

IN THE INCOME TAX APPELLATE TRIBUNAL  
SURAT BENCH, SURAT  
(HYBRID HEARING)

**Before: Shri T.R. Senthil Kumar, Judicial Member And  
Shri Bijayananda Pruseth, Accountant Member**

**ITA No: 901/SRT/2024  
Assessment Year: 2015-16**

Income Tax Officer. Surat <b>(Appellant)</b>	Vs	Ilesh B Ponkia 21, Milan Bunglow, Opp. Valintine Cinema, Surat-395007, Gujarat  <b>PAN: AAAHI6401H (Respondent)</b>
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**Assessee Represented: Shri Rasesh Shah, CA  
Revenue Represented: Shri Ajay Uke, Sr.D.R.**

Date of hearing : 02-07-2025  
Date of pronouncement : 30-07-2025

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

This appeal is filed by the Revenue as against the appellate order dated 01.07.2024 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the reassessment order passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2015-16.

2. The Grounds of Appeal raised by the Revenue are as follows:

1. On the facts and circumstances of the case and in law the Ld CIT has erred in deleting the addition made of Rs. 84,90,075/-by the AO on account of cash credit u/s 69A of the Act in the disguise of exempted long term capital gains on account of sale of the share of JRI Industries and Infrastructure Limited, a penny stock and without appreciating the findings of the Assessing Officer that the price movement of the company were not supported by financial fundamentals of the company?

ii. On the facts and circumstances of the case and in law the Ld CIT has erred in ignoring the facts brought on record establishing manipulation of share prices of JRI Industries and Infrastructure Limited as the upward movement of share price was not at all justified by the economic fundamental of company during the period of transactions by the assessee?

iii. On the facts and circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition made by the Assessing Officer of Rs. 84,90,075/- ignoring the fact that the stock prices of the companies are manipulated to provide the bogus LTCG.

iv. On the facts and circumstances of the case and law, the Id.CIT(A) has erred in allowing the claim ignoring the judicial pronouncement by the Hon'ble Supreme Court in the case of McDowell Vs CTO wherein it was held that "Colourable devises cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious method. It is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges".

v. On the basis of the facts and circumstances of the case and in law, the Id. CIT(A) ought to have upheld the order of the Assessing Officer.

vi. It is therefore prayed that the order of Id. CIT(A) may kindly be set aside that of the Assessing Officer be restored.

vii. The appellant craves leave to add, alter, amend and/or withdraw any ground of appeal either before or during the course of hearing of the appeal.

3. Ld. Sr. D.R. appearing for the Revenue submitted that the Ld.CIT(A) erred in deleting the addition made on account of capital

gains on penny stock scrip namely JRI Industries & Infrastructure Ltd. In support of the grounds of appeal, Ld. Sr. D.R. requested to sustain the addition made by the assessing officer and allow the Revenue appeal.

4. Per contra, Ld. Counsel Shri Rasesh Shah appearing for the assessee submitted that on the very same scrip JRI Industries & Infrastructure Ltd. (JIIL), Co-ordinate Bench of this Tribunal relied upon in the case of Anisha Raof Dhanani Vs. ACIT reported in [2025] 175 taxmann.com 665 (Ahmedabad-Trib.) relating to Asst. Year 2015-16 held that the notice issued on 29-07-2022 was beyond the limitation period prescribed u/s. 149 of the Act and the assessment is held to be barred by limitation. Ld. Counsel further submitted that the Co-ordinate Bench considered the Supreme Court Judgments in the case of Rajeev Bansal and Deepak Steel and Power Ltd. and held that the reopening of assessment made u/s. 148 on 29-07-2022 relating to the Asst. Year 2015-16 was void ab initio and bad in law and therefore requested to dismiss the appeal filed by the Revenue.

5. We have given our thoughtful consideration and perused the materials available on record and rival submissions. It is undisputed fact that assessee filed her original Return of Income for the Asst. Year 2015-16 on 30-03-2016 declaring total income of Rs.2,66,370/-. No regular assessment was made on the original return. Subsequently based on the information received that the assessee was indulged in trading of shares of JRI Industries & Infrastructure Ltd. (JIIL) which is said to be penny stock used by

brokers/entry operators, to provide accommodation entries so as to convert the unexplained cash into legitimate tax free income in the form of Long Term Capital Gain to the beneficiaries. The assessee said to have sold 50,000 shares of JIIL during this year. Therefore the assessment was reopened and denied the benefit of claim of exemption u/s. 10(38) of the Act and made addition of Rs.84,90,075/- under section 69 of the Act.

