

IN THE INCOME TAX APPELLATE TRIBUNAL

"C" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.4400/Mum/2025
(Assessment Year : 2017-18)

ITA No.4401/Mum/2025
(Assessment Year : 2017-18)

Pooja Oberoi,

A-1503, Skyvistas, Plot No.106/a,
D.N. Nagar, Andheri West,
Mumbai - 400053

PAN : AADPO7633C

..... Appellant

v/s

**Deputy Commissioner of Income Tax -
24(1), Mumbai**

Room No.601, Piramal Chambers,
Lalbaug, Mumbai - 400012

..... Respondent

Assessee by : Shri Jigar Mehta

Revenue by : Shri Virabhadra S. Mahajan, Sr.DR

Date of Hearing – 14/08/2025

Date of Order - 20/08/2025

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The assessee has filed the present appeals against the separate impugned orders of even date 13/06/2025, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], which in turn arose from the separate orders passed under section 147 read with section 144 read with section 144B of the Act and order passed under section 271AAC(1) of the Act, for the assessment year 2017-18.

2. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case are that the assessee is an individual and for the year under consideration filed her return of income on 21/08/2017, declaring a total income of INR 24,62,800. The return filed by the assessee was processed under section 143(1) of the Act. Subsequently, on the basis of the information received from the Investigation Wing that the assessee has traded in the shares of a company, which is nothing but the paper entity with no genuine business activity and received sale consideration of INR 6,79,51,952 from the sale of shares of that company, notice under section 148 of the Act was issued on 30/03/2021 and proceedings under section 147 of the Act were initiated. However, the assessee did not comply with the notice, and no return of income was filed. Thereafter, the assessee also did not comply with various statutory notices issued under section 142(1) of the Act. Accordingly, a show cause notice was issued to the assessee proposing to pass the best judgment assessment under section 144 of the Act, granting a final opportunity to the assessee. In response thereto, the assessee filed her reply and submitted that she had already declared the income from shares in the year under consideration. However, no reply was filed by the assessee in response to notices issued under section 142(1) of the Act/questionnaire, and no computation of income was provided. Accordingly, the Assessing Officer ("AO"), vide order dated 24/03/2022, passed under section 147 read with section 144 read with section 144B of the Act and proceeded to complete the assessment, assessing the total income of the assessee at INR 7,04,14,742 after adding the entire sale consideration from the sale of shares.

3. In its appeal before the learned CIT(A), the assessee raised grounds challenging the invocation of proceedings under section 147 of the Act, as well as raising the grounds on merits. During the appellate proceedings, the assessee submitted additional evidence, namely, the computation of income along with a copy of the balance sheet as on 31/03/2017 and a copy of the income and expenditure account for the year ending 31/03/2017, marked to market summary statement for the year under consideration. The learned CIT(A), vide impugned order, not only dismissed the ground raised by the assessee challenging the initiation of proceedings under section 147 of the Act, but also upheld the addition on merits. Being aggrieved, the assessee is in appeal before us.

4. During the hearing, the learned Authorised Representative ("*learned AR*") submitted that since the notice under section 148 of the Act was issued during the pandemic period, i.e. on 30/03/2021, the assessee could not properly respond to the notice. Further, the learned AR submitted that the assessee has also not received the reasons recorded by the AO for initiating the proceedings under section 147 of the Act. From the record, we find that the assessee has also not responded to various statutory notices issued under section 142(1) of the Act, and the details sought by the AO during the assessment proceedings vide various questionnaires were not provided by the assessee. Further, the assessee also did not file her return of income in response to the notice issued under section 148 of the Act. Accordingly, the AO passed the assessment order under section 147 read with section 144 read with section 144B of the Act.

5. At this stage, it is pertinent to note that by the Finance (No.2) Act, 2024 w.e.f. 1st October, 2024, the learned CIT(A) has been empowered under section 251(1)(a) of the Act to set aside the assessment and remand the case back to the AO for making a fresh assessment, in case the assessee files an appeal against an order of assessment made under section 144 of the Act. However, in the present case, as noted above in the appeal by the assessee against the order passed by the AO under section 147 read with section 144 read with section 144B of the Act, the learned CIT(A) did not exercise the power granted to it to restore the case to the file of the AO.

6. In the facts and circumstances as noted above, we are of the considered view that, in the interest of justice and fair play, the assessee should be granted one more opportunity to represent its case on merits as well as on jurisdiction and produce all the documents in support of its claim. Since the assessee also did not receive the reasons recorded for reopening the assessment, we direct that the same be provided to the assessee with an opportunity to raise objections against the same before the AO, which may be considered as per law. Accordingly, we deem it fit and proper to restore the matter to the file of the jurisdictional AO for *de novo* adjudication after considering all the details/submissions as may be filed by the assessee and after providing due opportunity of hearing to the assessee. The assessee is directed to cooperate in the assessment proceedings and furnish all the details as may be sought by the AO for complete adjudication. As the matter is being restored to the jurisdictional AO for adjudication, the other grievance raised by the assessee in the present appeals does not call for adjudication at this

stage. Accordingly, the impugned order in quantum appeal is set aside, and the grounds raised by the assessee in quantum appeal are allowed for statistical purposes.

7. Insofar as the appeal emanating from the penalty proceedings, we are of the considered view that as the quantum proceedings have been restored to the file of the AO for consideration afresh, the penalty levied under section 271AAC(1) of the Act doesn't survive at this stage and therefore is quashed. However, it is directed that the AO can take a fresh call on the aspect of levy of penalty at the time of conclusion of the quantum assessment proceedings for the assessment year 2017-18. Accordingly, the grounds raised by the assessee in the penalty appeal are allowed for statistical purposes

8. In the result, both appeals by the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 20/08/2025

Sd/-

**NARENDRA KUMAR BILLAIYA
ACCOUNTANT MEMBER**

Sd/-

**SANDEEP SINGH KARHAIL
JUDICIAL MEMBER**

MUMBAI, DATED: 20/08/2025

Prabhat

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

By Order

Assistant Registrar
ITAT, Mumbai