

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AGRA BENCH: AGRA**

**BEFORE  
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER  
AND  
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.158/AGR/2025  
(ASSESSMENT YEAR: 2016-17)

Sonu Jain through legal heir and father of Late Sonu Jain Shri Rajendra Jain, Ward No.17, Sadar Bazar, Guna-473001 PAN-ALRPJ6187D	Vs.	Income Tax Officer, Guna.
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Shri Subhash Jain, CA and
Department by	Shri Shailendra Srivastava. Sr. DR
Date of Hearing	22/05/2025
Date of Pronouncement	24/06/2025

**ORDER**

**PER MANISH AGARWAL, AM:**

This is an appeal filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals), [CIT(A) in short] National Faceless Appeal Centre (NFAC) in appeal No. NFAC/2015-16/10329923 dated 19.02.2025 passed u/s 250 of the Income Tax Act, 1961 ('the Act' for short) arising out of the order passed u/s 147 r.w.s. 144 of the Act dated 09.03.2024.

2. Brief facts of the case are that the AO has information that assessee has made large cash deposit into the bank accounts amounting to ₹64,90,000 and no return of income was filed. He therefore, proceeded to re-open the assessment and issued notice u/s 148A(a) in the name of the assessee Shri Sonu Jain. In reply, the father of the assessee intimated that assessee was died on 10.02.2016. Therefore, the assessing officer after receiving the replies from the father Shri Rajendra Kumar Jain, passed the order under Section 148A(d) of the Act in the name father as legal heir of the assessee. Thereafter, the notice under Section 148 was also issued in the name of the father of the assessee in the capacity of legal heir. Subsequently, various notices u/s 142(1) were issued from time to time which were partly replied by the legal heir of the assessee and finally the reassessment proceedings were completed vide order dt.09.03.2024 by making additions of Rs.78,88,849/- on account of bank deposits and interest from bank. The re-assessment order was passed in the name of father of assessee in the capacity of legal heir.

3. Against such order, the assessee filed an appeal before Id. CIT appeal, who set aside the appeal of the assessee and direct the AO to pass the fresh assessment order *denovo* after providing reasonable opportunity to the legal heir of the assessee. Against this order, the present appeal is filed before the Tribunal on the strength of following grounds of appeal:

*“1. On the facts and circumstances of the case the Learned CIT(A) has failed to adjudicate on the specific grounds of appeal raised by the Appellant and has illegally remanded the matter, causing unnecessary hardship and prolonging litigation.*

2. *On the facts and circumstances of the case, the Commissioner of Income Tax (Appeals) has erred in setting aside the assessment order passed under section 147 rws 144B of the Income Tax Act, 1961, despite the assessment was void ab initio due to the issuance of notice in the name of a deceased person.*
3. *The CIT(A) has erred not deciding the ground of notice under Section 148A was issued to a non-living person, rendering the proceedings null and void in law.*
4. *The CIT(A) has failed to appreciate that the father had not inherited any estate of Late Sonu Jain and, therefore, appellant could not be made liable for the alleged undisclosed income.*
5. *The CIT(A) has erred in not dealing to the addition of Rs. 78,46,007/-under Section 69A because no substantive evidence, thereby shifting the burden of proof unjustly onto the appellant.*
6. *On the facts and circumstances of the case the Learned CIT(A) has erred in not dealing to the addition of Rs. 42842/- on account of undisclosed interest received from bank on the basis of whims, conjecture and surmises.*
7. *On the facts and circumstances of the case the Learned CIT(A) has erred in the reassessment proceedings were invalid because the notice under Section 148A was issued without obtaining proper approval from the competent authority, which is a jurisdictional defect.*
8. *On the facts and circumstances of the case the Learned CIT(A) has erred in not dealing to the reassessment proceedings were invalid because same was initiated beyond the time limit prescribed under Section 149(1)(b), Thus whole entire assessment time-barred and unsustainable in law.*
9. *On the facts and circumstances of the case the Learned CIT(A) has erred in not dealing to the holding as imposition of interest under Sections 234A, 234B, and 234C without considering that the assessment order itself was void ab initio and liable to be quashed.*
10. *On the facts and circumstances of the case the Learned CIT(A) has erred in non dealing to the facts that the assessment order u/s 147 r..ws 144B of the Income Tax Act 1956 is bad in law and void ab initio as the same is not in compliance with the Provisions of the Law.*

11. *That the appropriate order for granting justice and relief be passed.*

12. *Your appellant reserves its right to add to amend to alter or to modify any of above grounds and to pursue any other or further grounds as may be required.”*

4. Grounds of appeal number 1 and 11 are general in nature, thus are not adjudicated.

5. In Ground of appeal number 2 to 4, 7 and 8, the reassessment proceedings were challenged on the basis that the notice under Section 148A was issued in the name of a dead person. Further it is challenged that the notice u/s 148A was issued without proper approval and beyond the time limit prescribed under section 149(1)(b) of the Act. Since all these grounds are pertaining to the legality of the reassessment order, therefore, they are taken together for consideration.