6. On appeal, Ld. CIT(A) deleted the addition treating the transaction as genuine transaction. On further appeal before this Tribunal, the Ld. Counsel for the assessee submitted that the reassessment itself is bad in law. This issue of reopening of assessment for the Asst. Year 2015-16 in July 2022 was considered by the Co-ordinate Bench of this Tribunal and respectfully following Supreme Court Judgments in the case of Rajeev Bansal and Deepak Steel and Power Ltd. quashed the reassessment order ab initio void by observing as follows:

“.....7. We have considered the rival submissions and perused the material brought on record. We find that similar issue pertaining to the challenge of notice issued under Section 148 of the Act for the A.Y. 2015-16, on the ground that the same was beyond the limitation period prescribed under Section 149 of the Act, was decided in favour of the tax payer in the various cases as relied upon by the assessee, after noting the submissions of the Revenue before the Hon'ble Supreme Court in the case of *Rajeev Bansal (supra)*. In the case of *Rajeev Bansal (supra)*, the finding as recorded by the Hon'ble Supreme Court in paragraph no.19(f) was as under:-

"f. The Revenue concedes that for the assessment year 2015-16, all notices issued on or after 1<sup>st</sup> April 2021 will have to be dropped as they will not fall for completion during the period prescribed under TOLA;"

7.1 The Hon'ble Supreme Court in the case of *Deepak Steel and Power Ltd. (supra)* had considered the above submission of the Revenue in the case of *Rajeev Bansal (supra)* and had given the following finding: -

4. The learned counsel appearing for the revenue with his usual fairness invited the attention of this Court to a three judge bench decision of this Court in Union

of India and Ors. v. Rajeev Bansal, reported in 2024 SCC OnLine SC 2693, more particularly, paragraph 19(f) which reads thus:-

"19. (f) The Revenue concedes that for the assessment year 2015-2016, all notices issued on or after April 1, 2021 will have to be dropped as they will not fall for completion during the period prescribed under the Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020."

5. As the revenue made a concession in the aforesaid decision that is for the assessment year 2015-2016, all notices issued on or after 1 April, 2021 will have to be dropped as they would not fall for completion during the period prescribed under the taxation and other laws (Relaxation and Amendment of certain Provisions Act, 2020). Nothing further is required to be adjudicated in this matter as the notices so far as the present litigation is concerned is dated 25.06.2021."

On the basis of the above finding the Hon'ble Supreme court had quashed and set aside the notice issued u/s 148 of the Act for the A.Y. 2015-16. Thus, even if the Revenue's contention that submission before the Hon'ble Supreme Court in the case of *Rajeev Bansal (supra)* was not the decision of the Hon'ble Supreme Court is considered, the fact remains that on the basis of that submission the Apex Court had subsequently decided the issue in favour of the taxpayer. And following the judicial discipline the decision of the Supreme Court is the law of the land on the issue involved.

**7.2** In the case of *Nehal Ashit Shah (supra)*, the Hon'ble Supreme Court has held as under:-

"5. In this regard, reference could also be made to paragraph 19(e) and (f) in the case of *Union of India v. Rajeev Bansal*, Civil Appeal No.8629 of 2024 on 03.10.2024 (2024 SCC ONLINE 754) under which the learned Additional Solicitor General for India has made a concession insofar as the assessment year 2015-16 is concerned."

**7.3** In the case of *IBIBO Group (P.) Ltd. (supra)*, similar finding was rendered by the Hon'ble Delhi High Court. Further, the Co-ordinate Bench of Kolkata Tribunal in the case of *Shatakshi Mudra Investment (P.) Ltd. (supra)* and Bombay Tribunal in the case of *Sumitra Rajeshbhai Jain (supra)* also have held that the notice issued under Section 148 of the Act on 23.07.2022 and 29.07.2022 respectively for A.Y. 2015-16 was void-ab-initio and bad in law.

**7.4** In the present case also, the notice under Section 148 of the Act was issued on 29.07.2022. In view of the principles laid down by the Hon'ble Supreme Court in the case of *Rajeev Bansal (supra)* as well as in the case of *Deepak Steel and Power Ltd. (supra)*, it is held that the notice issued on 29.07.2022 under Section 148 in this case for the A.Y. 2015-16 was void ab initio and bad in law. As the notice was barred by limitation, accordingly, the entire reassessment proceeding and the assessment order passed under Section 147 read with Section 144B of the Act, is quashed."

6.1. Respectfully following the above judicial precedents, the reopening notice issued u/s. 148 dated 29-07-2022 for the Asst. Year 2015-16 is beyond the limitation period prescribed u/s. 149 of the Act and is bad in law. Consequently, the reassessment order is hereby quashed. Thus, there is no merits in the grounds raised by the Revenue.

7. In the result, **the appeal filed by the Revenue is hereby dismissed.**

Order pronounced under proviso to Rule 34 of ITAT Rules, 1963 on -07-2025

**Sd/-**  
**(BIJAYANANDA PRUSETH)**  
**ACCOUNTANT MEMBER**  
**Ahmedabad : Dated 30/07/2025**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

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.

**// TRUE COPY //**

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
सूरत