

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" BENCH, MUMBAI**

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.2626/MUM/2025  
(Assessment Year:2012-2013)**

**Shree Arihant Gems**

C/o. CA Himanshu Gandhi, 16<sup>th</sup> Floor,  
D Wing, Trade World Tower, Kamala Mills Compound,  
Lower Parel (West), Mumbai - 400013, Maharashtra.  
[PAN:ABVFS3509G]

..... **Appellant**

Vs

**Income Tax Officer – 19(3)(1), Mumbai**

Income Tax Department, Piramal Chambers,  
Lal Baugh, Parel, Mumbai – 400012.  
Maharashtra.

..... **Respondent**

**Appearance**

For the Appellant/Assessee : Shri Himanshu Gandhi  
For the Respondent/Department : Shri Surendra Mohan

**Date**

Conclusion of hearing : 31.07.2025  
Pronouncement of order : 25.08.2025

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**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. The present appeal preferred by the Assessee is directed against the order, dated 20/03/2025, passed by the Additional/Joint Commissioner of Income Tax (Appeals) – 2, Ahmadabad [hereinafter referred to as 'the **CIT(A)**'] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'] whereby the Ld. CIT(A) had dismissed the appeal against the Assessment Order, dated 18/12/2019, passed under Section 143(3) read with Section 147 of the Act for the Assessment Year 2012-2013.
2. The Assessee has raised following grounds of appeal :
  - "1. *On the facts and circumstances of the case and law, the Ld.*

*CIT(A) erred in confirming validity of reassessment proceeding under section 147 of the Income Tax Act, 1961.*

2. *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming addition of Rs.10,10,000/- being 100% of genuine purchase of from M/s.Delight Diam Pvt. Ltd. by treating the same as suspicious."*
3. We have considered the rival submission and have perused the material on record including the orders passed by the Assessing Officer and the Ld. CIT(A).
4. Paragraph 1 and 2 of the Assessment Order, dated 18/12/2019, passed under Section 147 read with 143(3) of the Act read as under:

"The assessee has filed the return of income for A.Y. 2012-13 on 30.09.2012 declaring total income at Rs.2,52,600/- which was processed u/s. 143(1) of the I.T. Act, 1961 on 29.03.2014.

2. Subsequently Information was received from the O/o the Director of Income tax (Inv)-2, Surat. Accordingly, the assessee's case for the instant year was reopened for re-assessment and as such Notice u/s.148 of the Act was issued to the assessee on 29.03.2019, requiring the assessee to furnish the return of income for the year within 30 days from service thereof."
5. On perusal of Paragraph 1 & 2 of the Assessment Order, it appears that income tax return filed by the Assessee for the Assessment Year 2012-2013 was processed under Section 143(1) of the Act and thereafter, reassessment proceedings were initiated under Section 147 of the Act in the case of the Assessee. Whereas, assessment under Section 143(3) of the Act was framed on the Assessee vide Assessment Order, dated 21.11.2014, Thereafter, information was received from the Investigation Wing, Surat leading to initiation of reassessment proceedings under Section 147 of the Act. This becomes clear on perusal reasons recorded for reopening the assessment (placed at Page No.25 to 26 of the Paper-Book) which read as under:

"REASONS FOR RE-OPENING OF THE ASSESSMENT for A.Y.2012-13  
u/s 147 of the Act.

1. Brief details of the Assessee:

The assessee has filed the return of income for A.Y. 2012-13, on 30.09.2012, declaring total income at Rs. 2,52,600/- and the same processed u/s 143(1) of the IT Act, 1961 on 29.03.2014. The order u/s 143(3) was passed on 21.11.2014, assessing total income at Rs. 3,71,170/-

2. Brief details of information received by the A.O.

Information was received from the O/o DDIT (INV)-2, Surat vide letter No. SRT/DDIT(Inv)-2/Info-DKB/2018-19 dated 13.03.2019 that during the investigation in the case of Shri Deepak Kailash Babel, it was found that he is involved in providing accommodation entries to various beneficiaries through his entities operated and controlled by him. The list of such beneficiaries was also forwarded by the Investigation Wing of the Surat.

3. Analysis of information received:

Ongoing through the documents forwarded by the Investigation Wing, it is found that **various concerns** of above mentioned groups have **shown bogus/loan sales** to M/S. SHREE ARIHANT GEMS **in their books of account**. In other words M/S. SHREE ARIHANT GEMS has obtained accommodation **entry of bogus purchases** from following concerns of above groups during F.Y.2011-12 relevant to A.Y.2012-13.

Sr. No.	Name of the hawala parties	Nature of entry	Amount (INR)
1.	DELIGHT DIAM PVT. LTD.	Sales	20,10,000
	<b>Total</b>		<b>20,10,000</b>

4. Enquiries made by the A.O. as sequel to information received:

During the investigation, the statement of Shri Deepak Kailash Babel was recorded u/s 131 of the IT Act, 1961 on 05.03.2018 and he has not carried out any real business in the company M/s. Delight Diam Pvt. Ltd and only provided accommodation entries.