6. Before us, the ld.AR of the assessee argued that the notice under section 148A was issued on 24.02.2023 in the name of the assessee who was died on 10.02.2016. Since the notice u/s 148A was issued in the name of a dead person, the consequent proceedings concluded by way of passing order under section 148A(d) and subsequent notice issued under section 148 are also bad in law. Ld. AR thus prayed for the cancellation of the entire reassessment proceedings. Ld. AR further submitted that the assessee had not left any asset to his father or his family members and accordingly when no asset was inherited by family members, therefore, the father of the assessee could not be hold as the legal heir. In this regard he placed reliance on the case of V Rama Rao Naidu Vs CIT (1961) 42 ITR 80

(AP) in which it is clearly held that who get nothing under his parents will is not heir. Ld. AR further submits that ld. CIT(A) failed to appreciate these facts and set aside the matter to the file of the AO for passing the fresh assessment order denovo though ld. CIT(A) has no power to set aside. Regarding the limitation, it is submitted by ld. AR that the Assessing Officer has observed that the approval for issue of notice under Section 148A was obtained on 11/3/2023 whereas the notice u/s 148A was issued on 24.02.2023. Therefore, entire proceedings are barred by limitation. Ld. AR also filed detailed submission on the legal issues as well as on the merits, which is placed on record.

7. The learned Senior DR vehemently supported the orders of the lower authorities and submitted that the Assessing Officer after having the information that assessee had died, proceeded to complete the proceedings under Section 148A(d) and notice u/s 148 was issued in the name of the legal heir of the assessee. Further the reassessment order was also passed in the name of the legal heir of the assessee. Therefore, there is no error in the action of the AO. He thus prayed for the confirmation of the orders of the lower authorities.

8. We have heard the rival submissions and perused the material available on record. The assessee in first appeal before ld. CIT(A) besides challenging the additions made on merits also raised legal issues about the validity of reassessment proceedings initiated u/s 147 of the Act. From the perusal of appellate order we find that the

ld. CIT(A) has not decided these legal and jurisdictional issues though a discussion is made in para 6.3 of the order and for the sole reason that the reassessment order was passed *exparte*, had set aside the reassessment order in terms of the power conferred upon him under first proviso to section 251(1)(a) of the Act and directed the AO to pass assessment afresh after considering the submission of the assessee on merits. It is true that the assessment order was passed u/s 144 of the Act as no details were filed to explain the source of deposits made in the bank account however, when the assessee has challenged the validity of reassessment proceedings, the ld. CIT(A) should have decided the jurisdictional issues raised by the assessee first than proceed to decide the issues taken on merits of the additions made. The coordinate bench of Hyderabad Tribunal in the case of **EyeGear Optics India (P.) Ltd. vs. DCIT** reported in [2025] 174 taxmann.com 1060 (Hyderabad - Trib.) under identical circumstances vide order dt. 14.05.2025 held as under:

*“15. Adverting to the facts pertaining to the challenge thrown by the assessee company, qua the validity of the jurisdiction assumed by the AO for initiation of the reassessment proceedings, on the ground that the same was beyond the prescribed time limit as contemplated under the "1<sup>st</sup> Proviso" to section 147 of the Act, we are of the view that the Ld. CIT(A) ought to have adjudicated the same instead of adopting an evasive approach in the guise of exercise of the extended jurisdiction vested with him vide the "Proviso" to section 251(1)(a) of the Act as made available on the statute by the Finance (No.2) Act 2024 w.e.f. 01.10.2024. We find substance in the Ld. AR's contention that in case the lack of jurisdiction on the part of the A.O for framing the assessment is not addressed by the CIT(A), but, in the garb of the powers vested with him as per the "Proviso" to Section 251(1) of the Act the matter is referred back to the file of the AO for fresh adjudication, then, it would afford a second inning to the A.O who would simply give effect to the directions of the CIT(A) and reframe the re-assessment order despite*

*lack of valid assumption of jurisdiction which was the very foundation for initiating the impugned proceedings.*

16. *Be that as it may, we are of the firm conviction that in the totality of the facts involved in the present appeal before us, the CIT(A) instead of summarily setting aside the matter to the file of the AO for making a fresh assessment, ought to have taken a call as regards the specific ground based on which the validity of the jurisdiction that was assumed by the AO for framing the reassessment was assailed by the assessee-appellant before him. Our aforesaid conviction that it is not obligatory on the part of the CIT(A) to set aside all best judgment assessment orders passed u/s 144 of the Act to the file of the AO is further fortified on looking at the language used by the legislature in the "Proviso" to Section 251(1) of the Act, i.e, ".may set aside the assessment and refer the case back to the Assessing Officer for making a fresh assessment." which, thus, does not compulsorily require the CIT(A) to set aside and refer the assessment in every case where it is made u/s 144 of the Act.*

17. *We thus, in terms of our aforesaid deliberations set aside the order of the CIT(A), and restore the matter to his file with a direction to adjudicate the specific "Ground of appeal No.2" based on which the jurisdiction assumed by the A.O for framing the impugned reassessment order u/s 147 r.w.s 144 of the Act dated 16.12.2019 was assailed by the assessee appellant before him."*

9. Accordingly, by following the aforesaid judgement of coordinate bench and after considering the facts of the case, we set aside the order of Id. CIT(A) and direct him to pass a speaking order on the legal issues raised by the assessee in grounds of appeal Nos. 1 to 6 taken before him. With these directions, grounds taken by the assessee are partly allowed for statistical purposes. It is further clarify, that since we have already set aside the matter to the file of the CIT(A) in terms of direction given herein above, therefore, we are not expressing any view, regarding the issues based on which validity of jurisdiction assumed by the AO for initiating the reassessment proceedings, and also the merits of the addition challenged by the assessee before us.

10. In the result, the appeal is partly allowed.

Order pronounced in the open court on 24.06.2025.

Sd/-  
**(SUNIL KUMAR SINGH)**  
**JUDICIAL MEMBER**

Sd/-  
**(MANISH AGARWAL)**  
**ACCOUNTANT MEMBER**

Dated: 24.06.2025

*PK/Sr. Ps*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR