Investigation Wing was that the assessee had carried out High Value transactions and that there was a receipt of Rs.1,61,75,577/- in the bank account of the assessee. The said information received by the AO may have been relevant to make further enquiries to verify if the assessee had taken into account such receipts in his income tax return. However, the said information, in itself, was not enough to form the belief that the income of the assessee has escaped assessment. The AO was supposed to co-relate the said vague information received from the Investigation Wing with the

assessment records of the assessee and thereafter he could have formed the belief that the income of the assessee has escaped assessment.

9.1. The issue is covered by various decisions of the higher courts and even of the Hon'ble Supreme Court. The Hon'ble Supreme Court in the case of "Dr. Jagmittar Sain Bhagat & Ors vs Dir. Health Services, Haryana" in Civil Appeal No.5476 of 2013 decided on July 11, 2013, while relying upon another decision of the Hon'ble Supreme Court in the case of "Sushil Kumar Mehta v. Gobind Ram Bohra" (1990) 1 SCC 193 and further placing reliance on the other decisions of the Hon'ble Supreme Court in the cases of "Premier Automobiles Ltd. v. K.S. Wadke & Ors.", (1976) 1 SCC 496; "Kiran Singh v. Chaman Paswan", AIR 1954 SC 340; and "Chandrika Misir & Anr. v. Bhaiyalal", AIR 1973 SC 2391 has observed that where a statute places obligation and enforces the performance in specified manner, "performance cannot be forced in any other manner." Under the relevant provisions of section 147 & section 148 of the Income Tax Act, for assuming jurisdiction to reopen an assessment by the Assessing Officer, there is a condition precedent that the Assessing Officer must have reasons to believe that the income of the assessee for that year has escaped assessment. It has been held time and again that such reasons to believe must have a material bearing on the question of escapement of income. It does not mean a purely subjective satisfaction of the assessing authority. Such reason should be held in good faith and cannot merely be a pretence. The reasons to believe must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Assessing Officer and the formation of belief regarding escapement of income. The powers of Assessing Officer to reopen

an assessment, though wide, are not plenary. The words of the statute are "reason to believe" and not "reason to suspect". There can be no manner of doubt that the words "reason to believe" suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds and that the Income-tax Officer may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. The Income-tax Officer would be acting without jurisdiction if the reason for his belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the section. Such an action of the Assessing Officer regarding formation of belief of escapement of assessment and thereby in starting proceedings u/s 147 is open to challenge in a court of law. The entire law as to what would constitute "reason to believe" has been summed up by the hon'ble Supreme Court in the case of "Income Tax Officer v Lakhmani Mewaldas" (1976) 103 ITR 437. Reliance in this respect can also be placed on the decision of the Hon'ble Punjab & Haryana High Court in the case of 'CIT vs Paramjit Kaur' (2008) 311 ITR 38 (P&H), wherein, making identical observations, the Hon'ble High Court has held that in the absence of sufficient material to form satisfaction of the Assessing Officer that income of the assessee had escaped assessment, the issuance of notices u/s 148 of the Act was not valid.

10. In view of the above discussion, the re-opening of the assessment in this case on the basis of mere suspicion and vague information received from the Investigation Wing without co-relating the same with the assessment records available with the department, is not sustainable. Therefore, the consequential assessment order passed u/s.147 of the Act is also not sustainable. The assessment passed by the AO u/s.147 of the Act is, thus, bad in law and the same is accordingly quashed. Since we have decided the legal

issue relating to validity of the re-opening of the assessment in favour of assessee, therefore we, at this, do not deem it necessary to discuss the factual merits as the same has been rendered academic in nature.

**ITA Nos.1623 & 1624/Ahd/2024 for AYs 2015-16 & 2016-17 respectively.**

11. The facts and issues involved in the above appeals are identical to that has been discussed above while adjudicating the appeal of the assessee in ITA No.1622/Ahd/2024 for AY 2013-14. Hence, our findings given above will mutatis mutandis apply to these appeals also and, accordingly, the assessment orders passed u/s.147 of the Act in the above appeals are also held bad in law and, therefore, are hereby quashed.

12. In the result, all the captioned three appeals of the assessee are hereby allowed.

**Order pronounced in the Open Court on 20/05/2025.**

**Sd/-  
( Narendra Prasad Sinha )  
Accountant Member**

**Sd/-  
( Sanjay Garg )  
Judicial Member**

अहमदाबाद/Ahmedabad, दिनांक/Dated 20/05/2025

टी. सी. नायर, व. नि. स. / T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)- (NFAC), Delhi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण ,अहमदाबाद/DR, ITAT, Ahmedabad.
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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आयकर अपीलीय अधिकरण, ITAT, Ahmedabad