5. Findings of the A.O.

*In view of the above facts and circumstances of the case and after application of my mind, I have reason to believe that the income of the assessee M/S. SHREE ARIHANT GEMS amounting to Rs. 20,10,000/- has escaped assessment due to failure of the chargeable to tax for the A.Y. 2012-13 assessee to disclose fully and truly all material facts necessary for the assessment in this case in terms of provisions of Section 147 of the I.T. Act*

6. *Basis of forming reason to believe and details of escapement of income*

*During the investigation, the statement of Shri Deepak Kailash Babel was recorded u/s 131 of the I T Act, 1961 on 05.03.2018 and he has not carried out any real business in the company M/s. Delight Diam Pvt Ltd and only provided accommodation entries*

7. *Applicability of provisions of section 147/151 to the facts of the case;*

*The case was selected under CASS for scrutiny and the assessment u/s 143(3) was completed assessing the total income at Rs. 3,71,170/- The issue regarding bogus sales availed by the assessee from the entity operated by Shri Deepak Kailash Babel was never examined by the AO.*

*Though the assessment was completed u/s 143(3), the assessee failed to make full and complete disclosure before the AO explanation 2 to section 147 are applicable to facts of this case the assessment year under In view of the above, provisions of clause (b) of consideration is deemed to be a case where income chargeable to tax has escaped assessment.*

*In this case, more than four years have lapsed from the end of assessment year under consideration. As per the Proviso to Sec. 151(1) of the Income tax Act 1961, permission of the Pr Commissioner of Income tax, 19, Mumbai is hereby sought to re-open the case of the assessee for A.Y. 2012-13 by issue of notice u/s. 148 of the Income tax Act 1961."*

6. Further, we note that in Paragraph 3 of the Assessment Order, the Assessing Officer has only reproduced part of the reasons recorded and the same reads as under:

"3. *In response to the same, the assessee has filed a return of income on 05.05.2019 in response to the notice issued u/s.148*

and furnished a copy of the same. The assessee has further asked to furnish a copy of reasons recorded for each reopening. On 11.11.2019, a copy of reason recorded for re-opening of the assessment u/s. 147 of the Act and an opportunity was also given to the assessee to file objection, if any. The same is reproduced hereinunder:

Information was received from the O/o DDIT (INV)-2, Surat vide letter No. SRT/DDIT(Inv)-2/Info-DKB/2018-19 dated 13.03.2019 that during the investigation in the case of Shri Deepak Kailash Babel, it was found that he is involved in providing accommodation entries to various beneficiaries through his entities operated and controlled by him. The list of such beneficiaries was also forwarded by the Investigation Wing of the Surat.

Ongoing through the documents forwarded by the Investigation Wing, it is found that **various concerns of above mentioned groups have shown bogus/loan sales to M/S. SHREE ARIHANT GEMS in their books of account. In other words M/S. SHREE ARIHANT GEMS has obtained accommodation entry of bogus purchases from following concerns of above groups during F.Y.2011-12 relevant to A.Y.2012-13.**

Sr. No.	Name of the hawala parties	Nature of entry	Amount (INR)
1.	DELIGHT DIAM PVT. LTD.	<b>Sales</b>	20,10,000
	Total		<b>20,10,000</b>

During the investigation, the statement of Shri Deepak Kailash Babel was recorded u/s 131 of the IT Act, 1961 on 05.03.2018 and he has not carried out any real business in the company M/s. Delight Diam Pvt. Ltd and only provided accommodation entries.

In view of the above facts and circumstances of the case and after application of my mind, I have reason to believe that the income of the assessee M/S. SHREE ARIHANT GEMS amounting to Rs. 20,10,000/- has escaped assessment due to failure of the chargeable to tax for the A.Y. 2012-13 assessee to disclose fully and truly all material facts necessary for the assessment in this case in terms of provisions of Section 147 of the I.T. Act"

7. The portion reproduced by the Assessing Officer in paragraph 3 of

the Assessment Order correspond to paragraph 2 to 5 of the reasons recorded for reopening assessment (*reproduced in para 5 hereinabove*). On perusal of the paragraph 6 and 7 of the reasons recorded, it emerges that the Assessing Officer has stated that therein that the '*Basis of forming reason to believe and details of escapement of income*' was that during the investigation, the statement of Mr. Deepak Kailash Babel was recorded under Section 131 of the Act wherein he had confessed to not carrying out any real business in Delight Diam Pvt Ltd and using the said company only for providing accommodation entries. In Paragraph 7, the Assessing Officer has recorded that on going through the documents forwarded by the Investigation Wing, it is found that various concerns of (Deepak Kailash Babel) group had shown '*bogus/ loan sales*' to the Assessee in their books of account. On the basis of the aforesaid, the learned Assessing Officer concluded that the Assessee had obtained accommodation entry of '*bogus purchases*' of INR.20,10,000/- from Delight Diam Pvt. Ltd. during the previous year 2011-12 relevant to Assessment Year 2012-13. We note that there is nothing on record to suggest that loan transactions or purchase transactions aggregating to INR.20,10,000/- were undertaken between the Assessee and Delight Diam Pvt. Ltd. Even in the Assessment Order, addition has been made in respect of the bogus purchases of INR.10,10,000/-. Thus, the factual understanding that income of INR.2,10,000/- had escaped assessment on the basis of which the reasons were recorded is not supported by any material. On the other hand, the Assessee had placed on record the ledger account which shows that on 16/03/2012 and 17/03/2012 payment of INR.10,00,000/- each was made by way of cheque. Against the same, invoice of INR.10,10,000/- (ledger entry dated 31/03/2012) was raised by Delight Diam Pvt Ltd for sale of polished diamonds while the balance amount of INR. 9,90,000/- was returned by the Delight Diam Pvt Ltd to the Assessee by way of Cheque (bearing number 362306, ledger entry dated 21/03/2012) . Thus, admittedly,

there was purchase transaction for INR.1,10,000/-. The balance amount of INR. 9,90,000/- paid by the Assessee to Delight Diam Pvt Ltd could have been regarded as loan/unexplained cash credit in the hands of Delight Diam Pvt Ltd and not in the hands of the Assessee.

8. Further, we note that in paragraph 7 of the reasons recorded, the Assessing Officer has recorded as under:

"7. *Applicability of provisions of section 147/151 to the facts of the case;*

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*Though the assessment was completed u/s 143(3), the assessee failed to make full and complete disclosure before the AO **explanation 2 to section 147** are applicable to facts of this case the assessment year under In view of the above, provisions of **clause (b)** of consideration is deemed to be a case where income chargeable to tax has escaped assessment." (Emphasis Supplied)*

On perusal of the above it is clear that the Assessing Officer has recorded that the Assessee had failed to make and full and complete disclosure before the Assessing Officer and therefore, the provisions contained in Explanation 2 to Section 147 were attracted and as per Clause (b) of the said Explanation 2, the income would be deemed to have escaped assessment. Explanation 2 to Section 147 of the Act on which reliance was placed by the Assessing Officer reads as under:

"147. *If the [Assessing] Officer[has reason to believe] that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings-under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) :*

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*Explanation 2.— For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:*

(a) **where no return of income has been furnished** by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax;

(b) **where a return of income has been furnished by the assessee but no assessment has been made** and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

*[(ba) where the assessee has failed to furnish a report in respect of any international transaction which he was so required under section 92E;]*

(c) **where an assessment has been made, but—**

(i) *income chargeable to tax has been underassessed ; or*

(ii) *such income has been assessed at too low a rate ; or*

(iii) *such income has been made the subject of excessive relief under this Act ; or*

(iv) *excessive loss or depreciation allowance or any other allowance under this Act has been computed;]...”*

9. On perusal of the same Clause (b) to Explanation 2 above, we find that the same is applicable in the case where the return of income has been furnished by the Assessee and no assessment has been made. Therefore, the aforesaid Clause (b) of Explanation 2 has no application in the facts of the present case where assessment has been framed on Assessee under Section 143(3) of the Act vide Assessment Order dated 21/11/2014. Clause (c) of the Explanation 2 to Section 147 created a deeming fiction (*about escapement of income*) which gets triggered in cases where assessment has been framed. However, the Assessing Officer has not invoked the same.

10. Thus, in the present case we find that while the Assessing Officer had, while recording findings in paragraph 5 of the reasons recorded

for reopening the assessment, that the Assessing Officer had applied mind to the material on record, the observation made and the conclusions drawn by the Assessing Officer do not support the same.

11. In view of the aforesaid, we are of the considered view that the reasons recorded are based upon incorrect appreciation of facts and the applicable law and he same do not reflect application of mind showing nexus between the fresh tangible material and formation of belief that income has escaped assessment. It is settled legal position that the reasons recorded should be clear and unambiguous and should not suffer from any vagueness. Therefore, the reasons recorded must be self-explanatory disclosing application of mind by the Assessing Officer and identifying the link between the tangible material and formation of belief that income as escaped assessment [*Hindustan Lever Ltd. vs. R.B. Badkar 268 ITR 332 (Bom)*]. The reasons recorded in the present case fail to meet the aforesaid requirements and therefore, cannot be sustained being in violation of the provisions contained in Section 147 of the Act. Therefore, notice, dated 29/03/2019, issued under Section 148 of the Act, the consequential reassessment proceedings and the Assessment Order, dated 18/12/2019, passed under Section 143(3) read with 147 of the Act are quashed. Thus, Ground No. 1 raised by the Assessee is allowed, and therefore, Ground No.2 is dismissed as having been rendered infructuous.

12. In result the appeal preferred by the Assessee is allowed

Order pronounced on 25.08.2025.

Sd/-  
**(Om Prakash Kant)**  
**Accountant Member**

Sd/-  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 25.08.2025  
Milan,LDC

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण , मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai